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## Table of Contents

JUVENILE JUSTICE LEGISLATION.....	5
HB 668 (Brink) / SB 134 (Favola): Independent living services, releases from the Department of Juvenile Justice between 18 and 21 years of age. ....	5
HB 1002 (Head) / SB 391 (Vogel): Department of Criminal Justice Services Committee on Training, adds the Director of the Department of Juvenile Justice. ....	5
HB 1069 (Taylor): Department of Human Resource Management, grievance procedures for employees of the Departments of Corrections and Juvenile Justice. ....	6
JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS .....	7
AND OTHER COURT PROCESSES .....	7
HB 171 (Farrell): Crime victims’ rights; offenses by juveniles.....	7
HB 183 (Farrell) / SB 128 (Favola): Commitment of juveniles to the Department of Juvenile Justice; consideration of social history. ....	8
HB 278 (Albo): Expungement of juvenile and domestic relations district court records. ....	8
HB 359 (Chafin): Jurisdiction; custody and visitation arrangements for minor children; persons with legitimate interest.....	9
HB 452 (R.B. Bell): Pleas; withdrawal of plea. Recusal. ....	9
HB 933 (Watts): Update to child support guidelines. ....	10
HB 1013 (Campbell): Record retention in district courts.....	10
CRIMES (GENERAL).....	11
HB 542 (McQuinn): Wearing masks in certain places; penalty.....	11
HB 708 (Gilbert): Assault and battery against a family or household member.....	11
HB 810 (Carr) / SB 65 (Marsh): Willful discharge or firearms with no discernible or designated target; penalty (Brendon’s Law). ....	11
HB 851 (LeMunyon) / SB 570 (Stuart): Assault and battery of school employees. ....	12
HB 976 (Cline): Accessories after the fact to certain homicides.....	12
CRIMES (SPECIFIC TO MINORS).....	13
HB 218 (Albo) / SB 96 (Reeves): Purchase of tobacco products by minors; vapor products.....	13

HB 505 (Hodges) / SB 213 (Carrico): Dextromethorphan Distribution Act; penalty for distributing or selling to a minor. ....	13
TRAFFIC OFFENSES (SPECIFIC TO MINORS).....	15
HB 996 (Bulova) Driver’s licenses’ applicant less than 19 years old.....	15
SB 205 (McWaters): Licensure and examination for persons age 19 or older. ....	16
CRIMES (SEXUAL) AND SEX OFFENDERS .....	17
HB 235 (R.B. Bell) / SB 454 (Obenshain): Sex Offender and Crimes Against Minors Registry Act; solicitation of prostitution; pandering; minors.....	17
HB 326 (R.B. Bell): Unlawful dissemination or sale of images of another (“revenge porn”).....	17
HB 403 (R.B. Bell): Prior sex offenses admissible in evidence; sex crime against child.....	18
HB 567 (Watts): Assault by touching a person’s intimate parts; penalty. ....	18
HB 1251 (Ramadan): Sex offenders; reregistration; name change. ....	18
SB 14 (Garrett): Certain sex crimes.....	19
SB 476 (Norment): Incest; definition of parent, includes step-parent, grandparent includes step-grandparent, penalty. ....	19
SB 537 (Norment) Offenses requiring registration; withdrawal of plea by certain defendants. ....	20
EDUCATION .....	21
HB 198 (Landes) / HB 752 (Rust) / SB 441 (Garrett): Elementary and secondary school students; expulsion.....	21
HB 484 (Kory): Electronic cigarettes in public elementary and secondary schools.....	21
HB 751 (Rust): Expulsion of students for certain drug offenses. ....	22
HB 851.....	22
HB 930 (Greason) / SB 306 (Deeds): Standards of Learning assessments; reform.....	22
HB 1110 (Toscano): Children placed in child-caring institutions or group homes; reimbursement of costs to educate.....	23
SB 448 (Norment): Hazing; penalty and institution policies. ....	23
MENTAL HEALTH.....	25
HB 478 (Villanueva): Emergency custody orders; duration; notification. ....	25
SB 260 (Deeds): Emergency custody and temporary detention; psychiatric registry, period of custody. ....	26
PROTECTIVE ORDERS .....	27
HB 285 (R.B. Bell) / SB 71 (Stuart): Emergency protective orders; arrests for certain offenses. ....	27
HB 335 (Bell) / SB 151 (Stuart): Family abuse protective orders; motor vehicles. ....	27

