2017

Virginia Department of Juvenile Justice

2017 General Assembly

Legislative Training Manual

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CRIMES

HB 1404 (COLE) / SB 1054 (STUART): FIRE ALARMS; MALICIOUSLY ACTIVATING, PENALTY

- **Existing Law:** Section 18.2-212 of the *Code of Virginia* makes it a Class 1 misdemeanor to summon an emergency medical service (EMS) or firefighting vehicle or to maliciously activate a fire alarm in a building designated for public use, such as a school, theater, store, office building, shopping center, coliseum, or arena. Under § 15.2-1716.1, localities may establish ordinances rendering individuals convicted of falsely making bomb threats or knowingly fashioning imitation fire bombs civilly liable to the locality or the responding volunteer EMS agency for the reasonable expense incurred in responding to the threat. The current civil remedy is capped at $1,000.
    - While a person may be criminally liable regardless of whether an EMS vehicle responds, they are civilly liable only if the act is the proximate cause of an incident resulting in an emergency response.
- **Effect of the Bills**: These bills remove the requirement in § 18.2-212 that the building must be for public use in order for the crime against maliciously activating a fire alarm to apply. Additionally, the bills amend § 15.2-1716.1 to expand local authority to render persons convicted of maliciously activating a fire alarm civilly liable for the reasonable expense the locality or EMS agency incurred responding to the threat. Finally, the bills increase the maximum amount a locality or EMS agency may recover under the ordinance from $1,000 to $2,500.

HB 1493 (HOPE): SALES DRAFT; DEFINITION, CREDIT CARD OFFENSES, PENALTY.

- **Existing Law:** Section 18.2-193 of the *Code of Virginia* makes a person guilty of credit card forgery if he forges a sales draft, uses a credit card number belonging to another holder, or attempts to employ as true, the forged draft. Currently, this offense is designated as a Class 5 felony.
    - Section 18.2-191 defines sales draft as a "paper form evidencing a purchase of goods, services, or anything else of value from a merchant through the use of a credit card.
- **Effect of the Bill:** This bill amends the definition of "sales draft" in § 18.2-191 to include ***electronic*** forms, in addition to paper forms; therefore, the bill expands the credit card forgery crime to include the forgery of an electronic sales draft or knowing attempt to use a forged electronic draft.

- **Comments**: Electronic credit card forgery is already captured in existing law in the general forgery statute, set out in § 18.2-172, which prohibits as a Class 5 felony, the forgery of ***any writing***, excluding forgery of public records and coins or bank notes.

HB 1610 (GARRETT)/SB 1546 (VOGEL):DRUG CONTROL ACT; ADDS CERTAIN CHEMICAL SUBSTANCES TO SCHEDULE I.

- **Effect of the Bills**: These bills add certain chemical substances to Schedule I of the Drug Control Act. Through the expedited regulatory process, the Board of Pharmacy has added these substances to Schedule I; however, substances added through this regulatory process are removed from the schedule after 18 months unless a general law is enacted adding the substance to the schedule. Additionally, the bill removes benzylfentanyl and thienylfentanyl from Schedule I and makes several technical amendments.

HB 2470 (JONES): DRUG CONTROL ACT; SCHEDULE II AND SCHEDULE V.

- **Existing Law:** Sections 54.1-3448 and 54.1-3454 of the *Code of Virginia* identify the controlled substances that are included under Schedule II and Schedule V respectively.

- **Effect of the Bill:** This bill adds Thiafentanil (a potent opioid and a synthetic analogue of fentanyl) to the controlled substances listed under Schedule II. On August 26, 2016, the Drug Enforcement Agency formally added Thiafentanil as a Schedule II controlled substance under the federal Controlled Substances Act. Possession of a Schedule I or II controlled substance is a Class 5 felony punishable by imprisonment ranging from one to ten years.

  The bill also adds Brivaracetam, also known as BRV; UCB-34714; Briviact, to the controlled substances listed under Schedule V. The DEA added this seizure medication to Schedule V on May 12, 2016. Possession of a Schedule V controlled substance is a Class 3 misdemeanor punishable by fine only; however, the manufacture, sale, or distribution of a Schedule V drug or the distribution of a Schedule V drug as an accommodation are Class 1 misdemeanors.

HB 1815 (YANCEY): COMPUTER TRESPASS; GOVERNMENT COMPUTERS AND COMPUTERS USED FOR PUBLIC UTILITIES, PENALTY.

- **Existing Law:** Section 18.2-152.4 of the *Code of Virginia* outlines the offenses that render a person guilty of computer trespass. Generally, computer trespass is designated as a Class 1 misdemeanor.

    - Computer trespass includes the following actions:

        - Removing, halting, or disabling computer data, programs, or software;
        - Causing a computer to malfunction;

- Altering, disabling, or erasing computer data, programs, or software;
- Effecting the creation or alteration of a financial instrument or electronic transfer of funds;
- Using a computer or network to physically injure another's property;
- Using a computer or network to make an unauthorized copy;
- Installing or collecting information through software that records keystrokes made on another's computer without permission;
- Installing software on another's computer to control the computer in order to cause damage; or disabling the computer's ability to transmit instructions or data to other computers.

- The individual must have engaged in the applicable activity with **malicious intent** to be convicted of this offense.

- If: i) the offense causes property damage totaling $1000 or more; ii) the person installs computer software in violation of this statute on more than five computers; or iii) the person installs or collects information through software that records keystrokes on another's computer, the crime is elevated to a Class 6 felony.

- **Effect of the Bill:** This bill adds a new Class 6 felony in § 18.2-152.4 for persons who commit computer trespass on a computer used exclusively by or exclusively for the use of: i) the Commonwealth, local governments within the Commonwealth or any department or agency, or ii) a public utility company, including a provider of telephone, wireless, or VOIP services.

HB 1921 (ROBINSON) / SB 973 (STURTEVANT): BATTERY; EXPANDS PENALTY WHEN AGAINST HEALTH CARE PROVIDER.

- **Existing Law:** Section 18.2-57 of the *Code of Virginia* makes it unlawful to commit battery against a known **emergency health care provider** delivering emergency health care in a hospital, clinic, or other emergency facility. The offense is a Class 1 misdemeanor, punishable by 15 days in jail, of which two days must be a mandatory minimum term.

    - Simple assault or assault and battery is a Class 1 misdemeanor which carries a penalty of up to twelve months in jail and/or a fine of up to $2,500.

    - "Health-care provider" is broadly defined in § 8.01-581.1 to include: licensed hospitals, physicians, dentists, pharmacists, registered nurses, LPNs, nurse practitioners, optometrists, podiatrists, physician assistants, chiropractors, physical therapists and assistants, clinical psychologists, clinical social workers, professional counselors, licensed marriage and family therapists, licensed dental hygienists, health maintenance organizations, fee-based emergency medical care attendants, as well as certain qualifying professional corporations, nursing homes, and certain limited liability companies.

- **Effect of the Bills:** These bills expand the battery offense against health care providers in § 18.2-57 to apply whenever a battery is committed against **any** health care provider performing duties in a hospital or an emergency room on the premises of a clinic or other facility rendering emergency medical care, rather than limiting the offense to battery against an emergency health care provider.

    - As under current law, health-care providers delivering services outside these facilities, such as in the home of a patient or at the scene of an emergency, are not included under this specific battery offense.

    - Additionally, the bill directs the Virginia Department of Health (VDH) to work with stakeholders to develop guidelines regarding: i) the publication of penalties for a battery committed on a covered health care provider, and ii) training of health care professionals and providers in violence prevention programs.

HB 2051 (ADAMS)/SB 1091(EBBIN): MARIJUANA OFFENSES; DRIVER'S LICENSE FORFEITURE.

- **Existing Law:** Section 18.2-251 of the *Code of Virginia* qualifies individuals charged for a first-time offense involving possession of a controlled substance or marijuana for a first-time offender program. Under the program, the court may defer further proceedings, place the individual on probation, and require him to undergo a substance abuse assessment and enter a treatment or education program. The accused must successfully complete the treatment or program; remain drug and alcohol free, and submit to tests in order to verify that the requirement has been satisfied; make reasonable efforts to secure and maintain employment; and comply with a plan of completion. If the individual violates any of the probationary requirements, the court is authorized to adjudicate guilt and proceed.

  An individual convicted of a first-time offense involving possession of a controlled substance or marijuana or whose charge is deferred and who is placed on probation automatically forfeits his driver's license for 6 months from the date of the judgment or probation placement.

- **Effect of the Bills:** These bills remove the automatic forfeiture of license penalty for individuals convicted of or placed on deferred disposition on marijuana possession offenses, provided the marijuana offense was not committed while the person was operating a motor vehicle. Additionally, if the court elects not to suspend or revoke the driver's license, the accused must complete 50 hours of community service in addition to any other community service imposed under current law.

    - The legislation does NOT apply to juveniles. Section 16.1-278.9 of the *Code of Virginia* provides that if a juvenile is charged with possession of marijuana, the court must deny his driver's license for a 6-month period. If the offense is committed by a juvenile who has not yet reached the legal age for obtaining a

driver's license, the 6-month period will not commence until the juvenile reaches the age of 16 and 3 months.

- This legislation is contingent upon the Federal Highway Administration of the U.S. Department of Transportation's written assurance that Virginia will not lose federal funding in implementing this act.

HB 2064 (MULLIN): ASSAULT AND BATTERY AGAINST A FAMILY OR HOUSEHOLD MEMBER; ELIGIBILITY FOR FIRST OFFENDER STATUS.

- **Existing Law:** Pursuant to § 18.2-57.3 of the *Code of Virginia,* when a person is charged either with a simple assault under § 18.2-57 of the *Code of Virginia* against a family or household member or an assault and battery against a family or household member under § 18.2-57.2, the court may defer the proceedings and place the offender on probation, provided:

  - The offense was committed while the person was an **adult**;
  - The person has not been convicted previously of a simple assault or a crime relating to an assault or assault and battery against a family or household member;
  - The person has not had a similar charge dismissed pursuant to a deferral program;
  - The court finds sufficient evidence to rule the person guilty; and
  - The person consents to the deferral.

  If the offender successfully completes the deferral program, the court must discharge him from the program with no adjudication of guilt and dismiss the proceedings against him.

- **Effect of the Bill:** This bill amends § 18.2-57.3 to expand the criteria necessary for a person to be eligible for the deferral program. In addition to the existing requirements, the bill prohibits individuals who were previously convicted of an act of violence from participating in the program unless the Commonwealth's attorney does not object to the deferral.

  - "Act of violence" includes: i) first and second degree murder and voluntary manslaughter; ii) mob-related felonies; iii) kidnapping or abduction felonies; iv) malicious felonious assault or malicious bodily wounding; v) robbery and carjacking; vi) felony criminal sexual assault; vii) arson when the structure burned was occupied, or Class 3 felony burning or destroying of certain buildings erected for public use.

HB 2113 (KEAM)/SB 1033 (HOWELL): BREACH OF PAYROLL DATA; NOTIFICATION REQUIREMENT.

- **Existing Law:** Section 18.2-186.6 of the *Code of Virginia* requires individuals or entities that own, maintain, or possess computerized personal information regarding Virginia residents and that reasonably believe that the information was accessed or acquired by an unauthorized person to report the breach to the Office of the Virginia Attorney General (OAG). Additionally, the entity must notify each affected Virginia resident.

- **Effect of the Bills:** This bill amends § 18.2-186.6 to impose new requirements on employers or payroll service providers that own or license computerized data relating to Virginia income tax withholdings. These employers or payroll service providers must notify the OAG without unreasonable delay if they discover that computerized data containing a taxpayer identification number and the amount of income tax withheld for that employee has been accessed or acquired without authorization and it results in, or the employer or payroll provider reasonably believes that it will cause, identity theft or fraud.

    - This bill applies solely to data regarding employees and not to data regarding the employer's customers, clients, or other non-employees.

    - The employer must provide the OAG with the name and federal employer identification number of the employee who has had his information compromised.

    - Once the employer or payroll service provider has notified the OAG of the breach and provided the employer's name and federal employer identification number, the OAG must notify the Department of Taxation of the breach.

- **Comment**: This legislation was introduced as a means of preventing the theft of state income tax refunds resulting from the unauthorized access of information from payroll systems.

HB 2201 (O'QUINN): FAILURE TO DRIVE ON RIGHT SIDE OF HIGHWAYS OR OBSERVE TRAFFIC LANES; INCREASES PENALTIES.

- **Existing Law:** Currently, §§ 46.2-802 and 46.2-804 of the *Code of Virginia* require motor vehicle operators to remain on the right half of the highway while traveling on that highway unless it is not feasible or unless they are passing another vehicle.

- **Effect of the Bill:** This bill imposes a fine for failing to drive on the right side of the highway or failing to observe traffic lanes of $100. The bill is intended to address motorists who drive too slowly in the left lane.

HB 2350 (MINCHEW): ELECTRONIC DEVICES; USE OF SYSTEM TO TRESPASS.

- **Existing Law:** Under § 18.2-130, it is a Class 1 misdemeanor to enter another person's property to secretly peep, spy, or attempt to peep or spy into a window, door or other opening of a building, structure, or enclosure intended as a dwelling. The law also prohibits the use of a peephole or other opening to peep or spy or attempt to peep or spy into restrooms, dressing rooms, locker rooms, or other statutorily specified areas. The crime does not apply to these activities when they are conducted for purposes of a lawful criminal investigation, by a correctional official or local or regional jail official conducting surveillance for security purposes, or during an investigation of alleged misconduct involving a person committed to the Department of Corrections or to a jail.

- **Effect of the Bill**: This bill creates a new section that makes it a Class 1 misdemeanor to knowingly and intentionally cause an electronic device to enter onto another's property in order to secretly peep or spy through a window, door or other opening of a dwelling. Like the existing peeping offense, the crime does not apply when the devices are used for a lawful criminal investigation.

SB 1210 (WEXTON): UNLAWFUL CREATION OF IMAGE OF ANOTHER; CIVIL ACTION.

- **Existing Law:** Section 18.2-386.1 of the *Code of Virginia* makes it a Class 1 misdemeanor to knowingly and intentionally create a video or photograph of any person without his consent if i) the person is totally nude, in undergarments, or dressed in a way that exposes private areas in a restroom, dressing room, locker room, hotel room, tanning booth, bedroom, or other location; or ii) the images are created by placing the lens of the recording device directly beneath or between the person's legs in order to photograph or view the person's private parts or undergarments when they are otherwise not visible.

    - The offense is elevated to a Class 6 felony if: i) the nonconsenting person is a minor; or ii) the offender was convicted within the 10 years immediately preceding the current offense of two or more offenses under this statute and each previous event occurred on a different date, was not part of a common act, transaction, or scheme, and the offender was free between each conviction.

  Section 18.2-386.2 makes it a Class 1 misdemeanor to maliciously disseminate or sell such videos or pictures with the goal of coercing, harassing, or intimidating the victim, and when the offender knows or has reason to know that he is not licensed or authorized to disseminate or sell the video or picture.

    - The Internet, e-mail, or other service provider whose services are used to sell or disseminate the pictures or video is not liable for content provided by another person.

