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## SENATE BILL NO. 247

Offered January 18, 1996

A BILL to amend and reenact §§ 3.1-884.25, 4.1-323, 5.1-24, 6.1-124, 10.1-1437, 18.2-10, 18.2-15, 18.2-22, 18.2-56.1, 18.2-61, 18.2-67.2:1, 18.2-91, 18.2-95, 18.2-248, 18.2-248.5, 18.2-254, 19.2-264.3, 19.2-288, 19.2-295, 46.2-357, 59.1-41.6, 62.1-44.32 and 62.1-270 of the Code of Virginia and to repeal § 19.2-295.1 of the Code of Virginia, relating to judicial sentencing in criminal cases tried by a jury; exceptions.

Patron—Gartlan

Referred to the Committee for Courts of Justice

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

1. That §§ 3.1-884.25, 4.1-323, 5.1-24, 6.1-124, 10.1-1437, 18.2-10, 18.2-15, 18.2-22, 18.2-56.1, 18.2-61, 18.2-67.2:1, 18.2-91, 18.2-95, 18.2-248, 18.2-248.5, 18.2-254, 19.2-264.3, 19.2-288, 19.2-295, 46.2-357, 59.1-41.6, 62.1-44.32 and 62.1-270 of the Code of Virginia are amended and reenacted as follows:

§ 3.1-884.25. Prohibitions concerning bribery of or gifts to state employees having duties under article; assaults or interference with such employees.

(1) Any person that shall give, pay, or offer, directly or indirectly, to any officer or employee of this Commonwealth authorized to perform any of the duties prescribed by this article or by the regulations of the Board, any money or other thing of value, with intent to influence said officer or employee in the discharge of any such duty, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine not less than \$1,000 nor more than \$10,000 and by imprisonment not less than one year nor more than three years, either or both; and any officer or employee of this Commonwealth authorized to perform any of the duties prescribed by this article who shall accept any money, gift, or other thing of value from any person, given with intent to influence his official action, or who shall receive or accept from any person engaged in intrastate commerce any gift, money, or other thing of value given with any purpose or intent whatsoever, shall be deemed guilty of a felony and shall, upon conviction thereof, be summarily discharged from office and shall be punished by a fine not less than \$1,000 nor more than \$10,000 or by imprisonment not less than one year nor more than three years, either or both, in the discretion of the jury or the court trying the case without jury.

(2) Any person that forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person engaged in or on account of the performance of his official duties under this article with the intent to hinder, delay or prevent the performance of such duties shall be fined not more than \$5,000 and/or be confined in the penitentiary not less than one year nor more than three years, or be confined in jail not exceeding one year at the discretion of the jury or court trying the case without jury.

§ 4.1-323. Attempts; aiding or abetting; penalty.

No person shall attempt to do any of the things prohibited by this title or to aid or abet another in doing, or attempting to do, any of the things prohibited by this title.

On an indictment, information or warrant for the violation of this title, the jury or the court may find the defendant guilty of an attempt, or being an accessory, and the punishment shall be the same as if the defendant were solely guilty of such violation.

§ 5.1-24. Penalties.

Any person violating any of the provisions of this chapter, or violating any of the rules or regulations promulgated pursuant thereto by the Board, except as otherwise specifically provided, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$100 or imprisonment in jail not exceeding one month, or both, in the discretion of the judge or jury trying the case; provided, that any person (excepting any government, political subdivision of the Commonwealth, or governmental subdivision or agency) establishing or operating an airport without first obtaining a permit as provided in § 5.1-8 shall, upon conviction, be fined not less than \$100 nor more than \$500 for each offense, and each day that the airport is operated without such permit shall be construed as a separate offense.

§ 6.1-124. Receiving deposit knowing bank or broker to be insolvent.

