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JUVENILE OFFENDER RE-ENTRY BILLS

HB 2036 (Delegate Peace) and SB 1170 (Senator Marsden) Parole Planning for Foster Care Commitments. HB 2036 and SB 1170 amend § 16.1-293 of the Code of Virginia relating to parole planning for children returning to foster care. HB 2036 and SB 1170 require the court services unit (CSU) to consult with DSS 90 days prior to the release of a juvenile, under the age of 18 at the time of release who was in DSS custody prior to release, and the CSU and DSS to develop a transition plan for the juvenile.

- *Applicability:* Applies in cases where a juvenile (i) will be under the age of 18 at the time of release, (ii) was in the custody of DSS prior to commitment, and (iii) will return to the custody of DSS upon release.
- *Current Law:* Under current law this consultation must occur four weeks prior to the release from the commitment.
- *New:* The timeframe for the required consultation is extended from 4 weeks to 90 days prior to release.
- *New:* The CSU and DSS must collaborate to develop a plan that prepares the juvenile's transition, identifies needed services, and details how the services are to be provided.

This legislation incorporates the recommendations of the Virginia Commission on Youth's Study of Juvenile Offender Re-Entry and the Governor's Virginia Prisoner and Juvenile Offender Re-Entry Council. HB 2276 (Delegate Keam) was incorporated into HB 2036. *See, Chapter 39 of the 2011 Acts of Assembly and Chapter 442 of the 2011 Acts of Assembly. Effective July 1, 2011.*

SB 954 (Senator Y.B. Miller) Juvenile Enterprise Committee Membership. SB 954 amends § 66-25.1 of the Code of Virginia relating to juvenile work programs. SB 954 expands the membership of the committee that reviews agreements with a public or private entity for the operation of a work program for juveniles committed to DJJ and requires the committee to develop a plan. This committee is called the Virginia Juvenile Enterprise Committee.

- *New:* Expands the committee membership to include a representative of: (1) a business that employs, has employed, or has expressed interest in employing juvenile offenders; (2) a workforce investment board; (3) the Department of Correctional Education; (4) the Office of the Secretary of Education; (5) the Virginia Community College System; and (6) the Virginia Workforce Council.
- *New:* A second enactment clause requires the committee described in subsection A of § 66-25.1 of the Code of Virginia to develop and submit to DJJ a plan to establish a network of businesses willing to employ juveniles released from the Department's commitment.
- *Delayed effectiveness:* A third enactment clause delays enactment of this act until July 1, 2012. *See, Chapter 551 of the 2011 Acts of Assembly. Delayed effective date of July 1, 2012.*

Governor's State Government Reform Commission: The Governor's State Reform Commission is exploring proposals for the elimination and consolidation of committees and boards. The Virginia Juvenile Enterprise Committee is being considered for elimination. Given that the Governor's State Reform Commission's work is not complete, expansion of a committee under continuing consideration appears premature and a delayed enactment clause was added in the event the committee is recommended for consolidation or elimination.

JUVENILE RECORDS BILLS

HB 1783 (Delegate Gilbert) and SB 1166 (Senator Reynolds): Interstate Release of Juvenile Records. HB 1783 and SB 1166 amend § 16.1-300 of the Code of Virginia to allow the Department of Juvenile Justice (DJJ) and local court service units (CSUs) to share confidential juvenile records with a person, agency, or institution in other states for treatment, rehabilitation, or maintaining security in detention and other similar secure facilities. The intent of the legislation is to eliminate barriers and facilitate the exchange of confidential juvenile records across state lines between "sister" juvenile justice agencies. See, *Chapters 99 and 169 of the 2011 Acts of Assembly*. Effective July 1, 2011.

- *Issue #1: Juveniles under Court Supervision in Virginia and also in a Border State.* The issue involves those children living in Virginia or in a border state, such as Maryland, who may be court-involved in both Virginia and Maryland and the inability to share confidential information between Virginia and the border state on "shared children."
- *Issue #2: The State of Maryland Needs a Reciprocal Agreement with Virginia to Share Confidential Juvenile Information.* In 2009 Maryland enacted legislation that allows its Department of Juvenile Services to share confidential juvenile records with similar agencies in Washington, D.C., and Virginia, but only if there is reciprocity. This legislation provides reciprocity and allows such information to be shared between Maryland and Virginia.
- *New: Sharing For Out-of-State Treatment & Rehabilitation Services:* Information may be shared for the provision of treatment or rehabilitation services for the juvenile who is the subject of the information.
- *New: Sharing For Out-of-State Juvenile Detention Facilities:* Information may be shared when the requesting party has custody of or is providing supervision for a juvenile in a detention facility or other secure facility in another state when the release of the confidential information is in the interest of maintaining security.
- *This Legislation is Similar to a 2009 Bill Covering Law-Enforcement Records (SB 1377 - Senator Stolle, 2009).* In 2009 the Virginia General Assembly enacted SB 1377 that allowed law enforcement in Virginia to share confidential juvenile arrest records with law enforcement in other states. This legislation is consistent with the 2009 legislation (§ 16.1-301(D)).
- *Technical or clarifying amendment?* The legislation adds "in any state" after referencing to whom the information may be shared. It is arguable that the information could have been shared with any state previously since the sharing was not restricted in state.

HB 2012 (Delegate Carrico): Juvenile CCRE Records and Screening Law Enforcement Employees. HB 2012 amends §§ 16.1-308 and 19.2-389.1 of the Code of Virginia relating to the disclosure of juvenile records for the purpose of screening for law-enforcement civilian employment positions. The bill allows juvenile record information maintained by State Police in the Central Criminal Records Exchange (CCRE) to be disseminated to the State Police or a local police department or sheriff's office for the purpose of screening a person for employment. It provides that a person who was adjudicated delinquent may be denied employment with the State Police or a local police department or sheriff's office. The Senate amended the bill so that denial of employment must be based on the nature and gravity of the offense, the time since adjudication, the time since completion of any sentence, and the nature of the job sought.

- *Current Law:* Under current law, law-enforcement personnel have access to juvenile record information for the purpose of the administration of criminal justice, but not for screening

civilian employment applicants. Juvenile adjudications may not operate to disqualify the juvenile from employment by any state or local governmental agency.

- *New! Access to Juvenile Records:* This bill: (1) allows the Virginia State Police and local police and sheriff's offices to review an applicant's juvenile delinquency history, including felonies and Class 1 and 2 misdemeanors, in deciding whether to hire the individual and (2) gives law-enforcement offices the ability to deny employment based on the applicant's juvenile delinquency history. Thus juveniles, who may have been offered a position of employment under the current law, can be denied employment based on prior adjudications of delinquency.
- *Information to be shared:* Section 16.1-299 of the Code of Virginia requires law-enforcement officers to take the fingerprints and photographs of a juvenile when that juvenile is arrested for a delinquent act that would be reportable to the CCRE pursuant to subsection A of § 19.2-390 of the Code of Virginia. Accordingly, the CCRE contains the fingerprints and a report of the disposition of any juvenile, regardless of age, if the juvenile:
 - is convicted of a felony,
 - is adjudicated delinquent of an offense that would be a felony if committed by an adult,
 - has a case involving an offense, which would be a felony if committed by an adult, that is dismissed pursuant to the deferred disposition provisions of § 16.1-278.8, or
 - is convicted or adjudicated delinquent of any other offense for which a report to the CCRE is required by subsection C of § 19.2-390 (which includes all Class 1 and Class 2 misdemeanors, as they are punishable by confinement in jail as provided in 18.2-11 of the Code of Virginia).
- *New! Denial of Employment:* If the State Police intend to deny a person employment based upon an adjudication of delinquency in juvenile court, then such denial must be based on:
 - The nature and gravity of the offense,
 - The time since adjudication,
 - The time since completion of any sentence, and
 - The nature of the job sought.

JUVENILE AND DOMESTIC RELATIONS COURTS BILLS

SB 1168 (Senator Marsden): Pre-Dispositional Detention for Violation of Conditions of Release.

