2009 General Assembly Session
Juvenile Justice Legislative
Training Manual

This overview of legislation, as enacted by the 2009 General Assembly, relates to juvenile justice.

This handbook is intended only for use as a summary of those bills enacted during the 2009 General Assembly Session relating to the juvenile justice system. If you are using an electronic copy of this document, many of the bill numbers and Code of Virginia citations are hyperlinked. By clicking on the bill number or Code of Virginia citation, you should be able to access the enacted bill language or statute.

For questions or issues concerning any of the information contained herein, please contact: Deron M. Phipps at Deron.Phipps@djj.virginia.gov or (804) 786-6407, or Janet Van Cuyk at Janet.VanCuyk@djj.virginia.gov or (804) 371-4097.

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- **HB 2424 (Delegate May) Restitution for Graffiti Cleanup**. HB 2424 amends § 15.2-908 of the Code of Virginia relating to restitution for graffiti abatement costs.
- **SB 1363 (Senator Reynolds) Compensation of Court-Appointed Counsel in Habeas Corpus Cases.** SB 1363 amends § 19.2-163 of the Code of Virginia relating to compensation of court-appointed counsel.
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- **HB 2312 (Delegate Melvin) & SB 1381 (Senator Stolle) Requirements for Writ for Actual Innocence**. HB 2312 & SB 1381 amend §§ 19.2-327.2, 19.2-327.3, and 19.2-327.5 of the Code of Virginia.
- **SB 1391 (Senator Stolle) Criminal Convictions & DNA Notification**. SB 1391 contains an enactment that states an emergency exists and the act is in force from its passage (March 23, 2009).
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- **HB 1969 (Delegate Massie) & SB 1299 (Wagner) Administrative Process Act & Electronic Submission of Documents and Fees.** By January 1, 2010, HB 1969 & SB 1299 require each agency, when promulgating regulations, to consider providing for the electronic submission of documents and payments, including fees and fines.
- **SB 848 (Senator Edwards) Elections & Voting - Clarifications and Revisions to Registration and Election Processes**. SB 848 amends §§ 24.2-101, 24.2-115, 24.2-115.1, 24.2-404, 24.2-418, 24.2-604, and 24.2-1004 of the Code of Virginia.

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- **SB 1319 (Senator Houck) Freedom of Information Act & Meeting Minutes Must be in Writing**. SB 1319 amends § 2.2-3707 of the Code of Virginia relating to the Freedom of Information Act, open meetings and the posting of meeting minutes.
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JUVENILE JUSTICE

SB 1149 Crime Commission Study: Juvenile Code – Technical Amendments.
Senator Howell

SB 1149 amends §§ 4.1-305, 16.1-237, 16.1-260, and 18.2-57.2 of the Code of Virginia to make various "clarifying" changes in the Code of Virginia pertaining to juveniles and juvenile court provisions. Effective July 1, 2009.

1.00 Summary: Crime Commission Study - Juvenile Code - Technical Amendments. SB 1149 was a recommendation of the Virginia State Crime Commission upon completion of the third year of study of the juvenile justice system (House Joint Resolution 136 [2006] and House Joint Resolution 113 [2008]). SB 1149 amends §§ 4.1-305, 16.1-237, 16.1-260, and 18.2-57.2 of the Code of Virginia to make various "clarifying" changes in the Code of Virginia pertaining to juveniles and juvenile court provisions.

2.00 New! Possession of Alcohol Dispositions. Section 4.1-305 of the Code of Virginia provides the penalties for the purchasing or possessing of alcoholic beverages by persons under the age of 21. Prior to SB 1149, a juvenile could be punished for the illegal possession or consumption of alcohol under either § 4.1-305 or § 16.1-278.9. To avoid potential confusion, SB 1149 clarifies that an adult (person between the ages of 18 and 21) will be punished in accordance with subsection C § 4.1-305 and a juvenile found to have committed a violation of subsection A of § 4.1-305 will have the disposition handled according to the provisions of Article 9 (§ 16.1-278 et seq.) of Chapter 11 of Title 16.1.

3.00 New! Photographs May be Taken. Section § 16.1-237 of the Code of Virginia provides the powers, duties, and functions of juvenile probation and parole officers. SB 1149 amends § 16.1-237 (F) to clarify that photographs may be retained in work case files.

4.00 New! Informal Diversion – Clarifying Language. Section 16.1-260 of the Code of Virginia provides the authority of the juvenile intake officer to file petitions initiating formal court action or to divert a case informally. SB 1149 adds language to § 16.1-260 to clarify that a juvenile may not be diverted if he had been previously adjudicated delinquent for an offense that would be a felony if committed by an adult. Current language in § 16.1-260 conflicts and creates confusion as to whether a petition must be filed if the juvenile had previously been adjudicated delinquent for any offense.

5.00 New! Petitions and Assault & Battery of a Family Member. Section 18.2-57.2 of the Code of Virginia makes it a Class 1 misdemeanor to assault and batter a family or household member. The juvenile court has limited jurisdiction over some criminal offenses. Such offenses include § 18.2-57.2. However, formal proceedings in juvenile court are initiated by petition. SB 1149 adds "petitions" to § 18.2-57.2 so that a case of assault and battery of a family member in a juvenile court is subject to a higher penalty for a third or subsequent conviction.

SB 1290 De Novo Appeal from Juvenile and Domestic Relations District Court.
Senator Edwards

SB 1290 amends §§ 16.1-106 and 16.1-296 of the Code of Virginia relating to appeals from district courts. Effective July 1, 2009.

1.00 Summary: De Novo Appeal from Juvenile and Domestic Relations District Court. SB 1290 amends §§ 16.1-106 and 16.1-296 of the Code of Virginia to clarify that an appeal from the juvenile and domestic relations district court or an appeal in a civil case from the general district court shall be heard de novo in the circuit court.

2.00 What Does § 16.1-106 of the Code of Virginia Do? (Appeals from Courts Not of Record in Civil Cases.) Section 16.1-106 of the Code of Virginia provides for an appeal of a case in a court not of record in a civil case when the case involves a matter of greater value than fifty dollars, the constitutionality or validity of a statute of the Commonwealth, an ordinance or bylaw of a municipal corporation, the enforcement of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), or of a protective order pursuant to § 19.2-152.10. The appeal must be taken within 10 days of an order or judgment rendered.

2.10 New - The Fix! Clarifying Language. SB 1290 amends § 16.1-106 to clarify that an appeal under this section "*shall be heard de novo*."

3.00 What Does § 16.1-296 of the Code of Virginia Do? Section 16.1-296 of the Code of Virginia affords a person the right to appeal any final order or judgment of the juvenile court affecting the rights or interests of that person to the circuit court. The appeal must be taken within 10 days of an order or judgment rendered.

3.10 Issue: Are Appeals from JDR Heard De Novo? There was some question as to whether that appeal would be heard de novo. Although the juvenile code statutes may not be as clear as one would hope, it does appear that the issue of whether an appeal from juvenile court is held de novo was well settled in case law. In juvenile delinquency proceedings, the juvenile's appeal to the circuit court from the juvenile court "annuls the judgment of the inferior tribunal as completely as if there had been no previous trial." Grogg v. Commonwealth, 6 Va. App. 598, 606, 371 S.E.2d 549, 553 (1998) (quoting Walker v. Dept. of Public Welfare of Page County, 223 Va. 557, 563, 290, S.E.2d 887, 890 (1982)); see § 16.1-136 of the Code of Virginia (appeal from juvenile court shall be heard de novo). When the circuit court heard the appeal de novo, it retained jurisdiction over the appellant's parole on her release. Austin v. Commonwealth, 2004 Va. LEXIS 149 (Va., Nov. 5, 2004). Whereas it appears that issue was not in question, the bill does ensure clarity.

3.20 New - The Fix! Clarifying language. SB 1290 adds language to § 16.1-296 to clarify that an appeal from the juvenile and domestic relations district court shall be heard de novo in the circuit court.

3.30 The Fix is Declarative of Existing Law. A second enactment clause provides that SB 1290 is declarative of existing law.

JUVENILE RECORDS

SB 1218 DJJ Director to Make Reports to School When Credible Threat to Safety.
Senator Obenshain

SB 1218 amends § 16.1-305.2 and creates § 66-25.2:1. Effective July 1, 2009.

1.00 Summary: DJJ Director to Make Reports to School When Credible Threat to Safety. SB 1218 amends § 16.1-305.2 of the Code of Virginia and creates § 66-25.2:1 to place a duty upon the Director to notify the school superintendent when a juvenile is released from a juvenile correctional center and poses a credible danger of serious bodily injury or death to one or more students or school personnel.

2.00 Not New: § 16.1-305.2 - What School Superintendent Can Do with Confidential Juvenile Information. When a school superintendent receives notice from an intake officer that a petition has been filed against a student pursuant to § 16.1-260 of the Code of Virginia, § 16.1-305.2 gives the authority to the superintendent to be able to disseminate the information to other school staff and students. The division superintendent may disclose the nature of the petition to the school principal if the superintendent believes the disclosure is necessary to ensure the physical safety of the juvenile, other students, or school personnel at the school. The principal may further disseminate the information regarding a petition, after the juvenile has been

taken into custody, whether or not the child has been released, only to those students and school personnel having direct contact with the juvenile and need the information to ensure physical safety or the appropriate educational placement or other educational services.

2.10 New! Disseminating Info Received from DJJ Director.
SB 1218 amends § 16.1-305.2 to allow the division superintendent to disclose to the school principal information received from the Director of DJJ pursuant to § 66-25.2:1 of the Code of Virginia. If the superintendent believes that disclosure of the information regarding a report received pursuant to § 66-25.2:1 is necessary to ensure the physical safety of the juvenile, other students, or school personnel within the division, he may disclose the information to the principal of the school in which the juvenile is enrolled. The superintendent may then disclose the information in the report to school personnel if necessary to ensure the physical safety of the students or school personnel.

3.00 New! DJJ Director Has Duty to Warn – Newly Created § 66-25.2:1. SB 1218 requires the Director of the Department of Juvenile Justice, or his designee, to notify the school division superintendent in the jurisdiction in which the juvenile will be enrolled upon release from a juvenile correctional center when the Director reasonably believes the juvenile poses a credible danger of serious bodily injury or death to one or more students or school personnel. The superintendent may then disclose the information in the report to school personnel if necessary to ensure the physical safety of the students or school personnel.

3.10 New Language is Modeled Upon Mental Health Provider's Duty to Warn. The new language is modeled upon language pertaining to a mental health service provider's duty under § 54.1-2400.1 of the Code of Virginia to take precautions to protect third parties from violent behavior or other serious harm when a client has communicated a specific and immediate threat to cause serious bodily injury or death. The new language places a similar duty upon the Director to notify the school superintendent when a juvenile is released from a juvenile correctional center and poses a credible danger of serious bodily injury or death to one or more students or school personnel.

SB 1377 Confidentiality of Law-Enforcement Juvenile Arrest Information.
Senator Stolle

SB 1377 amends § 16.1-301 of the Code of Virginia relating to juvenile law-enforcement records to allow the release to law enforcement in other states. Effective July 1, 2009.

1.00 Summary: Confidentiality of Law-Enforcement & Juvenile Arrest Information. SB 1377 amends § 16.1-301 of the Code of Virginia to allow the release juvenile law-enforcement records to law-enforcement agencies in other states.

2.00 What Does § 16.1-301 Do? Releasing Confidential Law Enforcement Records. Section 16.1-301 requires law-enforcement agencies to take special precautions to ensure that law-enforcement records concerning a juvenile are protected against disclosure to any unauthorized person.

2.10 Not New: Releasing Information When Student is a Suspect. Section 16.1-301 allows law-enforcement agencies to release confidential information to a school when a juvenile is a suspect in or has been charged with a violent juvenile felony[1]; an arson offense[2]; or a violation of any law involving a weapon described in subsection A of § 18.2-308[3].

[1] See subsections B and C of § 16.1-269.1.
[2] See Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2.
[3] Such weapons include guns, bowie knives, switchblade knives, machetes, nun chucks, and throwing stars.

2.20 Not New: Inspection by Court Personnel & Institutions. Section 16.1-301 allows the "inspection" of law-enforcement records by the court having the juvenile currently before it, any public or nongovernmental institution where the juvenile is currently committed, and those persons responsible for his supervision after release.

2.30 Not New: Inspection by Adult Probation Officers & Penal Institutions. Section 16.1-301 allows probation and other professional staff of a court in which the juvenile is subsequently convicted of a criminal offense to inspect law-enforcement records for the purpose of a pre-sentence report or other dispositional proceedings. Officials of penal institutions and other penal facilities to which the juvenile is committed may inspect law-enforcement records. A parole board in considering a juvenile's parole or discharge may inspect law-enforcement records.

2.40 Not New: Inspection by Persons with Legitimate Interest by Court Order. Section 16.1-301 allows any other person, agency, or institution, by order of the court, having a legitimate interest in the case or in the work of the law-enforcement agency to inspect confidential law-enforcement records.

2.50 Not New: Inspection by Law-Enforcement Officers by Court Order. Section 16.1-301 allows law-enforcement officers of other jurisdictions to inspect confidential law-enforcement records, by order of the court, when necessary for the discharge of their current official duties.

2.60 Not New: Inspection by Juvenile & Parents. Section 16.1-301 allows the juvenile, parent, guardian or other custodian, and counsel for the juvenile by order of the court to inspect confidential law-enforcement records.

2.70 Not New: Information to the CCRE. Section 16.1-301 allows law-enforcement records to be sent to the Central Criminal Records Exchange pursuant to the provisions of §§ 19.2-389.1 and 19.2-390.

3.00 Not New: Releasing Confidential Information to other Law-Enforcement Agencies. Under current law, subsection D of § 16.1-301 of the Code of Virginia allows law enforcement to release, upon request, to local, state, and federal law-enforcement agencies, current information on juvenile arrests. The information must be used by the receiving agency for current investigation purposes only. The arrest information cannot result in the creation of new files or records on individual juveniles on the part of the receiving agency.

3.10 New! Releasing Law-Enforcement Records to Out-of-State Law-Enforcement Agencies. SB 1377 adds law enforcement from other states to the list of law-enforcement agencies that can receive arrest information. SB 1377 provides that police and sheriff departments may release current information on juvenile arrests to law-enforcement agencies in other states.

HB 2513 Mob Offenses Reportable by Intake Officers to Schools.
Delegate Marsden

HB 2513 amends § 16.1-260 of the Code of Virginia relating to student offenses reportable by intake officers to schools. Effective July 1, 2009.

1.00 Summary: HB 2513 Mob Offenses Reportable by Intake Officers to Schools. HB 2513 amends § 16.1-260 of the Code of Virginia to require a report by the intake officer to the school superintendent when a petition is filed alleging that a juvenile committed an act of violence by a mob pursuant to § 18.2-42.1.

2.00 What Does § 16.1-260 Do (Intake & Petitions)? Section 16.1-260 of the Code of Virginia requires the intake officer to notify the school superintendent when a petition has been filed in juvenile court for an offense listed in subsection G of § 16.1-260. The offenses include those involving:

- Firearms,
- Homicides,
- Felonious assault and bodily woundings,
- Sexual assaults,
- Controlled substances,
- Marijuana distribution,
- Arson,
- Burglary,
- Robbery, and
- Criminal street gang activity and recruitment.

2.10 Intake Information May be Disseminated to Principal & School Personnel. The information provided to a division superintendent may be disclosed to the school principal as provided in § 16.1-305.2 of the Code of Virginia. The school principal then may disclose the information to those students and school personnel having direct contact with the juvenile and having need of the information to ensure physical safety or the appropriate educational placement or other educational services.

2.20 Clerk Must Notify School of Disposition. Upon disposition of the case, the clerk of the juvenile court is required by § 16.1-305.1 of the Code of Virginia to report to the school superintendent whether the juvenile was adjudicated delinquent, convicted, found not guilty or the charges were reduced, or the charges were dismissed. The clerk must provide written notice of the disposition ordered by the court, including the nature of the offense upon which the disposition was based. The juvenile court clerk has 15 days to report the information.

3.00 <u>New</u>! Intake Must Now Notify for Two New Mob Offenses. The new language requires the intake officer to notify the school division superintendent when a petition is filed against a student for "[a]n act of violence by a mob pursuant to § 18.2-42.1." Section 18.2-42.1 of the Code of Virginia then refers to § 19.2-297.1 for the definition of an "act of violence by a mob." Section 19.2-297.1 defines "an act of mob violence" as mob-related felonies under Article 2 of Title 18.2 (§ 18.2-38 et seq.). As a result, two sections of the Code were added to the list requiring a report to the school superintendent when a petition is filed against a student. Those two new sections are § 18.2-40 (Lynching) and § 18.2-41 (Shooting, Stabbing by a Mob). Therefore, as drafted, the language in the bill is circuitous and actually will have only a minimal impact.