Any officer or director of any bank and any private banker or broker or any employee of any such bank, banker or broker, who shall take and receive, or permit to be received, a deposit from any person with the actual knowledge that the bank, banker or broker is at the time insolvent, shall be guilty of embezzlement, and shall be punished by a fine double the amount so received, and be confined in a state correctional facility not less than one nor more than three years, in the discretion of the jury judge,

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60 for each offense. On the trial of any indictment under this section it shall be the duty of any such bank,  
61 banker or broker, its agent or officers, to produce in court on demand of the attorney for the  
62 Commonwealth, all books and papers of such bank, banker or broker, to be read as evidence on the trial  
63 of such indictment; but in determining the question of the solvency of any bank, the capital stock  
64 thereof shall not be considered as a liability due by it.

65 § 10.1-1437. Notice of intent to file application for certification of site approval.

66 A. Any person may submit to the Board a notice of intent to file an application for a certification of  
67 site approval. The notice shall be in such form as the Board may prescribe by regulation. Knowingly  
68 falsifying information, or knowingly withholding any material information, shall void the notice and  
69 shall constitute a felony punishable by confinement in the penitentiary for one year or, in the discretion  
70 of the ~~jury or the court trying the case without a jury~~, confinement in jail for not more than twelve  
71 months, a fine of not more than \$10,000, or both.

72 Any state agency filing a notice of intent shall include therein a statement explaining why the  
73 Commonwealth desires to build a hazardous waste facility and how the public interest would be served  
74 thereby.

75 B. Within forty-five days of receipt of such a notice, the Board shall determine whether it is  
76 complete. The Board shall reject any incomplete notice, advise the applicant of the information required  
77 to complete it, and allow reasonable time to correct any deficiencies.

78 C. Upon receipt of the notice, the Board, at the applicant's expense, shall:

79 1. Deliver or cause to be delivered a copy of the notice of intent together with a copy of this article  
80 to the governing body of each host community and to each person owning property immediately  
81 adjoining the site of the proposed facility; and

82 2. Have an informative description of the notice published in a newspaper of general circulation in  
83 each host community once each week for four successive weeks. The description shall include the name  
84 and address of the applicant, a description of the proposed facility and its location, the places and times  
85 where the notice of intent may be examined, the address and telephone number of the Board or other  
86 state agency from which information may be obtained, and the date, time and location of the initial  
87 public briefing meeting on the notice.

88 § 18.2-10. Punishment for conviction of felony.

89 The authorized punishments for conviction of a felony are:

90 (a) For Class 1 felonies, death, or imprisonment for life and, subject to subdivision (g), a fine of not  
91 more than \$100,000.

92 (b) For Class 2 felonies, imprisonment for life or for any term not less than twenty years and,  
93 subject to subdivision (g), a fine of not more than \$100,000.

94 (c) For Class 3 felonies, a term of imprisonment of not less than five years nor more than twenty  
95 years and, subject to subdivision (g), a fine of not more than \$100,000.

96 (d) For Class 4 felonies, a term of imprisonment of not less than two years nor more than ten years  
97 and, subject to subdivision (g), a fine of not more than \$100,000.

98 (e) For Class 5 felonies, a term of imprisonment of not less than one year nor more than ten years,  
99 or in the discretion of the ~~jury or the court trying the case without a jury~~, confinement in jail for not  
100 more than twelve months and a fine of not more than \$2,500, either or both.

101 (f) For Class 6 felonies, a term of imprisonment of not less than one year nor more than five years,  
102 or in the discretion of the ~~jury or the court trying the case without a jury~~, confinement in jail for not  
103 more than twelve months and a fine of not more than \$2,500, either or both.

104 (g) Except as specifically authorized in subdivision (e) or (f), or in Class 1 felonies for which a  
105 sentence of death is imposed, the court shall impose either a sentence of imprisonment together with a  
106 fine, or imprisonment only. However, if the defendant is not a natural person, the court shall impose  
107 only a fine.

108 For any felony offense committed on or after January 1, 1995, the court may impose an additional  
109 term of not less than six months nor more than three years, which shall be suspended conditioned upon  
110 successful completion of a period of post-release supervision pursuant to § 19.2-295.2 and compliance  
111 with such other terms as the sentencing court may require. However, such additional term may only be  
112 imposed when the sentence includes an active term of incarceration in a correctional facility.

113 § 18.2-15. Place of punishment.