SB 1168 amends § 16.1-248.1 of the Code of Virginia relating to detention of a juvenile for noncompliance with the terms of his conditional release. **SB 1168** provides that a juvenile can be detained in detention prior to trial when that juvenile violates the terms of his conditional release, imposed by the court, an intake officer, or a magistrate, if the underlying offense is a Class 1 misdemeanor or a felony. As enacted, if a juvenile violates his conditional release, that juvenile can be detained in detention regardless of whether the juvenile is a threat to public safety as required under current law. *See, Chapter 644 of the 2011 Acts of Assembly. Effective date July 1, 2011.*

- *Current law:* Under current law, a juvenile can be detained for a Class 1 misdemeanor or a felony if the remaining criteria of § 16.1-248.1(A)(1) are satisfied. Briefly, the criteria focus upon whether the juvenile is a public safety threat or risk. (The release constitutes a clear and substantial threat to the person or property of others; or a clear and substantial threat of serious harm to such juvenile's life or health; or the juvenile has threatened to abscond from the court's jurisdiction or has failed to appear within the immediately preceding 12 months.)
- *New! A Small, but Substantive Change to the Current Law?* Under **SB 1168**, if a juvenile is taken into custody for a Class 1 misdemeanor or a felony and released upon conditions imposed by a judge, an intake officer, or a magistrate, that juvenile may be detained in detention for any violation of those conditions regardless of whether the juvenile is a threat to public safety as required under current law.
- *Example:* A juvenile arrested for a Class 1 misdemeanor shoplifting violation of § 18.2-103 and released to his parents under conditions which he subsequently violates, then that juvenile could be detained regardless of whether the remaining criteria of § 16.1-248.1(A)(1) are satisfied by clear and convincing evidence.

HB 2462 (Delegate Habeeb): Summons for Possession of Marijuana & “Baby DUI.”

HB 2462 amends § 16.1-260 of the Code of Virginia relating to intake and petitions initiating actions in juvenile and domestic relations district courts. The bill allows law-enforcement personnel to issue a summons and release a juvenile to the custody of a parent or legal guardian pending the initial court date when the juvenile is charged with a misdemeanor violation of § 18.2-250.1 (Possession of marijuana) or § 18.2-266.1 (Person under the age of 21 driving with a blood alcohol level of .02 to .08) of the Code of Virginia. It also adds § 16.1-278.8:01 (Screening and assessment for juveniles found delinquent of first drug offense) to the dispositional options available to the court. Under current law, actions in juvenile court for these offenses must be initiated by filing a petition through the court service units (CSU). Under current law, a summons, in lieu of filing a petition, can be issued for violations of § 18.2-266 (Driving under the influence with a blood alcohol level of .08 or greater) and § 29.1-738 (Operating a boat while intoxicated) of the Code of Virginia. *See, Chapter 825 of the 2011 Acts of Assembly. Effective July 1, 2011.*

- *Current law:* With a few exceptions, all actions in juvenile court are initiated by the filing of a petition with juvenile court. One exception is that law enforcement may issue a summons and release a juvenile on (i) driving while intoxicated (.08 BAL and above), (ii) boating while intoxicated, and (iii) other alcohol-related offenses.

- *New! Limitation to Misdemeanors:* This legislation limits the option to summons and release juveniles to misdemeanor cases only (prior to July 1, 2011, felonies and misdemeanors could be summoned and released).
- *New! Possession of Marijuana:* This legislation expands the classes of offenses on which law enforcement may issue a summons and release a juvenile to the custody of that juvenile's parent or legal guardian. It adds misdemeanor (i) underage driving with a BAL of .02- .08 and (ii) possession of marijuana.
- *New! Right for Diversion Consideration:* A juvenile who is charged with misdemeanor possession of marijuana by summons is entitled to have the charge referred to intake for consideration of diversion. To exercise this right, the juvenile must provide written notice to the clerk 10 or more days before the scheduled adjudicatory hearing.
- *New! Notice by Law Enforcement:* Law enforcement must provide written notice of the right to have the charge referred to intake for consideration of diversion. This notice must be returned to the clerk of court.
 - If the right to seek diversion is not noticed to the juvenile or returned to the court, the court must dismiss the case without prejudice.
 - If dismissed, law enforcement may seek a petition on the charge via intake.
- *Diversion is not mandatory:* The law requires the case to be referred to intake for consideration of diversion. The intake officer retains discretion on whether to divert the charge.
- *Conference Committee Report:* Because the Senate and House passed versions of HB 2462 with conflicting language, HB 2462 went to conference. The Conference Committee added language that allows a juvenile charged with a possession of marijuana violation under § 18.2-250.1 of the Code of Virginia to be entitled to have the charge referred to intake for consideration of informal proceedings pursuant to subsection B of § 16.1-260 of the Code of Virginia. The juvenile must exercise that right by written notification to the clerk no later than 10 days prior to trial. In addition, at the time of the issuance of the summons, the law-enforcement officer must provide written notice of the right to have the charge referred to intake on a form approved by the Supreme Court and make return of such service to the juvenile court. If the law-enforcement officer fails to make the service or return, the juvenile court shall dismiss the summons without prejudice.
- *Rationale for Conference Committee Amendments:* The Senate had significant concerns with removing the opportunity for diversion for juveniles charged with the possession of marijuana. Thus, the citation to marijuana was removed from the bill. The House objected to the Senate amendments, and the bill went to the Conference Committee. The Conference Committee report was a compromise.

HB 2085 (Delegate C. Herring): Guardianship & Child Custody. HB 2085 amends § 31-8 and repeals §§ 31-15 through 31-18 of the Code of Virginia relating to guardianships and child custody. HB 2085 eliminates the option for parents who are separated but not divorced to bring a custody proceeding in either circuit court or juvenile and domestic relations district court. Such actions shall be brought in juvenile and domestic relations district court, unless concurrent jurisdiction exists with the circuit court, i.e., divorce actions. *See, Chapter 113 of the Acts of Assembly. Effective July 1, 2011.*

Other Bills of Interest:

- **HB 1529 (Delegate D. Toscano): Pendente lite support orders; payment of debts.** [HB 1529](#) amends § [20-103](#) of the Code of Virginia relating to court orders in pending suits for divorce, custody, and visitation. It provides that a pendente lite spousal support order may include ordering that a party pay secured or unsecured debts incurred jointly by the parties or in either party's name.
 - *Current law:* The court may order the other spouse to pay any sums necessary for the “maintenance and support” of the petitioning spouse including providing health care coverage.
 - *New! Secured and unsecured debts:* The legislation adds a provision allowing the judge to “order that a party pay secured and unsecured debts incurred jointly or by either party” pending resolution of a suit for divorce, custody, or visitation.

- **SB 910 (Senator M. Herring): Military parents; delegation of visitation rights.** [SB 910](#) amends § [20-108](#), [20-124.8](#), and [20-124.9](#) of the Code of Virginia relating to visitations rights of deployed military personnel. It provides that in cases involving a parent who is a member of the military and who has been deployed on active duty, a court may enter an order (i) delegating the deploying parent's visitation rights with a child to a family member of the deploying parent or (ii) awarding visitation rights to a family member of the deploying parent if the parent had physical custody of the child prior to the deployment and physical custody is awarded to the nondeploying parent or his family during the deployment. Written notice of the return of the deployed parent or guardian and the termination of the delegated visitation shall be provided by the previously deployed parent or guardian to any family member whose visitation is thereby terminated.
 - *Procedure:* The deploying parent or guardian must file a motion to delegate visitation to a family member.
 - The delegee must have a substantial relationship with the child.
 - The court must find that the delegation is in the best interests of the child.
 - *New! Delegation of rights:*
 - If the deploying parent had visitation rights with the child prior to the deployment, all or a portion of those rights may be delegated.
 - If the deploying parent had physical custody of the child prior to deployment and the nondeploying parent (or a member of that parent’s family) is awarded physical custody during deployment, the legislation allows for providing visitation rights to a family member of the deployed parent.
 - *Safeguards:*
 - This legislation does not create a separate right to visitation in the delegee.
 - Either parent or guardian may, upon a showing of a material change in circumstances, file a motion to rescind the order delegating or providing visitation rights to a family member.
 - The order under this subsection terminated upon the return of the deploying parent or guardian from deployment.
 - *New! Electronic appearance:* The legislation provides that the court may provide for the appearance of parties and witnesses via electronic means at any hearing under the Virginia Military Parents Equal Protection Act (§ [20-124.7](#) et seq.).