- Individuals can be prosecuted under §§ 18.2-386.1 and 18.2-386.2 under current law.

- **Effect of the Bill:** This bill adds a new *Code* section that creates a civil action against a person who violates either § 18.2-386.1 or § 18.2-386.2, regardless of whether the offender has been charged with or convicted of the alleged violation. If successful, the victim may recover compensatory damages, punitive damages, and reasonable attorney fees and costs. Under the bill, the statute of limitations for filing a civil suit is two years after the later of: i) the date of the last act, ii) the date on which the person attained 18 years of age; or iii) the date on which the person discovered or reasonably should have discovered the prohibited conduct. As under the criminal statutes, Internet, email, and other service providers whose services are used to sell or disseminate the pictures or videos are not liable for content provided by another person.

HB 1622 (COLLINS): COMMERCIAL VEHICLES; HARMONIZES PENALTIES FOR DRIVING UNDER THE INFLUENCE (DUI) AND COMMERCIAL DUI.

- **Existing Law:** Section 46.2-341.24 outlines the penalties for the unlawful operation of a commercial motor vehicle while intoxicated, as set out below:

    - Driving a commercial motor vehicle while intoxicated or under the combined influence of alcohol and certain specified drugs is a Class 1 misdemeanor.

    - Conviction for a second offense within less than five years is punishable by a fine ranging from $200 to $2,500 and a jail sentence ranging from one month to one year, including a mandatory minimum jail sentence of 5 days. A second or subsequent offense within a five to ten-year period is punishable by a fine ranging from $200 to $2500 and confinement in jail ranging from one month to one year.

    - A third or subsequent offense within 10 years is punishable by a fine ranging from $500 to $2,500 and confinement in jail ranging from two months to one year. A mandatory minimum jail sentence of 30 days applies if the 3rd or subsequent offense occurs within less than 5 years, and the mandatory minimum is 10 days if the third or subsequent offense occurred within five to ten years.

    - For purposes of determining the applicable penalty, a prior conviction includes: i) maiming another while operating a motor vehicle (§ 18.2-51.4); ii) driving a motor vehicle while intoxicated (§ 18.2-266); iii) violating an ordinance of a locality that prohibits offenses similar to those set out in (i) and (ii) above; driving a commercial vehicle while intoxicated, or violating any substantially similar laws of another state.

- **Effect of the Bill:** This bill increases the penalties for driving a commercial motor vehicle while intoxicated to mirror the similar penalties applicable to driving a motor vehicle while intoxicated under § 18.2-270, as follows:

    - Adds a mandatory minimum fine of $250 for a first time offense of driving a commercial motor vehicle while intoxicated, and provides that if the person's blood alcohol level was between 0.15 and 0.20, the person must be confined in jail for an additional mandatory minimum period of five days, and 10 days for persons with a blood alcohol level in excess of 0.20.

    - For a second commercial motor vehicle DWI offense occurring within less than five years, the bill adds a mandatory minimum fine of $500 and increases the mandatory minimum jail sentence to 20 days. For a second offense occurring within 5 to 10 years, the bill adds a mandatory minimum fine of $500 and imposes a 10-day mandatory minimum period of confinement.

    - For a second commercial motor vehicle offense within 10 years in which the offender's blood alcohol level was at least 0.15 to 0.20, the offender is subject to an additional mandatory minimum confinement period of 10 days, and for a blood alcohol level exceeding 0.20, an additional mandatory minimum of 20 days.

    - The bill elevates the offense to a Class 6 felony and imposes a mandatory minimum jail sentence of 90 days if the person is convicted of three or more offenses within a 10-year period. If the three offenses were committed within a five-year period, the individual is subject to a mandatory minimum sentence of 6 months and a mandatory minimum fine of $1,000.

    - Additionally, the bill makes a subsequent conviction for driving a commercial motor vehicle while intoxicated, when the offender has been convicted previously of: i) driving a commercial motor vehicle while intoxicated; or ii) involuntary manslaughter or causing the serious bodily injury of another due to operating a motor vehicle, watercraft, or motor boat while under the influence, a Class 6 felony, subject to a mandatory fine of $1,000. A fourth offense or subsequent offense committed within a 10-year period results in a mandatory minimum imprisonment period of 1 year and a mandatory minimum fine of $1,000.

    - For individuals convicted of DWI in operating a commercial motor vehicle while transporting a minor, an additional fine ranging from $500 to $1,000 and a mandatory minimum 5-day period of confinement must be imposed.

    - The bill expands the offenses deemed "prior convictions" for purposes of determining the current penalties to include: i) involuntary manslaughter due to driving while under the influence and similar federal laws.

- Finally, the bill adds a provision requiring that mandatory minimum punishments be cumulative and mandatory minimum terms of confinement be served consecutively. The bill prohibits any penalty from exceeding the applicable statutory maximum misdemeanor or felony conviction penalty.

HB 2327 (COLLINS): DRIVING UNDER INFLUENCE OF ALCOHOL; IMPLIED CONSENT, REFUSAL OF BLOOD OR BREATH TESTS.

- **Existing Law:** Currently, under the "implied consent" law set out in § 18.2-268.2 of the *Code of Virginia*, a person who operates a motor vehicle on the highway or watercraft on the waterways of the Commonwealth is deemed to have consented to having samples of his blood or breath taken to determine the alcohol or drug content upon arrest for a DUI-related offense. Section 18.2-268.3 of the *Code of Virginia* prohibits a person operating a motor vehicle or watercraft while under the influence of alcohol or drugs from unreasonably refusing to have a blood sample, breath sample, or both samples taken for purposes of administering a chemical test to determine the content of alcohol or drugs in the individual's system. Individuals accused of driving while intoxicated, persons under the age of 21 accused of driving after illegally consuming alcohol, and individuals driving on a suspended or revoked license who are believed to have a blood alcohol content of 0.02 percent are subject to this provision.

- Individuals who unreasonably refuse to have the required breath and blood samples taken in violation of this provision are subject to the following civil or criminal penalties under existing law:

    - A first violation is a civil offense, which results in suspension of the individual's driver's license for a one-year period.
    - A violation of this offense occurring within 10 years of being found guilty of a refusal to submit a blood or breath sample or another DUI-related offense is a Class 2 misdemeanor punishable by driver's license suspension for a period of three years.
    - A violation of this offense occurring within 10 years of being found guilty of at least two separate refusals to submit a blood or breath sample or two other DUI-related offenses is a Class 1 misdemeanor, punishable by driver's license suspension for a period of three years.

- **Effect of the Bill**:

    - This bill removes the criminal penalty associated with the refusal to submit to a **blood test**. As under previous law, for a first offense, the court is required to suspend the defendant's driver's license for a period of one year in addition to any other applicable driver's license suspension imposed under current law. If the individual committed a similar refusal or another DUI-related offense within the 10 years immediately preceding the current

refusal, the individual's driver's license will be suspended for a period of three years from the date of judgment.

- The bill increases the criminal penalty for a second refusal to submit to a **breath** test from a Class 2 misdemeanor to a Class 1 misdemeanor. As under current law, first offenses are deemed criminal penalties subject to a one-year suspension of the offender's driver's license.

- The bill extends to blood analyses performed by the Department of Forensic Science pursuant to a search warrant the rebuttable presumption that a person is intoxicated based on the person's blood alcohol level demonstrated by such tests.

- The bill modifies § 16.1-278.9 of the *Code of Virginia* by providing that for juveniles at least 13 years of age or older who refuse to take a blood test, the court must order that the child be denied a driver's license for a period of 1 year or until the juvenile reaches age 17, whichever is later, for a first offense or for a period of one year or until the child reaches age 18, whichever is longer, for a second or subsequent offense.

- **Background**: This bill is intended to reflect the United States Supreme Court decision in *Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016), in which the Court held that while the Fourth Amendment permits warrantless **breath tests** incident to arrests for drunk driving, **blood tests** administered without a search warrant violate the Fourth Amendment. Therefore, states may not enact laws that criminalize an individual's refusal to submit to a blood test incident to a lawful arrest.

HB 2467 (BELL, ROBERT): DRIVING ON A SUSPENDED OR REVOKED LICENSE; PERIOD OF SUSPENSION.

- **Existing Law:** Individuals: i) whose driver's license, learner's permit, or other privilege to operate a motor vehicle is suspended or revoked; 2) who are directed not to drive by a court or the DMV Commissioner; or 3) who are otherwise prohibited by law or local ordinance from operating a motor vehicle, may not drive a motor vehicle or self-propelled machinery on a Virginia highway before the suspension or revocation is terminated unless they are issued a restricted license or their privilege is otherwise reinstated.

  - Violation of this provision is a Class 1 misdemeanor.
  - If an individual is charged with driving on a suspended or revoked license, the court must suspend the person's license for the same period of time as the previous suspension or revocation. If the previous suspension was not for a defined period, the court must suspend the license for an additional 90 days, which may not begin until the previous suspension or revocation penalty is complete.

Additionally, current law requires the court to suspend a person's driver's license if he violates Virginia law and fails to pay the fines, other costs associated with the crime, or installment payments. Generally, the suspension continues until the fines or other associated costs are paid in full, at which time the Commissioner must return the person's license, unless his license is under suspension or revocation for another lawful reason.

- **Effect of the Bill:** This bill amends § 46.2-301 to provide that for an individual convicted of driving on a suspended or revoked driver's license, if the underlying suspension was due to the individual's failure to pay fines, any additional suspension period must run concurrently with the original suspension. Additionally, the legislation amends § 46.2-395 to provide that any driver's license suspension for failure to pay court-ordered fines and costs must run concurrently with the offender's other license suspension, revocation, or forfeiture periods. The bill contains an emergency clause and took effect on March 16, 2017.

SB 817 (SUROVELL): RESTRICTED DRIVER'S LICENSE; PURPOSES.

- **Existing Law:** Virginia law identifies a host of different penalties that may be imposed on a person who operates a motor vehicle while intoxicated. The penalties depend upon the individual's blood alcohol content, the number of previous offenses, and the time period between offenses. Among the penalties, an offender's driver's license may be automatically suspended or revoked. In those instances, Section 18.2-271.1 of the *Code of Virginia* gives the court the discretion, for good cause shown, to allow for the issuance of a restricted driver's license permit for a number of specified purposes, such as to travel to and from work or school, to travel to and from programs required by the court or as conditions of probation, or to transport an elderly parent for medically necessary health care services.

- **Effect of the Bill:** This bill expands Section 18.2-271.1 to grant courts authority to issue a restricted license for travel to and from a job interview, provided the individual maintains on his person written proof from the prospective employer of the date, time and location of the job interview, ostensibly to present to an officer in the event he is stopped by law enforcement while traveling to or from the interview.

SB 1008 (HANGER): BARRIER CRIMES; CLARIFIES INDIVIDUAL CRIMES, CRIMINAL HISTORY RECORDS CHECKS.

- **Existing Law:** Sections 37.2-408.1 and 63.2-1719 of the *Code of Virginia* provide a list of crimes, commonly referred to as "barrier crimes." Any person convicted of a barrier crime is prohibited from volunteering with, being employed with, or contracting to provide services for: (i) any children's residential facility that is regulated by the Department of Behavioral Health and Developmental Services, the Department of Social Services, the Department of Education or the Department of Military Affairs; (ii) any locally-structured residential program established for

juvenile offenders or juveniles determined to be children in need of services or supervision (including employees of local secure juvenile detention facilities who accepted a position on or after July 1, 2013 and qualifying volunteers and contractors who will be alone with the juvenile in the performance of their duties). Section 63.2-1721 of the *Code of Virginia* provides that if any person required to have a background check has any "barrier crimes" or other "offense" defined in § 63.2-1719, and the Commissioner has not granted the person a waiver or the person is not otherwise subject to an exception, the Commissioner may not issue a license to a child-placing agency, independent foster home, family day system, or assisted living facility, or issue a registration to a family day home.

- **Effect of the Bill:** This bill amends various provisions of the *Code of Virginia* governing barrier crimes. The bill:

    - Moves the list of barrier crimes and other references to barrier crimes from § 63.2-1719 to § 19.2-392.02.
    - Expands barrier crimes to include substantially similar offenses under the laws of other jurisdictions.
    - Adds new barrier crimes to the list, including violent crimes and crimes that require registration on the Sex Offender and Crimes against Minors Registry, as well as offenses for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted.

SB 1060 (BLACK): FEMALE GENITAL MUTILATION; CRIMINAL PENALTY AND CIVIL ACTION.

- **Effect of the Bill:**

    Criminal Penalty

    This bill creates a new crime for the knowing genital mutilation of a minor female. The crime is designated as a Class 1 misdemeanor. Additionally, the bill makes it a Class 1 misdemeanor for a parent, guardian, or other person responsible for the minor female's care to: i) consent to this offense; or ii) take the minor female outside of Virginia to have the operation performed.

    The bill exempts from this statute operations that meet the following requirements:

    - Necessary to the health of the minor female if performed by a medical practitioner licensed in the state in which the operation is performed; or

    - Performed on a person in labor who has just given birth, for medical reasons involving the labor or birth if the operation is performed by a licensed medical practitioner, midwife, or person training to become a practitioner or midwife.

Under the bill, the statute of limitations for bringing a charge on this offense is one year after the minor attains age 18. The offense is deemed a separate and distinct offense. Therefore, a person may be prosecuted under this statute as well as under another existing statute.

Civil Penalty

Additionally, the bill adds a new section, § 8.01-42.5, that creates a civil action for victims of this offense and allows them to file suit regardless of whether the offender has been charged with or convicted of the offense. The statute of limitations for bringing a civil action is within 10 years after the later of (i) the date of the last such offense; or ii) the date on which the victim attained 18 years of age.

SB 1154 (REEVES): TERRORIST ORGANIZATION, DESIGNATED; PROVIDING MATERIAL SUPPORT, PENALTY.

- **Existing Law:** Acts of terrorism are unlawful and are subject to different penalties based on the nature of the underlying offense pursuant to § 18.2-46.5 of the *Code of Virginia*.
    - "Act of terrorism" means any of the following acts committed with the intent to intimidate the civilian population or to influence the conduct or activities of the government, the United States, a state, or locality through intimidation:
        - First and second degree murder and voluntary manslaughter (§ 18.2-30)
        - Mob-related felonies (18.2-38 et seq)
        - Kidnapping or abduction felonies (18.2-47 et seq)
        - Malicious felonious assault or malicious bodily wounding (18.2-51)
        - Robbery (18.2-58) and carjacking (18.2-58.1)
        - Criminal sexual assault punishable as a felony (18.2-61 et seq); or
        - Arson when the structure burned was occupied, or was a meeting house, courthouse, townhouse, college, academy, schoolhouse or other qualifying building erected for public use. (18.2-77)
    - The commission, conspiracy to commit, or aiding and abetting of an act of terrorism is a Class 2 felony if the underlying act of violence is punishable by life imprisonment or a term not less than 20 years.
    - The commission, conspiracy to commit, or aiding and abetting of an act of terrorism is a Class 3 felony if the maximum penalty for the underlying act of violence is a term of imprisonment or incarceration in jail of fewer than 20 years.
    - The solicitation, invitation, recruitment, encouragement, or other attempt to influence another to participate in an act of terrorism is a Class 4 felony.