114 Imprisonment for conviction of a felony shall be by confinement in a state correctional facility,  
115 unless in Class 5 and Class 6 felonies the ~~jury or court trying the case without a jury~~ fixes the  
116 punishment at confinement in jail. Imprisonment for conviction of a misdemeanor shall be by  
117 confinement in jail.

118 § 18.2-22. Conspiracy to commit felony.

119 (a) If any person shall conspire, confederate or combine with another, either within or without this  
120 Commonwealth, to commit a felony within this Commonwealth, or if he shall so conspire, confederate  
121 or combine with another within this Commonwealth to commit a felony either within or without this

Commonwealth, he shall be guilty of a felony which shall be punishable as follows:

(1) Every person who so conspires to commit an offense which is punishable by death shall be guilty of a Class 3 felony;

(2) Every person who so conspires to commit an offense which is a noncapital felony shall be guilty of a Class 5 felony; and

(3) Every person who so conspires to commit an offense the maximum punishment for which is confinement in a state correctional facility for a period of less than five years shall be confined in a state correctional facility for a period of one year, or, in the discretion of the ~~jury or the~~ court trying the case ~~without a jury~~, may be confined in jail not exceeding twelve months and fined not exceeding \$500, either or both.

(b) However, in no event shall the punishment for a conspiracy to commit an offense exceed the maximum punishment for the commission of the offense itself.

(c) Jurisdiction for the trial of any person accused of a conspiracy under this section shall be in the county or city wherein any part of such conspiracy is planned or in the county or city wherein any act is done toward the consummation of such plan or conspiracy.

(d) The penalty provisions of this section shall not apply to any person who conspires to commit any offense defined in Chapter 34 of Title 54.1 or of Article 1 (§ 18.2-247 et seq.), Chapter 7 of this title. The penalty for any such violation shall be as provided in § 18.2-256.

§ 18.2-56.1. Reckless handling of firearms; reckless handling while hunting.

A. It shall be unlawful for any person to handle recklessly any firearm so as to endanger the life, limb or property of any person. Any person violating this section shall be guilty of a Class 1 misdemeanor.

B. If this section is violated while the person is engaged in hunting, trapping or pursuing game, the trial judge may, in addition to the penalty imposed ~~by the jury or the court trying the case without a jury~~, revoke such person's hunting or trapping license or privilege to hunt or trap while possessing a firearm for a period of one year to life.

C. Upon a revocation pursuant to subsection B hereof, the clerk of the court in which the case is tried pursuant to this section shall forthwith send to the Department of Game and Inland Fisheries (i) such person's revoked hunting or trapping license or notice that such person's privilege to hunt or trap while in possession of a firearm has been revoked and (ii) a notice of the length of revocation imposed. The Department shall keep a list which shall be furnished upon request to any law-enforcement officer, the attorney for the Commonwealth or court in this Commonwealth, and such list shall contain the names and addresses of all persons whose license or privilege to hunt or trap while in possession of a firearm has been revoked and the court which took such action.

D. If any person whose license to hunt and trap, or whose privilege to hunt and trap while in possession of a firearm, has been revoked pursuant to this section, thereafter hunts or traps while in possession of a firearm, he shall be guilty of a Class 1 misdemeanor, and, in addition to any penalty imposed ~~by the jury or the court trying the case without a jury~~, the trial judge may revoke, such person's hunting or trapping license, or privilege to hunt or trap while in possession of a firearm, *may be revoked* for an additional period not to exceed five years. The clerk of the court shall notify the Department of Game and Inland Fisheries as is provided in subsection C herein.

§ 18.2-61. Rape.

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

B. If any person has sexual intercourse with his or her spouse and such act is accomplished against the spouse's will by force, threat or intimidation of or against the spouse or another, he or she shall be guilty of rape.

However, no person shall be found guilty under this subsection unless, at the time of the alleged offense, (i) the spouses were living separate and apart, or (ii) the defendant caused serious physical injury to the spouse by the use of force or violence.