ALCOHOL OFFENSE BILLS

HB 1407 (Delegate Janis) and SB 770 (Senator Marsden): Baby DUI. HB 1407 and SB 770 amend § 18.2-266.1 of the Code of Virginia Provides that “zero tolerance” (0.02% BAC) underage drinking and driving is punishable as a Class 1 misdemeanor. HB 1407 and SB 770 make "Baby DUI" (driving under the age of 21 with a blood alcohol level of 0.02 to 0.08 percent) a Class 1 misdemeanor with a mandatory one-year driver's license suspension and minimum fine of \$500 or 50 hours of community service. This legislation corrects an oversight from the 2010 General Assembly Session wherein legislation was not introduced to remove an enactment clause containing a sunset date from prior legislation (HB 719 in 2008 and HB 1868 in 2009). *See, Chapters 683 and 134 of the 2011 Acts of Assembly. Effective date July 1, 2011.*

- *Current law:* Section 18.2-266.1 of the Code of Virginia makes it unlawful for a person under the age of 21 to drive with a blood alcohol level of 0.02 to 0.08 percent (commonly referred to as "Baby DUI"). Under current law a violation of this section must be punished with a six-month driver's license suspension and a fine of not more than \$500.00. The suspension is in addition to the suspension period provided under § 46.2-391.2 of the Code of Virginia. The penalties and license forfeiture provisions set forth in §§ 16.1-278.9, 18.2-270, and 18.2-271 do not apply to a violation of § 18.2-266.1 of the Code of Virginia.
- *Why All the Confusion?* During the 2008 General Assembly Session, Delegate Janis sought parity between the penalties for "Baby DUI" and underage possession or consumption of alcohol. Legislation was enacted that made "Baby DUI" punishable as a Class 1 misdemeanor (see HB 719). Due to concerns expressed by the Department of Criminal Justice Services (DCJS) regarding the impact of the legislation on federal funding under the Juvenile Justice and Delinquency Prevention Act of 2002 (JJDP, 42 U.S.C. § 5601 *et seq.*), an enactment clause with the sunset provision that removed the Class 1 misdemeanor offense language in § 18.2-266.1 of the Code of Virginia on July 1, 2010, was included. Under federal interpretation, it appeared that "Baby DUI" and possession of alcohol would be included in the federal definition of a "status offense." Subsequently, the sunset clause was attached to allow the issue to be studied. However, no legislation in 2009 and 2010 was enacted that would remove the sunset date. Thus, on July 1, 2010, § 18.2-266.1 of the Code of Virginia reverted to the pre-2008 language, and the penalty for 'Baby-DUI' was no longer a Class 1 misdemeanor.

HB 1496 (Delegate C. Herring): Providing Alcohol to an Underage Person. HB 1496 amends § 4.1-306 of the Code of Virginia to provide that any person who purchases alcoholic beverages for or otherwise gives, provides, or willfully assists in the provision of alcoholic beverages to another person, knowing or having “reason to know” that such person was less than 21 years of age is guilty of a Class 1 misdemeanor. *See, Chapter 31 of the 2011 Acts of Assembly. Effective July 1, 2011.*

CRIME BILLS

HB 1434 (Delegate Garrett) and SB 745 (Senator M. Herring): Synthetic Cannabinoids (“Spice”) & Bath Salts. HB 1434 and SB 745 amend numerous sections of the Code of Virginia relating to synthetic illegal substances. This legislation makes it illegal to manufacture, possess, sell, give, distribute, or possess with the intent to sell, give, or distribute “synthetic cannabinoids” and “bath salts.”

- *New!* “Synthetic cannabinoids” are commonly referred to as spice, K2, Mr. Smiley or synthetic marijuana and includes any substance that contains one or more of ten synthetic materials enumerated in § 18.2-248.1:1 of the Code of Virginia. Synthetic cannabinoids are dried herbs sprayed with a chemical compound that, when smoked, creates a high similar to marijuana.
- *New!* “Bath salts” are a synthetic stimulant, which has been called super coke, M4, meph, and drone and are commonly called MDPV, mephedrone, and 4-MMC. Bath salts come in tablet and powder forms and produce effects similar to that of amphetamines and cocaine.

HB 1434 and SB 745 adds § 18.2-248.1:1 to create specific penalties for possessing, selling, giving, distributing, or possessing with intent to distribute, synthetic cannabinoids and amends several existing statutes, including §§ 18.2-255, 18.2-255.1, 18.2-255.2, 18.2-258, 18.2-258.02, 18.2-258.1, 18.2-308.4, 18.2-474.1, 53.1-203 and 54.1-3446, to define penalties specific to synthetic cannabinoids. The punishment for possession and distribution of synthetic marijuana is largely in accord with the provisions for actual marijuana. It is a Class 1 misdemeanor to possess; a Class 6 felony to sell, give or distribute or possess with the intent to sell, give or distribute; and an unclassified felony, with a mandatory period of confinement of 5 to 30 years, to manufacture synthetic cannabinoids.

The legislation adds “bath salts” as a series of controlled substances listed in Schedule 1 (§ 54.1-3446) of the Drug Control Act (§ 54.1-3400 et seq.). The penalties are provided for in § 18.2-248, which have not changed, relating to the manufacture, selling, giving, distributing, or possessing with the intent to manufacture, sell, give, or distribute a controlled substance or an imitation controlled substance. Possession of a Schedule I drug is a Class 5 felony and selling or manufacturing a Schedule I drug is punishable by 5 to 40 years in prison.

The bills contain an emergency enactment clause making the law take effect on March 23, 2011. See, Chapters 384 and 410 of the 2011. *Effective on March 23, 2011.*

- HB 1434 incorporated HB 1473, HB 1481, HB 1878, HB 1778, HB 1423, HB 1427.
- SB 745 incorporated SB 1082, SB 748, SB 926, SB 1186, SB 749, SB 882, & SB 1373.

HB 1898 (Delegate Hugo): Abduction of a Minor for Sexual Purposes. HB 1898 amends §§ 18.2-48, 18.2-67.7, and 18.2-356 of the Code of Virginia relating to abduction of minors for sexual purposes.

- *Current law:* It is a Class 2 felony to abduct any person (i) with the intent to extort money or pecuniary benefit, (ii) with the intent to defile, (ii) if under sixteen years of age, for the purpose of concubinage or prostitution. Currently, under § 18.2-356 it is a Class 4 felony to receive money for procuring for or placing in a house of prostitution any person for the purpose of causing such person to engage in unlawful sexual intercourse or any act in violation of § 18.2-361.

- *New!* **HB 1898** makes the following actions criminal:
- Abduction of any minor for the purpose of manufacturing of child pornography (Class 2 felony);
 - Abduction of any person for the purpose of prostitution expanding the application from 15 years of age and younger (Class 2 felony);
 - Receive money for procuring a person for purposes of concubinage, prostitution, or the manufacture of obscene material or child pornography (Class 4 felony).

See, Chapter 784 of the 2011 Acts of Assembly. Effective July 1, 2011.

HB 1995 (Delegate Janis) and SB 1426 (Senator Deeds): Child Pornography & Mandatory Restitution. **HB 1995** and **SB 1426** amend 19.2-305.1 of the Code of Virginia relating to mandatory restitution for victims of child pornography. **HB 1995** and **SB 1426** require that a defendant convicted of an offense under § 18.2-374.1 (production of Child Pornography), 18.2-374.1:1 (Possession of Child Pornography), or 18.2-374.3 (Solicitation of a Minor by Electronic Means) shall be ordered to pay mandatory restitution to the victim of the offense in an amount as determined by the court. For purposes of this subsection, "victim" means a person who is depicted in a still or videographic image involved in one of the offenses listed above. For the above offenses, the Commonwealth must make reasonable efforts to notify victims of those offenses. *See, Chapters 575 and 588 of the 2011 Acts of Assembly. Effective July 1, 2011.*

- In 2010, there were 849 total convictions for offenses under §18.2-374.1, §18.2-374.1:1, and §18.2-374.3. (Department of Planning and Budget Fiscal Impact Statement, March 4, 2011.)