3.10 Duplicative Gang Language is Removed. HB 2513 strikes language in subdivisions 10 and 12 of subsection G of § 16.1-260 relating to intake reports when a juvenile is alleged to be involved in a gang crime or is alleged to have recruited another juvenile to join a gang. The two subsections were duplicative of language in subsections 11 and 13. These amendments created the impression that this is an "anti-gang" bill as alluded to in Senate Courts. However, the amendments simply remove duplicative language and make no substantive change.

SB 928 & HB 2310 Confidentiality of Juvenile Court Records; Open to Inspection & Copies.
Senator Marsh & Delegate Melvin

SB 928 & HB 2310 amend § 16.1-305 of the Code of Virginia relating to confidentiality of juvenile court records. Effective July 1, 2009.

1.00 Summary: Confidentiality of Juvenile Court Records; Open to Inspection & Copies. HB 2310 and SB 928 amend § 16.1-305 of the Code of Virginia to provide that any person, agency, or institution that may inspect juvenile case files also will be authorized to have copies made of such records subject to any restrictions, conditions, or prohibitions that the court may impose.

2.00 Legislation in Response to OAG Opinion. HB 2310 and SB 928 were a recommendation of the Committee on District Courts and in response to an Official Opinion released by the Office of the Attorney General in June 2008. HB 2310 and SB 928 were anticipated as a result of an Official Opinion of the Attorney General released on June 16, 2008. The Opinion was released in response to a question about whether copies of juvenile court records could be provided to persons for whom release was authorized by the Code or whether those records were only "open to inspection." Essentially, the Opinion stated that authorized persons only could "inspect" court records and not receive copies of court reports.

2.10 The "Open to Inspection" Language. The "open to inspection" language creating the problem is antiquated boilerplate language going back to the 1950s when copier machines did not exist and court records were open to inspection only. Prior to copy machines, attorneys, probation staff, and treatment providers would "inspect" the records and take relevant notes. Today, by not providing copies of juvenile records to the attorneys, probation staff, and treatment and service providers only serves to be burdensome in conducting court proceedings and to providing supervision, treatment, and services to the juvenile and his family.

3.00 New! The Fix! HB 2310 and SB 928 fix the issue raised by the Attorney General pertaining to providing copies of juvenile court records under any restrictions ordered by the court. HB 2310 and SB 928 provide that any person, agency, or institution that may inspect juvenile case files will also be authorized to have copies made of such records subject to any restrictions, conditions, or prohibitions that the court may impose.

SEX OFFENSES

HB 1843 Civil Commitment of Sexually Violent Predators Act – Juvenile Records.
Delegate Griffith

HB 1843 amends §§ 16.1-69.55, 16.1-300, 16.1-305, 37.2-900, 37.2-901 through 37.2-909, 37.2-911 through 37.2-914, 37.2-918, and 53.1-32 of the Code of Virginia relating to civil commitment of sexually violent predators. Effective July 1, 2009.

1.00 Summary: Civil Commitment of Sexually Violent Predators Act – Juvenile Records. HB 1843 amends §§ 16.1-69.55, 16.1-300, 16.1-305, 37.2-900, 37.2-901 through 37.2-909, 37.2-911 through 37.2-914, 37.2-918, and 53.1-32 of the Code of Virginia relating to civil commitment of sexually violent predators. For DJJ, HB 1843 amends §§ 16.1-300 and 16.1-305 of the Code of Virginia to allow the Office of the Attorney General access to confidential juvenile records for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.). HB 1843 extends the years for retaining juvenile court records for specific misdemeanor sex offenses from 10 to 50 years.

2.00 New! DJJ Records. HB 1843 amends §§ 16.1-300 and § 16.1-305 of the Code of Virginia relating to the confidentiality of juvenile court records and the records in the custody of DJJ. Subsection A of § 16.1-300 states

that confidential juvenile social, medical, and psychiatric and psychological reports and records "shall be open for inspection only" to specifically enumerated persons, agencies, and entities. For example, § 16.1-300 allows any "law-enforcement agency, attorney for the Commonwealth, school administration, or probation office" access to a juvenile's confidential records and reports if the requesting party has a legitimate interest in the case. HB 1843 adds a new subsection 12 that would allow the Office of the Attorney General access to these confidential juvenile records for all criminal justice activities otherwise permitted and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.).

2.10 Issue Thought Resolved in. The Department thought the issue of accessing confidential juvenile records was fixed during the 2007 General Assembly Session. Prior to the 2007 Session, in order to get confidential juvenile records from DJJ for purposes of conducting the Commitment Review Committee (CRC) review summarized above, the OAG would need to get a court order. In 2007 Delegate Griffith submitted legislation that created § 37.2-905.2 of the Code of Virginia that gave the CRC and the OAG access and copies of all records from all state and local courts, including DJJ and several other state agencies.

3.00 New! Opening Juvenile Court Records. Section 16.1-305 of the Code of Virginia governs the release of confidential juvenile court records. Section 16.1-305(A) provides that "[s]ocial, medical, and psychiatric or psychological records" of juveniles before the court "shall be open for inspection only to" the certain individuals and entities named in subsections (A)(1)-(5). HB 1843 adds the same language to § 16.1-305 as it did to § 16.1-300.

4.00 New! Limited Expanded Access by the OAG. The language in the bill does expand access by the Office of the Attorney General beyond the Commitment of Violent Sexual Offenders Act to include access to "all criminal justice activities otherwise permitted." Given that the OAG has limited criminal jurisdiction, such as in cases involving violations of the Alcoholic Beverage Control Act (§ 4.1-100 et seq.), violation of election laws (§ 24.2-104), the handling of funds by a state agency or the theft of state property, and criminal laws involving child pornography and sexually explicit visual material involving children, the expanded access is minimal.

5.00 New! Misdemeanor Sex Case Court Records to be Kept for 50 Years. Under current law, § 16.1-69.55 of the Code of Virginia requires the juvenile court to expunge court records pursuant to § 16.1-306. Generally, misdemeanor cases are destroyed when the juvenile attains the age of 19 years and five years have elapsed since the date of the last hearing in any case in which the juvenile was the subject. HB 1843 extends the years for retaining juvenile court records for any cases involving sexually violent offenses as defined in § 37.2-900 (Civil Commitment of Sexually Violent Predators Act) and enumerated misdemeanor sex cases from 10 to 50 years.

5.10 Records in General District and Juvenile Courts. HB 1843 applies to misdemeanor sex cases of adults and juveniles and in general district and juvenile courts.

5.20 The Misdemeanor Sex Cases. The misdemeanor sex cases in which the records must be kept for 50 years are:

- § 18.2-67.4 (Sexual battery),
- § 18.2-67.4:1 (Infected sexual battery),
- § 18.2-67.4:2 (Sexual abuse of a child under 15 years of age),
- § 18.2-346 (Being a prostitute),
- § 18.2-347 (Keeping, residing in or frequenting a bawdy place),
- § 18.2-348 (Aiding prostitution or illicit sexual intercourse),
- § 18.2-349(Using vehicles to promote prostitution or unlawful sexual intercourse),
- § 18.2-370 (Taking indecent liberties with children),

- § 18.2-370.01 (Indecent liberties by children),
- § 18.2-370.1 (Taking indecent liberties with child by person in custodial or supervisory relationship),
- § 18.2-374 (Production, publication, sale, possession, etc., of obscene items),
- § 18.2-386.1 Unlawful filming, videotaping, or photographing of another),
- § 18.2-387 (Indecent exposure), and
- § 18.2-387.1(Obscene sexual display).

6.00 Technical Amendments to the Civil Commitment of Sexually Violent Predators Act. HB 1843 makes several technical and procedural changes to the Civil Commitment of Sexually Violent Predators Act (Chapter 9 of Title 37.2 §§ 37.2-900 et seq.) Such changes include changing the name of "prisoner or defendant" to "respondent;" possession and use of records and reports; addressing challenges to filing defects, including defendants under the Commitment Review Committee; allowing access to sealed records; extending from 60 to 90 days the time for a probable cause hearing and allowing the respondent to waive his right to such hearing; setting a standard for the court to find probable cause; and extending from 90 to 120 the number of days after the probable cause hearing for conduct of the trial. Per §§ 37.2-917 and 37.2-918, it is a Class 6 felony for a civilly-committed person to escape from custody or for a person on conditional release to leave Virginia without permission from the court. Under the proposal, § 37.2-918 is expanded to include persons on conditional release who fail to return to Virginia in violation of a court order. HB 1843 adds a semicolon to the definition of sexually violent predator in § 37.2-900 of the Code of Virginia.

7.00 FYI Only: Sexually Violent Predator Population. According to a report submitted to the General Assembly by the Secretary of Health and Human Resources (Sexually Violent Predator Referral, Commitment, and Bed Utilization Forecast for FY2009-2014), the population of sexually violent predators civilly committed to the Virginia Center for Behavioral Rehabilitation (VCBR) was 81 as of July 1, 2008; another 17 individuals were under conditional release as of that date. The report states that the population of civilly-committed persons at VCBR is expected to reach 448 by FY2014.[4]

According to the Attorney General's Sexually Violent Predators Civil Commitment Section, as of December 19, 2008, there have been 56 sexual offenders civilly committed to the VCBR during calendar year (CY) 2008. Of the 18 who have been placed under conditional release provisions in CY2008, nine have re-offended and have returned to the Department of Corrections or local jails; an additional case was pending. Of the two offenders who were released from the custody of the VCBR during CY2008, one has re-offended. According to the Secretary of Health and Human Resources, as of July 1, 2008, no individuals on sexually violent predator conditional release had been accused or charged with a new sex crime. It is a Class 6 felony for a civilly-committed person to escape from custody or for a person on conditional release to leave the state without permission (§§ 37.2-917 and 37.2-918). According to the Circuit Court Automated Information System (CAIS), there were no convictions under these statutes during CY2006 and CY2007.[5]

[4] See Fiscal Impact Statement for Proposed Legislation, House Bill No. 1843 (Floor Amendment in the Nature of a Substitute), Virginia Criminal Sentencing Commission, February 26, 2009, at http://leg1.state.va.us/cgi-bin/legp504.exe?091+oth+HB1843FS2160+PDF.
[5] Id.

HB 2397 Venue for Prosecuting Possession, Distribution, Etc., of Child Pornography.
Delegate Bell

HB 2397 amends § 18.2-374.1:1 of the Code of Virginia relating to venue for prosecuting the possession, etc., of child pornography. Effective July 1, 2009.

1.00 New! Summary: Venue Can Lie Where Child Porn Was Found. HB 2397 provides that venue for prosecuting child pornography crimes under § 18.2-374.1:1 "*may lie in the jurisdiction where the unlawful act occurs or where any child pornography is produced, reproduced, found, stored, received, or possessed . . .*"

2.00 Not New: Overview of Current Child Pornography Law. Section 18.2-374.1:1 makes it a Class 6 felony for any person to knowingly possess child pornography. It is a Class 5 felony for a second conviction. Producing or distributing child pornography is punishable by five to 20 years in a state correctional facility. A second conviction for producing or distributing child pornography carries a five-year mandatory minimum term of imprisonment. A 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.

3.00 Sidebar: Child Pornography Laws Apply to Juveniles – "The Sexting Trend." Please note: While the law requires that the person depicted in the child pornography must appear less than 18 years of age, the person possessing, producing, or distributing the child pornography can be under the age of 18.

Additional Sex Offender Legislation

- **HB 2400 (Delegate Bell) Criminal Sexual Assault - Establishment of a Multidisciplinary Response**. HB 2400 requires each attorney for the Commonwealth to establish a multidisciplinary response to criminal sexual assault as set forth in Article 7 (§ 18.2-61) of Chapter 4 of Title 18.2 of the Code of Virginia. The attorney for the Commonwealth must hold a meeting, at least annually, to discuss protocols and policies for coordinating sexual assault response teams and to establish guidelines for collecting, preserving, and securing evidence from Physical Evidence Recovery Kit examinations consistent with § 19.2-165.1 of the Code of Virginia. The protocols must be consistent with those established by the Department of Criminal Justice Services pursuant to § 9.1-102 (45) of the Code of Virginia. The following persons must be invited to participate: the sheriff; the director of the local sexual assault crisis center; the chief of police; a forensic nurse examiner; and the director of the victim/witness program in the jurisdiction, if any.
- **SB 965 (Senator Blevins) SANE Nurses & Preventive Medications for Sexual Assault Victims**. *SB 965 amends §§ 54.1-2722 and 54.1-3408 of the Code of Virginia relating to the administration of preventive medication for victims of rape.* SB 965 provides that pursuant to an oral or written order or standing protocol issued by a prescriber within the course of his professional practice, such prescriber may authorize registered professional nurses certified as sexual assault nurse examiners under his supervision and when he is not physically present to possess and administer preventive medications for victims of sexual assault as recommended by the Centers for Disease Control and Prevention.

Crime Commission to Study Sex Offender Legislation

The General Assembly has revisited various sections in Chapter 9 of Title 9.1 (Sex Offender and Crimes Against Minors Registry Act) several times in recent years. In the 2008 Session, the crimes requiring registration were restructured. During the 2007 Session, the information required of registrants was expanded, and the list of crimes requiring registration was expanded and reorganized. In 2006 the General Assembly increased the offenses requiring registration and the penalties for second SOR violations. In 2005 the Code was changed to allow Juvenile and Domestic Relations (J&DR) courts to require a juvenile who has been adjudicated delinquent for a Registry offense to register. During the 2009 session, the General Assembly enacted HB 1843 that generally made technical changes to the Violent Sexual Predator Act. However, any legislation that made any substantive changes to the

Violent Sexual Predator Act or the Sex Offender Registry was referred to the Virginia State Crime Commission to be studied.

- **HB 1898 (Delegate Watts) Sex Offender & Crimes Against Minors Registry Act and The Adam Walsh Act.** *Subject matter referred to the Crime Commission pursuant to Senate Rule 20 (L).* HB 1898 would have amended §§ 9.1-903 through 9.1-905 to expand the information that registrants with the Sex Offender and Crimes Against Minors Registry (SOR) are required to provide. In addition to the information currently required, registered sex offenders would be required to provide:
  - Any telephone number the offender uses or intends to use;
  - Information regarding the offender's immigration status;
  - Information regarding any professional or occupational license held by the offender;
  - Places and physical job site locations of employment including volunteer work; and
  - Registration information for all motor vehicles, watercraft, and aircraft regularly operated by the offender.

  Registrants would also be required to re-register following any change in temporary lodging, employment status, or location of employment. The term "temporary lodging" means any place where a person subject to registration is staying when away from his residence for seven or more days. Re-registration would also be required following any change in the registration information of any motor vehicle, watercraft, or aircraft regularly operated by the offender. For non-residents, the requirement to register with the Commonwealth under § 9.1-905 would be affected by changes that shorten the time periods defining "employment" and "extended visit." The penalties for providing materially false information to the Registry or failure to meet the registration or re-registration requirements are delineated in § 18.2-472.1.
- **HB 1928 (Delegate Lewis) Sex Offender and Crimes Against Minors Registry & Change in Appearance**. *Subject matter referred to the Crime Commission pursuant to Senate Rule 20 (L).* HB 1928 would have amended §§ 9.1-903 and 9.1-904 of the Code of Virginia to expand the requirements for sex offenders who must register with the Sex Offender and Crimes Against Minors Registry. Under HB 1928, registered sex offenders would be required to re-register in person and be photographed within three days following any significant change in appearance. If a probation or parole officer becomes aware of a significant change of appearance for any probationers or parolees required to register, the officer shall notify the State Police forthwith. Sex offenders must currently re-register in person following any name change, but the proposal adds a three-day time limit for offenders to do so.
- **HB 1962 (Delegate Mathieson) Sex Offender Registry & Court Orders Void Ab Initio**. *Subject matter referred to the Crime Commission pursuant to Senate Rule 20 (L).* HB 1962 would have amended § 9.1-923 of the Code of Virginia relating to conviction and sentencing orders in contravention of the Sex Offender and Crimes Against Minors Registry Act. HB 1962 stated that any provision in a conviction order, a sentencing order, or other court order or plea agreement stating that a person is not required to register with the Sex Offender and Crimes Against Minors Registry is invalid and void ab initio[6] if such provision is in conflict with the Sex Offender Registry. If the State Police receives such an order, the State Police must notify the chairmen of the House Committee for Courts of Justice; the House Committee on Militia, Police, and Public Safety; the Senate Committee for Courts of Justice; and the Executive Secretary of the Supreme Court of Virginia.
- **HB 2274 (Delegate Poindexter) Sex Offender Registry & Posting "Wanted" for a Crime on the Internet**. *Subject matter referred to the Crime Commission pursuant to Senate Rule 20 (L).* HB 2274 would have amended § 9.1-913 of the Code of Virginia to allow the Internet Sex Offender Registry information system to include a "wanted" notation for a person who is wanted for any crime. Currently, the "wanted" notation is posted only for a person who is wanted for failing to register.