- **Effect of the Bill:** This bill amends § 18.2-46.5 of the *Code of Virginia* to create a new felony against an individual who knowingly provides material support i) to an individual or organization whose primary objective is to commit an act of terrorism and ii) with the intent of furthering the individual's or organization's objective.

    - The bill designates this crime as a Class 3 felony.
    - The crime is elevated to a Class 2 felony if the provision of material support results in another person's death.

  Additionally, the bill expands the definition of an act of terrorism provided in § 18.2-46.4 of the *Code of Virginia* to include a similar act committed outside of Virginia that would be deemed an act of violence if committed in Virginia and that meets the additional statutory requirements.

SB 1533 (OBENSHAIN): ANTIQUE FIREARMS; POSSESSION BY NONVIOLENT FELONS.

- **Existing Law:** It is a Class 6 felony for certain individuals with previous felony convictions or adjudications to possess or transport firearms, firearm ammunition, stun weapons, explosive materials, pistols, revolvers, dirks, bowie knives, switchblade knives, ballistic knives, machetes, razors, slingshots, spring sticks, metal knucks, blackjacks, nun chucks, throwing stars or oriental darts, or similar weapons.

    - The prohibition applies specifically to: i) individuals convicted of a felony; ii) individuals adjudicated delinquent as juveniles 14 years of age or older at the time of committing murder, kidnapping, robbery by threat or by firearm, or rape; or iii) individuals under 29 who were adjudicated delinquent as a juvenile 14 years of age or older at the time of any other act which would be a felony if committed by an adult.

    - The knowing and intentional possession or transporting of a firearm by an individual previously convicted of a violent felony is subject to a mandatory minimum prison term of five years.

- **Effect of the Bill:** This bill amends § 18.2-308.2 to allow the individuals with previous felony convictions or adjudications set out above to possess, transport, or carry: i) antique firearms or ii) fewer than five pounds of black powder, provided the items are intended solely for sporting, recreational, or cultural purposes.

    - The bill defines "antique firearm" to include a muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol designed to use black powder or a black powder substitute, and that cannot use fixed ammunition. Antique firearm does not include any weapon that incorporates a firearm frame or receiver, any firearm converted into a muzzle-loading weapon, or any muzzle-loading weapon that can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breech-block, or any.

- This exception does not apply to persons convicted of an act of violence or a violent felony.

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CRIMINAL / CIVIL PROCEDURE

HB 1456 (ALBO): CUSTODY AND VISITATION ORDERS; USE OF TERM PARENTING TIME.

- **Existing Law:** Sections 16.1-278.15 and 20-124.2 govern court-ordered custody and visitation arrangements in the Juvenile and Domestic Relations Court, circuit courts, and district courts. Prior to July 1, 2017, neither statute addressed the use of the term "visitation" in cases or proceedings involving custody or visitation.

- **Effect of the Bill:** This bill amends §§ 16.1-278.15 and 20-124.2 of the *Code of Virginia* to give the Juvenile and Domestic Relations Court the discretion to use the phrase "parenting time" synonymously with "visitation," in child custody or visitation cases. The purpose of this legislation is to prevent the perception that one parent is less or more important than the other.

HB 1492 (HOPE): CHILD SUPPORT ORDERS; SPECIAL NEEDS TRUST OR ABLE SAVINGS TRUST ACCOUNT.

- **Existing Law:** Section 16.1-278.15 of the *Code of Virginia* gives Juvenile and Domestic Relations (J&DR) Court judges the discretion to order that child support be paid or continued for a child over the age of 18 who is a) severely and permanently mentally or physically disabled if the disability existed prior to the child's 18th birthday; b) unable to live independently and support himself; and c) residing in the home of the parent seeking or receiving child support.

    - Note that child support may be awarded or extended for children over the age of 18 whose disability existed prior to the age of 19 if the child is: i) a full-time high school student; ii) not self-supporting; and 3) living in the home of the child-support petitioner).

- **Effect of the Bill:** This bill amends § 16.1-278.15 to enable the court to order that child support payments for qualifying disabled children be made to a special needs trust or an ABLE savings account upon the request of either party.

    - The ABLE account is used to help support individuals with disabilities. Contributions that total less than $100,000 may be made to the account without becoming ineligible for Social Security and other government benefits. Earnings or contributions placed in the account are exempt from both federal and Virginia state income tax. The ABLE account may be used to assist the disabled individual with education, employment training and support; housing; transportation; assistive technology and personal support services; financial management and administration services; legal fees; oversight and monitoring; health, prevention and wellness; funeral and burial; and other expenses.

- A special needs trust is similar to the ABLE savings trust account, but, unlike the ABLE account, contributions remaining in the account after the child's death may be passed on to heirs, rather than reverting to the state.

HB 1586 (CAMPBELL): COURT-ORDERED CUSTODY AND VISITATION ARRANGEMENTS; TRANSMISSION OF ORDER TO CHILD'S SCHOOL.

- **Effect of the Bill:** This bill amends §§ 16.1-278.15 and 20-124.2 of the *Code of Virginia* to provide that in a custody or visitation case in which the court issues an order prohibiting a party from collecting the child from school, the court must order one of the parties to provide a copy of the order to the child's school within three business days of the date the order was issued. If a custody determination affects the child's school enrollment and prohibits a party from collecting the child from school, the court must order one of the parties to provide the school with a copy of the custody order within three business days of the party's receipt of the order. The order must also direct that party to provide a copy of any subsequent order that requires a change in the child's school enrollment to the new school. Under the bill, if the court determines that it would not be feasible for the party to deliver the order to the school within the required timeframe, the party must provide the court with the name of the principal and address of the school. The court must then mail the order, first class, to the school principal.

HB 1882 (HOPE)/SB 1352 (HOWELL): CAPITAL CASES; REPLACING CERTAIN TERMINOLOGY.

- **Effect of the Bills:** This bill replaces the term "mental retardation," used in numerous sections of the *Code of Virginia* governing capital cases, with "intellectual disability." These changes are intended to reflect the U.S. Supreme Court decision in *Hall v. Florida* (2014) that adopted the term "intellectual disability," to replace the term "mental retardation." Beyond changing the terminology used, the bill makes no substantive changes to these *Code* provisions. The bill contains an enactment clause to this effect, which expresses the General Assembly's intent that the amendments reflect a change in terminology only, and "do not affect the meaning or applicability of the existing definition or case law utilizing the existing definition." References to "mental retardation" are replaced in the following *Code of Virginia* sections.

    - **Section 8.01-654.2** – Applies to capital defendants whose death sentences became final in the circuit court before April 29, 2003. The amended statute outlines the manner in which a person under a death sentence may have a claim of intellectual disability presented to the Supreme Court.

    - **Section 18.2-10** – Provides that the penalty for Class 1 felonies is death or life imprisonment; however, for individuals under 18 at the time of the offense or individuals with an intellectual disability, the punishment is life imprisonment and a fine of not more than $100,000.

- **Section 19.2-264.3:1.1** – Outlines the process, during the sentencing phase, for determining whether a person has an intellectual disability. The defendant has the burden of proving that there is an intellectual disability by a preponderance of the evidence.

- **Section 19.2-264.3:1.2** – Under this amended *Code* section, if the court makes a finding that a defendant charged with capital murder is financially unable to pay for expert assistance, the court must appoint a mental health expert to present a report assessing whether the person has an intellectual disability.

- **Section 19.2-264.3:3** – Prohibits the introduction of any statement or disclosure made by the defendant during an intellectual disability evaluation against the defendant at the sentencing phase of a capital murder trial to prove the aggravating circumstances during the sentencing proceeding.

SB 928 (PETERSEN): SUBSTITUTE JUDGES.

- **Existing Law:** When a district court judge is unable to perform his duties due to sickness, absence, vacation, conflict of interest, or other reasons, the chief district judge may select a substitute judge to serve. However, under Section 16.1-69.21 the chief district judge must, where possible, select a substitute judge who does not regularly practice in the court requiring the substitute. Additionally, the chief district judge may designate a substitute judge from another district within the Commonwealth when **reasonably available**. Once selected, the substitute judge is required to perform the same duties and is granted the same power and authority as the judge for that court.

- **Effect of the Bill:** This bill amends § 16.1-69.21 to remove the prohibition against a substitute judge sitting in the court in which he regularly practices. Additionally, the bill limits the chief judge's authority to allow a substitute judge from another district to be designated as a substitute to those instances in which the designation is **reasonably necessary**.

SB 1343 (SUROVELL): GUARDIAN AD LITEM; REIMBURSEMENT FOR COST.

- **Existing Law:** Under the Appropriations Act, if a J&DR or circuit court appoints a Guardian ad Litem (GAL) for a case, the court must order the parent(s), adoptive parent(s), or another party with a legitimate interest who has filed a petition with the court to reimburse the Commonwealth for the costs of providing the GAL services. The reimbursement amount may not exceed the amount awarded to the GAL. If the court determines the party is indigent, the required reimbursement may be reduced or eliminated. Additionally, the Act requires the Executive Secretary of the Supreme Court to report on August 1 and January 1 of each year to the Chairmen of the House Appropriations and Senate Finance Committees on the amounts paid for GAL purposes, amounts reimbursed by the parties with a legitimate interest,

savings achieved, and management actions taken to further enhance savings under the program. This requirement is not set out in the *Code of Virginia*.

- **Effect of the Bill:** This bill adds a provision to § 16.1-267 to codify the GAL reimbursement provisions currently contained in the Appropriations Act. The bill specifically requires the J&DR court to order the parent or other party with a legitimate interest who filed the petition in the proceeding to reimburse the Commonwealth for the costs of the GAL.

    - As under the Appropriations Act, the court has the discretion to reduce or eliminate the reimbursement amount if it finds the party is unable to pay.

    - The court may not order reimbursement if it finds that the party is indigent, unless the court finds good cause to do so.

    - The provisions requiring the Executive Secretary of the Supreme Court to administer the GAL program and report annually to the Chairmen of the House Appropriations and Senate Finance Committees are retained.

    - Finally, the bill contains an enactment clause indicating that child welfare agencies or local departments of social services are not "parties with a legitimate interest" for purposes of this reimbursement requirement.

EDUCATION

HB 1392 (LINGAMFELTER): SCHOOL SECURITY OFFICERS; CARRYING A FIREARM IN PERFORMANCE OF DUTIES.

- **Existing Law:** Section 18.2-308.1 of the *Code of Virginia* makes it unlawful to knowingly possess stun weapons, certain knives, firearms, and other weapons on any elementary, middle, or high school property, any school bus owned or operated by such school, or any property open to the public while being used exclusively for school-sponsored functions. The knowing possession of stun weapons, knives, and other weapons, excluding firearms, in these designated areas is a Class 1 misdemeanor; the knowing possession of firearms in any such area is elevated to a Class 6 felony. If an individual brandishes the firearm in a threatening manner, he may be guilty of a Class 6 felony, punishable by a mandatory minimum five-year prison sentence. This prohibition does not apply to retired or acting law enforcement officers, certain armed security officers, and other statutorily enumerated parties.

- **Effect of the Bill:** This bill amends various sections of the *Code of Virginia* to grant localities the discretion to allow school security officers to carry a firearm in the performance of their duties, provided the following requirements are satisfied:

    - The officer was an active law enforcement officer within 10 years prior to being hired as a school security officer;
    - The officer retired or resigned from his law-enforcement position in good standing;
    - The officer has provided proof to the Department of Criminal Justice Services that he completed the required training, including active shooter emergency response, emergency evacuation procedure, and threat assessment;
    - The local school board in which the officer is seeking employment has solicited input from the chief law enforcement officer of the locality in which he will be employed regarding the applicant's qualifications and received verification that the applicant is not prohibited from possessing, purchasing or transporting a firearm; and
    - The local school board has granted the individual the authority to carry a firearm.

HB 1408 (WARE): STUDENT VISION SCREENINGS; REQUIREMENTS FOR CERTAIN STUDENTS.

- **Existing Law:** Section 22.1-273 of the *Code of Virginia* directs school principals to ensure that the sight and hearing of all students in the grades identified by the Board of Education's regulations are tested, unless: 1) the student is attending a public kindergarten or elementary school for the first time and was tested as part of the comprehensive physical exam required under current law; or 2) the parent or

guardian of the student objects on religious grounds and there is no obvious evidence of an eye or ear defect or disease. The Board's regulations, 8VAC20-250-10, require vision and hearing tests be conducted for students in kindergarten as well as third, seventh, and tenth grades. Currently, the statute does not prescribe the method that must be utilized in administering the screenings, nor does it identify the individual who must provide the vision screenings.

- **Effect of the Bill:** This bill amends § 22.1-273 to direct public elementary, middle, and high school principals to ensure that students in kindergarten, second, third, seventh, and tenth grades have their vision tested unless they are admitted for the first time to a public elementary school and can produce a written record of a comprehensive eye exam performed within the preceding 2 years or the parents or guardians object on religious grounds. The screening may be conducted by a qualified nonprofit vision heath organization that uses a digital photo screening method pursuant to a comprehensive vision program or other methods compliant with Department of Education requirements.

    - A "qualified nonprofit vision health organization" is defined as an organization that is exempt from taxation under § 501(c)(3) or § 501(c)(4) of the Internal Revenue Code, has at least 10 years of direct experience in delivering vision and vision education services, and does not derive profit from the sale of vision equipment, insurance, medication, merchandise, or vision-related products.

  Under the bill, screenings may be conducted at any time during the school year, provided scheduling is completed no later than the 60th administrative working day of the school year. Additionally, the bill requires the principal to keep a record of the screenings and to notify the parent or guardian of any student who fails the screening.

HB 1437 (HEAD): PUBLIC SCHOOL STUDENTS; SIGHT AND HEARING TESTING, EXCEPTIONS.

- **Effect of the Bill:** This bill amends § 22.1-273 to add to the list of students who are exempted from having their eyes or ears tested any student with an Individualized Education Program (IEP) or Section 504 plan that documents a defect of vision or hearing or a disease of the eyes or ears and the principal determines that the test would not identify any previously unknown defect of vision or hearing or a disease of the eyes or ears.

HB 1709 (FILLER-CORN): SCHOOL BOARDS; POLICIES AND PROCEDURES PROHIBITING BULLYING; PARENTAL NOTIFICATION.

- **Existing Law:** Under § 22.1-279.6 of the *Code of Virginia*, the Board of Education must establish guidelines and develop model policies for codes of student conduct to aid local school boards in implementing these policies. Among the numerous topics listed, the guidelines and policies must include standards consistent with state, federal, and case laws, for school board policies on bullying. The law requires each school board to include in its code of conduct by July 1, 2014, policies and procedures that include a prohibition against bullying and that are consistent with the standards for school board policies on bullying and the use of electronic means for bullying developed by the Board.