C. A violation of this section shall be punishable, in the discretion of the court ~~or jury~~, by confinement in a state correctional facility for life or for any term not less than five years. There shall be a rebuttable presumption that a juvenile over the age of ~~10~~*ten* but less than ~~14~~*fourteen*, 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 of subsection B 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.

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

§ 18.2-67.2:1. Marital sexual assault.

A. An accused shall be guilty of marital sexual assault if (i) he or she engages in sexual intercourse, cunnilingus, fellatio, anallingus or anal intercourse with his or her spouse, or penetrates the labia majora or anus of his or her spouse with any object other than for a bona fide medical purpose, or causes such spouse to so penetrate his or her own body with an object, and (ii) such act is accomplished against the spouse's will by force or a present threat of force against the spouse or another person.

B. A violation of this section shall be punishable by confinement in a state correctional facility for a term of not less than one year nor more than twenty years or, in the discretion of the court ~~or jury~~, by confinement in jail for not more than twelve months and a fine of not more than \$1,000, either or both. In any case deemed appropriate by the court, all or part of any sentence 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 in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant 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 enter an adjudication of guilt 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.

D. A violation of this section shall constitute a lesser, included offense of the respective violation set forth in §§ 18.2-61 B, 18.2-67.1 B or § 18.2-67.2 B.

§ 18.2-91. Entering dwelling house, etc., with intent to commit larceny, assault and battery or other felony.

If any person commits any of the acts mentioned in § 18.2-90 with intent to commit larceny, assault and battery or any felony other than murder, rape or robbery, he shall be guilty of statutory burglary, punishable by confinement in a state correctional facility for not less than one or more than twenty years or, in the discretion of the ~~jury or the court trying the case without a jury~~, be confined in jail for a period not exceeding twelve months or fined not more than \$2,500, either or both. However, if the person was armed with a deadly weapon at the time of such entry, he shall be guilty of a Class 2 felony.

§ 18.2-95. Grand larceny defined; how punished.

Any person who (i) commits larceny from the person of another of money or other thing of value of \$5 or more, (ii) commits simple larceny not from the person of another of goods and chattels of the value of \$200 or more, or (iii) commits simple larceny not from the person of another of any handgun, rifle or shotgun, regardless of the handgun's, rifle's or shotgun's value, shall be guilty of grand larceny, punishable by imprisonment in a state correctional facility for not less than one nor more than twenty years or, in the discretion of the ~~jury or court trying the case without a jury~~, be confined in jail for a period not exceeding twelve months or fined not more than \$2,500, either or both.

§ 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 or tablet 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 or tablet, considering the actual chemical composition of such pill, capsule or tablet and, where applicable, the price at which over-the-counter substances of like chemical composition sell.

C. 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 forty years and fined not more than \$500,000. Upon a second or subsequent conviction of such a violation, any such person may, in the discretion of the court ~~or jury~~ imposing the sentence, be sentenced to imprisonment for life or for any period not less than five years and be fined not more than \$500,000.

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

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

F. Any person who violates this section with respect to a controlled substance classified in Schedule III, IV or V or an imitation controlled substance which imitates a controlled substance classified in Schedule III, IV, or V, except for an anabolic steroid classified in Schedule III constituting a violation of § 18.2-248.5, 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 or II 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. "Drug kingpin" means a person who was the principal or one of several principal administrators, organizers or leaders of a continuing criminal enterprise if (i) the enterprise received at least ~~five hundred~~ \$500 thousand ~~dollars~~ in gross receipts during any twelve-month period of its existence from the manufacture, importation, or distribution of heroin or cocaine or ecgonine or the derivatives, salts, isomers, or salts of isomers thereof 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:

1. 100 kilograms or more of a mixture or substance containing a detectable amount of heroin;
2. 500 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; or
3. 1.5 kilograms or more of a mixture or substance described in subdivision 2 which contains cocaine base.

Any person who is found to be a drug kingpin shall upon conviction be guilty of a felony punishable by a fine of not more than one million dollars and imprisonment for twenty years to life, twenty years of which shall be a mandatory, minimum sentence which shall be served with no suspension in whole or in part, nor shall anyone convicted hereunder be placed on probation or parole.