HB 972 (Cline): Protective orders; companion animals.....	27
SOCIAL SERVICES.....	29
HB 334 (R.B. Bell) / SB 421 (McDougle): Local multidisciplinary child sexual abuse response teams....	29
HB 405 (R.B. Bell) / SB 284 (Howell): Suspected child abuse or neglect; reports to law enforcement..	30
HB 412 (Anderson): Child welfare agencies; criminal history background checks.....	30
HB 522 (R.P. Bell): Comprehensive Services Act for At-Risk Youth and Families; appeals.....	30
HB 709 (Gilbert): Child abuse or neglect investigations; time for determination.....	31
HB 683 (Herring): Investigation of alleged child abuse and neglect; agreements with school divisions. .....	31
SB 284 (Howell): Kinship care; regulations.....	31
SB 400 (Reeves): Kinship foster care; removal.....	31
MISCELLANEOUS.....	33
HB 17 (Marshall): Warrant requirement for cellular telephone, etc., as tracking device and obtaining location data.....	33
SB 97 (Reeves): Minimum clearance for passing bicycles, etc.....	34
STUDIES.....	35
HB 1106 (Hope): Virginia Commission on Youth; review and report on the use of seclusion and restraint in schools.....	35
SJ 47 (Deeds) / SJ 16 (Howell): Study; mental health and the criminal justice system.....	35
SJ 24 (Favola) Study; expungement of juvenile records.....	36
SUPPLEMENTAL INFORMATION .....	37
Synthetic Marijuana.....	37



## JUVENILE JUSTICE LEGISLATION

### **HB 668 (Brink) / SB 134 (Favola): Independent living services, releases from the Department of Juvenile Justice between 18 and 21 years of age.**

**Issue:** During the 2013 General Assembly session HB 1743 (Brink) and SB 863 (Favola) passed and outlined the process for juveniles, who were in the custody of a local department of social services immediately preceding their commitment to the Department of Juvenile Justice and over the age of 18 at the time of release, to access independent living services upon release. Although the bills passed, along with a budget amendment to fund the services, the language did not require the local departments of social services to make independent services available.

**Current Law:** Provides that local departments of social services and child-placing agencies *may* provide independent living services to any person between 18 and 21 years of age who is transitioning from a commitment to the Department of Juvenile Justice to self-sufficiency when such individual was in the custody of the local department of social services immediately prior to the commitment.

**Effect of the Bills:** The bills amend § 63.2-905.1 of the *Code of Virginia* by striking the permissive “may” and inserting the directive “shall.” Local departments of social services and child-placing agencies are now *required* to provide independent living services to any person between 18 and 21 years of age who is transitioning from a commitment to the Department of Juvenile Justice to self-sufficiency when the person (1) was in the custody of the local department of social services immediately prior to his commitment, (2) provides written notice of his or her intent to receive independent living services, (3) and enters into a written agreement for independent living services with the local board of social services or child-placing agency within 60 days of his or release from the Department of Juvenile Justice.

### **HB 1002 (Head) / SB 391 (Vogel): Department of Criminal Justice Services Committee on Training, adds the Director of the Department of Juvenile Justice.**

**Issue:** During the 2012 General Assembly session, HB 273 and SB 293 passed and amended § 9.1-102 of the *Code of Virginia* to require the Virginia Department of Criminal Justice Services (DCJS) to develop compulsory minimum entry-level, in-service, and advanced training standards for juvenile correctional officers employed by

juvenile correctional facilities operated by or under the authority of the Department of Juvenile Justice. Additionally, DCJS was required to establish the timeline for completion of the trainings.

**Current Law:** Section **9.1-112** of the *Code of Virginia* establishes a Committee on Training (COT) under the Criminal Justice Services Board and identifies the number and members of the COT by agency, organization, and association. COT oversees the Criminal Justice Services Board’s training standards development and review processes. The Department of Juvenile Justice is not represented on the COT.

**Effect of the Bills:** The bills amend § **9.1-112** of the *Code of Virginia* and increase the membership of the COT from 14 to 15 members by adding the Director of the Department of Juvenile Justice. The bills ensure juvenile-specific issues are identified as training standards are developed.

**HB 1069 (Taylor): Department of Human Resource Management, grievance procedures for employees of the Departments of Corrections and Juvenile Justice.**

**Current Law:** Section **2.2-3007** of the *Code of Virginia* provides that employees of the Departments of Corrections or Juvenile Justice, who are terminated due to client/resident abuse, criminal conviction, or placement on probation for a certain first drug offenses (see § **18.2-251**), “may appeal their termination only through the grievance resolution steps.” If no resolution is achieved at the last grievance step, the employee may appeal to the circuit court.