- **Effect of the Bill:** This bill adds a requirement to § 22.1-279.6 that local school boards must include in their bullying codes of conduct policies and procedures directing the principal to notify the parent of all students involved in an alleged incident of bullying of the status of the investigation within five days of the allegation.

SB 1159 (REEVES): PUBLIC SCHOOLS; CAREER AND TECHNICAL EDUCATIONAL CREDENTIAL.

- **Existing Law:** Section 22.1-253.13:4 directs the Board of Education, in establishing secondary school graduation requirements, to mandate that students either: i) complete an Advanced Placement, honors, or International Baccalaureate course or ii) earn a CTE credential that has been approved by the Board. If a CTE credential in a subject area is not readily available, not appropriate, or does not adequately measure student competency, the student must receive competency-based instruction in the subject area to earn credit. The CTE credential may include the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness skills assessment. Local school boards must report annually to the Board the number of Board-approved industry certifications obtained, state licensure examinations passed, national occupational competency assessments passed and Virginia workplace readiness skills assessments passed, and the number of CTE completers who graduated. The Board must establish similar requirements by regulation for attaining a general achievement adult high school diploma.

- **Effect of the Bill:** This bill expands Section 22.1-253.13:4 by permitting students to fulfill the CTE credential, when required, by successfully completing the Armed Services Vocational Aptitude Battery. This exception is permitted for students obtaining a high school diploma or adults pursuing a general achievement adult high school diploma for whom the compulsory attendance requirements do not apply.

HB 1848 (HESTER)/SB 1032 (FAVOLA): COMPREHENSIVE COMMUNITY COLLEGES; TUITION GRANTS AND FEES FOR CERTAIN INDIVIDUALS.

- **Existing Law:** Section 23.1-601 of the *Code of* Virginia requires comprehensive community colleges to provide grants to cover tuition or fees (excluding fees for course materials, such as lab fees) for Virginia students in a comprehensive community college who meet the following requirements:

    - i) Received a high school diploma or passed a Board of Education-approved high school equivalency exam and was in foster care or under Department of Social Service custody or is considered a special needs adoption at the time the diploma or certificate was awarded; or ii) was in foster care when he turned 18 and subsequently received a high school diploma or passed the Board-approved high school equivalency exam;
    - Is enrolled or has been accepted as a full-time or part-time student, taking a minimum of six credit hours per semester, in a degree or certificate program of at least one academic year in length in a comprehensive community college;
    - Has not been enrolled in postsecondary education as a full-time student for more than five years or does not have a bachelor's degree;
    - Maintains the required GPA established by the State Board;
    - Has submitted a complete application for federal student financial aid programs;
    - Demonstrates financial need; **and**
    - Meets any additional financial need requirements established by the State Board for purposes of the grant.

- **Effect of the Bills:** These bills amend § 23.1-601 by expanding the students eligible to receive the grants to include a Virginia student in a noncredit workforce credential program in a comprehensive community college who meets all of the additional requirements of the statute.

- **Comments**: These bills are part of the Governor's legislative package aimed at expanding education opportunities for Virginians and strengthening workforce development.

HB 1924 (BAGBY)/SB 829 (WEXTON): PUBLIC SCHOOLS; SUSPENSIONS.

- **Existing Law:** Generally, pursuant to Section 22.1-277 of the *Code of Virginia*, public schools in Virginia may suspend or expel students from school for sufficient cause. Section 22.1-276.01 of the *Code of Virginia* provides that during a short-term suspension, students are prohibited from attending school for a maximum period of 10 school days, and during long-term suspensions, students may be prohibited from attending school for more than 10 school days, but fewer than 365 calendar days.

- **Effect of the Bills:** This is a Section 1 bill that directs the Board of Education to establish guidelines for short-term and long-term suspension. Local school boards may **consider** these guidelines in developing policies on long-term and short-term suspensions. Under the bill, alternatives may include positive behavior incentives, mediation, peer-to-peer counseling, community service, and other intervention alternatives.

HB 2040 (MURPHY): POSTSECONDARY SCHOOLS; ENROLLMENT AGREEMENT WITH EACH STUDENT.

- **Effect of the Bill:** This bill adds a new § 23.1-230, which prohibits colleges required to be certified by SCHEV from enrolling students without entering into an enrollment agreement with each student, signed by the student and an authorized representative and containing all disclosures prescribed by the Council.

- **Comments**: This bill is intended to promote transparency and prevent colleges from failing to disclose that their credits are not transferable, that they are not accredited, or that they are not financially solvent. While not specified in the statute, the enrollment agreement will contain disclosures relevant to each institution, including such information as whether the school is under probationary status for accreditation or financial aid eligibility and information about transferability of credits.

HB 2174 (MURPHY): SCHOOL BOARDS; ANNUAL REPORT ON PUPIL/TEACHER RATIOS IN ELEMENTARY, MIDDLE, ETC., SCHOOL CLASSROOMS.

- **Existing Law:** Section 22.1-253.13:2 of the *Code of Virginia* requires local school boards to report to the public by January 1 of each year the pupil/teacher ratios for elementary school classrooms for the current school year, arranged by schools. Actual pupil/teacher ratios may consist only of the full-time teachers who teach the grade and class on a full-time basis and not resource personnel. However, school boards must add resource teachers to the pupil/teacher ratio in this same annual report.

- **Effect of the Bill:** This bill expands the pupil/teacher ratio reporting requirement in § 22.1-253.13:2 to include actual ratios for middle school and high school.

SB 1475 (MCCLELLAN): FAMILY LIFE EDUCATION; CHANGES TO CURRICULUM GUIDELINES AND CURRICULA.

- **Existing Law:** Section 22.1-207.1 of the *Code of* Virginia requires the Board of Education to develop Standards of Learning and curriculum guidelines for a comprehensive, sequential family life education curriculum in kindergarten through grade 12. The curriculum guidelines must include instruction appropriate to the age of the student in various topics involving family living including the value of

marriage, abstinence education, the benefits of adoption in the event of an unwanted pregnancy, human sexuality, and steps to avoid sexual assault. Additionally, § 22.1-207.1:1 requires high school family life curricula to incorporate programs on the prevention of dating violence, domestic abuse, sexual harassment and sexual violence.

- **Effect of the Bill:** This bill amends Section 22.1-207.1 by adding a requirement that the curriculum guidelines for family life education also include instruction on the value of family relationships. Additionally, the bill amends § 22.1-207.1:1 to clarify that the family life education curricula may include instruction on the fact that consent is required before sexual activity.

HB 2257 (FILLER-CORN): HIGH SCHOOL FAMILY LIFE EDUCATION CURRICULA; EFFECTIVE AND EVIDENCE-BASED PROGRAMS ON CONSENT.

- **Existing Law:** Section 22.1-207.1:1 of the *Code of Virginia* directs local school divisions that offer family life education to mandate the Standards of Learning objectives related to dating violence and abusive relationships to be taught at least once in middle school and twice in high school. Additionally, high school family life education curricula must include age-appropriate elements of effective and evidence-based programs on the prevention of dating violence, domestic abuse, sexual harassment, and sexual violence.

- **Effect of the Bill:** This bill expands § 22.1-207.1:1 to authorize local school divisions to incorporate into high school family life education curricula, age-appropriate elements of effective and evidence-based programs on the law and meaning of consent.

- **Comments**: Note that § 22.1-207.2 of the *Code of Virginia* gives parents and guardians the right to review the family life education program offered by the school division and to excuse their child from all or part of the program.

HB 2282 (LEFTWICH): CHILDREN, TRAFFICKING OF; GUIDELINES FOR TRAINING SCHOOL COUNSELORS, ETC.

- **Existing Law:** Legislation enacted in 2012, set out in § 22.1-16.5 of the *Code of Virginia*, requires the Board of Education to collaborate with the Department of Social Services to provide awareness and training materials for local school division staff on human trafficking, including strategies for the prevention of trafficking of children. In order to carry out this requirement, the legislation directed the Department of Social Services to provide the Board of Education with: 1) resource information on human trafficking, including strategies to prevent child trafficking; and 2) materials for distribution that describe resources for information on human trafficking.

- **Effect of the Bill:** This is a §1 bill that requires the Board of Education to develop guidelines for training school counselors, nurses, and other relevant school staff on preventing child trafficking.

HB 2290 (WARD): DRIVER EDUCATION PROGRAMS; INSTRUCTION CONCERNING TRAFFIC STOPS.

- **Existing Law:** Section 22.1-205 of the *Code of* Virginia requires the state Board of Education to establish a standardized program of driver education that must consist of instruction on the following topics i) alcohol and drug abuse; ii) aggressive driving; iii) distracted driving; iv) motorcycle awareness; v) organ and tissue donor awareness vi) fuel-efficient driving practices and v) an additional parent/student driver education component for students completing a driver education program in Northern Virginia that emphasizes parental responsibilities regarding juvenile driver behavior, juvenile driving restrictions, and the dangers of driving and underage drinking.

- **Effect of the Bill:** This bill expands the driver's education program curriculum requirements listed in § 22.1-205 of the *Code of Virginia* to include traffic stops, including law-enforcement procedures for traffic stops, appropriate actions to be taken by drivers during traffic stops, and appropriate interactions with law-enforcement officers who initiate traffic stops. Additionally, the bill requires the Board of Education to collaborate with the Department of State Police to implement this expansion.

HB 2332 (TYLER): TEACHERS; COMPENSATION AT RATE COMPETITIVE WITH NATIONAL AVERAGE SALARY.

- **Existing Law:** Section 22.1-289.1 of the *Code of* Virginia declares the Commonwealth's goal to compensate its public school teachers at a competitive rate in order to attract and keep highly qualified teachers. To effectuate this goal, the Director of Human Resource Management is required to conduct a biennial review of compensation for teachers and similarly-trained professionals, taking into account the compensation for teachers in states that are members of the Southern Regional Education Board, and to report the results of this review to the Governor, General Assembly, and Board of Education by June 1 of every odd-numbered year.

- **Effect of the Bill:** This bill amends § 22.1-289.1 by defining the term "competitive," to mean, "at a minimum, at or above the national average teacher salary."

- **Comments**: According to the National Education Association, the United States average classroom teacher salary is estimated to be $58,064 for the 2015-16 school year.

SB 1116 (McPike): Public school employees, certain; assistance with student insulin pumps by registered nurse, etc.

- **Existing Law:** Section 22.1-274.01:1 of the *Code of Virginia* allows local school boards to permit students diagnosed with diabetes to carry and use supplies, including a short-term supply of carbohydrates, an insulin pump, and equipment for immediate treatment of blood glucose levels. They may also administer self-checks of their blood glucose levels on school buses, school property, and at school-sponsored events.

- **Effect of the Bill:** This bill amends § 22.1-274.01:1 to authorize registered nurses, licensed practical nurses (LPNs) or certified nurse aids (CNAs) who are employees of a local school board to assist a student diagnosed with diabetes who carries an insulin pump with inserting or reinserting the pump or its parts. This authorization is contingent upon the following:

    - The term "employee" includes any person employed by a local health department who is assigned to the public school pursuant to an agreement between the local health department and the school board.

    - The nurse or nurse aid must have training in administering glucagon and insulin, including the use and insertion of insulin pumps; and

    - Before the nurse or nurse aid may assist with the insertion or reinsertion of the pump or its parts, prescriber authorization and parental consent must be obtained.

  The bill also amends § 8.01.225 to shield such employees from liability for civil damages arising from inserting or reinserting the insulin pump or its parts.

SB 1245 (Dunnavant): Public education; economics education and financial literacy,

- **Existing Law:** Section 22.1-2003.03 of the *Code of Virginia* requires all public high schools and middle schools in Virginia to teach principles of the American economic system to promote economics education and financial literacy. In connection with this mandate, the statute requires the Board of Education to develop and approve objectives for economics education and financial literacy that must be achieved by all middle and high school students and incorporated into the relevant Standards of Learning and CTE programs. At minimum, the objectives must include:

    - Personal living and finances;
    - Personal and business money management skills
    - Opening an account in a financial institution and judging the quality of the institution's services;
    - Balancing a checkbook;

- Completing a loan application;
- The implications of an inheritance;
- The basics of personal insurance policies;
- Consumer rights and responsibilities;
- Dealing with salesmen and merchants;
- Debt management;
- Managing retail and credit card debt;
- State and federal tax computation;
- Local tax assessments;
- Computation of interest rates by various mechanisms;
- Understanding simple contracts; and
- Learning how to contest an incorrect bill.

- **Effect of the Bill:** This bill requires that the Board expand its objectives for economics education to include a topic on considering the economic value of postsecondary studies, including attendance costs, potential student loan debt, and potential earnings. The Board must amend its objectives by July 1, 2018.

HB 2432 (BULOVA): TEACHERS AND OTHER SCHOOL PERSONNEL; INVESTIGATION OF CERTAIN COMPLAINTS, LICENSE REVOCATION.

- **Existing Law:** Section 22.1-298.1 of the *Code of Virginia* requires the Board of Education to promulgate regulations that set out the licensure requirements for teachers and other personnel with professional licenses, as well as the elements necessary for the Board to revoke, deny, suspend, cancel, or reinstate the license. Under the statute, the Board of Education has sole authority to license teachers for regular employment by local school boards.

- **Effect of the Bill:** This bill expands § 22.1-298.1 to require that the Board's regulations also describe the process by which the local superintendent must investigate a complaint alleging that a licensee has engaged in conduct that may result in revocation of the licensure. The procedures must require:

  - That the division superintendent petition to revoke the license if he finds reasonable cause to believe the licensee has engaged in behavior sufficient to revoke the license;
  - That the school board hold a hearing within 90 days of the petition being mailed to the licensee (unless the licensee requests revocation of the license); and
  - That the school board provide a copy of the investigative file and petition to the Superintendent of Public Instruction at the time the hearing is scheduled.

  Additionally, the bill clarifies that in the case of a teacher who becomes the subject of a founded complaint of child abuse and neglect, the teacher must be dismissed after all rights to any **administrative** appeal have been exhausted. Current law does not specify that these appeals are administrative in nature.

SB 1117 (McPike): School Counselors; licensure.

- **Existing Law:** Section 22.1-298.1 of the *Code of Virginia* requires the Board of Education to promulgate regulations that identify the requirements individuals in Virginia must satisfy to obtain initial or renewal teacher licensure in Virginia.

- **Effect of the Bill:** This bill amends § 22.1-298.1 to require that individuals who are seeking initial licensure or renewal as a school counselor must complete training in recognizing mental health disorders and behavioral distress, including depression, trauma, violence, youth suicide, and substance abuse.

JUVENILE JUSTICE

HB 1940 (CARR): VIRGINIA PUBLIC PROCUREMENT ACT; SELECTION OF PRE-RELEASE AND POST-COMMITMENT SERVICES.

- **Existing Law:** The Virginia Public Procurement Act (*Code of Virginia* § 2.2-4300 *et seq*.) sets out the policies that government entities in Virginia must follow in procuring goods and services. Only those entities that are granted a statutory exception in *Code of Virginia* § 2.2-4343 are exempt from the requirements of the Act. In the event of an emergency, the Act authorizes governmental entities to issue emergency procurements, which exempt them from meeting a number of requirements related to competitive sealed bidding and competitive negotiation. Although the standards are relaxed in emergency situations, governmental entities remain obligated to post notice of the emergency procurement and satisfy additional documentation requirements under the Act.