[6] Black's Law Dictionary defines "void ab initio" as: "A contract is null from the beginning if it seriously offends law or public policy in contrast to a contract which is merely voidable at the election of one of the parties to the contract."

ALCOHOL OFFENSES

HB 1868 "Baby DUI" is a Class 1 Misdemeanor - Clarifying Language.
Delegate Janis

HB 1868 amends § 18.2-266.1 of the Code of Virginia to fix a drafting error in legislation (HB 719) enacted last year. Effective July 1, 2009.

1.00 Summary: "Baby DUI" is a Class 1 Misdemeanor – Clarifying Language. HB 1868 amends § 18.2-266.1 of the Code of Virginia to fix a drafting error in legislation (HB 719) enacted last year. HB 1868 ensures that all the penalties for a conviction of a Class 1 misdemeanor apply to a conviction for underage drinking and driving.

2.00 What is "Baby-DUI?" Section 18.2-266.1 of the Code of Virginia, commonly referred to as the "Baby-DUI" statute, provides a "zero tolerance" level (0.02% -0.08% BAC) for underage drinking and driving and makes it a Class 1 misdemeanor. However, due to a drafting error in legislation during the 2008 General Assembly, the penalty for Baby-DUI was limited to forfeiture of the person's driver's license for one year and either a mandatory minimum fine of $500 or performance of a minimum of 50 hours of community service. The drafting error appeared to have prohibited the use of incarceration in detention facility as a dispositional option.

2.10 New! Legislative Fix of Drafting Error. HB 1868 fixes the drafting error by inserting "include." Now the punishment for "Baby-DUI" is a Class 1 misdemeanor and shall "include" license forfeiture and either a fine or community service. Therefore, incarceration in a detention is a dispositional option.

3.00 FYI – Conflict in Punishment for "Baby-DUI" and Possession (2008 General Assembly). In 2008, it became known that there was a conflict in the punishment for the possession of alcohol by an underaged person compared to underage drinking and driving. The possession of alcohol by a person under the age of 21 was a Class 1 misdemeanor[7] but that underage drinking and driving (Baby-DUI) was not a Class 1 misdemeanor. The punishment for "Baby-DUI" was a mandatory minimum fine of $250 and a period of license suspension for six months. The punishment did not include a period of incarceration. Therefore, the penalty for a juvenile possessing alcohol was greater than the penalty for a juvenile drinking and driving; not to mention the contrast between the punishment for "Baby-DUI" with the punishment for an adult conviction for DUI. An adult convicted of driving while intoxicated with a blood alcohol count of 0.08% or more is guilty of a Class 1 misdemeanor, and punishment includes a mandatory minimum fine of $250 (see § 18.2-270). During the 2008 General Assembly Session, Delegate Janis introduced legislation to fix this apparent conflict.[8]

3.10 Concerns with Violating OJJDP. The Department of Criminal Justice Services (DCJS) raised concerns that the federal government considered "Baby-DUI" a status offense and that making "Baby-DUI" a Class 1 misdemeanor could result in the state losing federal grant funding under the Juvenile Justice and Delinquency Prevention (JJDP) Act of 2002 (Public Law 107–273, 42 U.S.C. § 5601 et seq.). The federal government defines a status offender as a juvenile charged with or adjudicated for conduct that would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult. Examples provided in the OJJDP interpretive guidelines include truancy, curfew violations, incorrigibility, runaway, and underage possession and/or consumption of alcohol or tobacco. Thus, it appears that "Baby-DUI" and possession of alcohol would be included in the federal definition of a "status offense." Upon that consideration, last year's bill passed with two additional enactment clauses. One enactment clause contained a sunset provision for July 1, 2010, and the second additional enactment clause required DCJS to report on the number of detentions pursuant to § 18.2-266.1 that are "in violation of the federal Juvenile Justice and Delinquency Prevention Act."

[7] See § 4.1-305 of the Code of Virginia.
[8] See 04/14/08 Governor: Acts of Assembly Chapter text (CHAP0729).

4.00 Enactment Clauses Remain: Sunset Clause and DCJS Report. Originally HB 1868 attempted to remove an enactment clause with a sunset provision that has § 18.2-266.1 expiring on July 1, 2010. A third enactment clause in the 2008 legislation (HB 719) requires DCJS to submit to the Chairmen of the House and Senate Committees for Courts of Justice an interim report (January 2009) and a final report by November 1, 2009, on the number of detentions pursuant to § 18.2-266.1 that are in violation of the federal Juvenile Justice and Delinquency Prevention Act. The sunset provision was reinserted, and the requirement for the reports remains.

Other Legislation Relating to the Possession of Alcohol

- **HB 2627 (Delegate Griffith) Alcoholic Beverage Control – Affirmative Defense to Unlawful Possession**. *HB 2627 amends § 4.1-305 of the Code of Virginia to create an affirmative defense to the unlawful possession of alcohol.* Subdivision 7 of § 4.1-200 provides that alcoholic beverages may be served or given to guests under 21 years of age in a residence by a person, his family, or servants when the guests are accompanied by a parent, guardian, or spouse who is 21 years of age or older. HB 2627 amends § 4.1-305 to make subdivision 7 of § 4.1-200 an affirmative defense to the underage possession of alcohol.

DOMESTIC VIOLENCE/PROTECTIVE ORDERS

HB 1857 Protective Orders in Cases Where Perpetrator is or has been Incarcerated.
Delegate Shannon

HB 1857 amends §§ 16.1-253.1 and 16.1-279.1 of the Code of Virginia relating to protective orders. Effective July 1, 2009.

1.00 Summary: Protective Orders in Cases Where Perpetrator is or has been Incarcerated. HB 1857 amends §§ 16.1-253.1 and 16.1-279.1 of the Code of Virginia to provide the juvenile court with circumstances in which the court can issue a protective order if the petitioner has been subjected to family abuse within a reasonable time and the alleged abuser is or has been recently incarcerated.

2.00 Not New: Preliminary Protective Orders in Cases of Family Abuse. Section 16.1-253.1 of the Code of Virginia provides the juvenile court with the authority to issue a preliminary protective order in cases of family abuse to protect the health and safety of the petitioner or any family or household member of the petitioner. The order may be issued in an ex parte proceeding upon good cause shown when the petition is supported by an affidavit or sworn testimony before the judge or intake officer. A hearing on the merits must be held within 15 days of the issuance of the preliminary order. If the respondent fails to appear at this hearing because the respondent was not personally served, the court may extend the protective order for a period not to exceed six months.

2.10 New! Preliminary Protective Orders in Cases of Current or Previous Incarceration. HB 1857 amends § 16.1-253.1 to provide the juvenile court with circumstances in which the court can issue a preliminary protective order if the petitioner has been subjected to family abuse within a reasonable time and the alleged abuser is or has been recently incarcerated. The court may order the issuance of a preliminary protective order if there is evidence of immediate and present danger of family abuse by showing that:

"(i) the allegedly abusing person is incarcerated and is to be released from incarceration within 30 days following the petition or has been released from incarceration within 30 days prior to the petition,
(ii) the crime for which the allegedly abusing person was convicted and incarcerated involved family abuse against the petitioner, and
(iii) the allegedly abusing person has made threatening contact with the petitioner while he was incarcerated, exhibiting a renewed threat to the petitioner of family abuse."

2.20 New! No More Addendums (see SB 1439). SB 1439 removes the provisions added in 2008 requiring an addendum to each type of protective order that contains identifying information.

3.00 Not New: Protective Orders in Cases of Family Abuse. Section 16.1-279.1 allows the court to issue a protective order in cases of family abuse. The court may issue a protective order to protect the health and safety of the petitioner and family or household members of the petitioner if the court finds by a preponderance of the evidence that the abuse occurred. The standard of evidence is in § 16.1-253.1. The protective order may be issued for a period not to exceed two years.

3.10 New! Protective Orders in Cases of Incarcerated Persons. Consistent with the changes made to § 16.1-253.1, HB 1857 amends § 16.1-279.1 to allow a protective order to be issued in a case involving an incarcerated or recently incarcerated respondent against whom a preliminary protective order has been issued pursuant to § 16.2-253.1.

3.20 New! Again, No More Addendums (see SB 1439). SB 1439 removes the provisions added in 2008 requiring an addendum to each type of protective order that contains identifying information.

SB 1439 Protective Orders – No More Addendums.
Senators Edwards and Obenshain

SB 1439 amends §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 19.2-152.8, 19.2-152.9, and 19.2-152.10 of the Code of Virginia relating to family abuse protective orders and stalking protective orders. Effective July 1, 2009.

1.00 Summary: Family Abuse and Stalking Protective Orders – No More Addendums. SB 1439 amends §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 19.2-152.8, 19.2-152.9, and 19.2-152.10 of the Code of Virginia relating to family abuse protective orders and stalking protective orders. SB 1439 removes the provisions added in 2008 requiring an addendum to each type of protective order that contains identifying information. The identifying information will return to the front page of the order. The bill also specifies identifying information to be added and transmitted to the Virginia Criminal Information Network (VCIN) regarding the protected person and provides that orders will expire at 11:59 p.m. on the date specified. So, no longer will there be an addendum attached to the issuance of a protective order.

2.00 Not New: Statutory Background: Child & Family Protective Orders. There are four types of protective orders to protect children and family members. Brief summaries are provided below on each type of protective order.

2.10 Emergency Protective Orders (§ 16.1-253.4 of the Code of Virginia). A judge of a circuit, general district, or juvenile and domestic relations district court or magistrate may issue a written or oral ex parte emergency protective order in order to protect the health or safety of any person. An emergency protective order provides protection to "family and household members" by prohibiting acts of family abuse, prohibiting such contacts by the respondent with family or household members as the judge or the magistrate deems necessary to protect the safety of such persons and granting the family or household member possession of the premises occupied by the parties to the exclusion of the respondent. Under § 16.1-253.4, when a warrant for domestic assault is issued, a presumption exists that further family abuse will occur, therefore, requiring the issuance of an emergency protective order, unless rebutted by the victim. An emergency protective order expires at "*11:59 p.m.*" on the third day following issuance.

2.20 Preliminary Protective Orders for Children (§ 16.1-253 of the Code of Virginia). Upon the motion of any person or upon the court's own motion, the court may issue a preliminary protective order, after a hearing, if necessary to protect a child's life, health, safety, or normal development pending the final determination of any matter before the court. The order may require a child's parents, guardian, legal

custodian, other person standing in loco parentis, or other family or household member of the child to observe reasonable conditions of behavior for a specified length of time. A hearing on the issuance of the preliminary protective order must be held within 15 days. A continuance may be granted for an additional 15 days. At the hearing, the court may issue a protective order if the court finds that the petitioner has proven the allegation of family abuse by a preponderance of the evidence.

2.30 Preliminary Protective Orders for Family Abuse (§ 16.1-253.1 of the Code of Virginia). Upon the filing of a petition alleging that the petitioner is or has been, within a reasonable period of time, subjected to family abuse, the court may issue a preliminary protective order against an allegedly abusing person in order to protect the health and safety of the petitioner or any family or household member of the petitioner. The order may be issued in an ex parte proceeding upon good cause shown when the petition is supported by an affidavit or sworn testimony before the judge or intake officer. Immediate and present danger of family abuse or evidence sufficient to establish probable cause that family abuse has recently occurred constitutes good cause. A hearing on the issuance of the preliminary protective order must be held within 15 days. A continuance may be granted for an additional 15 days. At the hearing, the court may issue a protective order if the court finds that the petitioner has proven the allegation of family abuse by a preponderance of the evidence.

2.40 Final Protective Orders (§ 16.1-279.1 of the Code of Virginia). The purpose of a protective order is to prevent family abuse. "Family abuse" means any act involving violence, force, or threat including, but not limited to, any forceful detention, that results in bodily injury or places one in reasonable apprehension of bodily injury and that is committed by a person against the person's family or household member. "Family or household member" means a spouse or former spouse, whether or not he resides in the same home, the person's parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents, and grandchildren, regardless of whether or not such persons reside in the same home with the person. The definition of family member includes the person's mother- and father-in-law, sons- and daughters-in-law, and brothers- and sisters-in-law when residing in the same home with the person. The definition of family member also captures any individual who has a child in common with the person and who cohabited within the previous 12 months. The protective order may be issued for a specified period not longer than two years. The protective order expires at "*11:59 p.m.*" on the last day specified or the end of the two-year period.

3.00 Not New: Statutory Background: Stalking Orders. A stalking order can be issued when there is probable cause to believe that the person is subject to being stalked or has been subjected to stalking or a criminal offense resulting in a serious bodily injury to the alleged victim, and a warrant for the arrest of the alleged stalker has been issued. Similar to protective orders, there are three types of stalking orders (emergency, preliminary, and final stalking order). The timeframes for issuing the stalking orders and their validity are similar, too. The types of stalking protective orders are:

- "emergency" protective orders in cases of stalking (§ 19.2-152.8 of the Code of Virginia),
- "preliminary" protective orders in cases of stalking (§ 19.2-152.9 of the Code of Virginia), and
- "final or permanent" protective orders in cases of stalking (§ 19.2-152.10 of the Code of Virginia).

A stalking order can prohibit contacts by the respondent with the alleged victim or that person's family and any other conditions necessary to prevent acts of stalking or criminal offenses resulting in injury to person or property, including any communication of any kind.

4.00 Last Year's Legislation – Adding the Addendum to Protective Orders: In 2008 the General Assembly enacted HB 753 & SB 540 that amended §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 19.2-152.8, 19.2-152.9, 19.2-152.10, and 19.2-390. The purpose of the legislation was to ensure that, when a protective order is issued, the information was entered into the Virginia Criminal Information Network (VCIN) system immediately. However,

the new language also created the need for an "addendum" to the protective order. The addendum contained the identifying information needed by the primary law-enforcement agency responsible for service and entry of protective orders. The 2009 legislation amends each of the above-mentioned statutes, except § 19.2-390, to remove the attachment of the addendums to the protective orders.

5.00 New! No More Addendums! SB 1439 removes the provisions added in 2008 requiring an addendum to each type of protective order that contains identifying information. The identifying information will return to the front page of the order.

HB 1908 & SB 1300 Rewriting the Assault & Battery of Family Member Criminal Statute – Deferred Disposition.
Delegate Armstrong & Senator Hurt

HB 1908 and SB 1300 amend § 18.2-57.3 of the Code of Virginia relating to assault and battery against a family or household member and deferred disposition. Effective July 1, 2009.

1.00 Summary: The Assault & Battery of Family/Household Member – Deferred Disposition Statute. HB 1908 and SB 1300 amend § 18.2-57.3 of the Code of Virginia relating to assault and battery against a family or household member and deferred disposition.

2.00 What is § 18.2-57.3 (Deferred Disposition for Alleged Family Abuse Crime)? Section 18.2-57.3 allows persons charged with a first offense of assault and battery against a family or household member under § 18.2-57.2 to be placed on local community-based probation. There is no finding of guilt.

> **2.10 Eligibility Requirements for Deferred Disposition**. For a person to be eligible for a deferred disposition, he must be an adult and not previously convicted of assault and battery of a family member in any state or federal court. The person must not have previously had an assault and battery charge against a family member deferred and dismissed or had a proceeding against him for violation of such an offense dismissed under § 18.2-57.3. There must be sufficient evidence for the court to find the person guilty and, the person must agree to plead guilty or nolo contender.

3.00 New! But Not Substantively Different: Rewriting the Deferred Disposition Statute. HB 1908 and SB 1300 amend § 18.2-57.3 to rewrite the existing statute for clarity and allows the court to order the person to obtain services from a local community-based probation services agency if the services are available or from an alternative service provider. HB 1908 and SB 1300 also require the court to order the person to be of good behavior for at least two years following deferral of proceedings. HB 1908 and SB 1300 were a recommendation of the Committee on District Courts.

4.00 FYI - What is the Crime? (See § 18.2-57.2 - Assault & Battery Against a Family or Household Member) Section 18.2-57.2 makes it a Class 1 misdemeanor for a person to commit an assault and battery against a family or household member. A third conviction of any combination of assault and battery against a family or household member, malicious wounding in violation of § 18.2-51, aggravated malicious wounding in violation of § 18.2-51.2, or malicious bodily injury by means of a substance in violation of § 18.2-52 raises the penalty to a Class 6 felony. The three convictions must have occurred within 20 years on different dates. Convictions for similar offenses of any other jurisdiction count.

HB 1842 Emergency Protective Orders in Cases of Stalking & Sexual Battery.
Delegate Griffith

HB 1842 amends §§ 19.2-152.8, 19.2-152.9, and 19.2-152.10 of the Code of Virginia relating to issuing an emergency protective order in cases of stalking involving sexual battery. Effective July 1, 2009.