**Issue:** The Department of Human Resource Management (DHRM) exempts these specific terminations from having to proceed through a grievance hearing. However, inclusion of the term “grievance resolution steps” appears to require the entire grievance procedure for any termination to be followed (see § **2.2-3003** requiring either three successively higher grievance resolution steps and a formal hearing or, if the termination is due to formal discipline or unsatisfactory job performance, a formal hearing without the three steps). The bill was submitted by DHRM to clarify that the DHRM procedure eliminating the three steps *and* the formal hearing shall be followed for these terminations (abuse, conviction, probation for drug offenses)

**Effect of the Bill:** Clarifies that employees of the Departments of Corrections and Juvenile Justice may appeal terminations for abuse, criminal convictions, and certain first drug offenses under an applicable grievance process that may be different from the standard grievance procedure for other types of cases. The terminated employee is not entitled to a grievance hearing and must appeal straight to the circuit court.

## JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS AND OTHER COURT PROCESSES

### **HB 171 (Farrell): Crime victims' rights; offenses by juveniles.**

**Current Law:** Section **16.1-309.1** of the *Code of Virginia* permits the court, at the request of the victim of a delinquent act that would be a felony if committed by an adult, to order the victim be informed of the offense or offenses petitioned, the findings of the court, and the disposition of the case. Additionally, § **16.1-300** allows the Department of Juvenile Justice to release confidential juvenile records and information with any person or agency with a legitimate interest in the case if ordered by the court. No specific provision relating to victim notification authorizes the sharing of misdemeanor delinquency information.

**Effect of the Bill:** The bill amends §§ **16.1-309.1** and **19.2-11.01** of the *Code of Virginia* and expands the list of offenses for which a victim of a delinquent act committed by a juvenile may request to be informed of the offense or offenses petitioned, the findings of the court, and the disposition of the case. The added offenses are:

- § **16.1-253.2**. Violation of provisions of protective orders
- § **18.2-57**. Assault and battery
- § **18.2-57.2**. Assault and battery against a family or household member
- § **18.2-60.3**. Stalking
- § **18.2-60.4**. Violation of protective orders
- § **18.2-67.4**. Sexual battery
- § **18.2-67.5**. Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual battery, and sexual battery

The bill also provides that the definition of “victim” in § **19.2-11.01** of the *Code of Virginia* for purposes of the Crime Victim and Witness Rights Act includes victims of certain delinquent acts.

**HB 183 (Farrell) / SB 128 (Favola): Commitment of juveniles to the Department of Juvenile Justice; consideration of social history.**

**Current Law:** Section **16.1-273** of the *Code of Virginia* allows the juvenile or circuit court, post adjudication and before final disposition, to order the Department of Juvenile Justice or a locally operated court services unit to prepare an investigation (social history report) of the juvenile. Section **16.1-278.7** of the *Code of Virginia* requires the court, if a social history had not previously been completed, to order a social history to be completed within 15 days of an ordered commitment to the Department of Juvenile Justice. The requirement in § **16.1-278.7** is the only circumstance where the completion of a social history report is not discretionary.

**Effect of the Bills:** The bills amend §§ **16.1-272**, **16.1-273**, **16.1-278.7**, and **16.1-278.8** of the *Code of Virginia* and require a judge to review and take into consideration the information provided in a social history report of a juvenile prior to ordering the juvenile to be committed to the Department of Juvenile Justice for placement in a juvenile correctional center.

- There is an exception to this requirement in instances where the Commonwealth attorney, the attorney for the juvenile, and the juvenile or any other legal representative agree to waive the requirement to review and consider the social history prior to commitment.
- Circuit court judges are not required to review a social history prior to sentencing a juvenile to commitment to the Department of Juvenile Justice.
- The bills require the Department of Juvenile Justice to develop a model social history and guidelines to be used by court services units when preparing a social history and to report its progress to the Commission on Youth by the 2015 General Assembly Session.
- The bills have a delayed effective date of October 1, 2014.

**Note:** The bills are a recommendation of the Virginia Commission on Youth stemming from its 2013 Assessment of Mental Health Needs of Juvenile Offenders.

**HB 278 (Albo): Expungement of juvenile and domestic relations district court records.**

**Issue:** Section **16.1-306** of the *Code of Virginia* enumerates when juvenile delinquency records may be expunged. The existing language was ambiguous, and there was no consensus regarding which adjudications were required to be retained and were eligible or required to be expunged.

**Effect of the Bill:** The bill amends § **16.1-306** of the *Code of Virginia* and clarifies which records documenting juvenile adjudications are to be maintained by the juvenile and domestic relations district court.