I. For purposes of subsection H of this section, a person is engaged in a continuing criminal enterprise if (i) he violates any provision of this section, the punishment for which is a felony and (ii) such violation is a part of a continuing series of violations of this section which are undertaken by such person in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management, and from which such person obtains substantial income or resources.

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

A. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), Chapter 34 of Title 54.1, it

shall be unlawful for any person to knowingly manufacture, sell, give, distribute or possess with intent to manufacture, sell, give or distribute any anabolic steroid.

A violation of subsection A shall be punishable by a term of imprisonment of not less than one year nor more than ten years or, in the discretion of ~~the jury or~~ the court trying the case ~~without a jury~~, confinement in jail for not more than twelve months or a fine of not more than \$20,000, either or both.

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

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

§ 18.2-254. Commitment of convicted person for treatment for drug or alcohol abuse.

A. The court trying the case of any person alleged to have committed any offense designated by this article or by the Drug Control Act (§ 54.1-3400 et seq.) or in any other criminal case in which the commission of the offense was motivated by, or closely related to, the use of drugs and determined by the court to be in need of treatment for the use of drugs may commit such person, upon his conviction and with his consent and the consent of the receiving institution, to any facility for the treatment of persons for the intemperate use of narcotic or other controlled substances, licensed or supervised by the State Mental Health, Mental Retardation and Substance Abuse Services Board, if space is available in such facility, for a period of time not in excess of the maximum term of imprisonment specified as the penalty for conviction of such offense ~~or, if sentence was determined by a jury, not in excess of the term of imprisonment as set by such jury~~. Confinement under such commitment shall be, in all regards, treated as confinement in a penal institution and the person so committed may be convicted of escape if he leaves the place of commitment without authority. The court may revoke such commitment, at any time, and transfer the person to an appropriate state or local correctional facility. Upon presentation of a certified statement from the director of the treatment facility to the effect that the confined person has successfully responded to treatment, the court may release such confined person prior to the termination of the period of time for which such person was confined and may suspend the remainder of the term upon such conditions as the court may prescribe.

B. The court trying a case in which commission of the offense was related to the defendant's habitual abuse of alcohol and in which the court determines that such defendant is an alcoholic as defined in § 37.1-217 and in need of treatment, may commit such person, upon his conviction and with his consent and the consent of the receiving institution, to any facility for the treatment of alcoholics licensed or supervised by the State Mental Health, Mental Retardation and Substance Abuse Services Board, if space is available in such facility, for a period of time not in excess of the maximum term of imprisonment specified as the penalty for conviction. Confinement under such commitment shall be, in all regards, treated as confinement in a penal institution and the person so committed may be convicted of escape if he leaves the place of commitment without authority. The court may revoke such commitment, at any time, and transfer the person to an appropriate state or local correctional facility. Upon presentation of a certified statement from the director of the treatment facility to the effect that the confined person has successfully responded to treatment, the court may release such confined person prior to the termination of the period of time for which such person was confined and may suspend the remainder of the term upon such conditions as the court may prescribe.

§ 19.2-264.3. Procedure for trial by jury.

A. In any case in which the offense may be punishable by death which is tried before a jury the court shall first submit to the jury the issue of guilt or innocence of the defendant of the offense charged in the indictment, or any other offense supported by the evidence for which a lesser punishment is provided by law and the penalties therefor.

B. If the jury finds the defendant guilty of an offense for which the death penalty may not be imposed, ~~the court~~ shall fix the punishment as provided in § 19.2-295.1 ~~by law~~.

C. If the jury finds the defendant guilty of an offense which may be punishable by death, then a separate proceeding before the same jury shall be held as soon as is practicable on the issue of the penalty, which shall be fixed as is provided in § 19.2-264.4.

If the sentence of death is subsequently set aside or found invalid, and the defendant or the Commonwealth requests a jury for purposes of resentencing, the court shall impanel a different jury on the issue of penalty.

§ 19.2-288. Verdict when accused found guilty of punishable homicide.