1.00 Summary: Emergency Protective Orders in Cases of Stalking & Sexual Battery. HB 1842 amends §§ 19.2-152.8, 19.2-152.9, and 19.2-152.10 of the Code of Virginia relating to issuing an emergency protective order in cases of stalking involving sexual battery. HB 1842 adds sexual battery in violation of § 18.2-67.4 and aggravated sexual battery in violation of § 18.2-67.3 to the list of offenses for which an emergency protective order can be issued.

2.00 Not New: Emergency Protective Order in Stalking Cases. Section 19.2-152.8 of the Code of Virginia allows a judge of a circuit, general district, or juvenile and domestic relations district court or magistrate to issue a written or oral ex parte emergency protective order in cases of stalking. Under current law, an emergency protective order for stalking can be issued when a law-enforcement officer or the alleged victim asserts under oath to a judge or magistrate that the alleged victim "is being or has been subjected to stalking or a criminal offense resulting in a serious bodily injury" and there is "probable danger of a further such offense being committed" and a warrant for the arrest of the alleged stalker has been issued. In the ex parte emergency protective order, the judge or magistrate may impose such conditions as prohibiting acts of violence or acts of stalking in violation of § 18.2-60.3 of the Code of Virginia.

3.00 New! EPO for Sexual Battery. HB 1842 adds sexual battery in violation of § 18.2-67.4 and aggravated sexual battery in violation of § 18.2-67.3 to the list of offenses for which an emergency protective order can be issued.

SCHOOLS/EDUCATION

HB 1794 Suspensions: Truancy Insufficient Cause Alone.
Delegate Brink

HB 1794 amends § 22.1-277 of the Code of Virginia relating to the use of suspension for instances of truancy. Effective July 1, 2009.

1.00 Summary: New! Suspensions - Truancy Insufficient Cause Alone. HB 1794 amends § 22.1-277 of the Code of Virginia relating to the use of suspension for instances of tardiness or truancy. Section § 22.1-277 provides the authority for schools to suspend or expel students. HB 1794 amends subsection A of § 22.1-277 so that "*in no cases may sufficient cause for suspensions include only instances of truancy.*"

2.00 FYI – The Statutes Providing the Authority to Suspend. Below are the sections of the Code that allow or require schools to suspend or expel students for certain actions.

- § 22.1-277 allows the superintendent to suspend or expel a student when he has received a report pursuant to § 16.1-305.1 of an adjudication of delinquency or a conviction for an offense listed in subsection G of § 16.1-260.
- § 22.1-277.04 provides the statutory authority for the principal to suspend a student for up to ten school days.
- § 22.1-277.05 allows a student to be suspended for more than 10 days after written notice and the right to a hearing before the school board. The hearing must be held and a decision rendered within 30 days of the suspension.

- § 22.1-277.06 allows a student to be expelled after written notice to the student and his parent and the right to a hearing before the school board. The hearing must be held and a decision rendered within 30 days of the suspension.
- § 22.1-277.07 provides that, in compliance with the federal Improving America's Schools Act of 1994 (Part F - Gun-Free Schools Act of 1994), a school board must expel a student for at least a year when it is determined that the student possessed a firearm or a pneumatic gun on school property or at a school-sponsored activity.[9]
- § 22.1-277.08 requires school boards to expel from school a student who has brought a controlled substance, imitation controlled substance, or marijuana onto school property or to a school-sponsored activity.

3.00 Brief Background on Origination of the Legislation. Delegate Frank Hall introduced two pieces of legislation during the 2008 General Assembly Session addressing truancy and dropout prevention (HB1263 Truancy and School Dropout Prevention & HJ 179 Study on Chronic Truancy & Dropout Prevention). HB 1263 did not make it out of the Committee on Education. House Rules recommended that HJ 179 be sent to the Commission on Youth for study. The purpose of the study was to do a comprehensive overview of state laws and policies relating to the enforcement of compulsory school attendance, truancy, and dropout prevention. The Commission on Youth created an Advisory Group for the "Study on Truancy and School Dropout Prevention." The advisory group had 31 members with several staff from DOE. Delegate Fralin chaired the group. He stated on multiple occasions that he wanted the group to identify Code changes for the 2009 session. The committee made several recommendations to the full Commission on Youth, including HB 1794.

HB 1794 was a recommendation made by the above-mentioned Advisory Group. The full Commission accepted the recommendation to amend the Code of Virginia to prohibit the use of suspension in all instances of tardiness or attendance. The Advisory Group considered prohibiting the use of expulsions in instances of truancy, but rejected that option. Briefly, the Group's logic focused upon the fact that expulsions are under the domain of the school board and not individual schools. Due process protections are stronger for expulsions, and expulsions are rarely used for truants unless there are egregious circumstances.

In 2006-2007 there were over 18,530 instances of attendance suspensions of Virginia students.

HB 2341 Short-Term Suspension for Student When Intake Files a Report.
Delegate Amundson

HB 2341 amends § 22.1-277.2:1 of the Code of Virginia relating to the disciplinary authority of school boards. Effective July 1, 2009.

1.00 Summary: Short-Term Suspension of a Student When Intake Files a Report & Extenuating Circumstances. HB 2341 amends § 22.1-277.2:1 of the Code of Virginia to allow the school board to place a student in an alternative educational program when that student has been charged with "*an offense that is required to be disclosed to the superintendent of the school division pursuant to subsection G of § 16.1-260*."

2.00 Alternative School for Student Charged or Adjudicated Delinquent for Certain Offenses. HB 2341 amends § 22.1-277.2:1 relating to the disciplinary authority of school boards. Section 22.1-277.2:1 allows the school board to require a student to attend an alternative education program when the student is charged with a certain offense or has been suspended or expelled. A student may be required to attend an alternative program when the student has been:

[9] The prohibition of a firearm on school property is found in § 18.2-308.1 of the Code of Virginia. The definition of a pneumatic gun can be found in subsection E of § 15.2-915.4.

- charged with a delinquent offense or a violation of school board policies involving weapons, alcohol, drugs, or intentional injury to another person;
- adjudicated delinquent for an offense involving weapons, alcohol, or drugs, or an offense that resulted in or could have resulted in injury to others, or of an offense that is required to be disclosed to the superintendent of the school division pursuant to subsection G of § 16.1-260 (Intake);
- found to have committed a serious offense or repeated offenses in violation of school board policies;
- suspended pursuant to § 22.1-277.05 (Long-term suspension); or
- (v) expelled pursuant to §§ 22.1-277.06 (Expulsion), 22.1-277.07 (Expulsion for weapon), 22.1-277.08 (Expulsion for drug offense) or subsection B of § 22.1-277 (Suspension or expulsion for delinquent Offense).

A school board may require such student to attend such programs regardless of where the crime occurred.

> ***FYI – Drug & Alcohol Evaluation***: Section 22.1-277.2:1 also allows the school board to require a student to undergo an evaluation for drug or alcohol abuse if the student was in possession of, or under the influence of, drugs or alcohol on a school bus, on school property, or at a school-sponsored activity. The parents must consent to treatment if so recommended by the evaluation.

3.00 New! Alternative Education Placement When *Charged* with Reportable Intake Offense: HB 2341 amends § 22.1-277.2:1 to allow the school board to place a student in an alternative educational program when that student has been charged with "*an offense that is required to be disclosed to the superintendent of the school division pursuant to subsection G of § 16.1-260.*"

4.00 New! Short-Term Suspension When Charged with a Certain Offense Involving Intake Report: HB 2341 adds a new subsection C to § 22.1-277.2:1 of the Code of Virginia that allows the school board to adopt regulations authorizing a short-term suspension of a student, pursuant to § 22.1-277.04, when that student "*has been charged with an offense involving intentional injury enumerated in subsection G of § 16.1-260, to another student in the same school pending a decision as to whether to require that such student attend an alternative education program.*"

> **4.10 Short-Term Suspension is up to 10 Days**. Section 22.1-277.04 provides the statutory authority for the principal to suspend a student for up to ten school days.
>
> **Sidebar: Suspension or Expulsion for Intake Reports and Subsequent Adjudication (§ 22.1-277(B)):** Section § 16.1-260 requires the intake officer to notify the school superintendent when a petition has been filed in juvenile court for an offense listed in subsection G of § 16.1-260. Upon disposition of the case, the clerk of the juvenile court is required by § 16.1-305.1 to report to the school superintendent whether the juvenile was adjudicated delinquent, convicted, found not guilty or the charges were reduced, or the charges were dismissed. The clerk must provide written notice of the disposition ordered by the court, including the nature of the offense upon which the disposition was based. The juvenile court clerk has 15 days to report the information. Subsection B of 22.1-277 provides authority to the superintendent of the school division to suspend or expel a student when a report pursuant to § 16.1-305.1 of an adjudication of delinquency or a conviction for an offense listed in subsection G of § 16.1-260.

HB 1945 Regional Alternative Education Programs & At-Risk Students.
Delegate Peace

HB 1945 amends § 22.1-209.1:2 of the Code of Virginia relating to regional alternative education programs. Effective July 1, 2009.

1.00 Summary: Regional Alternative Education Programs & At-Risk Students. HB 1945 amends § 22.1-209.1:2 of the Code of Virginia to allow a parent of a student to request that the student "be administratively assigned to a regional alternative education program" if the division superintendent consents.

2.00 What is a Regional Alternative Education Program? Section 22.1-209.1:2 provides the authority for the establishment of regional alternative education programs for elementary, middle, and high school students who have committed certain delinquent offenses or have been suspended or expelled. The regional alternative school is designed to serve those students who have:

- committed an offense in violation of school board policies relating to weapons, alcohol, drugs, or an intentional injury to another person, or against whom a petition or warrant has been filed alleging such acts;
- been expelled from school or suspended for an entire semester;
- received two or more long-term suspensions within one school year; or
- been released from a juvenile correctional center and have been identified as requiring a regional alternative education program.

3.00 New! Parent May Request Alternative School Placement for Child. HB 1945 amends subsection A of § 22.1-209.1:2 to allow a parent of a student to request that the student "*be administratively assigned to a regional alternative education program*" if the division superintendent consents. HB 1945 also allows the division superintendent to place a student in a regional alternative program after written notice to the student and his parent, including notice of the opportunity for a hearing conducted by the division superintendent or his designee regarding such placement. The school board retains the authority to "alter" the assignment. HB 1945 then allows the parent to petition the school board for a review of the record.

3.10 Governor's Amendment: School Board Regulations. The Governor amended HB 1945 so that the parent's "appeal" to the school board is conducted in accordance with regulations promulgated by the school board.

3.20 Clarifying "Regional" Technical Changes. HB 1945 makes several technical changes to clarify that the alternative programs referred to under § 22.1-209.1:2 are "regional." Under the former law "regional" was mentioned only in the title of the Code section.

HB 1826 School Dropouts to Have Driver's Licenses Suspended After 10 Unexcused Absences.
Delegate Fralin

HB 1826 amends § 46.2-323 of the Code of Virginia and creates § 46.2-334.001 relating to the suspension of the driver's licenses of minors attending public schools in the Commonwealth who have 10 or more unexcused absences on consecutive school days. Effective July 1, 2009.

1.00 Summary: School Dropouts to Have Driver's Licenses Suspended After 10 Unexcused Absences. HB 1826 amends § 46.2-323 of the Code of Virginia and creates § 46.2-334.001 relating to the suspension of the driver's licenses of minors attending public schools in the Commonwealth who have 10 or more unexcused absences on consecutive school days.

2.00 New! Every Application Must Include Document Allowing School to Notify J&DR Court: Section 46.2-323 provides the requirements for applying for a driver's license. HB 1826 creates a new subsection E that requires *"[e]very application for a driver's license submitted by a person less than 18 years old and attending a public school in the Commonwealth [to] be accompanied by a document, signed by the applicant's parent or legal guardian, authorizing the principal, or his designee, of the school attended by the applicant to notify the juvenile and domestic relations district court within whose jurisdiction the minor resides when the applicant has had 10 or more unexcused absences from school on consecutive school days."*

3.00 New! J&DR Court Can Suspend Driver's License of School Dropouts: HB 1826 creates § 46.2-334.001 that allows the juvenile court to suspend driver's license issued to certain minors. Below are the conditions for determining whether or not to suspend the driver's license.

- **School May Petition the Court**: Subsection A of § 46.2-334.001 allows the school principal to petition the juvenile court when a student under the age of 18 and residing in the jurisdiction of the court has had 10 or more unexcused absences. The juvenile court will give notice and opportunity for the minor to show cause why his driver's license should not be suspended. Upon failure to show cause for the license not to be suspended, the court may suspend the minor's driver's license for any period of time up until the minor is 18 years old.
    - *Please note: There was not a corresponding amendment to the jurisdictional authority of the juvenile court under § 16.1-241 to hear such matters nor an amendment to § 16.1-260 concerning the authority to file the petition.*
- **Circumstances When License will not be Suspended**: Subsection B of § 46.2-334.001 provides circumstances when the driver's license will not be suspended. It will not be suspended in cases where the student has withdrawn from school for a reason or reasons beyond the control of the student or the student transferred to another school as confirmed in writing by the student's parent or guardian. Also, the driver's license will not be suspended *"when the student's parent or guardian expresses in open court his desire to allow the student to retain his license."* The juvenile court judge will be the sole authority as to whether the licensee's withdrawal from school is due to circumstances beyond the control of the student.
- **Application for Restricted License**: Subsection C of § 46.2-334.001 allows the juvenile to apply to the juvenile court for a restricted license or learner's permit. However, to get a restricted license, the juvenile must be employed at least four hours per day and at least 20 hours per week, has a medical condition that requires him to be able to drive a motor vehicle, or is the only driver in the household.

Other Legislation Relating to Schools & Education

- **HB 1624 (Delegate Englin) Board of Education - Model Policy on Bullying & Harassment by Electronic Means**. HB 1624 amends § 22.1-279.6 of the Code of Virginia relating to a Board of Education model policy for the prohibition of bullying, harassment, and intimidation. Section 22.1-279.6 requires the State Board of Education to establish guidelines and develop model policies for codes of student conduct to aid local school boards in the implementation of such policies. The guidelines and model policies cover suspension and expulsion, alcohol and drugs, gang-related activity, hazing, vandalism, trespassing, and bullying. HB 1624 adds "*the use of electronic means for purposes of bullying, harassment, and intimidation"* to the list of guidelines and model policies required of the Board of Education.
- **HB 1942 (Delegate Peace) Single-Sex Education - Clarifies How School Boards May Establish Programs**. HB 1942 amends § 22.1-212.1:1 of the Code of Virginia to clarify the manner in which school boards may establish a single-sex class or school in a school division. Participation must be voluntary, and the school division must provide a substantially equal co-educational school or class.
- **HB 1679 (Delegate Orrock) Out-of-State Child Abuse & Neglect Checks for Teachers**. HB 1679 amends § 22.1-296.4 of the Code of Virginia to clarify that a local school board must take reasonable steps to determine whether an applicant, who has resided in another state within the last five years, was the subject of a founded case of child abuse and neglect in the relevant state.

- **Current Law**: Section 22.1-296.4 requires school boards to conduct a search of the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services (DSS) pursuant to § 63.2-1515 on persons applying for employment. The search must be conducted on every full- or part-time position that requires direct contact with students.
- **FYI – Out-of-State Child Abuse & Neglect Searches**: In addition, where the applicant has resided in another state within the last five years, the school board must obtain information from each relevant state as to whether the applicant was the subject of a founded complaint of child abuse and neglect in such state.
- **New! Code of Virginia Requirement:** HB 1679 clarifies that a local school board must take reasonable steps to determine whether an applicant, who has resided in another state within the last five years, was the subject of a founded case of child abuse and neglect in the relevant state. HB 1679 adds language to require DSS "to maintain a database of central child abuse and neglect registries in other states *that provide access to out-of-state school boards,* for use by local school boards."
- **Effective February 25, 2008**: HB 1679 contains a second enactment clause that states an emergency exists and this act is in force from its passage. The Governor signed the bill on February 25, 2008.

- **HB 1980 (Delegate McClellan) Family Life Education & Parent's Right to Review Materials**. HB 1980 amends § 22.1-207.2 of the Code of Virginia concerning the right of parents to review certain education materials. HB 1980 allows parents and guardians to have the right to review the family life education program offered by their school division, including written and audio-visual educational materials used in the program. Parents and guardians also have the right to excuse their child from all or part of family life education instruction.
- **HB 2112 (Delegate Spruill) Standards of Learning & Financial Literacy Education in Middle and High Schools**. HB 2112 amends §§ 22.1-209.1:2, 22.1-225, and 22.1-253.13:1 of the Code of Virginia relating to financial literacy education. Section 22.1-253.13:1 establishes educational objectives for the Standards of Learning. Subsection D requires local school boards to establish certain programs and curriculum such as career and technical, dropout, children with disabilities, and gifted children. HB 2112 amends subsection D to require local school boards to establish educational objectives in middle and high school that emphasize economic education and financial literacy pursuant to § 22.1-200.03. Section § 22.1-200.03 currently requires school divisions to provide instruction to middle and high school students on the principles of the American economic system to promote economics education and the financial literacy of students. It is anticipated this legislation will not have a fiscal impact to the state. HB 2112 also amends § 22.1-209.1:2 to require alternative education programs for students expelled or suspended to also emphasize economic education and financial literacy. HB 2112 also amends § 22.1-225 to require adult educational programs to emphasize economic education and financial literacy.