- **Effect of the Bill:** The bill amends § 2.2-4343 of the *Code of Virginia* to exempt the Department of Juvenile Justice from the requirements of the Public Procurement Act when purchasing pre-release and post-commitment services. The legislation will benefit juveniles returning to their communities after a commitment to the Department by expediting their access to reentry services.

- **Comments:** The Virginia Department of Corrections has had a similar statutory exemption since 2003.

HB 2287 (COLLINS)/SB 1288 (MCDOUGLE): JUVENILE JUSTICE, DEPARTMENT OF; CONFIDENTIALITY OF RECORDS.

- **Existing Law:** Under *Code of Virginia* § 16.1-300, the social, medical, psychiatric and psychological reports and records of youth who have been before the court, under court service unit supervision or committed to the Department of Juvenile Justice are confidential and may only be shared with certain statutorily enumerated parties. However, the Department must disclose social records and reports related to criminal street gangs (including that an individual is a member of a criminal street gang) to state or local law enforcement officers to assist with their street gang investigations.

    - Once law enforcement obtains this information, they may share it only in connection with a criminal street gang investigation authorized by the Attorney General or by the Commonwealth's Attorney in connection with a prosecution or other court proceeding.

    - A criminal street gang consists of three or more persons whose primary objective is the commission of criminal activities, which group has an identifiable name, sign, or symbol, and whose members have committed,

attempted to commit, conspired to commit, or solicited two or more predicate criminal acts, at least one of which was an act of violence.

- **Effect of the Bills:** The bills amend § 16.1-300 of the *Code of Virginia* by authorizing the Department of Juvenile Justice to share these otherwise confidential social reports and records with community gang task force groups, provided the task force: 1) consists solely of state and local government representatives; or 2) includes a law enforcement officer who is present at the time the information is disclosed.

    - Law enforcement officers and applicable gang task forces may subsequently divulge this information in connection with gang activity prevention and intervention.

HB 1549 (FARRELL)/SB 1005 (HANGER): COMMUNITY SERVICES BOARDS AND BEHAVIORAL HEALTH AUTHORITIES; SERVICES TO BE PROVIDED, REPORT.

- **Existing Law**: Pursuant to § 37.2-500 of the *Code of Virginia*, every county or city is required to establish a community service board (CSB), either individually or collectively with other localities. In lieu of a CSB, the cities of Richmond and Virginia Beach and the County of Chesterfield may create a behavioral health authority pursuant to § 37.2-601 of the *Code of Virginia.* These boards and authorities must provide core services, including emergency services and, subject to the availability of appropriated funds, case management services.

- **Effect of the Bills**: These bills amend §§ 37.2-500 and 37.2-601 of the *Code of Virginia* to expand the core services that CSBs and behavioral service authorities are directed to provide to include: 1) same-day mental health screening services; 2) outpatient primary care screening and monitoring services for physical health indicators and health risks, and follow-up services to help individuals overcome barriers to accessing primary health services, including developing links to primary health care providers. These requirements will take effect on July 1, 2019.

  Additionally, effective July 1, 2021, the bill requires CSBs and behavioral health authorities to further expand their core services to include: i) crisis services for individuals with mental health or substance use disorders; ii) outpatient mental health and substance abuse services; iii) psychiatric rehabilitation services; iv) peer support and family support services; v) mental health services for armed service members located 50 miles or more from a military treatment facility and veterans located 40 or more miles from a Veterans Health Administration medical facility; vi) care coordination services; and vii) case management services.

  Finally, the legislation requires the Department of Behavioral Health and Developmental Services (DBHDS) to report to the General Assembly by December 1 annually regarding its progress in meeting these requirements.

HB 1551 (FARRELL)/SB 1006 (HANGER): COMMITMENT HEARINGS.

- **Existing Law**: With the exception of certain statutorily enumerated parties, medical, psychiatric, and psychological records of neglected and abused children, children in need of services, children in need of supervision, and delinquent children remain confidential and may not be disclosed. Similarly, § 37.2-818 of the *Code of Virginia* prohibits the disclosure of copies, relevant medical records, reports, and court documents pertaining to commitment hearings for involuntary admission to mental facilities.

- **Effect of the Bills**: These bills add a new *Code of Virginia* section that requires the Office of the Executive Secretary of the Supreme Court of Virginia (OES), at the request of DBHDS, to provide DBHDS with electronic data, including individually identifiable information on the proceedings described in the Psychiatric Treatment of Minors Act. DBHDS may use this electronic data to develop and maintain statistical archives, conduct research on the outcome of these proceedings, and develop analyses and reports for DBHDS's use. Additionally, the bill requires DBHDS to employ measures to protect the security and privacy of the electronic data to the same extent as required under state and federal law and regulations governing privacy of health information. Finally, the bill exempts this electronic data from the Virginia Freedom of Information Act.

HB 1840 (STOLLE):HUMAN IMMUNODEFICIENCY VIRUS (HIV); CONFIDENTIALITY OF TESTS, RELEASE OF INFORMATION.

- **Existing Law:** Section 32.1-36.1 of the *Code of Virginia* requires that HIV test results be kept confidential and be released only to: 1) the test subject or his legally authorized representative; 2) a person designated in a release signed by the test subject or his legally authorized representative; 3) the Health Department; 4) health care providers in order to consult, treat, or care for a test subject or an infected baby; 5) health care facility staff committees; 6) medical or epidemiological researchers to use as statistical data; 7) persons given access by court order; 8) facilities that procure, process, distribute or use blood, body fluids, tissues, or organs; 9) persons authorized by law to receive the information; 10) parents or other legal custodians of a minor test subject; 11) the test subject's spouse; and 12) Health departments in other states, when the results are shared with Virginia's Department of Health for the purposes of disease surveillance and investigation.

- **Effect of the Bills:** These bills remove the specifically enumerated parties who are entitled to have HIV tests results released to them under § 32.1-36.1 of the *Code of Virginia* and clarifies that the results may be released to any person or entity authorized to obtain protected health information under applicable federal or state laws.

HB 1885 (HUGO)/SB 1232 (DUNNAVANT): OPIOIDS; LIMIT ON AMOUNT PRESCRIBED, EXTENDS SUNSET PROVISION

- **Existing Law:** Section 54.1-2522.1of the *Code of Virginia* requires certain licensed prescribers to register with the Virginia Department of Health Professions' Prescription Monitoring Program. Whenever the prescriber initiates a new course of treatment involving opioids that is anticipated to last more than 14 consecutive days, the prescriber must request information from the Director of the Virginia Department of Health Professions to determine whether other covered substances are currently prescribed to the patient. Furthermore, prescribers authorized by the Drug Enforcement Administration to prescribe controlled substances approved for

use in opioid addiction therapy must, before or as part of the patient's treatment, request information from the director to determine whether other covered substances are currently prescribed to the patient. Prescribers are exempt from these requirements if the opioid is prescribed to a patient as part of treatment for a surgical or invasive procedure and is not refillable, for patients receiving hospice or palliative care, or when the prescription monitoring program cannot be accessed due to emergency, disaster, or temporary technological or electrical failure.

- **Effect of the Bills:** These bills amend § 54.1-2522.1 to reduce from 14 days to 7 days the anticipated course of treatment for an opioid prescription that is subject to the VDHP information requirements. Additionally, the bill modifies the exemption currently available for an opiate prescribed as a result of a surgical or invasive procedure when the prescription is not refillable by instead allowing the exemption when opioid treatments are prescribed for a surgical or invasive procedure prescribed for no more than 14 consecutive days. Finally, the bill extends the sunset period for these requirements from July 1, 2019, to July 1, 2022.

- **Background**: The prescription monitoring program collects prescription data for Schedule II-IV drugs and records them in a central database to monitor and prevent the illegitimate use of prescription drugs. The collected data are maintained by the Virginia Department of Health Professions.

HB 2095 (PRICE)/SB 1020 (BARKER): PEER RECOVERY SPECIALISTS AND QUALIFIED MENTAL HEALTH PROFESSIONALS; REGISTRATION.

- **Existing Law:** Section 54.1-2400.1 of the *Code of Virginia* imposes a duty on a "mental health service provider" to protect third parties from violent behavior or other serious harm when: i) a client has communicated to the provider a specific and immediate threat to cause serious bodily injury or death to a person; and ii) the provider reasonably believes the client can carry out the threat immediately or imminently. In addition, the provider must take precautions to protect a third party child if the client threatens to engage in behaviors that would constitute physical or sexual abuse on the child.

    - A "mental health service provider" is defined to include: certified substance abuse counselors, clinical psychologists, clinical social workers, licensed substance abuse treatment practitioners, licensed practical nurses, marriage and family therapists, mental health professionals, physicians, professional counselors, psychologists, registered nurses, school psychologists and social workers.

    - The duty to protect only attaches if the threat has been communicated to the provider by the threatening client while the provider is engaged in his professional duties.

- Mental health service providers are discharged from these duties if they: 1) seek to involuntarily admit the client; 2) make reasonable efforts to warn the potential victims or a minor victim's parent or guardian; 3) reasonably attempt to notify a law-enforcement official with jurisdiction in the client or potential victim's place of residence or work, or that of a minor victim's parent or guardian; 4) take available steps to prevent the client from using physical violence or other means of harm until appropriate law-enforcement can be summoned; and 5) counsel the client or patient at the session in which the threat is communicated until the provider reasonably believes the client no longer intends or is capable of carrying out the threat.

- **Effect of the Bills:** These bills authorize the registration of peer recovery specialists and qualified mental health professionals by the Board of Counseling and make changes to various provisions in the *Code of Virginia* to effectuate this change:

  - Add definitions for "registered peer recovery specialist" and "qualified mental health professional" to § 54.1-2400.1. A "registered peer recovery specialist" is a person who is professionally qualified and registered to provide collaborative services to assist individuals in achieving sustained recovery from the effects of addiction or mental illness or both. A "qualified mental health professional" is a person who is professionally qualified and registered by the Board of Counseling to provide collaborative mental health services for adults of children.

  - Require the Board of Behavioral Health and Developmental Services to adopt regulations that set out the qualifications, education, and experience for peer recovery specialists, and remove the Commissioner's authority to certify individuals as peer providers.

  - Mandate that the Board of Counseling promulgate regulations for the registration of qualified mental health professionals, including qualifications, education and experience necessary for such registration, and peer recovery specialists who meet the qualifications, education, and experience established by the Board of Behavioral Health and Developmental Services;

  - Directs qualified mental health professionals to provide such services as an employee or independent contractor of DBHDS or a provider licensed by DBHDS.

  - Expands the definition of mental health service providers to include "peer recovery specialists" and "qualified mental health professionals" thereby extending to these additional categories the duty to protect third parties from violent behavior.

  - Expands the reasons for which the duty to protect third parties from violent behavior of a client may be discharged to include scenarios in which a registered peer recovery specialist or qualified mental health professional

not otherwise licensed by a health regulatory board at the Department of Health Professions, reports immediately to a licensed mental health service provider to take action to discharge a mental health service provider from this duty.

- Requires persons certified or registered by the Board of Counseling to post a copy of their certification or registration in a conspicuous place;

- Requires the Board of Behavioral Health and Developmental Services and the Board of Counseling to promulgate regulations to implement these requirements, effective within 280 days of the enactment.

SB 1062 (DEEDS)/HB 1910 (YOST): DEFINITION OF MENTAL HEALTH SERVICE PROVIDER .

- **Existing Law:** Section 54.1-2400.1 of the *Code of Virginia* imposes a limited duty upon mental health service providers to attempt to protect third parties from violent behavior or other serious harm only when the client has orally, in writing, or via sign language, communicated to the provider a specific and immediate threat to cause serious bodily injury or death to an identified or readily identifiable person.

    - Mental health service providers currently include: certified substance abuse counselors, clinical psychologists, clinical social workers, licensed substance abuse treatment practitioners, licensed practical nurses, marriage and family therapists, mental health professionals, physicians, professional counselors, psychologists, registered nurses, school psychologists, or social workers, and qualifying professional corporations and partnerships.

- **Effect of the Bills:** These bills expand the list of mental health service providers subject to the duty to protect third parties to include physician assistants.

HB 2164 (PILLION): DRUGS OF CONCERN; DRUG OF CONCERN.

- **Existing Law:** Section 54.1-3456.1 of the *Code of Virginia* authorizes the Board of Pharmacy to promulgate regulations designating certain drugs and substances as "drugs of concern." Any drug so designated must be reported to the Department of Health Professionals and is subject to the reporting requirements for the Prescription Monitoring Program in order to track misuse. Under current law, drugs of concern must include any material, compound, mixture, or preparation that contains any quantity of the substance Tramadol, including its salts, but may not include any non-narcotic, nonprescription drug.

- **Effect of the Bill:** This bill adds to the list of required "drugs of concern" any material, compound, mixture, or preparation that contains any quantity of gabapentin, including its salts. The legislation contains an emergency clause, and the Governor signed it into law on February 23, 2017.

HB 2167 (PILLION): OPIOIDS AND BUPRENORPHINE; BOARDS OF DENTISTRY AND MEDICINE TO ADOPT REGULATIONS FOR PRESCRIBING.

- **Effect of the Bill:** This bill creates new *Code of Virginia* Sections 54.1-2708.4 and 54.1-2928.2 that direct the Board of Dentistry and Board of Medicine to adopt regulations for prescribing opioids and products containing buprenorphine. The regulations must include guidelines for treating acute pain that set out history and evaluation, limitations on dosages, requirements for record documentation, and requirements that the prescriber review information contained in the Prescription Monitoring Program. In addition, the guidelines must address the treatment of chronic pain, to include developing a treatment plan, an agreement for treatment that grants permission to obtain urine drug screens, and periodic review to determine whether continued treatment is appropriate. Finally, the regulations must include guidelines for referral of patients prescribed opioids for substance abuse counseling or treatment.

  Additionally, the bill requires that the Department of Health Professions' Prescription Monitoring Program annually report to the Joint Commission on Health Care on the prescribing of opioids and benzodiazepines in Virginia, including data on reporting unusual patterns of prescribing or dispensing of a covered substance or potential misuse by a recipient.

  The bill contains an emergency clause and took effect upon being signed by the Governor on March 3, 2017.

- **Comments:** The Board of Medicine promulgated regulations which took effect on March 15, 2017, and will remain in effect until they are replaced by permanent regulations on or around March 19, 2018.

HB 2301 (O'BANNON): NURSES; LICENSED PRACTICAL ADMINISTRATION OF VACCINATIONS

- **Existing Law:** Section 54.1-3408 of the *Code of Virginia* authorizes a medical practitioner who has the authority to prescribe medication to issue an oral or written standing order authorizing registered nurses or licensed practical nurses (LPNs) who are being immediately and directly supervised by such registered nurse to possess and administer tuberculin purified protein derivative (PPD) if the prescriber is absent. PPD is a diagnostic agent used to detect tuberculosis infection.