If a person indicted for murder ~~be is~~ found by the jury guilty of any punishable homicide, they shall in their verdict fix the degree thereof ~~and~~. *The court shall* ascertain the extent of the punishment to be inflicted within the bounds prescribed by §§ 18.2-30 to 18.2-36. *However, in any case in which the accused is found guilty of capital murder, the provisions of Article 4.1 (§ 19.2-264.2 et seq.) of Chapter 15 of Title 19.2 shall apply.*

§ 19.2-295. Ascertainment of punishment.

Within the limits prescribed by law, *the court shall ascertain* the term of confinement in the state correctional facility or in jail and the amount of fine, if any, ~~of when~~ a person is convicted of a criminal

offense, shall be ascertained by the jury, or by the court in cases tried without a jury.

*The deliberations of the jury shall be confined to a determination of the guilt or innocence of the accused, except that when the accused is found guilty of capital murder, Article 4.1 (§ 19.2-264.2 et seq.) of Chapter 15 of Title 19.2 shall apply.*

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

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

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

1. If such driving does not, of itself, endanger the life, limb, or property of another, such person shall be guilty of a misdemeanor punishable by confinement in jail for no more than ninety days and a fine of not more than \$2,500, either or both. However, ten days of any such confinement shall not be suspended except in cases designated in subdivision 2 (ii) of this subsection.

2. If such driving, of itself, does endanger the life, limb, or property of another, such person shall be guilty of a felony punishable by confinement in a state correctional facility for not less than one year nor more than five years or, in the discretion of the jury or the court trying the case without a jury, by confinement in jail for twelve months and no portion of such sentence shall be suspended except that (i) if the sentence is more than one year in a state correctional facility, any portion of such sentence in excess of one year may be suspended or (ii) in cases wherein such operation is necessitated in situations of apparent extreme emergency which require such operation to save life or limb, said sentence, or any part thereof may be suspended.

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

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

§ 59.1-41.6. Penalties for violation of chapter.

Violations of this chapter are punishable as follows:

1. Any person convicted of an offense under this chapter shall be guilty of a Class 1 misdemeanor; however:

a. Any offense involving at least 100 unlawful sound recordings or twenty unlawful audio visual recordings during any 180-day period shall be punishable by a term of imprisonment of not less than one nor more than two years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not more than \$5,000, either or both;

b. Any offense involving at least 1,000 unlawful sound recordings or sixty-five unlawful audio visual recordings during any 180-day period shall be punishable by a term of imprisonment of not less than one nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not more than \$100,000, either or both; and

c. Any second or subsequent felony offense under this chapter shall be punishable by a term of imprisonment of not less than one nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not more than \$100,000, either or both.

2. If a person is convicted of any offense under this chapter, the court in its judgment of conviction may order the forfeiture and destruction or other disposition of all infringing recordings and of all implements, devices and equipment used or intended to be used in the manufacture of the infringing recordings.

§ 62.1-44.32. Penalties.

(a) Any person who violates any provision of this chapter, or who fails, neglects or refuses to

429 comply with any order of the Board, or order of a court, issued as herein provided, shall be subject to a  
430 civil penalty not to exceed \$25,000 for each violation within the discretion of the court. Each day of  
431 violation of each requirement shall constitute a separate offense. Such civil penalties shall be paid into  
432 the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency  
433 Response Fund pursuant to Chapter 25 of Title 10.1, excluding penalties assessed for violations of  
434 Article 9 (§ 62.1-44.34:8 et seq.) or 10 (§ 62.1-44.34:10 et seq.) of Chapter 3.1 of Title 62.1, or a  
435 regulation, administrative or judicial order, or term or condition of approval relating to or issued under  
436 those articles.

437 Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the  
438 treasury of the county, city, or town in which the violation occurred, to be used for the purpose of  
439 abating environmental pollution therein in such manner as the court may, by order, direct, except that  
440 where the owner in violation is such county, city or town itself, or its agent, the court shall direct such  
441 penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia  
442 Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1, excluding penalties  
443 assessed for violations of Article 9 or 10 of Chapter 3.1 of Title 62.1, or a regulation, administrative or  
444 judicial order, or term or condition of approval relating to or issued under those articles.