DRUG COURTS

During the 2004 session, the General Assembly enacted HB 1430 establishing the Drug Treatment Court Act to allow the establishment of drug treatment courts as specialized court dockets within the existing structure of Virginia's court system.[10] HB 1430 provided the Supreme Court with the administrative oversight for implementing drug treatment courts in circuit and juvenile courts. HB 1420 established a state Drug Treatment Court Advisory Committee chaired by the Chief Justice of the Supreme Court. The state Drug Treatment Court Advisory Committee established the criteria for implementing a drug treatment court. HB 1430 also provided that no drug treatment court shall be established subsequent to March 1, 2004, unless the jurisdiction or jurisdictions intending or proposing to establish such court have been specifically granted permission under the Code of Virginia to establish such court. In 2005 the General Assembly enacted legislation that allowed the City of Chesapeake to establish a

[10] The 2004 General Assembly Handbook contains a summary of the new requirements for establishing a drug court pursuant to the Drug Court Treatment Act.

drug court subject to the requirements and conditions established by the state Drug Treatment Court Advisory Committee. In 2006 the General Assembly enacted legislation that allowed the City of Newport News to establish a drug court.

Drug treatment courts administer specialized dockets within Virginia's existing court system and provide comprehensive substance abuse treatment, as well as intensive supervision and frequent judicial monitoring. Drug treatment courts require collaboration and coordination among the judiciary, Commonwealth's Attorneys, defense attorneys, drug court case managers, drug court administrators, addiction treatment professionals, probation officers, and law enforcement. Only nonviolent offenders are eligible to participate. Although participants receive treatment and intensive court supervision instead of incarceration, they are still subject to legal consequences as determined by the court. In Virginia 27 drug treatment courts are currently in operation. Four models of drug treatment courts have been implemented: adult, juvenile, family, and driving under the influence.[11]

Many of the drug courts were initiated with grants from the federal government that are limited to demonstration programs. These grants are time limited and intended to support the initial phases of implementation and evaluation. Additional resources, such as state general funds, local funds, participant fees, and private foundations are necessary to sustain these courts. Fourteen drug treatment courts receive state funds. Newport News juvenile and Roanoke and Portsmouth adult drug courts are funded 100% by state general funds, and the other 11 are supported with a combination of state general funds and other resources. The additional 13 drug treatment courts are funded with a combination of resources that do not include state general funds. Because drug treatment courts must secure funding annually, their stability and effectiveness are undermined.

- **HB 2275 (Delegate Poindexter) & SB 1304 (Senator Hurt) Drug Treatment Court in County of Franklin**. HB 2275 & SB 1304 amend § 18.2-254.1 of the Code of Virginia relating to the Drug Treatment Court Act. HB 2275 & SB 1304 are identical. Section 18.2-254.1 creates the Drug Treatment Court Act. HB 2275 & SB 1304 provide the statutory authority for the County of Franklin to establish a drug treatment court.
    - **Side Bar: Language Prohibits State Funding**: The language in the legislation granting the County of Franklin the authority to establish a drug court prohibits the use of any state funding. The drug court must be "*funded solely through local resources*."
- **SB 1462 (Senator Puckett) Drug Treatment Court Act Authorized for County of Tazewell**. SB 1462 amends § 18.2-254.1 of the Code of Virginia relating to the Drug Treatment Court Act. Section 18.2-254.1 creates the Drug Treatment Court Act. SB 1462 provides the statutory authority for the County of Tazewell to establish a drug treatment court.
    - **Side Bar: Language Prohibits State Funding**: The language in the legislation granting the County of Tazewell the authority to establish a drug court prohibits the use of any state funding. The drug court must be "*funded solely through local resources*."

MENTAL HEALTH BILLS

First, A Name Change! Behavioral Health and Developmental Services
HB 2300 (Delegate Caputo) & SB 1117 (Senator Ticer) DMHMRSAS to Change Name to Behavioral Health and Developmental Services. HB 2300 and SB 1117 change the name of the Department, Board, Inspector General, and Commissioner of Mental Health, Mental Retardation and Substance Abuse Services to the Department, Board, Inspector General, and Commissioner of Behavioral Health and Developmental Services. This bill also makes technical amendments. The number of statutes requiring amendment are too numerous to list. This bill would require the Department of Mental Health, Mental Retardation and Substance Abuse Services and its facilities

[11] See "Substance Abuse Services Council Annual Report and Plan - January 1, 2009," Substance Abuse Services Council, as required by **§ 2.2-2696 (5)** of the Code of Virginia.

to change signs, letterhead, business cards, etc. The fiscal impact statement estimates the cost would be $75,000. *The Governor added three enactment clauses that are technical in nature during the reconvened session.*

HB 2061 & SB 1122 Psychiatric Inpatient Treatment of Minors Act & Outpatient Treatment. Delegate Hamilton & Senator Lucas

HB 2061 and SB 1122 amend §§ 16.1-336 through 16.1-339, 16.1-340, 16.1-341, 16.1-342, 16.1-344, 16.1-345, 16.1-345.1, 37.2-808, and 37.2-809 of the Code of Virginia and add sections numbered 16.1-339.1 and 16.1-345.2 through 16.1-345.5 relating to the Psychiatric Inpatient Treatment of Minors Act. Effective July 1, 2009.

1.00 Summary: Psychiatric Inpatient Treatment of Minors Act and Mandatory Outpatient Treatment (MOT). In 2008 the General Assembly made comprehensive changes to the mental health system and the ability to order involuntary inpatient and outpatient treatment.[12] The changes mainly impacted adults. The Commission on Mental Health Law Reform recommended modifications to the Code of Virginia to ensure Mandatory Outpatient Treatment (MOT) procedures are tailored to special circumstances of "juvenile commitments." HB 2061 and SB 1122 add language that provides clarity about what is to happen when a minor is ordered into MOT with the focus on preparation of the treatment plan, identification of providers, monitoring responsibilities, and obligations when there is non-compliance.

2.00 The Psychiatric Inpatient Treatment of Minors Act & Definition of CSB. Article 16 of Title 16.1 creates the Psychiatric Inpatient Treatment of Minors Act. Section § 16.1-336 of the Code of Virginia provides the definitions for unique terms used in the article.

2.10 New! Definition of Community Services Board (CSB). HB 2061 and SB 1122 amend § 16.1-336 to add a definition of community services board that mirrors the definition in § 37.2-100. By adding the definition, the term "behavioral health authority" was removed throughout the Act.

3.00 Not New: Parental & Child Admission for Inpatient Treatment. Section 16.1-338 provides the authority for a parental admission of a minor younger than 14 and a non-objecting minor 14 years of age or older (with parental consent) to a "willing" mental health facility for inpatient treatment upon application and with the consent of a parent. Section 16.1-339 provides the authority for a parental admission of an objecting minor 14 years of age or older

3.10 New! Return Child to Detention Home Following Inpatient Treatment. HB 2061 and SB 1122 amend §§ 16.1-338 and 16.1-339 so that a minor who has been hospitalized while properly detained by a juvenile or circuit court will be returned to the detention home following the inpatient treatment unless the court having jurisdiction over the case orders that the minor be released from custody.

4.00 New! Required Information from Detention & Shelter Care Facilities. HB 2061 and SB 1122 create § 16.1-339.1 to require directors of detention homes and shelter care facilities to provide specific information to the mental health facility and the juvenile court in the jurisdiction of the mental health facility at the time the child is admitted for mental health treatment. The information required are the charges against the admitted child, the names and addresses of the admitted child's parents, and the juvenile court that placed the child in the detention or shelter care facility before the child was admitted for emergency mental health treatment.

5.00 Not New: Emergency Admission for Inpatient Treatment. Section 16.1-340 provides that a minor, including a minor in detention or shelter care pursuant to an order of a juvenile court, may be taken into custody and

[12] See HB 499 & SB 246 (The Omnibus Mental Health Bills), 2008 Acts of Assembly Chapter 850.

admitted for inpatient treatment pursuant to the procedures specified in Article 4 (§ 37.2-808 et seq.) of Chapter 8 of Title 37.2.

5.10 New! Adult Standard of Evidence Does Not Apply to Children. HB 2061 and SB 1122 amend §§ 16.1-340, 37.2-808 (Emergency custody of adults) and 37.2-809 (Involuntary temporary detention for adults), so that an emergency custody order pursuant to § 37.2-808 or a temporary detention order pursuant to § 37.2-809 will be issued only for a minor if the minor meets the criteria for involuntary commitment set forth in § 16.1-345.

- ***Please Note: Standard of Evidence for Adults is Probable Cause for Emergency or Temporary Admission.*** Article 4 (§ 37.2-808 et seq.) of Chapter 8 of Title 37.2 provides the procedures for the emergency custody or temporary detention of adults when a magistrate has probable cause to believe that the person has a mental illness and there exists a substantial likelihood that the person will cause or suffer harm in the near future. The Standard of Evidence for committing a juvenile is by clear and convincing evidence.

6.00 Not New: Involuntary Commitment Petition. Section 16.1-341 provides the authority for a parent or any other responsible person to file a petition for the involuntary commitment of a minor with the juvenile court serving the jurisdiction in which the minor is located. Section 16.1-341 also provides the information required in the petition including the name and address of the petitioner and the minor and the terms why the petitioner believes the minor meets the criteria for involuntary commitment specified in § 16.1-345.

6.10 New! Information in the Petition & Scheduling the Hearing. HB 2061 and SB 1122 amend § 16.1-341 to require that the petition for the involuntary commitment include the information obtained from the detention or shelter care facility and that the court schedule the hearing to occur within 24 to 96 hours.

7.00 Not New: Clinical Evaluation Must be Ordered Upon Petition for Commitment. Section 16.1-342 requires the court to direct the CSB to arrange for a clinical evaluation upon the filing of a petition for involuntary commitment. The clinical evaluation must be filed with the court at least 24 hours before the involuntary commitment hearing.

7.10 New! Copy of the Evaluation to be Provided to Child's Attorney and GAL. HB 2061 and SB 1122 amend § 16.1-342 to require that a copy of the evaluator's report be provided to the minor's guardian ad litem and to the minor's counsel.

7.20 New! Evaluator Must be Available in Person or Electronically Whenever Possible. HB 2061 and SB 1122 amend § 16.1-342 to require the evaluator, if not physically present at the hearing, to be available whenever possible for questioning during the hearing through a two-way electronic video and audio or telephonic communication system.

8.00 The Involuntary Commitment Hearing: Witnesses and Reports. Section 16.1-344 requires the court to summon to the hearing all material witnesses requested by either the minor or the petitioner. All testimony shall be under oath, and the rules of evidence apply. Section 16.1-344 requires the evaluator's report to be admissible into evidence.

8.10 New! Objection to Evaluator's Report Requires Evaluator. Section 16.1-344 provides the procedures for conducting the involuntary commitment hearing. If the attorney for the child objects admitting the evaluator's report as evidence, then HB 2061 and SB 1122 amend § 16.1-344 to require the evaluator to attend the hearing in person or electronically for questioning.

8.20 New! Attendance by CSB and the CSB Providing the Services. HB 2061 and SB 1122 amend § 16.1-344 to require the CSB representative that arranged for the evaluation of the minor to attend the involuntary commitment hearing in person or electronically. HB 2061 and SB 1122 also require a representative of the CSB in the jurisdiction where the child will be receiving mandatory outpatient treatment to attend. The providing CSB may ask the evaluating CSB to present its recommendations for outpatient treatment at the hearing.

9.00 Not New: The Standard of Evidence for Children is Clear and Convincing. Section 16.1-345 provides that the court may order the involuntary commitment of the minor to a mental health facility for treatment for a period not to exceed 90 days if the court, by clear and convincing evidence, finds that child is in need of mental health treatment and the child:

(i) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats, or
(ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control.

9.10 New! Court May Order Outpatient Treatment for a Juvenile. HB 2061 and SB 1122 amend § 16.1-345 to allow the court to order mandatory outpatient treatment pursuant to § 16.1-345.2 if inpatient treatment is not required. HB 2061 and SB 1122 also amend § 16.1-345 to prohibit a minor who received inpatient treatment while detained in detention from being eligible for mandatory outpatient treatment upon release from detention.

10.00 New! Criteria & Length for Mandatory Outpatient Treatment. HB 2061 and SB 1122 create § 16.1-345.2 giving the court the authority to order involuntary mandatory outpatient treatment for a period not to exceed 90 days if the court finds clear and convincing evidence to order the treatment. The criteria for ordering involuntary mandatory outpatient treatment mirror the criteria for ordering involuntary mandatory inpatient treatment. Mandatory outpatient treatment may include day or night treatment in a hospital or other appropriate course of treatment as may be necessary to meet the needs of the minor.

11.00 New! Compliance or Non Compliance with Outpatient Treatment. HB 2061 and SB 1122 create § 16.1-345.3 to require the CSB to monitor the minor's compliance with the mandatory outpatient treatment plan. If the CSB determines that the minor materially failed to comply with outpatient treatment, the CSB must file a motion for a court review within three days of making such a determination. If the situation is sufficiently serious, the CSB may ask a magistrate to issue an emergency custody order or a temporary detention order pursuant to § 16.1-340. If the CSB determines that the minor no longer needs outpatient treatment, the CSB must file a motion for a review hearing. The court will schedule a hearing and provide notice of the hearing in accordance with subsection A of § 16.1-345.4.

12.00 New! Procedures for Review Hearing for Mandatory Outpatient Treatment. HB 2061 and SB 1122 create § 16.1-345.4 to provide the procedures for the review hearing. The court must conduct a review hearing within 15 days of receiving the motion. If the minor is being detained under a temporary detention order, the hearing will be scheduled within the same timeframe provided for a commitment hearing under § 16.1-340. If the minor is not represented by counsel, the judge will appoint an attorney. The judge will also appoint a guardian ad litem for the minor.

13.00 New! Court May Order Additional 90 Days. HB 2061 and SB 1122 create § 16.1-345.5 to allow the court, by motion of the CSB, to continue the mandatory outpatient treatment order for an additional 90 days.

Other Mental Health Legislation

- **HB 2060 (Delegate Hamilton) & SB 1083 (Senator Howell) Mental Health Laws - Amend Statutes to Address Issues Resulting from 2008 Overhaul**. HB 2060 and SB 1083 amend §§ 19.2-182.9, 37.2-808, 37.2-815, 37.2-816, 37.2-817, and 37.2-819 of the Code of Virginia relating to the involuntary commitment statutes in Article 4 (§ 37.2-808 et seq.) of Chapter 8 of Title 37.2. *The bills have an emergency clause making them effective on the date of passage (February 23, 2009)*. HB 2060 amends the mental health statutes to address issues resulting from the overhaul of mental health laws during the 2008 Session. HB 2060 and SB 1083 clarify requirements that law-enforcement initiated emergency custody remains subject to the four-hour limit and two-hour extension provisions. HB 2060 and SB 1083 clarify that the CSB employee or designee attending a commitment hearing need not be the person who prepared the prescreening report and that neither the CSB employee or designee nor the independent examiner who attends the commitment hearing will be excluded pursuant to an order of sequestration of the witnesses. HB 2060 and SB 1083 clarify that the prescreening report will be admitted into evidence and made part of the record of the case. HB 2060 and SB 1083 extend the CCRE reporting requirement to the close of business on the next business day following the hearing resulting in involuntary commitment.
- **HB 2460 (Delegate O'Bannon) & SB 823 (Senator Cuccinelli) Transporting Person Under Emergency Custody by Family Member.** HB 2460 and SB 823 amend §§ 16.1-345, 37.2-808, 37.2-810, 37.2-817.2, and 37.2-829 of the Code of Virginia and repeal § 37.2-830 to allow "an alternative transportation provider," including a family member, to transport a person under emergency custody order, temporary detention order, or involuntary commitment order. HB 2460 and SB 823 define "alternative transportation provider" in § 37.2-829 and provide the criteria in which a court may order a person, other than a sheriff, to transport the person to a mental health facility for treatment. Prior to HB 2460 and SB 823, § 16.1-345 required the court to order the sheriff to transport the juvenile to the mental health facility. Under HB 2460 and SB 823, the court may order an alternative transportation provider, such as a family member or friend, to take the juvenile to the mental health facility.
- **HB 2486 (Delegate J. Ward) & SB 1079 (Senator Howell) Emergency Custody & Authority of Law-Enforcement Officer When Person Revokes Consent**. HB 2486 and SB 1079 amend § 37.2-808 of the Code of Virginia to authorize a law-enforcement officer who is transporting a person who has voluntarily consented to being transported to a facility for assessment or evaluation and who subsequently revokes consent to be transported to take such person into emergency custody when the law-enforcement officer determines that consent has been revoked and the person meets the criteria for emergency custody, even if the law-enforcement officer is beyond the territorial limits of the jurisdiction in which he serves. HB 2486 and SB 1079 also clarify that a law-enforcement officer who takes a person into emergency custody based upon his own observations or reliable reports of others may transport such person beyond the territorial boundaries of the jurisdiction in which he serves in order to obtain the required assessment. *A second enactment clause provides that HB 2486 and SB 1079 are declarative of existing law*.
- **HB 2461 (Delegate O'Bannon) & SB 1077 (Senator Howell) Notification of Family Member of Involuntary Commitment Process**. HB 2461 amends §§ 32.1-127.1:03 and 37.2-804.2 of the Code of Virginia relating to notification of family member of person involved in the commitment process. Section 32.1-127.1:03 addresses an individual's right of privacy in the content of his health records. Section 32.1-127.1:03 provides that health records can be released only when permitted or required by said section or by other provisions of state law. HB 2461and SB 1077 amend §§ 32.1-127.1:03 and 37.2-804.2 to provide the conditions and requirements for releasing confidential patient information to a family member or personal representative when an individual is the subject of an involuntary commitment proceeding pursuant to Chapter 8 (§ 37.2-800 et seq.) of Title 37.2.
- **SB 1082 (Senator Howell) Voluntary & Involuntary Commitment - Executive Secretary of Supreme Court to Prepare Petitions.** SB 1082 amends § 37.2-801 of the Code of Virginia clarifying that the Office of the Executive Secretary of the Supreme Court of Virginia will prepare the petitions, orders, and such other legal forms as may be required in procedures for custody, detention, and involuntary admission and distribute such forms to the clerks for general district court and juvenile court. DMHMRSAS will prepare

the preadmission screening report, examination, and such other clinical forms as may be required in proceedings for custody, detention, and admission.