HB 1487 (Delegate Hope): Venue for Criminal Sexual Assault Coupled with a Violent Felony. **HB 1487** amends § 18.2-359 of the Code of Virginia relating to venue for criminal sexual assault coupled with a violent felony. **HB 1487** provides that venue for the trial of any person charged with committing or attempting to commit (i) any crime specified in § 18.2-361 (Crimes Against Nature) or 18.2-370 (Indecent Liberties with a Child) or criminal sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 and (ii) any violent felony as defined in § 17.1-805 or any act of violence as defined in § 19.2-297.1 arising out of the same incident, occurrence, or transaction may be had in the county or city in which any such crime is alleged to have occurred or, with the concurrence of the attorney for the Commonwealth in which the crime is alleged to have occurred, in any county or city through which the victim was transported by the defendant in the commission of such offense. *See, Chapter 763 of the 2011 Acts of Assembly. Effective July 1, 2011.*

HB 1476 (Delegate Albo) and SB 1145 (Senator Quayle): Torts, Sexual Abuse and Limitations Period. Section 8.01-243 of the Code of Virginia provides the limitations for bring a cause of action for personal injuries or injuries to property. **HB 1476** amends § 8.01-243 of the Code of Virginia extends the limitations period for actions for sexual abuse committed during the infancy or incapacity of the abused person from two years to 20 years from the time of the removal of the infancy or incapacity or from the time the cause of action otherwise accrues. *See, Chapters 373 and 402 of the 2011 Acts of Assembly. Effective date July 1, 2011.*

PROTECTIVE ORDER BILLS

HB 2063 (Delegate R. B. Bell) and SB 1222 (Senator Barker): Expanding the Scope of “Stalking” Protective Orders. HB 2063 and SB 1222 amend §§ 16.1-69.55, 16.1-228, 16.1-253.1, 16.1-253.4, 16.1-279.1, 17.1-213, 17.1-272, 18.2-60.4, 19.2-81.3, 19.2-120, 19.2-152.8, 19.2-152.9, and 19.2-152.10 of the Code of Virginia and creates § 19.2-152.7:1 relating to protective orders. HB 2063 and SB 1222 expand the class of persons that is eligible to obtain a “stalking” protective order (renamed under the bill “protective orders”) to include persons who have been subjected to any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury. *See, Chapters 445 and 480 of the 2011 Acts of Assembly. Effective July 1, 2011.*

- *New! Minimal Changes to Definition of Family Abuse:* HB 2063 and SB 1222 also amend the definition of "family abuse," which is used to determine when a family abuse protective order may be issued, to be consistent with the conduct that would allow for the issuance of a protective order and providing that a family abuse protective order may include a condition prohibiting the allegedly abusing person from committing a criminal offense that results in injury to person or property.
 - *Current law:* Family abuse involves violence, force, or threat that results in bodily injury or places one in reasonable apprehension of bodily injury.
 - *Additional language:* Adds that family abuse involves violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury. It also adds language that acts of family abuse includes forceful detention, stalking, criminal sexual assault, or any criminal offense that results in bodily injury or places on in reasonable apprehension of death, sexual assault, or bodily injury.
- *Not changed! Family and household member:* The definition of family and household member has not changed.
- *New! Allowable Family Protective Order Conditions:* Adds that the protective order may prohibit acts of family abuse “or criminal offenses that result in injury to person or property.”
- *New! Stalking Protective Orders Are Now Protective Orders:*
 - *New name:* Renames “stalking protective orders” to “protective orders.”
 - *Broader availability:* Allows a protective order to be issued when an alleged victim asserts that he or she has been subject to “an act of violence, force, or threat.” This definition mirrors the definition of family abuse (any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury). Protective orders issued under Title 19.2 of the Code of Virginia are no longer limited to cases involving stalking, sexual battery, aggravated sexual battery, or a criminal offense resulting in serious bodily injury to the alleged victim.
 - *No warrant required:* Removes the requirement to have a warrant issued for the issuance of a protective orders.
- *New! Consistent Punishments:* HB 2063 and SB 1222 also make the penalties for violating a protective order consistent with the penalties for violating a family abuse protective order: (i) any person convicted of a second violation of a protective order, when the offense is committed within five years of a conviction for a prior offense and when either the instant or prior offense was based on an act or threat of violence, shall be sentenced to a mandatory minimum term of

confinement of 60 days; (ii) any person convicted of a third or subsequent offense, when such offense is committed within 20 years of the first conviction and when either the instant or any of the prior offenses was based on an act or threat of violence, is guilty of a Class 6 felony and punishment shall include a mandatory minimum term of confinement of six months; (iii) any person who commits an assault and battery resulting in serious bodily injury upon a person protected by a protective order is guilty of a Class 6 felony; and (iv) any person who violates a protective order by furtively entering the home of the protected party while such party is present or enters and remains in such home until the protected party arrives is guilty of a Class 6 felony.

HB 2089 (Delegate C. Herring): Service of Notice of Emergency Protective Orders. **HB 2089** amends § 16.1-264 of the Code of Virginia relating to the service of notice for the issuance of an emergency protective order. A person who is subject to an emergency protective order issued pursuant to § 16.1-253.4 or 19.2-152.8 shall have been personally served with the protective order if a law-enforcement officer personally provides to that person a notification of the issuance of the order. The notification must be on a form approved by the Executive Secretary of the Supreme Court of Virginia, provided that all of the information and individual requirements of the order are included on the form. The officer making service must enter or cause to be entered the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. *See, Chapter 482 of the 2011 Acts of Assembly. Effective July 1, 2011.*

SB 925 (Senator McDougle) and HB 2106 (Delegate Armstrong): Protective Orders & GPS Devices. **HB 2106** and **SB 925** amend §§ 19.2-123 and 19.2-303 of the Code of Virginia relating to GPS tracking for persons on bond or probation. **HB 2106** and **SB 925** allows for use of GPS units or similar devices in lieu of incarceration in certain cases. *See, Chapters 799 and 837 of the 2011 Acts of Assembly. Effective July 1, 2011.*

HB 1779 (Delegate Gilbert) and SB 754 (Senator Reynolds): Preliminary Protective Orders & Purchasing and Transporting of Firearm. **HB 1779** and **SB 754** amend § 18.2-308.1:4 of the Code of Virginia relating to the purchase or transportation of firearms by persons subject to preliminary protective orders. **HB 1779** and **SB 754** limit prohibition on purchasing and transporting a firearm applicable to persons subject to preliminary protective orders issued pursuant to § 16.1-253 to circumstances wherein the petition was (i) relating to abuse and neglect and (ii) where there was a finding of abuse and neglect by a preponderance of the evidence. *See, Chapters 373 and 402 of the 2011 Acts of Assembly. Effective date July 1, 2011.*

DEPARTMENT OF SOCIAL SERVICES BILLS

HB 1767 (Delegate Crockett-Stark) and SB 1040 (Senator Barker): Foster Care Placement Only Via LDSS and Mandatory Background Checks. HB 1767 and SB 1040 amend §§ 63.2-100 and 63.2-901.1 of the Code of Virginia relating to foster care placement. The legislation:

- *Definition of Foster Care Placement:* Removes the placement of a child through an agreement between the parents or guardians and a public agency designated by a community policy and management team from the definition of "foster care placement" so that "foster care placement" means placement must be through the local board.
- *Mandatory Background Checks on All Household Members:* Eliminates language granting local boards of social services and licensed child-placing agencies discretion in deciding when to obtain background checks on adult household members residing in a home with a person with whom the local board or agency is considering placing a child on an emergency, temporary, or permanent basis and makes such checks mandatory. *See, Chapters 5 and 156 of the 2011 Acts of Assembly. Effective date July 1, 2011.*

HB 1984 (Delegate Kilgore) and SB 1178 (Senator Marsden). Foster Care Placements, Kinship Care and Alternative Placements. Section 63.2-900 requires the State Board of Social Services to adopt regulations for the provision of foster care services by local boards of social services which shall be directed toward the prevention of unnecessary foster care placements and towards the immediate care of and permanent planning for children in the custody of or placed by local boards and that shall achieve, as quickly as practicable, permanent placements for such children. HB 1984 and SB 1178 amend § 63.2-900 of the Code of Virginia so that the local board must first seek out kinship care options to keep children out of foster care and as a placement option for those children in foster care, if it is in the child's best interests, pursuant to § 63.2-900.1. In cases in which a child cannot be returned to his prior family or placed for adoption and kinship care is not currently in the best interests of the child, the local board shall consider the placement and services that afford the best alternative for protecting the child's welfare. Placements may include but are not limited to family foster care, treatment foster care and residential care. Services may include but are not limited to assessment and stabilization, diligent family search, intensive in-home, intensive wraparound, respite, mentoring, family mentoring, adoption support, supported adoption, crisis stabilization or other community-based services. *See, Chapters 9 and 170 of the 2011 Acts of Assembly. Effective date of July 1, 2011.*

SB 1037 (Senator Barker): Foster Care Plan - Independent Living is Not a Goal Option. SB 1037 amends §§ 16.1-281, 16.1-282, 16.1-282.1, and 63.2-906 of the Code of Virginia relating to foster care planning and independent living. SB 1037 eliminates independent living as a permanency goal option for foster care plans approved on or after July 1, 2011, except in cases involving children admitted to the United States as refugees or asylees who are 16 years of age or older. *See, Chapter 730 of the 2011 Acts of Assembly. Effective on July 1, 2011.*

SB 1038 (Senator Barker). Foster Care & School Placement. SB 1038 amends §§ 16.1-281 and 22.1-3.4 of the Code of Virginia and adds § 63.2-900.3 relating to school placement of foster care children.