445 In the event that a county, city, or town, or its agent, is the owner, such county, city, or town, or its  
446 agent, may initiate a civil action against any user or users of a waste water treatment facility to recover  
447 that portion of any civil penalty imposed against the owner proximately resulting from the act or acts of  
448 such user or users in violation of any applicable federal, state, or local requirements.

449 (b) Any person who willfully or negligently violates any provision of this chapter, any regulation or  
450 order of the Board, any condition of a certificate or any order of a court shall be guilty of a  
451 misdemeanor punishable by confinement in jail for not more than twelve months and a fine of not less  
452 than \$2,500 nor more than \$25,000, either or both. Any person who knowingly violates any provision of  
453 this chapter, any regulation or order of the Board, any condition of a certificate or any order of a court  
454 issued as herein provided, or who knowingly makes any false statement in any form required to be  
455 submitted under this chapter or knowingly renders inaccurate any monitoring device or method required  
456 to be maintained under this chapter, shall be guilty of a felony punishable by a term of imprisonment of  
457 not less than one year nor more than three years, or in the discretion of the ~~jury or the~~ court trying the  
458 case ~~without a jury~~, confinement in jail for not more than twelve months and a fine of not less than  
459 \$5,000 nor more than \$50,000 for each violation. Any defendant that is not an individual shall, upon  
460 conviction of a violation under this subsection, be sentenced to pay a fine of not less than \$10,000.  
461 Each day of violation of each requirement shall constitute a separate offense.

462 (c) Any person who knowingly violates any provision of this chapter, and who knows at that time  
463 that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon  
464 conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor  
465 more than fifteen years and a fine of not more than \$250,000, either or both. A defendant that is not an  
466 individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not  
467 exceeding the greater of \$1,000,000 or an amount that is three times the economic benefit realized by  
468 the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both  
469 fine and imprisonment for any subsequent conviction of the same person under this subsection.

470 (d) Criminal prosecution under this section shall be commenced within three years of discovery of  
471 the offense, notwithstanding the limitations provided in any other statute.

472 § 62.1-270. Penalties.

473 A. Any person who violates any provision of this chapter, or who fails, neglects or refuses to comply  
474 with any order of the Board pertaining to ground water, or order of a court, issued as herein provided,  
475 shall be subject to a civil penalty not to exceed \$25,000 for each violation within the discretion of the  
476 court. Each day of violation of each requirement shall constitute a separate offense.

477 Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the  
478 treasury of the county, city, or town in which the violation occurred to be used for the purpose of  
479 abating environmental pollution therein in such manner as the court may, by order, direct, except that  
480 where the person in violation is such county, city or town itself, or its agent, the court shall direct such  
481 penalty to be paid to the State Treasurer for deposit into the Virginia Environmental Emergency  
482 Response Fund pursuant to Chapter 25 of Title 10.1.

483 With the consent of any person in violation of this chapter, the Board may provide, in an order  
484 issued by the Board against the person, for the payment of civil charges. These charges shall be in lieu  
485 of the civil penalties referred to above. Such civil charges shall be deposited by the State Treasurer into  
486 the Virginia Environmental Emergency Response Fund.

487 B. Any person willfully or negligently violating any provision of this chapter, any regulation or order  
488 of the Board pertaining to ground water, any condition of a ground water withdrawal permit or any  
489 order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than  
490 twelve months and a fine of not less than \$2,500 nor more than \$25,000, either or both. Any person



who knowingly violates any provision of this chapter, any regulation or order of the Board pertaining to ground water, any condition of a ground water withdrawal permit or any order of a court issued as herein provided, or who knowingly makes any false statement in any form required to be submitted under this chapter shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not less than \$5,000 nor more than \$50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation of each requirement shall constitute a separate offense.

C. Any person who knowingly violates any provision of this chapter, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than fifteen years and a fine of not more than \$250,000, either or both. A defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not exceeding the greater of one million dollars or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person under this subsection.

D. Criminal prosecution under this section shall be commenced within three years of discovery of the offense, notwithstanding the limitations provided in any other statute.

**2. That § 19.2-295.1 of the Code of Virginia is repealed.**