- **SB 1294 (Senator Edwards) Establishment of Crisis Intervention Team (CIT) Programs**. SB 1294 requires DCJS and DMHMRSAS to use such federal or state funding as may be available to support the development and establishment of CIT programs in areas throughout the Commonwealth by January 1, 2010. Areas may be composed of any combination of one or more counties, cities, towns, or colleges and universities. The crisis intervention teams will assist law-enforcement officers in responding to crisis situations involving persons with mental illness, substance abuse problems, or both.
    - **New! Reports to Joint Commission on Health Care.** By November 1, 2009, DCJS and DMHMRSAS shall submit a report outlining the status of the CIT programs to the Joint Commission on Health Care. Also, DCJS and DMHMRSAS must submit a report on the impact and effectiveness of the CIT programs to the Joint Commission on Health Care by November 15, 2009; November 15, 2010; and November 15, 2011.
    - **Fiscal Impact – No State Funding Appropriated.** According to DCJS, several pilot CIT programs have already been developed and tested over the years utilizing Justice Assistance Grant (JAG) funds. Although JAG funds were available in the past to fund CIT pilot programs, DCJS does not anticipate receiving any additional federal funds for the distinct purpose of creating new CIT programs. For the purpose of the fiscal impact statement, the Department of Planning and Budget interpreted the language "utilizing such federal or state funding as may be available for this purpose…" as meaning DCJS is not obligated to fulfill the requirements of § 9.1-187 of the Code of Virginia unless funding becomes available.[13] No funding was appropriated.

SOCIAL SERVICES/FOSTER CARE

HB 1914 Foster Care Plan – "Continued Foster Care" No Longer an Option for Plan.
Delegate BaCote

HB 1914 amends §§ 16.1-281 and 16.1-282 of the Code of Virginia relating to foster care. Effective July 1, 2009.

1.00 Summary: Foster Care Plan – No Longer an Option of "Continued Foster Care." HB 1914 amends §§ 16.1-281 and 16.1-282 of the Code of Virginia relating to foster care. HB 1914 eliminates the selection of "continued foster care" as a permanency goal for a child in foster care. In addition, the bill specifies that in a petition for a foster care review hearing, such petition "shall set forth the disposition sought and the grounds therefore; however, in the case of a child who has attained age 16 and for whom the plan is independent living, the foster care plan shall be included and shall address the services needed to assist the child to transition from foster care to independent living."

2.00 Not New: Foster Care Plan & Review Hearing. Section 16.1-281 requires a foster care plan to be developed for a child placed in foster care through an agreement with the parents or where the local board of social services or the public agency has taken legal custody of the child for the purpose of obtaining services for the child. Section 16.1-282 requires a foster care review hearing to be conducted within six months on any child who is a subject of a foster care plan that has been filed with the court pursuant to § 16.1-281.

2.10 New! No Longer an Option to Select "Continued Foster Care." HB 1914 eliminates the selection of "continued foster care" as a permanency goal for a child in foster care. Therefore, in developing the foster care plan, the local department of social services or child welfare agency can select either permanent foster placement or independent living. Continuing in foster care is no longer an option.

[13] See "SB1294ER, 2009 Fiscal Impact Statement," Department of Planning and Budget, March 11, 2009, at http://leg1.state.va.us/cgi-bin/legp504.exe?091+oth+SB1294FER122+PDF.

2.20 New! Foster Care Review Hearing – No "Continued Foster Care" & Foster Care Plan. Section 16.1-282 requires a foster care review hearing. The petition for the review hearing must set forth the disposition sought. HB 1914 removes the option of continuing foster care as a dispositional option. In the case of a child who is 16 years of age or older and the dispositional option is independent living, HB 1914 requires that the foster care plan be included with the petition and that the foster care plan address the services needed to assist the child in his transition from foster care to independent living.

2.30 HB 1914 Builds Upon 2008 Foster Care Legislation. HB 1914 builds upon legislation enacted during the 2008 General Assembly Session. During 2008 the General Assembly enacted HB 149 & SB 249 that amended § 16.1-281 to require that the foster care plan for a child, who is 14 years of age and older and placed in foster care, include that "specific independent living services" will be provided to him. HB 149 & SB 249 also clarified that local departments of social services and child-placing agencies may provide independent living services to persons between 18 and 21 years of age if that person was in foster care on his 18th birthday.

Other Social Services, Foster Care, and Child Support Legislation

- **SB 1012 (Senator Edwards) Only DSS & Local DSS Involved in Preparing Foster Care Plans**. SB 1012 amends §§ 63.2-906 and 63.2-910 of the Code of Virginia relating to preparing a foster care plan.
  - **2008 General Assembly Legislation**: In 2008 the General Assembly enacted HB 1489 relating to foster care plans. HB 1489 amended §§ 16.1-281 (Foster care plans), 16.1-282 (Six-month foster care reviews) and 16.1-282.1 (Permanency planning hearing) to remove all public agencies, other than a local board of social services, from preparing foster care plans. The amendments removed DJJ from being required to prepare the foster care plan.
  - **2009 General Assembly Legislation**: SB 1012 appears to build upon the 2008 legislation by making similar amendments to §§ 63.2-906 and 63.2-910 relating to foster care plans and child support payments for children in foster care. The amendments to §§ 63.2-906 and 63.2-910 are technical in nature and ensure that only DSS and the local department of social services are involved with developing foster care plans.
- **HB 2500 (Delegate Ward) "A Place of My Own" Program**. HB 2500 amends the Code of Virginia by adding in Chapter 9 of Title 63.2 section 63.2-914 relating to the "A Place of My Own" Program. Chapter 9 of Title 63.2 provides the statutory framework for Foster Care.
  - **Purpose of "A Place of My Own" program**. The purpose of the program is to provide luggage for children in foster care at the time they are to leave that foster care placement. DSS may accept grants, gifts, donations, and bequests to support the activities of the program. HB 2500 requires DSSE to take steps to identify and work with faith-based, volunteer, private, and community-based organizations to develop and implement the program.
  - **Non-reverting Fund**. HB 2500 creates a special non-reverting fund on the books of the Comptroller.
  - **Enactment Clauses Stipulating Effective Dates**. HB 2500 contains additional enactment clauses stipulating that would not become effective unless general fund dollars are appropriated by the 2010 Session of the General Assembly. A third enactment clause states that the bill's provisions would expire on June 30, 2012, if no moneys have been deposited into the "A Place of My Own" Program Fund.
- **SB 1000 (Senator Quayle) Custody and Visitation Proceedings & History of Sexual Abuse**. SB 1000 amends § 20-124.3 of the Code of Virginia to require the court to consider any history of sexual abuse when determining the best interests of the child for the purpose of making arrangements for custody and visitation in divorce proceedings. Title 20 covers "Domestic Relations" including divorces and custody arrangements. Chapter 6.1 of Title 20 pertains to custody and visitation arrangements for children. In determining the best interests of a child for purposes of determining custody or visitation arrangements, § 20-124.3 requires the court to consider specific factors. Such factors include the age and physical and mental condition of the child, the age and physical and mental condition of each

parent, the relationship between the parents and the child, and the willingness of each parent to maintain a close and continuing relationship with the child.

- **New!** Subsection 9 of § 20-124.3 requires the court to consider any history of family abuse as defined in § 16.1-228. SB 1000 amends subsection 9 of § 20-124.3 to require the court to consider any history of sexual abuse when determining the best interests of the child for the purpose of making arrangements for custody and visitation in divorce proceedings.

- **HB 1904 (Delegate Armstrong) Establishing Virginia Child Protection Accountability System**. HB 1904 creates Article 6 in Chapter 15 of Title 63.2 of the Code of Virginia with section 63.2-1530 relating to the Virginia Child Protection Accountability System. Chapter 15 of Title 63.2 is the Child Abuse and Neglect statutes. HB 1904 creates the Virginia Child Protection Accountability System to collect and make information available to the public on the response to reported cases of child abuse and neglect in the Commonwealth. DSS will establish and maintain the system. The Board of Social Services must promulgate regulations to implement the provisions of this section.
  - **What Information will be Posted**? The information on the system will include the total number of complaints alleging child abuse and neglect received and deemed valid; the number of complaints resulting in investigations; the number of complaints resulting in founded dispositions; and, the number of administrative appeals and outcomes. The system shall also report the number of cases by type of abuse, gender, age, race, and the nature of the relationship between the alleged victim and alleged abuser. The information will be posted on DSS's website. No individual identifying information will be included.
- **SB 1059 (Senator Quayle) Child Support Orders - Revises Requirements for Contents in Court and Administrative Child Support Orders**. SB 1059 amends §§ 20-60.3 and 63.2-1916 of the Code of Virginia to revise the contents of child support orders. The bill adds that court-issued support orders are to contain information such as a notice that support must continue to be paid for a child over the age of 18 who is a full-time high school student or severely and permanently disabled and a notice that the Department of Motor Vehicles may suspend the license of any person who is delinquent in the payment of child support by 90 days or an amount equal to $5,000 or more. SB 1059 amends the contents of administrative support orders so that such orders must specify that all payments are to be credited to current support obligations first. Any payment in excess of current obligations will be applied to arrearages. Other required information in the administrative support order includes the name, date of birth, and last four digits of the social security number of the children, possible driver's license suspension, and a notice that the debtor may be subject to mandatory withholding of income or interception of tax refunds or payments from the Commonwealth.
- **SB 1015 (Senator Edwards) Administrative Child Support Enforcement Orders - Eliminates Requirement to Maintain In-State Marital Domicile**. SB 1015 amends §§ 63.2-1903 and 63.2-1931 of the Code of Virginia concerning the issuance of administrative child support orders. SB 1015 eliminates the requirement that an obligor and obligee must have maintained a marital domicile in the Commonwealth in order for DSS to establish an administrative support order on an out-of-state obligor. SB 1015 also extends the time limit for service of notice of an order to withhold funds in a joint account of an obligor from 21 to 45 days.
- **HB 1599 (Delegate Hamilton) & SB 1049 (Senator Whipple) Tuition Grant Program Eligibility Criteria for Foster Care and Special Needs Adoption Students**. HB 1599 & SB 1049 amend § 23-7.4:5 of the Code of Virginia pertaining to a grant for tuition and fees for individuals in foster care or considered a special needs adoption. HB 1599 & SB 1049 expand the current grant program for certain foster care and special needs adoption students by modifying the eligibility of the current program to allow students to enroll in a minimum of six credit hours per semester at a two-year institution of higher education and to receive a grant for tuition and fees. A student who has a prior bachelor's degree is excluded from participation. In its Fiscal Impact Statement, the Department of Planning and Budget estimated that approximately 20 individuals may become eligible for tuition assistance in FY 2011. The Virginia Community College System currently has $25,000 in general funds specifically for the financial aid of

foster care students. This funding is not always fully utilized. This funding would be used for students who are ineligible for Pell Grants.

COMPREHENSIVE SERVICES ACT

SB 1506 CSA & Second FAPT Report for the Juvenile Court.
Senator Hanger

SB 1506 amends § 2.2-5211 of the Code of Virginia relating to the Comprehensive Services Act Program and the judicial assignment of services for children. Effective July 1, 2009.

1.00 Summary: Office of Comprehensive Services and Reporting Expenditures on Pool-Funded Services. SB 1506 amends § 2.2-5211 of the Code of Virginia relating to the Comprehensive Services Act (CSA) Program and the judicial assignment of services for children. If, prior to a final disposition by the court, the court considers a service not identified or recommended in the FAPT report, then the court must request the community policy and management team (CPMT) to submit a second report characterizing comparable levels of service to the requested level of service.

2.00 Not New: Overview of § 2.2-5211 (A) & the CSA Pool of Funds. Section 2.2-5211 establishes the state pool of funds for CPMTs. The funds are for public or private non-residential or residential services for troubled youths and families.

2.10 Not New: § 2.2-5211 (B) Target Population. Subsection B of 2.2-5211 establishes the target population (i.e., mandated versus non-mandated) for receiving funding for residential and non-residential services. Section 2.2-5212 establishes the eligibility requirements for the state pool of funds. Children with severe emotional and behavioral problems are eligible for CSA services. However, being eligible for services does not guarantee access to funding for all children. Only children who are in foster care, at risk of placement in foster care, or in need of special education services that extend beyond the regular classroom are entitled to receive services. Funding must be provided in a sum-sufficient amount to children who fall into one of these "mandated" categories. In contrast, any child who is eligible for CSA services but falls outside of one of these categories is considered to be "non-mandated," and limited funding exists to serve them.

2.20 Not New: Determining Eligibility for Receiving CSA Funds. Pursuant to subsection D of § 2.2-5211, a CSB, local school division, local social service agency, court service unit, or DJJ may refer a child and family to a family assessment and planning team (FAPT) for the purpose of determining the child's eligibility for funding services through the CSA state pool of funds.

3.00 Not New: Court Access to CSA Funding Goes through CPMT for FAPT Report. Pursuant to subsection E of § 2.2-5211, if the juvenile court wants to access CSA funding for a child properly before a court, the court must refer the case to the CPMT for assessment by a local FAPT to determine the treatment and services needed by the child and family. The FAPT making the assessment must report to the court within 30 days of the court's referral. The court must consider the FAPT recommendations but may enter any disposition it wants.

3.10 New! Second Report Required if First Report is Not Adequate. If, prior to a final disposition by the court, the court is requested to consider a service not identified or recommended in the report submitted by the FAPT, then the court must request the CPMT to submit a second report characterizing comparable levels of service to the requested level of service. Regardless of the recommendations in the second report, the court may enter any disposition allowed by law.

SB 1179 Membership & Term Limits of the CSA State Executive Council.
Senator Hanger

SB 1179 amends§ 2.2-2648 of the Code of Virginia increasing the membership and establishing term limits on the State Executive Council. Effective July 1, 2009.

1.00 Summary: Membership & Term Limits of the CSA State Executive Council. SB 1179 amends § 2.2-2648 of the Code of Virginia by increasing the membership and establishing term limits on the State Executive Council (SEC). The Governor's Special Advisor on Children's Services was added to the membership of the SEC as an ex officio non-voting member. SB 1179 adds one additional local government representative, one public provider, and a second private provider to the membership.

2.00 Purpose of the CSA State Executive Council. Section 2.2-2648 establishes the State Executive Council for Comprehensive Services for At-Risk Youth and Families in the executive branch of state government. The Council is chaired by the Secretary of Health and Human Resources and meets, at a minimum, quarterly to oversee the administration of the Comprehensive Services Act. Subsection D of § 2.2-2648 delineates the powers of the SEC including hiring a director of the Office of Comprehensive Services and oversight responsibilities for programmatic and fiscal polices.

2.10 Not New: Old SEC Membership Prior to SB 1179. Membership on the Council consists of one member each from the House and the Senate; the Commissioners of Health, of Mental Health, Mental Retardation and Substance Abuse Services, and Social Services; the Superintendent of Public Instruction; the Executive Secretary of the Virginia Supreme Court; the Directors of the Departments of Juvenile Justice and Medical Assistance Services; and the chairman of the state and local advisory team established pursuant to § 2.2-5202 (State and Local Advisory Teams: Powers & Duties). A parent, who is not an employee of any public or private program that serves children and families, must also be appointed by the Governor for one term not to exceed three years.