- *New! Required Foster Care Plan Component:* Requires the foster care plan for school-aged children to describe the school placement.
- *New! Ability to Remain at Sending School:* Explicitly states that the child “shall be allowed” to continue to attend the school in which the child was enrolled prior to placement in foster care (if it is agreed by joint determination of the local department of social services and the local school division that remaining in the sending school is in the best interest of the child).
- *New! Collaborative Decision:* Before placing a child of school age in a foster care placement, as defined in § 63.2-100, the local social services agency making such placement shall, in writing, determine jointly with the local school division whether it is in the child's best interests to remain enrolled at the school in which he was enrolled prior to the most recent foster care placement, pursuant to § 22.1-3.4 of the Code of Virginia. Current law allows the child to continue if agreed upon by the sending and receiving school divisions (and does not include social services in the collaboration).

See, Chapter 154 of the 2011 Acts of Assembly. Effective July 1, 2011.

HB 2037 (Delegate Peace): Unlawful for Person not Licensed by Board of Social Work to use Title of Social Worker. HB 2037 adds § 54.1-3709 of the Code of Virginia relating to the practice of social work. HB 2037 makes it unlawful for any person not licensed under the Board of Social Work to use the title "Social Worker" in writing or in advertising in connection with his practice unless he simultaneously uses clarifying initials that signify receiving a baccalaureate or master's degree in social work from an accredited social work school or program approved by the Council on Social Work Education or a doctorate in social work. A violation constitutes a Class 1 misdemeanor. *See, Chapter 794 of the 2011 Acts of Assembly. Delayed effective date of July 1, 2013.*

- *Federal Exception:* HB 2037 allows federally defined "qualified social workers" and “social workers” to work in any licensed nursing home or hospice to use such titles. However, any such individual may only use the titles in connection with the activities of the nursing home or hospice.
- *DSS Exemption:* HB 2037 does not require the Department of Social Services, or any other entity, to hire licensed social workers or social workers with a baccalaureate or master's degree in social work from an accredited social work school or program approved by the Council on Social Work Education or a doctorate in social work.

COMPREHENSIVE SERVICES ACT BILLS

HB 1679 (Delegate R.P. Bell) and SB 1171 (Senator Marsden): State Executive Council for Comprehensive Services for At-Risk Youth and Families and Denial of Funding. **HB 1679** and **SB 1171** amend § 2.2-2648 of the Code of Virginia relating to the State Executive Council for Comprehensive Services for At-Risk Youth and Families (SEC). **HB 1679** and **SB 1171** authorize the SEC to deny state funding to a locality where the Community Policy and Management Team (CPMT) fails to provide services that comply with the Comprehensive Services Act (§ 2.2-5200 et seq.), any other state law or policy, or any federal law pertaining to the provision of any service funded in accordance with § 2.2-5211 of the Code of Virginia. (Section 2.2-5211 provides the criteria for allocating the state pool of funds for public and private nonresidential and residential services for troubled youths and families.) *See, Chapters 397 and 413 of the 2011 Acts of Assembly. Effective on March 23, 2011.*

- *Three Additional Enactment Clauses:* A second enactment clause requires the SEC to develop policies by July 1, 2011 for the implementation of the legislation. A draft of the policy was required to be submitted for public comment on April 1, 2011. A third enactment clause stated that the provisions of this act only apply for reimbursements after July 1, 2011. A fourth enactment clause contained an emergency clause stating that this act is in force from its passage.

SEX OFFENDER BILLS

HB 2066 (Delegate R.B. Bell) and SB 1185 (Senator Norment): Violent Sexual Offenders & Prohibiting Entry onto School Buses. HB 2066 and SB 1185 amends § 18.2-370.5 of the Code of Virginia relating to sex offenses prohibiting entry onto school or other property. HB 2066 and SB 1185 expands the prohibition on entry onto school grounds by any adult convicted of a sexually violent offense to include any school bus as defined in § 46.2-100. Under current law, offenders convicted of a violent sexual offense may enter the school or school property to vote or to attend classes as a student; they may also obtain a court order to gain access to such properties. The Governor's amendment clarifies that a violent sexual offender cannot enter a school bus. The penalty for violating § 18.2-370.5 remains a Class 6 felony. Sexually violent offenses are defined in § 9.1-902 of the Code of Virginia. *See, Chapters 796 and 855 of the 2011 Acts of the Assembly. Effective on July 1, 2011.*

SB 1318 (Senator Newman): Sex Offenders on School Property – Technical Fix. SB 1318 amends § 18.2-370.5 of the Code of Virginia relating to sex offenses and prohibiting entry onto school property. SB 1318 changes "and" to "or" in two places to avoid an interpretation that a sex offender is prohibited from being on school property during school-related or school-sponsored activities only during school hours. A sexually violent offender is prohibited from entering or being present during school hours, and is prohibited from entering or being present during school-related or school-sponsored activities, upon any property he knows or has reason to know is a public or private elementary or secondary school or child day center property. Sexually violent offenses are defined in § 9.1-902 of the Code of Virginia. *See, Chapter 648 of the 2011 Acts of Assembly. Effective July 1, 2011.*

SB 927 (Senator McDougle): Sex Offender Registry & Affidavits. SB 927 §§ 18.2-472.1 and 19.2-188.3 of the Code of Virginia relating to sex offender registry and affidavits. SB 927 clarifies several provisions regarding the use of an affidavit in a criminal proceeding for failure to register as a sex offender. The bill makes it clear that the Melendez-Diaz procedures do not have to be followed for a preliminary hearing and that in preliminary hearings the Commonwealth is not responsible for summoning the custodian of the records issuing the affidavit. *See, Chapter 285 of the 2011 Acts of Assembly. Effective on July 1 2011.*

HB 1698 (Delegate Athey) and SB 1275 (Senator Obenshain): Sexually Violent Predators & Mental Health Examination. HB 1698 and SB 1275 amend §§ 37.2-901, 37.2-906, 37.2-907, and 37.2-910 of the Code of Virginia relating to sexually violent predators. HB 1698 and SB 1275 allows a respondent who has refused to cooperate with a mental health examination required pursuant to § 37.2-904 to rescind his refusal and elect to cooperate with the mental health examination within 21 days of retaining counsel or appointment of counsel. Section 37.2-910 of the Code of Virginia requires the committing court to conduct a review hearing relating to assess the continuation of secure inpatient treatment hearing. HB 1698 and SB 1275 allows the hearing for assessment to be conducted using a two-way electronic video and audio communication system that meets standards set forth in subsection B of § 19.2-3.1 (Personal appearance by two-way electronic video and audio communication; standards.). *See, Chapters 446 and 448 of the 2011 Acts of Assembly. Effective on July 1, 2011.*

DJJ OPERATIONS BILL

HB 2076 (Delegate Landes) and SB 1477 (Senator Stosch): Governor’s State Inspector General’s Report. **HB 2076** and **SB 1477** create the Office of the State Inspector General, which shall be headed by a State Inspector General who is appointed by the Governor, subject to confirmation by the General Assembly. Effective July 1, 2012, **HB 2076** and **SB 1477** will transfer the functions and duties of the Inspector General Offices for the Departments of Behavioral Health and Developmental Services, Corrections, Juvenile Justice, and Transportation to the State Office of the Inspector General. The powers and duties of the State Internal Auditor are included in the transfer to the Office of the State Inspector General. See, *HB 2076 (Chapter 798 of 2011 Acts of Assembly)* and *SB 1477 (Chapter 871 of 2011 Acts of Assembly)*.