- **Effect of the Bill:** This bill amends § 54.1-3408 to remove the requirement that the supervision of LPNs be immediate and direct when they are administering PPD.

SB 1230 (DUNNAVANT): OPIATE PRESCRIPTIONS; ELECTRONIC PRESCRIPTIONS.

- **Existing Law:** Section 54.1-3408.02 of the *Code of Virginia* allows prescriptions to be transmitted to a pharmacy by electronic transmission or by fax in accordance

with federal law and Board of Pharmacy regulations. Prescriptions transmitted in this manner must be treated as valid original prescriptions. The statute defines "electronic transmission prescription" as a prescription, excluding an oral or written prescription or prescriptions transmitted by fax, that is electronically transmitted directly to a pharmacy without interception or intervention from a third party from a practitioner authorized to prescribe or from one pharmacy to another pharmacy.

- **Effect of the Bills:** This bill makes the following changes to the *Code of Virginia,* effective July 1, 2020.

    - Replaces the definition of "electronic transmission prescription" in § 54.1-3401 with "electronic prescription," and defines that term as "a written prescription that is generated on an electronic application and is transmitted to a pharmacy as an electronic data file."

    - Specifies in the definition of "electronic prescription" that Schedule II, III, IV, and V prescriptions must be transmitted in accordance with 21 C.F.R. Part 1300.

    - Adds a requirement in § 54.1-3408.02 that prescriptions for controlled substances containing opiates must be issued as electronic prescriptions.

    - Amends § 54.1-3410 to prohibit pharmacists from dispensing controlled substances containing opiates unless issued as electronic prescriptions.

  In addition, the bill requires the Secretary of Health and Human Resources to convene a work group of interested stakeholders to review actions necessary to implement these requirements and provide an interim report to the Chairmen of the House Committee on Health, Welfare, and Institutions and the Senate Committee on Education and Health by November 1, 2017, and a final report by November 1, 2018.

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HB 1485 (BELL, RICHARD): SEXUAL OFFENSES; PROHIBITS PERSON FROM PROXIMITY TO CHILDREN AND WORKING ON SCHOOL PROPERTY.

- **Existing Law:** Current law identifies a number of sex offenses that will render an adult permanently prohibited from loitering within 100 feet of primary, secondary and high schools, and child day programs, as well as from entering locally-owned or operated playgrounds, athletic facilities, athletic fields, or gyms in order to make contact with a child who is not in the offender's custody.

    - Violation of this prohibition is a Class 6 felony.
    - The offenses prohibiting proximity to children include the following offenses committed on a minor: i) abduction; ii) abduction with the intent to defile; iii) abduction of a child under 16 for prostitution; iv) intercourse with certain family members; and v) incestuous fornication; vi) rape of a child under age 13; vii) carnal knowledge of a child committed to DJJ while providing services; viii) forcible sodomy; ix) object sexual penetration or aggravated sexual battery against a victim less than 13 years of age; x) aggravated sexual battery against the will of a victim at least 13 but less than 15; xi) taking indecent liberties with children; xii) engaging in sexual acts with a child age 15 or older; xiii) production, reproduction or distribution of child pornography; or xiv) employing a minor to assist in certain sex offenses.

  Adult offenders convicted of committing certain qualifying offenses on minor victims who are more than three years younger than the offender are prohibited permanently from residing within 500 feet of a child day center, a primary, secondary, or high school, or a public park.

    - Violation of this prohibition is a Class 6 felony.
    - This prohibition applies only if the qualifying offense was performed in the commission or as part of the same course of conduct as an act of: i) abduction; ii) abduction with intent to extort money; iii) burglary; iv) entering a dwelling house with intent to commit murder, rape, robbery or arson; v) entering a dwelling house with intent to commit larceny, assault and battery or other felony; or aggravated malicious wounding
    - If an adult convicted of the underlying sex offense has established a lawful residence, he will not be deemed to have violated this requirement if the day center school is established within 500 feet of the residence after the adult is convicted.

  Additionally, adult offenders convicted of certain offenses against a victim who is more than three years younger than the offender are prohibited permanently from residing within 500 feet of a locally-owned and operated public park that shares a boundary line with a school and is regularly used for school activities.

- The offenses include:
  - Rape against a child under aged 13;
  - Forcible sodomy against a victim under aged 13;
  - Object sexual penetration against a victim under aged 13.
- Violation of this prohibition is a Class 6 felony.
- This prohibition applies only if the qualifying offense was performed in the commission or as part of the same course of conduct as an act of: i) abduction; ii) abduction with intent to extort money; iii) burglary; iv) entering a dwelling house with intent to commit murder, rape, robbery or arson; v) entering a dwelling house with intent to commit larceny, assault and battery or other felony; or aggravated malicious wounding.
- If an adult convicted of the underlying sex offense has established a lawful residence, he will not be deemed to have violated this requirement if the public park at issue is established within 500 feet of his residence after his conviction.

Finally, adult offenders who have committed certain offenses are prohibited permanently from working or volunteering with public or private elementary or secondary schools or child day centers.

- **Effect of the Bill:** This bill extends the sex offenses prohibiting proximity to minors under § 18.2-370.2, the offenses prohibiting residing in proximity to minors under § 18.2-370.3, and offenses prohibiting working or volunteering on school property under § 18.2-370.4 to include any conviction for a similar crime under the laws of another country, or its political subdivisions, the United States, or another state.

  - Under the bill, if the underlying conviction resulting in the prohibition against residing in proximity to a minor was obtained in another country, its political subdivisions, or another state or its localities, the prohibition applies only to residences established after July 1, 2017.

HB 1580 (CAMPBELL): CHILD PORNOGRAPHY; LAWFUL POSSESSION BY EMPLOYEES OF DEPARTMENT OF SOCIAL SERVICES.

- **Existing Law:** Section 18.2-374.1:1 of the *Code of Virginia* enumerates the child pornography offenses that are prohibited under current law.

  - The knowing possession of child pornography is a Class 6 felony.

  - The: i) reproduction, sale, donation, distribution, electronic transmission, display, purchase, or possession; and the ii) command, entreat, or attempt to persuade another to send, submit, transfer, or provide the person with child pornography to become a part of a group engaged in trading or sharing child pornography is punishable by between five and 20 years in a state correctional facility.

- The intentional operation of an Internet website to facilitate the payment for access to child pornography is a Class 4 felony.

This does not apply to material possessed for a bona fide medical, scientific, governmental, law-enforcement, or judicial purpose by statutorily specified parties, including physicians, psychologists, scientists, attorneys, law-enforcement employees, judges, or clerks if they possess the pornography in the course of conducting their professional duties.

- **Effect of the Bill:** This bill expands the list of individuals authorized under law to possess child pornography in the course of conducting their professional duties, to include employees of the Virginia Department of Social Services or a local department of social services.

HB 2127 (LEVINE): VICTIMS OF SEXUAL ASSAULT; RIGHTS OF VICTIMS, PHYSICAL EVIDENCE RECOVERY KITS.

- **Existing Law**: Legislation enacted in 2016 established a comprehensive procedure for the collection and analysis of physical evidence recovery kits (PERK kits) for victims of sexual assault, including those who elect at the time of the exam not to report a sexual assault to a law-enforcement agency.

  - Pursuant to § 19.2-11.6 of the *Code of Virginia,* a PERK kit from a victim who elects not to report the sexual offense, ("anonymous PERK kit") must be stored at the Division of Consolidated Laboratory Services (the Division) for a minimum of two years, although the Division, the victim, or the law-enforcement agency may elect to extend the storage period.
  - If the victim later elects to report the sexual assault, the victim's kit will be released to law enforcement. Health care providers must explain these procedures and time frames to victims.
  - If the victim elects to report the offense to law enforcement at the time of the exam, law enforcement must take possession of the victim's kit upon notification from the health care provider that the kit has been collected and, with limited exceptions, must submit the kit to the Department of Forensic Science for analysis within 60 days, as required in § 19.2-11.8 of the *Code of Virginia*.
  - Once the Department completes the analysis, the kit must be stored with the law enforcement agency for a minimum period of ten years, or until two years after a victim who was a minor at the time of the offense reaches the age of majority, whichever occurs later.

- **Effect of the Bills:** This bill amends numerous provisions in the *Code of Virginia* regarding PERK kits, as follows:

  - Requires that victims of sexual assault be advised of their rights regarding PERK kits.

- Requires the health care provider to inform a victim of sexual assault who undergoes a forensic examination but elects not to report the offense to law enforcement of her right to object to the destruction of the anonymous PERK kit.

- Directs the Division to store the anonymous PERK kit for an additional period of 10 years after receiving the victim's written objection to the destruction of the PERK kit, and allows the Division to destroy the PERK kit only if no additional written objections from the victim have been submitted in the previous 10-year period.

- Extends the time period that law enforcement must store a PERK kit once it has been analyzed by the Department of Forensic Science from two years after a minor victim reaches the age of majority to 10 years after the minor reaches majority.

- Requires law-enforcement agencies to store the analyzed PERK kit for 10 years following the receipt of a victim's written objection to the destruction of the kit and requires the law-enforcement agency to make a reasonable effort to notify the victim of the agency's intent to destroy the PERK kit after the mandatory retention periods have lapsed, unless the victim has consented in writing not to be contacted for this purpose. The notification must take place no less than 60 days before the intended date of destruction;

- Allows a victim of sexual assault, a minor victim's parent or guardian, or a close relative of a deceased sexual assault victim to request and receive information from the law-enforcement agency regarding the time frame for how long the kit will be held in storage and the victim's rights regarding the storage; and

- Adds a new statute that prohibits victims of sexual assault from being charged for the cost of collecting or storing a PERK kit or anonymous PERK kit.

SB 1501 (FAVOLA): PHYSICAL EVIDENCE RECOVERY KIT; VICTIM'S RIGHT TO NOTIFICATION OF SCIENTIFIC ANALYSIS INFORMATION.

- **Existing Law:** Under Section 19.2-11.11 of the *Code of Virginia*, victims of sexual assault, parents or guardians of victims who were minors at the time of the assault, and **close relatives** of deceased sexual assault victims are entitled to request and receive information from law enforcement regarding the results of a PERK kit submitted on behalf of the victim. Specifically, the law allows these parties to receive information on: i) the submission of the PERK kit collected from the victim; ii) the status of any analysis being performed on evidence collected during the

investigation; and iii) the results of any analysis. If disclosing the results of the analysis would interfere with the investigation or prosecution, the law-enforcement agency must inform the requesting victim, parent, guardian, or relative of the estimated date on which the information may be disclosed, if known. The applicable requesting party must provide the Commonwealth's Attorney and the law-enforcement agency with their contact information and must keep the information updated.

- **Effect of the Bill**: This bill makes several changes to § 19.2-11.11. First, it changes one of the parties eligible to request and receive the information from a **close relative** of a deceased sexual assault victim to the victim's **next of kin**.

    - "Close relative" is defined in Title 63.2-1700 of the *Code of Virginia* (63.2-1242.1) as a child's grandparents, great-grandparent, adult nephew or niece, adult brother or sister, adult uncle or aunt, or adult great uncle or aunt.

    - "Next of kin" is defined in Title 54.1 of the *Code of Virginia* (§ 54.1-2800) as "any person designated to make arrangements for the disposition of the decedent's remains upon his death, the legal spouse, child aged 18 years or older, parent of a decedent aged 18 or older, custodial parent or noncustodial parent of a decedent younger than 18 years of age, siblings over 18 years of age, guardian of minor child, guardian of minor siblings, maternal grandparents, paternal grandparents, maternal siblings over 18, and paternal siblings over 18, or any other relative in the descending order of blood relationship.

  Additionally, for PERK kits received by law-enforcement before July 1, 2016 that were subsequently submitted for analysis, the bill **requires** the law enforcement agency to notify the victim, parent, or guardian, or next of kin when the analysis is completed, regardless of whether the victim has requested this information. Furthermore, if the victim requests this information, the bill requires the law enforcement agency to disclose the results of any analysis unless disclosing the information would interfere with the investigation or prosecution. Law enforcement must make a good faith attempt to locate the applicable party if his current address is not available. Finally, the bill provides that the law-enforcement agency is not required to disclose information regarding the results of the analysis to any parent, guardian, or next of kin who is the alleged perpetrator of the offense.

HB 2217 (TOSCANO): ADDRESS CONFIDENTIALITY PROGRAM; VICTIMS OF SEXUAL VIOLENCE AND HUMAN TRAFFICKING.

- **Existing Law:** Section 2.2-515.2 creates the Address Confidentiality Program, which seeks to protect domestic violence and stalking victims by allowing the use of designated addresses for these victims. Under the program, the Attorney General's office establishes designated addresses for qualifying applicants who are victims of domestic violence or stalking and forwards all first-class mail addressed to those

designated addresses to the actual address of the program participants. The program participant's actual address is available only to the Attorney General, employees involved in the operation of the Address Confidentiality Program, and law-enforcement officers. In order to qualify for the program, the victim must file an application with the Office of the Attorney General. Once approved, the Attorney General's certification is valid for one year unless withdrawn or invalidated, and the victim may reapply after the certification lapses.

- **Effect of the Bill:** This bill makes several changes to the address confidentiality program in § 2.2-515.2, including the following:
    - Expands the category of applicants who are entitled to apply for the program to include persons who are victims of sexual violence or their parent or guardian, if the victim is a minor child;
        - Under the legislation, sexual violence includes the following, regardless of whether it was reported to a law enforcement officer or the assailant was charged or convicted:
            - Abduction i) of any person with intent to defile, ii)of a child under 16 for prostitution; iii)of any person for prostitution; or iv) of a minor for child pornography (18.2-48)
            - Rape (18.2-61)
            - Carnal knowledge of child between 13 and 15 (18.2-63)
            - Carnal knowledge of certain minors (18.2-64.1)
            - Forcible sodomy (18.2-67.1)
            - Object sexual penetration (18.2-67.2)
            - Aggravated sexual battery (18.2-67.3)
            - Sexual battery (18.2-67.4)
            - Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual battery, and sexual battery (18.2-67.5)
            - Aiding prostitution (18.2-348)
            - Using vehicles to promote prostitution or unlawful sexual intercourse (18.2-349)
            - Taking person for prostitution; human trafficking (18.2-355)
            - Receiving money for procuring persons (18.2-356)
            - Receiving money from prostitute earnings (18.2-357)
            - Commercial sex trafficking (18.2-357.1)
            - Placing or leaving wife for prostitution (18.2-368)
    - Amends the language of the statute to allow applicants to apply at sexual or domestic violence programs that have been accredited by the Virginia Sexual and Domestic Violence Program Professional Standards Committee. "Sexual or domestic violence programs" are public and nonprofit agencies with a

primary mission of providing services to victims of sexual or domestic violence or stalking;

- Increases the duration of the certification from one year to three years, and allows the applicant to apply for recertification after the expiration of the three-year period.

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SOCIAL SERVICES

HB 1451 (FARRELL): SOCIAL SERVICES, DEPARTMENT OF; SURVEY FOR CHILDREN AGING OUT OF FOSTER CARE.