- The bill requires that when a juvenile is found guilty of an ancillary offense to a delinquent act that would be a felony if committed by an adult, the records shall be retained. This clarifies that there is an exception to the requirement that all misdemeanor delinquent records be expunged.
- The bill clarifies certain traffic offenses (e.g., driving under the influence in violation of § **18.2-266**) that must be reported to the Department of Motor Vehicles and any offenses ancillary to the traffic offense shall be retained until the juvenile has attained the age of 29.
- The bill clarifies that a person who was the subject of a traffic proceeding and was found innocent or the proceeding was otherwise dismissed may file a motion to expunge all records relating to the proceeding (current law is clear relating to delinquency offenses but ambiguous relating to traffic proceedings).

**HB 359 (Chafin): Jurisdiction; custody and visitation arrangements for minor children; persons with legitimate interest.**

**Current Law:** Section **16.1-241** of the *Code of Virginia* states that the juvenile and domestic relations district court shall not limit custody, visitation, and support cases to petitions filed by the mother, father, or legal guardian. The court shall adjudicate petitions filed by “any party with a legitimate interest” in the matter. The Code states that the court shall broadly construe who may have a legitimate interest and lists relations who shall be included. The list does not include step-grandparents but includes grandparents, stepparents, former stepparents, blood relatives, and family members.

**Effect of the Bills:** The bill adds step-grandparents to the list of persons and parties with a legitimate interest involving custody, visitation, and support matters.

**HB 452 (R.B. Bell): Pleas; withdrawal of plea. Recusal.**

**Current Law:** The decision on whether a judge, who rejects a plea agreement in a delinquency or criminal matter, continues to preside over the matter is in the sole discretion of the judge.

**Effect of the Bill:** The bill creates § **16.1-277.2** of the *Code of Virginia* (relating to delinquency matters) and amends § **19.2-254** (relating to criminal matters) to provide that where any judge rejects a plea agreement in a criminal or delinquency matter he shall immediately recuse himself from any further proceedings on that matter unless the parties agree otherwise. This applies in delinquency and criminal matters.

### **HB 933 (Watts): Update to child support guidelines.**

**Current Law:** Establishes guidelines for monthly child support payments with a minimum monthly payment of \$65. In addition to any other child support obligations parents are required to pay in proportion to their gross incomes any reasonable and necessary unreimbursed medical or dental expenses in excess of \$250. The schedule is based on 1988 or earlier price levels.

**Effect of the Bill:** The bill amends § **20-108.2** of the *Code of Virginia* and provides updated child support guidelines.

- The new guidelines specify monthly child support obligation amounts for obligors who earn a gross monthly income of up to \$35,000, with new guidance for gross monthly incomes of \$0 - \$500; and there is an additional percentage added to the child support requirements for gross income above \$35,000.
- The bill allows the court to set a support obligation below the presumptive statutory minimum for obligors who earn up to 150 percent of the federal poverty level, provided that such lower amount does not seriously impair the custodial parent's ability to maintain minimal adequate housing and provide other basic necessities for the child.
- The bill also removes the \$250 floor on reasonable and necessary unreimbursed medical or dental expenses that are required to be paid by each parent in proportion to their gross incomes.
- This bill is a recommendation of the Child Support Guidelines Review Panel.

### **HB 1013 (Campbell): Record retention in district courts.**

**Current Law:** Under current law the chief judge of a general district court has the authority to destroy the hard copy records if there is an electronic copy. The chief judge of a juvenile and domestic relations district court does not have such authority.

**Effect of the Bill:** Amends § **16.1-69.55** of the *Code of Virginia* to permits the chief judge of a juvenile and domestic relations district court to direct the clerk of that court to destroy documents related to civil and criminal cases that ended three or more years prior, provided that the documents have been microfilmed or converted to an electronic format.

## CRIMES (GENERAL)

### **HB 542 (McQuinn): Wearing masks in certain places; penalty.**

**Current Law:** It is a Class 6 felony for any person who is older than 16 years of age to wear a mask, hood, or other device that hides or covers a substantial portion of his face that conceals the identity of the wearer in public or on private property without written consent of the owner or tenant except as specifically allowed in the *Code of Virginia*. Exceptions include holiday costumes, employment related protective or safety masks, theatrical productions and masquerade balls, and medical or public health necessity. Currently, the Code is silent as to the intent of the wearer.

**Effect of the Bill:** Amends § 18.2-422 of the *Code of Virginia* to add an intent element to the crime. To be guilty the wearer must have the intent to conceal his identity.

### **HB 708 (Gilbert): Assault and battery against a family or household member.**

**Current Law:** Assault and battery against a family or household member is a Class 1 misdemeanor. However, assault and battery of a family or household member is a Class 6 felony if the person had previously been *convicted* of two offenses involving (1) assault and battery of a family or household member; (2) malicious wounding; (3) aggravated malicious wounding; (4) malicious bodily injury by means of a substance; or (5) a similar offense in another jurisdiction within a 20 year period.