3.00 New! Members & Term Limits. SB 1179 amends § 2.2-2648 by increasing the membership and establishing term limits on the State Executive Council.

3.10 New! Governor's Special Advisor on Children's Services is Added. The Governor's Special Advisor on Children's Services was added to membership of the SEC as an ex officio non-voting member.

3.20 New! One New Local Government. Prior to SB 1179, the Governor appointed two local government representatives to include a member of a county board of supervisors, a city council, a county administrator or city manager. SB 1179 adds one additional local government representative.

3.30 New! Public & Private Providers. Prior to HB 1279 one private provider was appointed to the SEC by the Governor. SB 1179 adds one public provider and a second private provider to the membership one public provider and a second private provider. The private providers must represent facilities that maintain membership in an association of providers for children's or family services and receive funding as authorized by the Comprehensive Services Act (§ 2.2-5200 et seq.).

3.40 New! Length of Terms for Governor's Appointments. The Governor's appointments will be limited to two terms of three years beginning with appointments after July 1, 2009. Not new: There are no term limitations for legislators.

SB 1180 Powers & Duties of the State Executive Council for Comprehensive Services.
Senator Hanger

SB 1180 amends § 2.2-2648 of the Code of Virginia relating to the powers and duties of the State Executive Council and the reporting on certain expenditures and funding. Effective July 1, 2009.

1.00 Summary: **Powers and Duties of the State Executive Council (SEC) for Comprehensive Services**. SB 1180 amends § 2.2-2648 of the Code of Virginia relating to the powers and duties of the SEC by adding two new requirements for inclusion in the biennial state plan. The state plan must report and analyze expenditures associated with children with emotional and behavioral problems that do not receive pool funding and must identify funding streams used to purchase services in addition to pooled, Medicaid, and Title IV-E funding.

2.00 Overview of the SEC for Comprehensive Services for At-Risk Youth and Families. Section 2.2-2648 establishes the State Executive Council for Comprehensive Services for At-Risk Youth and Families in the executive branch of state government. Subsection D of § 2.2-2648 delineates the powers of the SEC, which include hiring a director of the Office of Comprehensive Services and oversight responsibilities for programmatic and fiscal polices.

2.10 Not New: Biennial Plan Requirements. Subdivision 21 of subsection D requires the SEC to biennially publish and disseminate to members of the General Assembly and CPMTs a state progress report on comprehensive services to children, youth, and families and a plan for such services for the next succeeding biennium. The state plan must provide a fiscal profile of current and previous years' federal and state expenditures for a comprehensive service system for children, youth, and families.

2.20 New! Additional Biennial Plan Requirements. SB 1180 adds two new requirements for inclusion in the biennial state plan. New subdivision (21)(d) requires the state plan to report and analyze expenditures associated with children who do not receive pool funding and have emotional and behavioral problems. New subdivision (21)(e) requires the state plan to identify funding streams used to purchase services in addition to pooled, Medicaid, and Title IV-E funding.

SB 1181 Office of Comprehensive Services & Reporting Expenditures on Pool-Funded Services.
Senator Hanger

SB 1181 amends § 2.2-2649 of the Code of Virginia relating to the Office of Comprehensive Services and reporting expenditures on children receiving pool-funded services. Effective July 1, 2009.

1.00 Summary: Office of Comprehensive Services & Reporting Expenditures on Pool-Funded Services. Whereas SB 1179 and SB 1180, as previously summarized, amended the powers, authorities, and membership ofthe SEC for Comprehensive Services for At-Risk Youth and Families, SB 1181 amends § 2.2-2649 of the Code of Virginia relating to the Office of Comprehensive Services and reporting expenditures on children receiving pool-funded services. This bill incorporated SB 1182, SB 1183, and SB1184.

2.00 Not New: What is the Office of Office of Comprehensive Services for At-Risk Youth and Families? Section 2.2-2649 establishes the powers and authority of the Office of Comprehensive Services for At-Risk Youth and Families. The Office of Comprehensive Services for At-Risk Youth and Families serves as the administrative entity and staff for the SEC. Subsection B of § 2.2-2649 establishes the duties for the director of the Office of Comprehensive Services. Such duties include hiring staff to implement the programs and fiscal policies of the SEC including the distributing and monitoring of moneys in the state pool of funds and the state trust fund. During the 2008 Session the General Assembly enacted several pieces of legislation that required the SEC and the Office of

Comprehensive Services to develop uniform data collection standards and uniform performance measures.[14] This year's legislation focuses upon new reporting requirements and model guidelines.

2.10 New! Pool-Funded Reporting Requirements. SB 1181 adds subdivision 15 to subsection B to require the director to report to the SEC all expenditures associated with serving children who receive pool-funded services. The report must include expenditures for (i) all services purchased with pool funding; (ii) treatment, foster care case management, and residential care funded by Medicaid; and (iii) child-specific payments made through the Title IV-E program.

2.20 New! Report on Cost & Services for All Eligible CSA Children. SB 1181 adds subdivision 16 to subsection B to require the director to report to the SEC the nature and cost of all services provided to the population of at-risk and troubled children identified by the SEC as within the scope of the CSA program. Children with severe emotional and behavioral problems are eligible for CSA services, as detailed in § 2.2-5212. However, being eligible for services does not guarantee access to funding for all children. Only children who are in foster care, at risk of placement in foster care, or in need of special education services that extend beyond the regular classroom are entitled to receive services. Funding must be provided in a sum-sufficient amount to children who fall into one of these "mandated" categories.

- **Please note: Report Includes Numbers of "Non-mandated" Not Served But Eligible**. Funding must be provided in a sum-sufficient amount to children who fall into one of these "mandated" categories. In contrast, any child who is eligible for CSA services but falls outside of one of these categories is considered to be "non-mandated" and limited funding exists to serve them. This amendment appears to require the report to include troubled children identified by the Council as within the scope of the CSA program, not just those that received CSA-funded services.

2.30 New! Model Job Description for Comprehensive Services Act Coordinator. SB 1181 adds subdivision 17 to subsection B to require the director to develop model job descriptions for the position of Comprehensive Services Act Coordinator and provide technical assistance to localities and their coordinators to help them guide localities in prioritizing coordinator's responsibilities toward activities to maximize program effectiveness and minimize spending.

2.40 New! Model Guidelines for Using Multidisciplinary Teams. SB 1181 adds subdivision 18 to subsection B to require the director to develop guidelines, approved by the SEC, regarding the development and use of multidisciplinary teams. The guidelines are intended to encourage utilization of multidisciplinary teams in service planning and to reduce FAPT caseloads by allowing FAPT to devote additional time to more complex and potentially costly cases.

[14] See SB 483 "CSA, Executive Council to Oversee Development of Performance Measures & Data Collection Standards" (Senator Emmett W. Hanger, Jr.); HB 503 & SB 487 "CSA, Executive Council Oversee Development of Case Management Services for At-Risk Children" (Delegate Phillip A. Hamilton & Senator Emmett W. Hanger, Jr.).; and SB 479 "CSA - Annual Workshop & Best Practices & Evidence-Based Practices" (Senator Emmett W. Hanger, Jr.).

CRIMINAL JUSTICE

HB 2178 Possession of Ammunition by Convicted Felon.
Delegate Scott

HB 2178 amends § 18.2-308.2 of the Code of Virginia banning the possession of ammunition by convicted felons, including juvenile felons. Effective July 1, 2009.

1.00 Summary: Possession of Ammunition by Convicted Felon. HB 2178 amends § 18.2-308.2 of the Code of Virginia to ban the possession of ammunition by convicted felons, including juvenile felons.

2.00 Not New: What is the No Guns for Felons Law? Section 18.2-308.2 makes it a Class 6 felony for a person convicted of a felony to knowingly and intentionally possess or transport any firearm or stun weapon. There are mandatory minimum terms of incarceration for adults who violate this section multiple times or have a prior violent felony conviction.

2.10 Not New: The Gun Ban Applies to Juvenile Felony Adjudications. Section 18.2-308.2 prohibits a person under the age of 29 to possess or transport any firearm or stun weapon if that person was adjudicated delinquent as a juvenile for a felony offense and was 14 years of age or older at the time of the offense. After the person obtains the age of 29, he can then carry a weapon.

2.20 Not New: Lifetime Ban on Juvenile Adjudications for Serious Offenses. There is a lifetime ban on possessing a weapon for a juvenile 14 years of age or older who is adjudicated delinquent in juvenile court for murder (§ 18.2-31 or § 18.2-32), kidnapping (§ 18.2-47), robbery by the threat or presentation of firearms (§ 18.2-58), or rape (§ 18.2-61). Prior to the 2008 General Assembly Session, the lifetime ban on possessing a weapon applied only to adjudications of delinquency for offenses after July 1, 2005. During the 2008 Session, SB 222 made the ban retroactive. It is a Class 6 felony to illegally possess a weapon under this section of the Code of Virginia.

2.30 FYI Only: Sentencing for Adult Convictions. For an adult convicted of a Class 6 felony, a judge has the option of sentencing him to up to one year in jail, or 1 to 5 years in prison. There is a minimum mandatory sentence of five years for a conviction when the person was previously convicted of a violent felony as defined in § 17.1-805. There is a minimum mandatory sentence of two years for a conviction when that person was convicted for any other felony within the last 10 years.

3.00 New! Possession of Ammunition Now Prohibited. HB 2178 makes it a Class 6 felony also for any felon to possess or transport ammunition for a firearm. HB 2178 defines "ammunition for a firearm" as meaning "*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*."

3.10 FYI Only: Some Argued No Substantive Change in the Law. Some legislators questioned the need for the legislation as they believed that ammunition was captured under the definition of "explosive material" as already defined under § 18.2-308.2:2. Pursuant to § 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."

Other Criminal Justice & Criminal Procedure Related Legislation

- **SB 1219 (Senator Obenshain) Hanging a Noose with Intent to Intimidate, Class 6 Felony**. SB 1219 adds § 18.2-423.2 to the Code of Virginia to create two new Class 6 felonies. Subsection A makes it a Class 6 felony for a person, with the intent of intimidating any person or group of persons, to display a noose on the private property of another without permission. Subsection B makes it a Class 6 felony for a person, with the intent of intimidating any person or group of persons, to display a noose on a highway or other public place in a manner having a direct tendency to place another person in reasonable fear or apprehension of death or bodily injury. For someone convicted of a Class 6 felony, a judge has the option of sentencing him to up to one year in jail, or one to five years in prison. According to the Fiscal Impact Statement by the Department of Planning and Budget, there was not enough information available to reliably estimate how many additional inmates in jail could result from this new law.
- **HB 2578 (Delegate A. Howell) Novelty Cigarette Lighters; Prohibiting Purchase & Distribution to Persons Under Age of 18**. HB 2578 amends the Code of Virginia by adding in Article 4 of Chapter 8 of Title 18.2 section 18.2-371.4 relating to the sale of novelty lighters to those juveniles under 18 years of age. HB 2578 imposes a $100.00 fine upon any individual who sells a novelty lighter to a person "he knows or has reason to know is a juvenile." HB 2578 defines a "*novelty lighter"* as meaning a lighter "*(i) designed to resemble a cartoon character, toy, gun, watch, musical instrument, vehicle, animal, food, or beverage, or (ii) a fanciful article that plays musical notes, has flashing lights, or has other entertaining features that are appealing to or intended for use by juveniles."* A novelty lighter does not include a standard disposable lighter. HB 2578 requires that the novelty lighters be located in a place that is not open to the general public.
- **SB 1301 (Senator Hurt) Identity Theft Includes Money, Credit, or Loans**. SB 1301 amends §18.2-186.3 of the Code of Virginia pertaining to identity theft. Under the current law, it is unlawful for any person, with the intent to defraud, to obtain identifying information about another person for the purpose of obtaining financial resources, goods, or services. SB 1301 clarifies that to obtain money, credit, or a loan by using, without authorization or permission, a person's identifying information is prohibited under the identity theft statutes. A violation resulting in a loss of $200 or less would be a Class 1 misdemeanor. A violation resulting in a loss greater than $200 would be a Class 6 felony. Any second or subsequent violation would be a Class 6 felony as well. In circumstances involving the use of multiple persons' identifying information in the same transaction, the violations would be a Class 5 or Class 6 felony. According to the Virginia Criminal Sentencing Commission, not enough information is available to reliably estimate how many additional inmates in jail could result from this legislation.
- **HB 2362 (Delegate Gilbert) Enhanced Penalties for Subsequent Drug Convictions – Out-of-State Convictions Count.** HB 2362 amends § 18.2-248 of the Code of Virginia to provide that prior out-of-state convictions for substantially similar offenses count as prior offenses for the purpose of enhancing punishment for a second offense of manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute a controlled substance or an imitation controlled substance.
- **HB 2393 (Delegate Bell) Obstructing Justice & Animal Control Officers.** Section 18.2-460 of the Code of Virginia makes it a Class 1 misdemeanor for a person to knowingly obstruct a judge, attorney for the Commonwealth, or law-enforcement officer in the performance of his duties. HB 2393 amends § 18.2-460 to include animal control officers employed pursuant to § 3.2-6555.
- **SB 1369 (Senator Barker) & HB 2138 (Delegate Miller) Graffiti Abatement & Permits Localities to Charge for Cleanup.** SB 1369 & HB 2138 amend § 15.2-908 of the Code of Virginia relating to removal or repair of defacement of buildings, walls, fences, and other structures. The bills defines "defacement" to mean the unauthorized application by any means of any writing, painting, drawing, etching, scratching, or marking of an inscription, word, mark, figure, or design of any type. The legislation permits localities to charge a property owner for the cost or expense of removing defacement that occurs on a public or private building, wall, fence, or other structure located on an unoccupied property. Every charge that remains unpaid shall constitute a lien against such property, but no lien shall be chargeable to the owners of such

property unless the locality shall have given a minimum of 15 days notice to the property owner prior to the removal of the defacement.

- **HB 2424 (Delegate May) Restitution for Graffiti Cleanup**. HB 2424 amends § 15.2-908 of the Code of Virginia relating to restitution for graffiti abatement costs. HB 2424 allows the circuit court to order a person convicted of unlawfully defacing property (graffiti) to pay full or partial restitution to the locality for costs incurred by the locality in removing or repairing the defacement if the locality has adopted an ordinance providing for recovering the costs of removing graffiti pursuant to subsection A of § 15.2-908. The order of restitution shall be docketed as provided in §8.01-446 and may be enforced by the locality in the same manner as a judgment in a civil action.
- **SB 1363 (Senator Reynolds) Compensation of Court-Appointed Counsel in Habeas Corpus Cases.** SB 1363 amends § 19.2-163 of the Code of Virginia relating to compensation of court-appointed counsel. SB 1363 provides compensation to counsel representing an indigent prisoner under sentence of death in a state habeas corpus proceeding on the same basis as provided to counsel representing a defendant charged with a Class 1 felony. According to the Supreme Court of Virginia, this legislation does not change the amount of compensation to court-appointed counsel in habeas corpus cases for capital offenses but permits the submission of bills on a monthly basis versus at the conclusion of the case.
- **HB 2108 (Delegate Sherwood) & SB 1268 (Senator Vogel) Electronic Video and Audio Communication for Bail or Appointment of Counsel.** HB 2108 & SB 1268 amend § 19.2-3.1 of the Code of Virginia pertaining to making personal appearances before an intake officer, magistrate, or a judge via two-way electronic video and audio communication. HB 2108 & SB 1268 amend § 19.2-3.1 to allow a hearing in district court for the purpose of setting bail or appointing counsel to be conducted via two-way electronic video and audio communication if available in that district court. The district court *must use* electronic means for conducting the hearing if a personal appearance would require the transportation of the person from outside the jurisdiction of the court.
- **HB 1968 (Delegate Massie) Sentencing Order & Failing to Show up to Jail**. HB 1968 provides that whenever a person willfully and knowingly fails to surrender or submit to the custody of a sheriff as ordered by a court, any law-enforcement officer, with or without a warrant, may arrest the person anywhere in the Commonwealth. If the arrest is made in the county or city in which the person was ordered to surrender, or in an adjoining county or city, the officer may forthwith return the accused before the proper court. If the arrest is made elsewhere, the officer shall proceed according to the provisions of § 19.2-76 of the Code of Virginia. If the arrest is made without a warrant, the officer shall procure a warrant from the magistrate serving the county or city where the arrest was made charging the person with contempt of court.
- **HB 2309 (Delegate Melvin) Supervised Probation & Payment of Fines and Restitution** (Applies only to Adults). HB 2309 amends § 19.2-305 of the Code of Virginia relating to conditions of supervised probation. Section 19.2-305 allows the circuit court to require a defendant pay fines, court costs, and restitution as a condition of probation. A failure to pay may be deemed as a breach of probation. HB 2309 amends § 19.2-305 so that no defendant will be kept under supervised probation solely because of his failure to make full payment of fines, fees, or costs provided that the court or the attorney for the Commonwealth does not object.
- **HB 2312 (Delegate Melvin) & SB 1381 (Senator Stolle) Requirements for Writ for Actual Innocence**. HB 2312 & SB 1381 amend §§ 19.2-327.2, 19.2-327.3, and 19.2-327.5 of the Code of Virginia to extend the ability to petition for a writ of actual innocence based on previously unknown or untested biological evidence to individuals who are not incarcerated.
- **SB 1391 (Senator Stolle) Criminal Convictions & DNA Notification**. SB 1391 permits the dissemination of Virginia criminal history information to certain individuals who volunteer in the identification, location, and notification of individuals convicted of crimes prior to the advent of DNA testing and the case files of which have since been found to contain evidence suitable for DNA testing. The bill also specifies other aspects of the notification process and has an emergency clause.
- **HB 1866 (Delegate Janis) Court-Established Community Service Programs & Payment of Court Fees – Optional.** Section 19.2-354 of the Code of Virginia provides that whenever a defendant, convicted of a

traffic infraction or a violation of any criminal law of the Commonwealth or found not innocent in the case of a juvenile, is sentenced to pay a fine, restitution, forfeiture, or penalty and the defendant is unable to make payment within 15 days of sentencing, the court shall order the defendant to pay the fine in deferred payments or installments. The court may authorize the clerk to establish and approve the conditions of all deferred or installment payment agreements pursuant to guidelines established by the court. Subsection C of § 19.2-354 requires the court to establish a program for performing community service in lieu of payment of the fines. HB 1866 amends subsection C to ensure that the performance of community service is an option available to the court and not mandatory.