- A 5th enactment clause states: “That the Governor, on or before December 31, 2011, shall, in consultation with impacted stakeholders, complete a plan for the coordination and oversight of the internal audit programs to the Office of the State Inspector General. This plan shall consider where transfer of the internal audit program to the Office is necessary or when a dual reporting structure is most practicable.”

STUDIES AND REPORTS

Department of Juvenile Justice (DJJ):

Juvenile Offender Demographics Report. DJJ shall consolidate the annual reporting requirements in §§ 2.2-222 and 66-13 of the Code of Virginia and in Chapters 755 and 914 of the 1996 Acts of Assembly concerning juvenile offender demographics. The consolidated annual report shall address the progress of the Virginia Juvenile Community Crime Control Act (VJCCCA) programs including the requirements in Article 12.1 of Chapter 11 of Title 16.1 (§ 16.1-309.2 et seq.) relating to the number of juveniles served, the average cost for residential and nonresidential services, the number of employees, and descriptions of the contracts entered into by localities. Notwithstanding any other provisions of the Code of Virginia, the consolidated report shall be submitted to the Governor, the General Assembly, the Chairmen of the House Appropriations and Senate Finance Committees, the Secretary of Public Safety, and the Department of Planning and Budget by the first day of the regular General Assembly Session. *See Chapter 890 of the 2011 Acts of Assembly (HB 1500, Appropriations Act, [Item 399\(G\)](#) and §§ [2.2-222](#) and [66-13\(D\)](#) of the Code of Virginia.*

Virginia Juvenile Community Crime Control Act (VJCCCA) Recidivism Report. DJJ, with the assistance of the Department of Correctional Education (DCE), the Department of Corrections (DOC), the Virginia Council on Juvenile Detention, juvenile court service unit directors, juvenile and domestic relations district court judges, and juvenile justice advocacy groups, shall provide a report on the types of programs supported by the VJCCCA and whether the youth participating in such programs are statistically less likely to be arrested, adjudicated or convicted, or incarcerated for either misdemeanors or crimes that would otherwise be considered felonies if committed by an adult. The report is due October, 1 2011. *See Chapter 890 of the 2011 Acts of Assembly (HB 1500, Appropriations Act, [Item 399 \(F\)\(3\)\(d\)](#)).*

Juvenile Correctional Centers & Detention Bed Space Utilization and Re-entry Report. DJJ shall prepare a report on the future of juvenile correctional centers (JCCs) in the Commonwealth. The report shall include: (1) an analysis of JCC utilization rates; (2) an analysis of local and regional secure juvenile detention center utilization rates; (3) a determination of the appropriate number and types of beds, including security levels, necessary to manage the projected state-responsible and local-responsible juvenile population; and (4) an analysis of options for providing regional transitional programs and re-entry services at selected local and regional secure juvenile detention facilities.

The report shall address the prospect of implementing a plan for (1) the closing of one JCC and reallocating the cost savings to regional transitional programs and re-entry services at selected local and regional secure juvenile detention facilities; and (2) identifying funding to be transferred for the purpose of reinvesting in such programs and services. The report shall detail the feasibility and core components of such a plan and shall include a fiscal analysis of the impact on localities and on DJJ. The fiscal analysis shall address state responsibilities related to transportation, education, medication, assistance to support security services provided directly by the juvenile detention facility, and comprehensive programming provided on a contractual basis by private, for-profit, and non-profit providers based on evidenced-based practices.

The report shall be provided to the Governor, the Secretary of Public Safety, and the Chairmen of the Senate Finance and House Appropriations Committees on or before October 1, 2011. *See Chapter 890 of the 2011 Acts of Assembly (HB 1500, Appropriations Act, [Item 400 \(D\)](#)).*

Supreme Court:

Judicial Districts Reorganization. The Executive Office of the Supreme Court is studying the existing boundary lines for Virginia's judicial circuits and districts. This review is in lieu of passing HB 1990 and SB 1240 (New Judicial Districts) during the 2011 General Assembly Session and is due to the General Assembly by November 1, 2011. The Supreme Court comprised a study committee of 20 members consisting of judges, clerks, attorneys, and a chief magistrate. The Supreme Court expects to offer an alternative plan for redistricting as opposed to the plan contemplated under HB 1990 and SB 1240. In addition to requesting written comments, six town hall meetings will be held this summer in the following areas: Northern Virginia, Central Virginia, Hampton Roads, Shenandoah Valley, Southside Virginia, and Southwest Virginia. *See [HB 1990](#) and [SB 1240](#) (New Judicial Boundaries). Letter from Senator Marsh, Chair of Senate Courts.*

Department of Criminal Justice Services (DCJS):

Study of Education and Training Services in Adult Jails & Juvenile Detention. DCJS, in coordination with DCE, shall conduct a study of the education and training services that are available in local jails and **juvenile detention centers**. The study shall examine the level and types of such services available as well as the barriers to providing such services and the gaps in service provision. It shall also determine the amounts and types of funding provided for such services. *See Chapter 890 of the 2011 Acts of Assembly (HB 1500, Appropriations Act, [Item 384\(I\)](#) New Language).*

Department of Behavioral Health and Developmental Services (DBHDS):

Children's Mental Health Services (Inpatient and Community-Based). The Commissioner of DBHDS shall establish a planning process to identify concrete steps to provide children's mental health services, both inpatient and community-based, as close to children's homes as possible. The planning process will produce a comprehensive plan that ensures there are child-centered services, both inpatient and community-based, delivered at the community level in every Health Planning Region in the Commonwealth. The target populations to be addressed in this plan are children through age 17 who (1) have a mental health problem, (2) may have co-occurring mental health and substance abuse problems, (3) may be in contact with the juvenile justice or courts systems, (4) may require emergency services, or (5) may require long-term community mental health and other supports. The planning process should identify the mental health and substance abuse services that are needed to help families keep their children at home and functioning in the community and should define the role that the Commonwealth Center for Children and Adolescents will play in this effort. The plan should establish and rank recommendations based on greatest priority and identify future funding associated with each recommendation. *See Chapter 890 of the 2011 Acts of Assembly (HB 1500, Appropriations Act, [Item 304\(M\)](#)).*

Also see in Chapter 890 of the 2011 Acts of Assembly:

- **Item 304 (E) (2011) Public-Private Partnerships for Mental Health Residential Beds for Juveniles.** DBHDS, in cooperation with DJJ, where appropriate, shall identify and create opportunities for public-private partnerships and develop the incentives necessary to establish and maintain an adequate supply of residential beds for the treatment of juveniles with behavioral health treatment needs, including those who are mentally retarded, aggressive, or sex offenders, and those juveniles who need short-term crisis stabilization but not psychiatric hospitalization.
- **Item 304 (D) (2011) Public-Private Partnerships for Acute-Care Psychiatric Beds for Children.** DBHDS shall identify and create opportunities for public-private partnerships and develop the incentives necessary to establish and maintain an adequate supply of acute-care psychiatric beds for children and adolescents.
- **Item 304 (F) (2011) Restoration Services for Incompetent Juveniles.** Out of this appropriation, \$656,538 the first year and \$656,538 the second year shall be provided from the General Fund for placement and restoration services for juveniles found to be incompetent to stand trial pursuant to Title 16.1, Chapter 11, Article 18, of the Code of Virginia.

Community Services Board (CSB) Study. DBHDS shall submit a report to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees no later than **December 1** of each year for the preceding fiscal year that provides information on the operation of Virginia's publicly funded behavioral health and developmental services system. The report shall include a brief narrative and data on the numbers of individuals receiving state facility services or CSB services, including purchased inpatient psychiatric services; the types and amounts of services received by these individuals; and CSB and state facility service capacities, staffing, revenues, and expenditures. The annual report also shall describe major new initiatives implemented during the past year and shall provide information on the accomplishment of systemic outcome and performance measures during the year. The first annual report shall be submitted no later than December 1, 2010, for FY2010. *See Chapter 890 of the 2011 Acts of Assembly (HB 1500, Appropriations Act, [Item 304 \(N\)](#)).*

Formulary for the Dispensing of Medications to Released Offenders. DBHDS, in coordination with DOC, DJJ, the Virginia Sheriffs' Association, and the Virginia Regional Jail Association, shall develop a formulary for the dispensing of medications to offenders who have been released from prisons, JCCs, and jails that will provide consistency as those offenders move from incarceration in the criminal justice system to being served by community behavioral health programs. *See Chapter 890 of the 2011 Acts of Assembly (HB 1500, Appropriations Act, [Item 304 \(O\)](#)).*

Virginia State Crime Commission:

Study on Compliance with National Sex Offender Registry Requirements. [Senate Joint Resolution 348](#) directs the Crime Commission to study compliance with the federal requirements regarding Virginia's Sex Offender Registry, examine the effectiveness of the Registry in preventing sexual victimization, and determine the feasibility of implementing a tiered system.