- **Effect of the Bill:** This is a § 1 bill that directs the Department of Social Services to collaborate with the Commission on Youth to develop a process and standardized survey to obtain feedback from children aging out of foster care. The survey must solicit the child's feedback regarding the Commonwealth's foster care services, recommendations of ways to improve the services provided, the amount of time the child spent in the foster care system, and other information deemed relevant by the Department of Social Services or the Commission on Youth.

HB 1567 (ORROCK): MEDICAID APPLICATIONS; INFORMATION ABOUT ADVANCE DIRECTIVES.

- **Existing Law:** Section 63.2-501 of the *Code of Virginia* outlines the process to apply for public assistance through local departments of social services (LDSSs). Specifically, LDSSs must provide applicants for medical assistance with information regarding their rights and responsibilities related to eligibility and must direct them to sign a form acknowledging receipt of this information. Additionally, pursuant to § 32.1-325 of the *Code of Virginia,* all entities approved by the State Board of Medical Assistance Services to receive applications and to determine eligibility for medical assistance are obligated to obtain accurate contact information from each medical assistance applicant as required by federal law and regulations.

- **Effect of the Bill**: This bill imposes additional requirements on LDSSs, their commissioners, or other entities approved by the Board to receive medical assistance applications. The bill requires these entities to provide medical assistance applicants with information about the purpose and benefits of advance directives, the process involved in making an advanced medical directive, and other such information.

HB 1942 (PEACE): FOSTERING FUTURES PROGRAM; INDIVIDUAL PARTICIPATING IN PROGRAM SUBJECT TO A BACKGROUND CHECK.

- **Existing Law:** Section 63.2-901.1 of the *Code of Virginia* requires local boards and child-placing agencies to request background checks, including criminal history record information from the Central Criminal Records Exchange and the FBI, as well as a search of the child abuse and neglect central registry for individuals being considered as temporary, emergency, or permanent foster care placement options. Background checks also must be conducted on all adult household members residing in the home in which the child will be placed. Child-placing agencies may

not approve individuals as foster care or adoptive parents if they have a founded complaint of child abuse or if any individual residing within the home has a record of committing a barrier crime or any other offense that requires him to register on the Sex Offender and Crimes Against Minors Registry, or a founded complaint of abuse or neglect reflected on the child-abuse registry. However, an individual that has been convicted of not more than one misdemeanor assault and battery charge not involving the abuse, neglect, or moral turpitude of a minor may be approved as a foster parent if the conviction occurred at least 10 years ago.

- **Effect of the Bill:** The bill requires individuals participating in the Fostering Futures program to undergo a background check, the results of which will be used solely to determine whether other children in foster care should be placed in the same foster home as the individual subject to the background check. The bill defines an "individual participating in the Fostering Futures program" as a person who is 18 years of age or older but has not reached 21 years of age and is receiving foster care services through the Fostering Futures program.

- **Background**: During the 2016 General Assembly session, the Virginia Department of Social Services and child advocates were successful in getting the General Assembly to agree to add budget language to support "Fostering Futures," which allows localities to extend foster care to the age of 21 for juveniles, provided they are: i) working at least 80 hours per month; ii) attending an education program, or iii) medically unable to do either activity.

HB 2156 (RASOUL): CHILD WELFARE AGENCIES; LICENSURE FOR AGENCIES OPERATED BY THE COMMONWEALTH.

- **Effect of the Bill**: This bill grants state agencies, including any department, institution, authority, instrumentality, board, or other administrative agency of the Commonwealth the authority to operate or maintain a child welfare agency.

- **Comment**: Child day centers operated by state agencies are not eligible for licensure by the Department of Social Services under current law. This presents an issue for many child day center programs operated by state agencies that must be licensed to be eligible for U.S. Department of Agriculture programs, federal Child Care Development Fund grant subsidy payments, credentialing, and quality ratings.

HB 2237 (CLINE): STATE INSPECTOR GENERAL, OFFICE OF THE; "STATE AGENCY" INCLUDES ANY LOCAL DEPT. OF SOCIAL SERVICES.

- **Existing Law:** Under current law, the State Inspector General has jurisdiction over state agencies, which is defined to include any agency, institution, board, bureau, commission, council, or instrumentality of state government in the executive branch listed in the appropriation act.

- **Effect of the Bill:** This bill amends the definition of "state agency" in § 2.2-307 of the *Code of Virginia*, which addresses the Office of the State Inspector General. This amendment to the definition thereby extends the jurisdiction of the State Inspector General to include LDSSs. Under the bill, the State Inspector General now has the following additional duties and powers over LDSSs:

    - Receive complaints from persons alleging retaliation by an officer or employee of a local department of social service;
    - Conduct performance reviews of local departments to assess their efficiency, effectiveness, and economy of programs;
    - Enter upon the premises of any local department at any time without prior announcement if the entry is necessary to the successful completion of an investigation; and
    - Question any officer or employee serving in, and any person transacting business with, the state agency.

SB 868 (FAVOLA): CHILD PROTECTIVE SERVICES; INVESTIGATION OF COMPLAINTS OF CHILD ABUSE OR NEGLECT.

- **Existing Law:** The Board of Social Services' regulatory provision, 22VAC40-705-50, mandates that all complaints and reports of suspected child abuse or neglect either be screened out or determined valid within five days of receipt. Reports and complaints determined to be valid must be investigated or a family assessment must be conducted; however, the current regulation does not identify a specific deadline for acting on the complaint or report.

- **Effect of the Bill:** This is a § 1 bill that directs the State Board of Social Services to promulgate regulations requiring LDSSs to respond to valid reports and complaints alleging suspected abuse or neglect of a child under the age of two within 24 hours of receiving the report or complaint.

SB 1461 (MCPIKE): FOSTER CARE; LOCAL IN THE COMMONWEALTH'S PROGRAM OF MEDICAL ASSISTANCE.

- **Effect of the Bill:** This bill creates a new *Code of Virginia* section, § 63.2-905.4, that requires local departments of social services to ensure that any individual who was in foster care on his eighteenth birthday is enrolled in the Commonwealth's program of medical assistance. The bill directs local departments to provide the individuals with basic information about health care services provided under the state plan for medical assistance services and to inform them that they will be enrolled in the program unless they are ineligible or they object to the enrollment. Additionally, the bill directs the State Board of Social Services to promulgate regulations to implement these requirements.

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HB 1555 (WARE): AGENCY DIRECTORS; HUMAN RESOURCE TRAINING AND AGENCY SUCCESSION.

- **Effect of the Bill:** This bill adds a new Section 2.2-1209 to the *Code of Virginia* that requires the Department of Human Resource Management (DHRM) to develop and administer at least twice annually training programs to familiarize the director of each state executive branch agency with state human resources policies, including general policies, compensation management, benefits administration, employee training, succession planning, and resources available at DHRM.

    - Each executive state agency director and chief human resource officer must attend one of these training programs within 6 months after the director's appointment. The agency's chief human resource officer must provide subsequent training to the director on any distinct companion human resource policies of the agency that are germane to the agency's programs and operations. Thereafter, the director must attend one additional training program provided by DHRM every four years.

    - The director of the state executive branch agency must include in the agency's annual strategic plan its key workforce planning issues and submit a succession plan for key personnel, executive positions, and employees nearing retirement to the appropriate Cabinet Secretary and DHRM, based on guidelines that will be established by DHRM.

HB 1720 (ANDERSON): FLAG AT HALF-STAFF OR MAST; PUBLIC SAFETY PERSONNEL.

- **Existing Law:** Section 18.2-488.1 of the *Code of Virginia* requires that all state and local flags flown at state-owned and operated buildings be flown at half-staff or mast for one day in the event that a Virginia resident service member, police officer, firefighter, or emergency medical services provider is killed in the line of duty. The statute defines "police officer" to include full and part-time police and sheriff's department employees who are responsible for preventing and detecting crime and enforcing the penal, traffic, or highway laws in Virginia.

- **Effect of the Bills:** This legislation expands the definition of "police officer" to include state correctional officers with the Department of Corrections. The legislation also expands the buildings that are subject to this requirement to include buildings owned and operated by political subdivisions of the Commonwealth.

HB 2396 (HOPE)/SB 1538 (HANGER): VIRGINIA PUBLIC PROCUREMENT ACT; PARTICIPATION OF EMPLOYMENT SERVICES.

- **Existing Law**: Section 2.2-4310 of the *Code of Virginia* requires public bodies to establish programs to ensure that small businesses; businesses owned by women, minorities, and service-disabled veterans; and employment service organizations participate in public procurement transactions. Under current law, contracts awarded to employment service organizations count toward the small business, women-owned, and minority-owned business contracting and subcontracting goals for state **contractors**.
    - The statute defines "employment service organization" as an organization that provides community-based employment services to individuals with disabilities and is an approved Commission on Accreditation of Rehabilitation Facilities vendor of the Department for Aging and Rehabilitative Services.
    - The Department of Rehabilitative Services is required by federal and state mandates to establish and monitor standards for employment service organizations that provide vocational services to persons with significant disabilities.
- **Effect of the Bills:** These bills amend § 2.2-4310 to allow contracts and subcontracts awarded to employment service organizations to count towards the small business, women-owned, and minority-owned business contracting and subcontracting goals for **state agencies**, as well as for state contractors and subcontractors.

HB 2425 (ANDERSON)/SB 1530 (VOGEL): ADMINISTRATION, SECRETARY OF; POLICY OF THE COMMONWEALTH REGARDING STATE EMPLOYMENT.

- **Existing Law:** Section 2.2-3900 of the *Code of Virginia* declares the policy of the Commonwealth to protect individuals in Virginia from unlawful discrimination in places of public accommodation and in employment, due to race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability.
- **Effect of the Bills:** These bills add a new Section 2.2-203.2:3 that declares a new Commonwealth policy to promote and increase employment of individuals with disabilities employed by state agencies, institutions, boards and authorities. To achieve this policy, the bills set out a goal of increasing the volume of individuals employed by state governmental entities by five percent by fiscal year 2023.
    - Under the bill, the Commonwealth must:

- Use available hiring authorities consistent with statutes, regulations, and prior executive orders;
- Increase the retention and return to work of individuals with disabilities;
- Expand efforts to recruit, accommodate, retain, and advance these individuals for available state government positions;
- Assign senior-level staff within each state agency to increase the employment of individuals with disabilities in the state agency;
- Mandate that state agencies prepare a plan to increase employment opportunities for individuals with disabilities. The plan must be submitted to the Secretary of Administration by December 31, 2017.

- The bill requires the Secretary to: i) establish guidelines regarding the content of state agency plans; ii) establish a reporting system to track progress toward meeting the goals; iii) collaborate with DHRM to develop an annual report on the number of individuals with disabilities directly employed by the state agency; and iv) report on the agencies' progress toward meeting these goals to the Governor and Chairmen of the House Committee on Appropriations and the Senate Committee on Finance by July 1 of each year.

- Additionally, the bill requires state agencies to examine their policies regarding employing individuals with disabilities and to review their recruitment efforts, interviewing criteria, testing procedures and resources to accommodate applicants and workers with disabilities.

- The bills do not require state agencies to create new positions or change existing qualification standards for positions, nor are state employees or position applicants required to disclose a disability status involuntarily.

HB 2391 (HOLCOMB)/SB 1293 (MCDOUGLE): PERSONNEL MANAGEMENT INFORMATION SYSTEM; STATE AGENCY POSITIONS DESIGNATED AS SENSITIVE.

- **Existing Law:** Current law requires the DHRM to have a statewide personnel policy for designating state agency positions as sensitive. Under the policy, final candidates applying for sensitive positions must undergo fingerprinting and provide personal information that will be forwarded through the Central Criminal Records Exchange to the FBI in order to obtain criminal history information on that applicant.

    - Sensitive positions include all positions directly responsible for the health, safety, and welfare of the general populace or the protection of critical infrastructures.

  Any criminal history record information obtained may be disseminated only to individuals enumerated by statute. Heads of state agencies that have positions

classified as sensitive are among the parties entitled to receive this information under *Code of Virginia* § 19.2-389. The statute restricts the dissemination of the criminal history record information to the positions directly responsible for the health, safety, and welfare of the general populace or protection of critical infrastructures.

- **Effect of the Bills:** These bills make a number of changes to §§ 2.2-1201.1 and 19.2-389 of the *Code of Virginia* regarding state agency positions designated as sensitive. The bills:

    - Require state agencies to continue recording positions designated as sensitive in the Personnel Management Information System (PMIS) to enable the DHRM to maintain a list of sensitive positions.

    - Extend the mandate that state agencies require fingerprinting to include current employees and contractors, in addition to candidates for employment that must undergo fingerprint checks under existing law.

    - Expand the definition of "sensitive positions" to include positions that can access sensitive information, including federal tax information in approved exchange agreements with the Internal Revenue Service or Social Security Administration and positions otherwise required by state or federal law to be designated as sensitive.

        - The Department of Social Services uses Federal Tax Information to locate and collect payments from parents who owe child support and may use address information from the IRS to help locate parents who owe child support.

    - Remove the restriction that the criminal record information that may be disseminated to heads of state agencies is limited to positions generally described as responsible for the health, safety, and welfare of the general populace or protection of critical infrastructures.

  The bills contain an emergency clause and took effect on March 13, 2017.

SB 1341 (SUROVELL): GOVERNMENT RECORDS; DIGITAL CERTIFICATION.

- **Effect of the Bill:** This bill creates a new Chapter in the *Code of Virginia* governing the use of digital signatures by state and local government agencies. The bill allows agencies to make digitally certified copies of electronic records available for a maximum price of $5. Under the bill, the Secretary of the Commonwealth must work with the Virginia Information Technologies Agency (VITA) to develop standards that agencies must follow in utilizing electronic digital signatures on the agency's records. Finally, the bill provides that any such digitally certified copy submitted to a court in Virginia, including a print version with visible assurance of the digital

signature, is deemed authenticated by the custodian of the record unless evidence is presented to the contrary.

- The bill applies to authorities, boards, commissions, councils, departments, instrumentalities, institutions or other executive or legislative branch units of state government; independent agencies, and any county, city, or town, or other unit of local government, including constitutional officers. The bill does not apply to circuit court clerks.

- Note the difference between an electronic signature and a digital signature. An electronic signature provides an electronic representation of a user's signature and is affixed to a document or record in order to convey that the document has been signed. A digital signature allows a user to affix a unique digital code to a document or record and provides a level of encryption and authentication.

SB 1412 (SUETTERLEIN): ADOPTION; LEAVE BENEFIT.

- **Effect of the Bill:** This bill creates a new classification of paid leave benefits for all full-time state employees with at least one year of continuous employment with the state who i) adopt an infant under one year of age or ii) are the natural father of an infant under one year of age. The bill provides the following additional terms:

  - **None of the provisions regarding the program will take effect unless reenacted during the 2018 General Assembly session.**

  - The qualifying adoptive parent or natural father is eligible for six weeks of parental leave, similar to the maternity leave benefits under the Sickness and Disability Program.

  - The employee must provide reasonable prior notice to his agency head of the intent to adopt and take parental leave.