Criminal Justice Legislation Referred to the Virginia State Crime Commission for Study

- **SB 1289 (Senator McEachin) Criminal Conviction Record & Expungement of Certain Criminal Offenses**. *Subject matter referred to the Crime Commission pursuant to Senate Rule 20 (L).* SB 1289 would have amended § 19.2-392.2 of the Code of Virginia to allow a person convicted of certain criminal offenses to petition to have his conviction expunged after a five-year period has expired following the conviction upon a showing that his opportunities for employment, education, or professional licensure are prejudiced by the existence of the criminal record. Expungement would not be available for someone convicted of a violent felony, a DUI-related offense, an offense for which registration on the Sex Offender Registry is required, or domestic violence.

DOC/JAILS

- **HB 2226 (Delegate Marsden) Prisoner Litigation Reform Act – Serving Office of Attorney General with Motion for Judgment**. HB 2226 amends § 8.01-694 of the Code of Virginia to require the court to serve the Office of the Attorney General with a copy of the motion for judgment and all necessary supporting papers only in actions in which the defendant is the Commonwealth or one of its officers, employees, or agents.
- **HB 1919 (Delegate Crockett-Stark) & SB 1199 (Senator Puckett) Prisoner Keep - Increases Amount Locality May Charge Inmate**. HB 1919 & SB 1199 amend § 53.1-131.3 of the Code of Virginia to increase from $1 to $5 the amount a locality may charge an inmate to defray the costs associated with the inmate's keep. The Governor amended the bill to reimburse an inmate should he be acquitted.
- **HB 2441 (Delegate Cline) & SB 1223 (Senator Obenshain) DOC & Notification of Gang Affiliation.** HB 2441 & SB 1223 amend § 53.1-10 of the Code of Virginia relating to powers and duties of the Director of the Department of Corrections. The Director is required to notify the attorney for the Commonwealth prosecuting a defendant for an offense that occurred in a state correctional facility of that defendant's known gang membership. The notice shall contain identifying information for each criminal gang member as well as his criminal record.

MICELLANEOUS STATE GOVERNMENT LEGISLATION

- **SB 1529 (Senator Y. Miller) Local Employees & Right to Participate in Political Activities**. SB 1529 broadens § 15.2-1512.2 of the Code of Virginia to include all local employees as well as firefighters, emergency medical technicians, law-enforcement officers, and local constitutional office staff. This section provides that the covered employees may participate in political activities while off duty, out of uniform, and not on their employment premises. The term "political activities" is defined to include a variety of such activities. The section further prohibits the use of official authority to coerce subordinates for political contributions, to discriminate in employment or in the provision of public services because of political affiliation, or to suggest a locality has officially endorsed a candidate or political party.
- **HB 1969 (Delegate Massie) & SB 1299 (Senator Wagner) Administrative Process Act & Electronic Submission of Documents and Fees.** HB 1969 and SB 1299 require each agency, when promulgating regulations, to consider providing for the electronic submission of documents and payments, including fees and fines by January 1, 2010. Agencies will be required to examine such regulations to determine whether

the submission of the required documents or payments may be accomplished by electronic means. If an agency chooses to amend the regulation to provide the alternative of submitting required documents or payments by electronic means, such action shall be exempt from the operation of Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia provided the amended regulation is adopted by December 31, 2010.

- **SB 848 (Senator Edwards) Elections & Voting - Clarifications and Revisions to Registration and Election Processes**. SB 848 incorporates changes to definitions, duties of election officials, registration procedures, voting procedures, and election offenses. Please note: The definition of "residence" or "resident" in § 24.2-101 of the Code of Virginia is amended so that to "*establish domicile, a person must live in a particular locality with the intention to remain. A place of abode is the physical place where a person dwells."* This bill is identical to SB 1188 and HB 1878.

State Budget Submissions

- **SB 895 (Senator McDougle) Governor's Revenue Forecasts & Submission of Alternative Revenue Estimates**. Section 2.2-1503 of the Code of Virginia requires the Governor to submit to the General Assembly by December 15 of each year estimates of anticipated general fund revenues, transportation fund revenues, and revenues for each of the remaining major non-general fund, for a prospective period of six years. SB 895 amends § 2.2-1503 to require the Governor to submit any alternative general fund revenue forecasts considered by the Governor's Advisory Council on Revenue Estimates at the same time he submits the general fund revenue estimate to the General Assembly. According to the Fiscal Impact Statement submitted by the Department of Planning and Budget, there would be no impact on the Department of Taxation's costs to produce the general fund revenue estimate because no additional forecasts would be required by this bill.
- **SB 893 (Senator McDougle) Submission of Executive Budget & Personnel Costs for State Agencies**. SB 893 amends § 2.2-1508 of the Code of Virginia relating to the submission of the budget by the Governor. SB 893 requires the Governor's budget document to list for each agency the estimated personnel costs included in the Governor's introduced budget. According to the Department of Planning and Budget, this additional requirement should not create any significant impact.
- **SB 892 (Senator McDougle) Information Technology Projects & Budget Appropriations**. SB 892 amends § 2.2-2008 of the Code of Virginia and adds § 2.2-1509.3 relating to approval of the development of certain major information technology projects. SB 892 requires the Governor to identify in his proposed budget bill all major information technology projects that have or are pending project development approval. SB 892 specifies what information must be included in the budget bill regarding major information technology projects and defines "major information technology project" as any state agency information technology project that (i) is mission-critical, (ii) has statewide application, or (iii) has a total estimated cost of more than $1 million. Additionally, SB 892 requires the CIO to determine whether funding for a major information technology project is included in the Governor's budget bill prior to the development of such project.

Freedom of Information Act

- **SB 1316 (Senator Houck) Freedom of Information Act - Strikes Requirement to Publish Database Index.** SB 1316 amends §§ 2.2-3704 and 2.2-3704.1 of the Code of Virginia relating to the Virginia Freedom of Information Act and the requirements to publish a listing of the state computer database index. In 1996 Senator Houck patroned SB 326 that required public bodies of state government to compile, and annually update, an index of computer databases, which contain, at a minimum, those databases created after July 1, 1997.[15] SB 1316 strikes the requirement to publish an index of computer databases and amends the requirement to publish a statement of rights and responsibilities to ensure that the public can find out, generally, what types of public records a public body has and what exemptions may apply to those

[15] See 04/05/96 Governor: Acts of Assembly Chapter text (CHAP0469).

records. Each state agency must post on the Internet a "*general description, summary, list, or index of the types of public records maintained by such state public body [and a] general description, summary, list, or index of any exemptions in law that permit or require such public records to be withheld from release*." This bill was a recommendation of the Freedom of Information Advisory Council.

- **SB 1319 (Senator Houck) Freedom of Information Act & Meeting Minutes Must be in Writing**. SB 1319 amends § 2.2-3707 of the Code of Virginia relating to the Freedom of Information Act, open meetings, and the posting of meeting minutes. SB 1319 clarifies that minutes of public meetings must be in writing. A second enactment clause states that "the provisions of this act are declaratory of existing law." This bill was a recommendation of the Freedom of Information Advisory Council.
- **SB 1344 (Senator Reynolds) Freedom of Information Act & Exempting Certain Business Records**. SB 1344 amends §§ 2.2-3705.6 and 2.2-3711 of the Code of Virginia relating to the Freedom of Information Act and exempting certain records from FOIA. Section 2.2-3705.6 allows certain business records to be exempted from disclosure when a business is considering locating or expanding in Virginia. SB 1344 amends the existing records exemption for economic development records to include records related to the retention of existing business. SB 1344 allows the exemption to be used by all public bodies subject to FOIA. SB 1344 amends § 2.2-3711 to make corresponding amendments to the existing meetings exemption that allows discussion of such records in closed meetings.

DEAD BILLS

Below are some of the juvenile justice-related legislation that failed to be enacted.

HB 1741 (Delegate Pogge) Juvenile Exile – Possession of a Weapon by Persons Under the Age of 18. HB 1741 would have amended § 18.2-308.7 of the Code of Virginia relating to the possession or transportation of certain firearms by persons under the age of 18. Under current law § 18.2-308.7 makes possession or transportation of a firearm by a person under the age of 18 a Class 1 misdemeanor. HB 1741 would have made the first-time conviction or adjudication for the possession or transportation of a firearm by a juvenile a Class 6 felony. The estimated fiscal impact was $41,650. *Stricken from docket by House Committee on Militia, Police, and Public Safety by voice vote.*

HB 1764 (Delegate Ingram) Battery of Teacher – Increasing the Mandatory Minimum Term of Person Convicted. HB 1764 would have amended § 18.2-57 of the Code of Virginia relating to mandatory minimum confinement for battery of a teacher. Section 18.2-57 makes it a Class 1 misdemeanor for any person who commits a simple assault or assault and battery upon another. Under current law, if a person commits a battery against another knowing or having reason to know that such other person is a full-time or part-time teacher, principal, assistant principal, or guidance counselor of any public or private elementary or secondary school and is engaged in the performance of his duties as such, he shall be guilty of a Class 1 misdemeanor. The sentence of such person upon conviction shall include 15 days in jail, two of which must be served. HB 1764 attempted to raise the mandatory minimum term of confinement for battery of a teacher from two to five days. *After it was discussed that mandatory minimums do not apply in juvenile court cases, HB 1764 was left in House Courts of Justice.*

HB 1781 (Delegate Albo) Confidentiality of DJJ Gang Records. HB 1781 was substantially similar to a bill introduced during the 2008 Session by Delegate Marsden (HB 1254). HB 1781 would have amended §§ 16.1-300 and 16.1-309.1 of the Code of Virginia relating to the sharing of juvenile record information. HB 1781 would have made substantive and sometimes conflicting changes to two sections of the Code that cover the release of confidential juvenile information that may or may not relate to criminal street gang activity. The changes proposed by HB 1781 would have mandated DJJ to release any information relating to criminal street gang involvement or the criminal street gang-related activity of others obtained from an investigation or supervision of a juvenile to law-enforcement officers. The amendments proposed by HB 1781 mandated the Department or the locally operated court service unit to disclose any information relating to criminal street gang involvement or activity of the juvenile or others regardless of a nexus to criminal gang activity. *HB 1781 was left in House Courts of Justice.*

HB 2131 (Delegate J.H. Miller) Gang-Free Zones & Mandatory Minimum Sentences. HB 2131 would have allowed gang-free zones on certain types of public property and on private property upon petition by residents within the zone. Within such zones criminal gang activity is subject to enhanced criminal penalties. For example HB 2131 would have added a mandatory minimum sentence of two years for gang participation or gang activity that takes place at a school bus stop or on the property of a public community center or library. *HB 2131 was left in House Courts of Justice.*

HB 2228 (Delegate Marsden) Juveniles & Restitution Payment. This bill attempted to add § 16.1-278.8:02 to the Code of Virginia relating to restitution paid by juveniles. The bill would have allowed a court to rescind an order of restitution issued pursuant to § 16.1-278.8 (A)(10) or § 16.1-278.8 (B) and enter a judgment for money in the amount of any unpaid restitution

and release the applicable probationer/parolee from probation or parole supervision. *HB 2228 was left in House Courts of Justice*.

HB 2361 (Delegate Gilbert) Sex Offender Registration for All Juveniles Adjudicated Delinquent of Sexually Violent Offense. HB 2361 would have required that juveniles of *any age* who are adjudicated delinquent of a sexually violent offense or homicide must register as a sex offender. Juveniles adjudicated delinquent of a nonviolent sex offense would remain under the current procedure, which applies to juveniles 13 years and older and allows the judge to determine if registration should be required. Because the bill was retroactive as drafted, it would apply to any juvenile who has been adjudicated delinquent for a violent sexual offense no matter the year. Usually the General Assembly includes language that the new offense is in effect from the date that the new change in the law becomes effective. That was not the case with this bill. *HB 2361 was left in House Committee on Militia, Police, and Public Safety.*

HB 2503 (Delegate Pogge) DNA Sampling of Juveniles for Deferred Felony Adjudications. HB 2503 would have amended § 16.1-299.1 of the Code of Virginia relating to deoxyribonucleic acid ("DNA") sample requirements of juveniles. This bill would have required DNA samples to be taken of any juvenile, aged 14 or older at the time of the offense, whose case involving an offense that would be a felony if committed by an adult is deferred and dismissed pursuant to § 16.1-278.8. Under current law only juveniles who are convicted of a felony offense or are adjudicated delinquent of an offense that would be a felony if committed by an adult and are 14 years of age or older at the time of the offense are required to submit DNA samples. *After some discussion that the requirements in HB 2503 went beyond those for adults, HB 2503 was left in House Courts of Justice*.

SB 861 (Senator Edwards) Office of the Children's Ombudsman – Created. SB 861 was a repeat from the 2008 Session. In 2008 the General Assembly enacted HB 1131 (Delegate Fralin) and SB 315 (Senator Edwards) to create the Office of the Children's Ombudsman to provide ombudsman services to any child served by any child-serving agency of the Commonwealth. Due to funding concerns the bills contained a fourth enactment clause providing that the bills would not become effective unless funded in the General Appropriations Act. No appropriations were allocated. Identical to the legislation in 2008, SB 861 attempted to add to the Code of Virginia sections 2.2-214.2, 2.2-214.3, and 2.2-214.4 in Article 6 of Chapter 2 of Title 2.2 to create the Office of the Children's Ombudsman. With a price tag approaching a million dollars, fiscal concerns proved too much. *SB 861 passed the Senate with a contingency clause requiring funding to take effect but failed to get out of the House Committee on General Laws*.

SB 1136 (Senator Petersen) Grand Larceny - Threshold Amount. Under the current law petit larceny is the taking of goods or merchandise of value of less than $200.00. A conviction for petit larceny is a Class 1 misdemeanor. Larceny is taking of goods or merchandise with a value over $200. A conviction for larceny is a felony. SB 1136 attempted to increase from $200 to $500 the threshold amount of money or the value of the goods or chattel that the defendant must take before the crime rises from petit larceny to grand larceny. *SB 1136 was left in Senate Courts of Justice*.

SB 1297 (Senator Herring) Post-Dispositional Detention & Violent Juvenile Dispositions Allowed. Current law prohibits a juvenile adjudicated delinquent from being placed in a post-dispositional detention program for up to six months. SB 1297 attempted to remove that prohibition and allow a juvenile who has previously been adjudicated delinquent of a violent juvenile felony to be confined in a detention home or other secure juvenile facility for up to six months. The bill also would have required the court to consider the assessment completed by the detention facility regarding the appropriateness of the placement when ordering a period of confinement that exceeds 30 days. *SB 1297 was left in Senate Courts of Justice*.

SB 1298 (Senator Herring) Felony Juvenile Disposition – Deferred Then Reduced to Misdemeanors. SB 1298 attempted to amend § 16.1-278.8 of the Code of Virginia to allow the court to, without entering a judgment of guilty, defer the disposition of an offense that would be a felony if committed by an adult for a specific period of time during which the individual is placed on probation. Thereafter, and upon fulfillment of the conditions of probation, the judge may reduce the offense to a misdemeanor. *SB 1298 passed the Senate but was left in House Courts of Justice*.