- *Also see Chapter 890 of the 2011 Acts of Assembly (HB 1500 Appropriations Act, [Item 408\(H\)\(2\)](#)), State Police Study of the Sex Offender Registry Study.* The Secretary of Public Safety, in conjunction with the Superintendent of State Police, shall report on the implementation of the monitoring of offenders required to comply with the Sex Offender Registry requirements.

Unlawful Solicitation of a Child by an Adult Study. By letter, Senate Courts requested the Crime Commission to study the intent of [HB 2396](#). [HB 2396](#) would provide that any adult who, by an offer of something of value or by misrepresentation of his identity, lures or entices a minor who is three or more years younger than the adult to enter a motor vehicle is guilty of a Class 1 misdemeanor. There would be rebuttable presumption that the prohibition does not apply to any law-enforcement officer in the performance of his duties, to any family or household member or guardian of the minor, or to any person who has permission, granted by an adult family member of the minor or the guardian of the minor, to transport the minor. See [HB 2396](#) (R.B. Bell)(Letter from the Senate).

Department of Education (DOE):

Study on Antibullying School Policies. DOE is to study the nature and effectiveness of local school divisions' antibullying policies. In conducting its study, DOE shall (1) review and compare antibullying measures in the student codes of conduct from each school division, (1) compare existing policies with the its model policy for codes of student conduct, and (3) determine if improvements to existing policies are warranted in order to more effectively combat bullying in Virginia's public schools. The report is due the first day of the 2012 General Assembly Session. See [House Joint Resolution 625](#) (R.B. Bell). Please note: In lieu of passing [HB 1576](#) (Bullying as a Class 1 Misdemeanor), House Subcommittee on Criminal Law requested that the intent of [HB 1576](#) be incorporated into the study.

Department of Social Services (DSS):

Report of Consolidation of Local "Human Services Buildings." The Commissioner of DSS, in consultation with relevant state and local agencies, shall develop proposed criteria for assessing funding requests for addressing space needs among local departments of social services as well as proposed consolidated human services buildings. DSS shall forward a prioritized list of projects to the Secretary of Health and Human Resources and the Department of Planning and Budget by November 1 of each year for consideration by the Governor in the development of the budget. DSS also shall submit a copy of the list of prioritized projects by November 1 of each year to the Chairmen of the House Appropriations and Senate Finance Committees. *See Chapter 890 of the 2011 Acts of Assembly (HB 1500 Appropriations Act, [Item 335](#) (C)).*

- *Also see HB 1500 Appropriations Act, [Item 335](#) (B), Consolidate Local Departments.* It is the intent of the General Assembly that the Commissioner of DSS shall work with localities that seek to voluntarily merge and consolidate their respective local departments of social services. No funds appropriated under this Act shall be used to require a locality to merge or consolidate local departments of social services.

INTERESTING JUVENILE JUSTICE BILLS THAT FAILED IN COMMITTEE

The Crime Commission's Study on the Juvenile Transfer Statutes: The Virginia State Crime Commission completed a two-year review of the transfer and certification statutes pertaining to trying a juvenile as an adult prior to the 2011 session of the General Assembly. In addition, the Crime Commission was sent two bills by the 2010 session of the General Assembly to study and make recommendations before the 2011 session. As a result, three bills with dramatically divergent intent were introduced during the 2011 session of the General Assembly.

- **SB 822 (Senator Edwards): Juvenile's Right to Appeal Prosecutor's Discretionary Transfer to Circuit Court.** The intent of SB 822 was to amend § 16.1-269.6 of the Code of Virginia to provide for a juvenile's right to appeal to the circuit court, within seven days, the attorney for the Commonwealth's decision to certify that juvenile's case to the circuit court for trial as an adult under the provisions of subsection C of § 16.1-269.1 of the Code of Virginia. Under current law, certifications for trial in circuit court under subsection C are not appealable and there is no right to judicial review or oversight. As provided in the bill, if the juvenile appeals the decision of the attorney for the Commonwealth, then the circuit court would "examine all such papers, reports and orders and conduct a hearing to take further evidence on the issue of transfer, to determine if there has been substantial compliance with subsection A of § 16.1-269.1, but without redetermining whether the juvenile court had sufficient evidence to find probable cause." The appeal process would be the same as that presently available for transfers of any felony case pursuant to subsection A of § 16.1-269.1 of the Code of Virginia. *The Crime Commission rejected approving SB 822 for submission during the 2010 General Assembly; however, the patron introduced the bill. SB 822 passed the Senate but was "left" in the House Committee on Courts of Justice.*
- **SB 914 (Senator McDougle) Expanding the Offenses for Transferring a Juvenile to Circuit Court.** The intent of SB 914 was to amend subsection B of § 16.1-269.1 of the Code of Virginia by adding violent felonies as defined in § 19.2-297.1 of the Code of Virginia to the list of offenses for which a juvenile who is 14 years of age or older will be mandated to be certified to stand trial as an adult in circuit court if the juvenile has been previously adjudicated delinquent for an offense defined as an act of violence in § 19.2-297.1. SB 914 also amends subsection C of § 16.1-269.1 of the Code of Virginia to add to the list of offenses for which the Commonwealth's attorney may request that a juvenile be certified to stand trial as an adult in circuit court. The juvenile court must establish probable cause prior to certifying the charge, and all ancillary charges, to the grand jury. *The Crime Commission approved endorsing SB 914 for submission in the 2011 General Assembly session. SB 914 was "passed by indefinitely" in the Senate Committee for Courts of Justice (10-Y 5-N).*
- **SB 948 (Senator Howell) - Juvenile Adjudication in Circuit Court.** The intent of SB 948 was to amend § 16.1-272 of the Code of Virginia pertaining to the circuit court's authority to sentence a juvenile convicted as an adult. The bill gives the circuit court, in cases involving juveniles transferred or certified for trial as an adult from a juvenile court, the authority to defer the imposition of a final sentence and place the juvenile on supervised probation. If the juvenile successfully fulfills all probation requirements, the circuit court may modify the guilty conviction and impose a juvenile adjudication of delinquency. The bill makes the decision to modify the finding from a conviction to an adjudication of delinquency discretionary. *The Crime Commission approved endorsing SB 948 for submission in the 2011 General Assembly session. SB 948 passed the Senate but was "left" in the House Committee on Courts of Justice.*

HB 1980 (Delegate Greason): Definition of Violent Juvenile Felony to Include Conspiracy and Attempts. The intent of HB 1980 was to amend §§ 16.1-228 and 16.1-269.1 of the Code of Virginia to expand the definition of a violent juvenile felony to include any conspiracy to commit or any attempt to commit a violent juvenile felony by a juvenile 14 years of age or older. Section 16.1-228 of the Code of Virginia defines a "violent juvenile felony" as meaning any of the delinquent acts enumerated in subsection B or C of § 16.1-269.1 of the Code of Virginia when committed by a juvenile 14 years of age or older. Under the provisions of this bill, a juvenile who is 14 years of age or older who conspires or attempts to commit an offense listed in subsection B of § 16.1-269.1 of the Code of Virginia will be mandated to be certified to stand trial as an adult in circuit court. Under the provisions of this bill, the Commonwealth's attorney may request that a juvenile be certified to stand trial as an adult in circuit court if he conspires or attempts to commit an offense listed in subsection C of § 16.1-269.1 of the Code of Virginia. *HB 1980 was "left" in the House Committee on Courts of Justice.*