  - Parental leave coverage commences upon the expiration of a seven-day waiting period, which, for adoption leave coverage, begins on the day the employee takes custody of the infant and, for leave coverage for a natural father, on the day that the child is born.

  - The natural father is no longer eligible to receive leave once the infant reaches one year of age.

  - If two state employees are eligible for adoption leave for the same infant, only one may utilize leave under this classification. Similarly, if a natural father is eligible for leave coverage and another state employee is eligible for maternity leave under the Sickness and Disability Program for the same infant, only one employee is eligible for paid leave under these programs.

- DHRM must develop guidelines and policies to implement these benefits.

These leave provisions will apply only for eligible state employees who take custody of an infant under an adoption on or after July 1, 2018, or, for a natural father, for an infant born on or after July 1, 2018.

Finally, the bill requires that the Joint Legislative Audit and Review Commission include in its study of total compensation to employees of the Commonwealth an analysis of parental leave benefits for state employees in other states and the cost of providing these benefits to Virginia's state employees.

MISCELLANEOUS

HB 1504 (FOWLER)/SB 1229 (DUNNAVANT): DRIVER'S LICENSE OR LEARNER'S PERMIT; ISSUANCE, MINIMUM STANDARDS FOR VISION TESTS.

- **Existing Law:** Section 46.2-311 prohibits the Department of Motor Vehicles from issuing a driver's license or learner's permit to a person who fails to demonstrate a 20/40 visual acuity in one or both eyes with or without corrective lenses or at least a field of 100 degrees of horizontal vision in one or both eyes or a comparable measurement demonstrating a visual field within this range. Drivers with a visual acuity of at least 20/70 in one or both eyes that demonstrate at least a field of 70 degrees of horizontal vision may be issued a restricted license that limits the individual's authorization to drive to daytime hours.

- **Effect of the Bills:** These bills amend § 46.2-311 to increase the degree of horizontal vision a person must have in one or both eyes in order to be issued a learner's permit or driver's license from 100 degrees to 110 degrees.

HB 1559 (KRIZEK): SPECIAL IDENTIFICATION CARDS; FEE FOR ISSUANCE OF DUPLICATE OR REISSUANCE, EXPIRATION OF CARDS.

- **Existing Law:** Section 46.2-345 of the *Code of Virginia* allows Virginia residents (and parents for those residents under age 15) who do not hold a valid driver's license, commercial driver's license, temporary driver's permit, learner's permit, or motorcycle learner's permit to apply for a special identification card. Applicants are charged a $5 fee for the original card, any renewals, duplicates, or reissued cards. In addition, the Department of Motor Vehicles (DMV) imposes a $5 surcharge pursuant to § 46.2-333.1.

    - The identification cards expire on the last day of the applicant's birthday month each year in which the applicant's age is divisible by five. However, cards may be issued for no fewer than 3 years and no more than seven years (except for cards issued to children under age 16, which expire on the child's 16th birthday). Thus, if a person applies for a special permit card on his 18th birthday, the card would not expire until the individual's 25th birthday under current law.

    - Special identification card applicants must appear in person at the DMV to apply for a renewal, duplicate, or reissue unless the DMV provides specific authorization to apply in another manner.

- **Effect of the Bill:** This bill modifies various special identification card provisions in §§ 46.2-333.1 and 46.2-345.

    - The bill removes the $5 surcharge authorized in § 46.2-333.1.

- The bill extends the maximum validity period for the card from its current 7 years to 8 years, and specifies that the required expiration date is the applicant's birthday date at the end of the period of years for which the special identification card has been issued.
- The bill modifies the fee authorized by § 46.2-345 from $5 to an annual $2 per year fee, with a minimum $10 fee, thus raising the total fee to $16 for special identification cards issued for the maximum amount of time permissible under the new law (8 years).
- Additionally, the bill adds a provision requiring special identification cards be issued to individuals required to register for the Sex Offender and Crimes against Minors Registry to expire on the applicant's birthday in years in which the applicant attains an age divisible by five and prohibits such applicants from waiving the requirement that he appear in person for renewals or requirements to obtain a photograph.

HB 1876 (POGGE): VIRGINIA FREEDOM OF INFORMATION ACT; PUBLIC ACCESS TO LIBRARY RECORDS OF MINORS.

- **Existing Law:** Under the Virginia Freedom of Information Act, all public records are open to inspection and copying by Virginia citizens unless there is a specific statutory exception. Section 2.2-3705.7 of the *Code of Virginia* exempts from the disclosure requirements information contained in library records if the information can be utilized to identify both the patron who borrowed material from the library and the material he borrowed.

- **Effect of the Bill:** This bill extends the exemption in § 2.2-3705.7 to include information contained in library records that can be used to identify any library patron under age 18. The bill provides that parents of such library patrons (including noncustodial parents) may continue to have access to this information.

HB 1888 (HUGO): WIRELESS TELECOMMUNICATIONS DEVICES; USE BY PERSONS DRIVING SCHOOL BUSES.

- **Existing Law:** Pursuant to § 46.2-919.1 of the *Code of Virginia,* school bus drivers are prohibited from using handheld or other wireless telecommunications devices while driving a school bus, except in the case of an emergency, or when the vehicle is lawfully parked and for dispatching purposes. Two-way radio devices may be used if authorized by the school bus owner.

- **Effect of the Bill:** This bill amends § 46.2-919.1 to allow school bus drivers to use hands-free wireless telecommunications devices for purposes of communicating with the school or public safety officials.

HB 1912 (YOST): ABSENTEE VOTING; ELIGIBILITY OF PERSONS GRANTED PROTECTIVE ORDER.

- **Existing Law:** Section 24.2-700 of the *Code of Virginia* sets out the classes of registered voters that are authorized to vote by absentee ballot. First responders, college students, members of electoral boards, registrars, election officers, pregnant women, and other statutorily enumerated parties are among the categories of individuals who may utilize the absentee ballot process to vote outside their normal polling locations.

- **Effect of the Bill:** This bill expands the classes of registered voters who are authorized to vote by absentee ballots to include individuals who have been granted a protective order issued by or under the authority of a court of competent jurisdiction. Additionally, the bill specifies that for individuals granted a protective order who elect to apply for an absentee ballot, the application must include the name of the county or city in Virginia or the state of the court that issued the order.

HB 1971 (MASSIE): FOIA; RECORD AND MEETING EXCLUSIONS FOR MULTIDISCIPLINARY CHILD ABUSE TEAMS.

- **Existing Law**: Commonwealth's attorneys in each locality are required by statute to establish multidisciplinary responses to criminal sexual assault. Representatives from the local sheriff's office, police departments, higher education, victim/witness programs, and other parties form a sexual assault response team that meets annually to discuss protocols and policies for these teams and to establish and review community response guidelines. Section 2.2-3705.7 of the *Code of Virginia* provides an exemption from the mandatory disclosure provision of FOIA for substantive information regarding individual sexual assault cases discussed at these meetings. However, the response team may disclose or publish findings in statistical or other aggregated form, provided the identity of specific individuals is not disclosed.

  In addition, local Commonwealth's attorneys must establish multidisciplinary child sexual abuse response teams pursuant to § 15.2-1627.5 of the *Code of Virginia* to regularly review the jurisdiction's reports of felony sex offenses involving a child or other reports of child abuse, neglect or sex offenses in the jurisdiction. The teams consist of law-enforcement officials who investigate sex offenses involving children, local CPS representatives, child advocacy representatives in the jurisdiction, and representatives from Internet Crimes Against children task forces.

- **Effect of the Bill:** This bill extends the exemption from the FOIA mandatory disclosure requirement in § 2.2-3705.7 to substantive information discussed during multidisciplinary child abuse team meetings involving individual child abuse or neglect cases or sex offenses involving a child. The bill also amends § 2.2-3711 to allow both teams to conduct closed meetings

HB 2066 (MULLIN): NATIONAL CRIME PREVENTION AND PRIVACY COMPACT OF 1998; CRIMINAL HISTORY RECORD INFORMATION.

- **Effect of the Bill:** This bill creates a new *Code of Virginia* section that allows Virginia to become a member of the National Crime Prevention and Privacy Compact of 1998. The Compact allows the federal government and member states to exchange criminal history records for noncriminal justice purposes authorized by federal or state law, such as for background checks for government licensing and employment. As part of the compact, member states agree to maintain detailed databases of their criminal history records, including arrests and dispositions, and to make them available to the federal government and member states for authorized purposes. The agreement requires the FBI to manage the federal data facilities that provide the infrastructure for the system.

    - The compact defines "criminal history records" as information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests detentions, indictments, or other formal criminal charges, and any disposition arising therefrom including acquittal, sentencing, correctional supervision, or release. Criminal history record does not include identification information such as fingerprint records if such information does not indicate involvement of the individual with the criminal justice system.

    - The Compact requires the establishment of a Compact Council located within the FBI to promulgate rules and procedures governing the use of the system for noncriminal justice purposes.

    - Once a state becomes a member, the state must:
        - Appoint a compact officer to administer the compact in the state and ensure compliance with its provisions;
        - Establish and maintain a criminal history record repository;
        - Participate in the National Fingerprint File; and
        - Provide and maintain telecommunications links and related equipment necessary to support the services in the Compact.

    - States may renounce membership in the same manner by which they ratified the compact and any such renunciation is effective 180 days after written notice of renunciation is given to every other party state and to the federal government.

- **Comments**: The Compact became effective in 1999. Currently, 30 states have ratified the Compact.

HB 2146 (HOPE): VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL; ONLINE PUBLIC COMMENT FORM.

- **Existing Law**: Section 2.2-3704.1 of the *Code of Virginia* requires state public bodies, counties or cities, and towns with populations in excess of 250 to make certain information available to the public and to post a link to the information on their respective public government websites. The required information includes:

    - A plain explanation of the requester's rights, procedures to obtain public records, and the public body's responsibilities in complying with these requirements;
    - Contact information for the FOIA officer;
    - A general description, summary, list, or index of the types of public records maintained by the state public body;
    - A general description, summary, or list of exemptions in law that permit or require the public records to be withheld from release;
    - The public body's policies regarding the type of public records withheld from release; and
    - A statement permitting the public body to impose a reasonable charge for accessing, duplicating, supplying or searching for the requested records.

- **Effect of the Bill:** This bill expands the duties of the Freedom of Information Advisory Council listed in § 30-179 to require the Council to develop an online public comment form and to post the form on the Council's official public website so that individuals who have submitted a request for public information pursuant to FOIA can comment on the quality of assistance provided by the public body. In addition, the bill amends § 2.2-3704.1 to require all state public bodies, counties or cities, and towns with a population of more than 250 to post a link to FOIA's online public comment form on their official public government website so that requesters can comment on the quality of assistance provided by the public body.

SB 1040 (HANGER): FOIA; RECORD EXCLUSION FOR PERSONAL CONTACT INFORMATION, DEFINITION.

- **Existing Law:** Section 2.2-3705.1 of the *Code of Virginia* allows for certain information contained in a public record to be excluded from the mandatory disclosure provisions of the Freedom of Information Act (FOIA). A custodian of public record information may, in his discretion, disclose such information unless the law prohibits the disclosure. Under current law, personal information, including email addresses furnished to public bodies to enable receipt of emails from that public body is exempt from the mandatory disclosure requirement, provided that the email recipient has asked the public body not to disclose this information.

    - The statute currently defines "personal information" very broadly, as any information that: 1) describes, locates, or indexes anything about an individual (such as a social security number, driver's license number, student

identification number, or employment record; or 2) affords a basis for inferring personal characteristics (such as fingerprints, photographs, or records of admission to an institution). Specifically excluded from the definition is routine information maintained for the purpose of internal office administration if its use could not affect adversely any data subject.

- **Effect of the Bill:** This bill amends § 2.2.3705.1 to narrow the exemption available for personal information.
    - The bill removes the broader "personal information" exemption and replaces it with a narrower exemption for "personal contact information," which is defined as "information provided to the public body for the purpose of receiving emails from the public body, including home or business: i) address, ii) email address, or iii) telephone or other comparable number assigned to an electronic communication device."

STUDIES

SB 1505 STUDY (MARSDEN): CHILD SUPPORT ORDERS; PLACEMENT IN TEMPORARY CUSTODY OF OR COMMITMENT TO THE DEPARTMENT OF JUVENILE JUSTICE.

- During the 2017 General Assembly Session, Senator Marsden introduced Senate Bill 1505. The bill would have placed an automatic stay on an existing child support order for a juvenile committed to DJJ, and would have automatically resumed the order upon the juvenile's release from DJJ's custody.

- The bill was introduced to address a constituent's challenges with having a child support order in effect when her child was committed to DJJ reinstated upon the child's release from commitment. The bill would have allowed the child support order to automatically resume upon the child's release from commitment and allowed the custodial parent to avoid filing a new petition to have the child support payments reinstated.

- In order to carry out this intent, the bill would have required DJJ to notify the court or administrative agency that issued the child support order of the juvenile's commitment to and release from the Department.

- Due to the practical challenges of implementing the proposal as written, the patron withdrew the bill and recommended that the Senate request a study on the issue.

- The Senate submitted a letter to DJJ on March 9, 2017, directing DJJ to study the issue and submit a copy of its findings by November 1, 2017.

- DJJ will convene a workgroup consisting of representatives from the Office of the Executive Secretary, Division of Child Support Enforcement, Court Service Unit representatives, and representatives from the Division of Legislative services to review the issue.

HB 2183 (YOST): MEDICAID; ELIGIBILITY OF INCARCERATED INDIVIDUALS.

- **Effect of the Bill:** This is a Section 1 bill that directs the Department of Medical Assistance Services (DMAS) to convene a workgroup to streamline the application and enrollment process for Medicaid and services provided through the Family Access to Medical Insurance Security (FAMIS) Plan so that these services are available to incarcerated individuals immediately upon release from a correctional facility. The workgroup's findings must be reported to the Chairmen of the House Health, Welfare, and Institutions Committee, Senate Education and Health Committee, House Appropriations Committee, and Senate Finance Committee by November 30, 2017.

    - The workgroup must consist of representatives from the following groups: 1) the Departments of Social Services, DBHDS, Corrections, and Juvenile Justice;

2) the Virginia Sheriffs' Association; 3) the Virginia Association of Regional Jails; 4) the Virginia Juvenile Detention Association; 4) the Virginia Chapter of the National Alliance on Mental Illness; 5) the Virginia Association of Community Services Boards; 6) the Virginia League of Social Services Executives; and other relevant stakeholders.

- **Background:** As introduced, this bill would have provided a mechanism to ensure the continued provision of Medicaid assistance for individuals incarcerated in Virginia for more than 30 days who were Medicaid-eligible and receiving medical assistance prior to their incarceration. The introduced bill would have suspended the incarcerated individual's Medicaid eligibility during incarceration and eligibility would have resumed upon their release. Currently, DMAS does not suspend coverage when individuals are incarcerated. Instead, staff in LDSSs evaluate whether the individual could continue to remain eligible for coverage, and, if so, the individual is moved into a specialized group to ensure that eligible inpatient hospital service claims are paid.