HB 1807 (Delegate Surovell) Single Petition for Child Custody and Visitation Cases in JDR Court. The intent of HB 1807 was to amend § 16.1-260 of the Code of Virginia, relating to a single petition for child custody or visitation cases. Specifically, a single petition could be filed with regard to any or all custody or visitation issues for a child, and a single petition could be filed with regard to such issues for two or more children if such children have the same parents or legal guardians. *Initially, the bill passed the House Committee for Courts of Justice (21-Y 1-N) and went to the floor of the House. However, on the floor, the bill was rereferred to the House Committee for Courts of Justice. HB 1807 was "left" in House Courts with a letter requesting the issue to be studied.*

SB 1409 (Senator Stanley) Mandatory Juvenile Sex Offender Registration. The intent of SB 1409 was to make amendments to §§ 9.1-902, 9.1-903, 9.1-904, 9.1-913, and 18.2-361 of the Code of Virginia for the purpose of ensuring that Virginia was in full compliance with the Adam Walsh Child Protection and Safety Act of 2006 (42 USCS §§ 16901 *et seq.*). In doing so, SB 1409 attempted to require all juveniles: (1) 13 years of age or older at the time of the offense, (2) adjudicated delinquent for any offense requiring registration, and (3) if the offense was committed on or after July 1, 2005, to register with the sex offender registry. Under current law, juveniles who are adjudicated delinquent of Registry offenses in juvenile court are not required to register; however, juveniles who were over the age of 13 at the time of the offense may be required to register if, upon motion of the Commonwealth's attorney, the court finds that the circumstances of the offense require offender registration. The proposal excludes juveniles who are adjudicated delinquent in juvenile and domestic relations court from the list of individuals whose information must be disseminated publicly on the Sex Offender and Crimes against Minors Registry. (See subsection G of § 9.1-902 of the Code of Virginia). *SB 1409 reported out from the Senate Committee on Courts of Justice (15-Y 0-N), but was "left" in the Senate Committee for Finance.*

HB 1576 (Delegate Ebbin) Definition of Bullying & Class 1 Misdemeanor. The intent of HB 1576 was to amend § 18.2-56 of the Code of Virginia relating to bullying and hazing. The intent was to (i) define "bullying" to mean recklessly or intentionally endangering the health or safety of a student by exposing the student repeatedly and over time to physical aggression or intimidation, whether through direct physical contact or through the use of information or communication technology, resulting in bodily injury or other harm to person or property and (ii) make such conduct punishable as a Class 1

misdemeanor. *HB 1576 was “left” in the House Committee for Courts of Justice with the intent that HB 1576 be incorporated into the study on bullying as required by House Joint Resolution 625.*

HB 1448 (Delegate Greason) Juvenile Court: Deferred and Dismissed Cases Ineligible for Expungement of Court Records. The intent of [HB 1448](#) was to amend § [16.1-306](#) of the Code of Virginia relating to the destruction of juvenile and domestic relations court files and records and notification of expungement. The bill would prohibit the expungement of juvenile court files and records in delinquency and traffic cases where the case was deferred and subsequently dismissed following the satisfaction of any terms and conditions imposed by the court. *HB 1448 was “left in the House Committee for Courts of Justice.*

HB 1488 (Delegate Hope) Prohibiting the Use of Restraints on those who are Pregnant. The intent of [HB 1488](#) was to create § [53.1-1.1:1](#) of the Code of Virginia relating to the use of restraints on pregnant prisoners. [HB 1488](#) prohibits any “state, regional, local, or juvenile correctional facility” from using “restraints on any prisoner who is pregnant during labor, transport to a medical facility, delivery, or postpartum recovery.” [HB 1488](#) incorporates an exception to this prohibition when the “warden, superintendent, or jailor finds there is a compelling reason to believe that the prisoner poses serious harm to herself or others, is a flight risk, or cannot be reasonably restrained by other means.” [HB 1488](#) requires the facility to use the “least restrictive restraints necessary on any inmate in the second or third trimester of pregnancy.” The bill was consistent with DJJ’s current practice and procedure and would have minimal impact on DJJ or the juvenile justice system. *HB 1488 was “tabled” in the House Committee for Militia, Police and Public Safety.*

HB 1616 (Delegate Ward) Exposing a Juvenile to Assault and Battery of a Family or Household Member. The intent of [HB 1616](#) was to amend § [18.2-57.2](#) of the Code of Virginia relating to assault and battery against family or household member when a juvenile is present. [HB 1616](#) would create a new Class 1 misdemeanor to punish an adult having a custodial relationship over a juvenile who knowingly allows the juvenile to be present during, to see, or to hear, an assault and battery of a family or household member. As drafted, the bill applied to any adult in a custodial relationship with the juvenile. Therefore, the scope of the bill went beyond family members and extended family members. The abuse had to be against a family member, but the person exposing the child to the abuse did not necessarily need to be a family member. As drafted, the victim of the family abuse could be guilty of a Class 1 misdemeanor if the victim allowed the child to be present during the assault.

HB 2445 (Delegate Cosgrove) Juvenile CCRE Information Disseminated to U.S. Attorney General. [HB 2445](#) amends § [19.2-389.1](#) of the Code of Virginia relating to the dissemination of juvenile record information. The bill provides that, for purposes of a determination as provided in §§ [18.2-308.2](#) and [18.2-308.2:2](#) (Records checks for possession and purchase, respectively) of eligibility to possess or purchase a firearm, juvenile record information maintained in the Central Criminal Records Exchange (CCRE) pursuant to the provisions of § [16.1-299](#) (Fingerprints and photographs of juveniles) shall be disseminated only to the Virginia State Police (VSP) or the Attorney General of the United States. Currently, there are no named recipients.

- *Effect of this bill:* This bill would result in the information relating to all felony adjudications of delinquency being provided to the Federal Bureau of Investigation’s National Criminal

Information Center (NCIC)¹. This information would not be maintained separately from other NCIC records and would be subject to release in accordance with federal requirements (which includes all federal criminal background checks). The juvenile adjudication information would be available, subject to the federal controls, on all background checks (including pre-employment screening by public and private employers).

SB 821 (Senator Edwards) Creation of the State Office of the Children's Ombudsman. The intent of **SB 821** was to create the State Office of the Children's Ombudsman. The bill creates the Office to provide ombudsman services, including performing inspections of, conducting investigation of complaints relating to, advocating for and providing information to children, parents, and citizens involved with child-serving agencies, which include the Departments of Social Services, Juvenile Justice, Education, Correctional Education, Behavioral Health and Developmental Services, Health; the Office of Comprehensive Services for At-Risk Youth and Families; and local entities that receive funding from a state child-serving agency. A version of this bill has been introduced each session since 2006. The fiscal implications present a significant obstacle for enactment. The 2010 fiscal impact statement estimated the phase-in implementation plan for creation of the Office would be \$334,492 in the first year; \$696,940 in the second year; and \$840,740 thereafter. *SB 821 passed the Senate, but without funding. On the House side, SB 821 was "left" in the House Committee for General Laws.*

HB 2214 (Delegate McQuinn) The Department of Criminal Justice Services to Develop Plan for Prevention of Juvenile Delinquency. The intent of **HB 2214** was to require Department of Criminal Justice Services (DCJS) and its Board to develop a comprehensive, statewide, long-range plan for the prevention of juvenile delinquency in the Commonwealth. The issue became whether the bill was duplicative of existing Juvenile Justice Board authorities and duties and the current duties and responsibilities of the Advisory Committee on Juvenile Justice under DCJS. Section 66-10 (2) of the Code of Virginia gives the Board the power and the duty "to ensure the development and implementation of a long-range youth services policy" to guide the Commonwealth's juvenile justice system. The Board last amended its "Long-Range Youth Services Policy" on April 8, 2009. In developing a comprehensive long-range policy to guide the Commonwealth's juvenile justice system, the Board and the Department of Juvenile Justice consult and coordinate planning with the Advisory Committee on Juvenile Justice and DCJS. *HB 2214 was "left" in the House Committee for Militia, Police and Public Safety.*

¹ NCIC is a computerized index of criminal justice information (i.e., criminal record history information, fugitives, stolen property, missing persons). It is available to federal, state, and local law enforcement and other criminal justice agencies for the purpose of providing prompt disclosure of information in the system. Criminal history data is disseminated to non-criminal justice agencies for use in connection with licensing for local/state employment or other uses but only where such dissemination is authorized by federal or state statutes and approved by the Attorney General of the United States. This information was obtained from <http://www.fbi.gov/about-us/cjis/ncic/ncic> and <http://www.fas.org/irp/agency/doj/fbi/is/ncic.htm>.