**Effect of the Bill:** The bill amends § 18.2-57.2 of the *Code of Virginia* to add unlawful wounding (in violation of § 18.2-51) and strangulation (in violation of § 18.2-51.6) to the list of offenses that, if a person has been previously *convicted* of two such offenses within a 20-year period and such offenses occurred on different dates, enhance the penalty of assault and battery against a family or household member from a Class 1 misdemeanor to a Class 6 felony.

### **HB 810 (Carr) / SB 65 (Marsh): Willful discharge or firearms with no discernible or designated target; penalty (Brendon's Law).**

**Current Law:** It is a Class 1 misdemeanor to recklessly handle any firearm so as to endanger the life, limb, or property of any person.

**Effect of the Bills:** The bills amend § 18.2-56.1 of the *Code of Virginia* to provide that any person who (1) handles a firearm in a gross, wanton, and culpable manner which shows a reckless disregard for human life and (2) causes the serious bodily injury of

another person that (3) results in permanent and significant physical impairment is guilty of a Class 6 felony.

**Note:** The law is in response to the death of a 7-year-old boy during a Fourth of July celebration in Chesterfield last year.

**HB 851 (LeMunyon) / SB 570 (Stuart): Assault and battery of school employees.**

**Current Law:** Generally, assault and battery of any person is a Class 1 misdemeanor without any mandatory minimum sentencing requirements. Section **18.2-57** of the *Code of Virginia* makes an assault and battery of any full-time or part-time teacher, principal, assistant principal, or guidance counselor of a public or private elementary or secondary school subject to a required sentence of 15 days in jail with two days a required mandatory minimum sentence. Additionally, if the offense is committed by use of a firearm or other weapon prohibited on school property the mandatory minimum sentence is six months.

**Effect of the Bills:** The bills amend § **18.2-57** and expands the category of school employees subject to the enhanced penalties. The bills remove the specific enumeration of school employees. The enhanced penalties now apply to any assault and battery of any full-time or part-time school employee engaged in the performance of his or her duties.

**HB 976 (Cline): Accessories after the fact to certain homicides.**

**Current Law:** Every accessory after the fact of a felony offense is a Class 1 misdemeanor, however certain relations who aid or assist the principal felon or accessory before the fact shall not be deemed accessories before the fact.

**Effect of the Bills:** The bill amends § **18.2-19** of the *Code of Virginia* to enhance the penalty for persons who aid or assist another person to escape from prosecution or punishment after the commission of certain homicides. An accessory after the fact of a homicide offense that is punishable by death or as a Class 2 felony is now guilty of a Class 6 felony.

## CRIMES (SPECIFIC TO MINORS)

### **HB 218 (Albo) / SB 96 (Reeves): Purchase of tobacco products by minors; vapor products.**

**Current Law:** Section **18.2-371.2** of the *Code of Virginia* prohibits any person from selling or distributing tobacco products to any person under the age of 18 years and any person less than 18 years of age from attempting to purchase or to purchase any tobacco products (e.g., cigarettes and cigars). There are no statutory limitations or restrictions related to the sale of nicotine vapor products and alternative nicotine products to or by minors.

The penalty for the seller is a fine as a civil penalty with an escape clause for a retail establishment if employees were trained on the prohibitions. The penalty for the minor is a fine as a civil penalty of up to \$100 for the first violation and \$250 for a second or subsequent violation or, as an alternative, 20 hours of community service for a first violation or 40 hours for a second or subsequent violation. The court may also suspend a minor's license or impose a curfew as provided for in § **16.1-278.8 (A) (9)**.

**Effect of the Bills:** The bill amends § **18.2-371.2** of the *Code of Virginia* and adds nicotine vapor product and alternative nicotine products to the definition of tobacco products that shall not be sold to or purchased or possessed by a minor.

The bill provides a definition for the following terms: alternative nicotine product, nicotine vapor product, and tobacco product. The provisions of this bill do not apply to mail or internet sales of tobacco products or nicotine vapor products if prior to the sale the vendor verifies the purchaser is at least 18 years old through a commercially available database or delivery requires purchaser's signature verifying age prior to release of the product to the purchaser. Current law only provides an exception for internet sales of tobacco products, without the additional delivery restriction.

### **HB 505 (Hodges) / SB 213 (Carrico): Dextromethorphan Distribution Act; penalty for distributing or selling to a minor.**

**Current Law:** There are no current restrictions or prohibitions relating to the sale of Dextromethorphan (one of the active ingredients in many over-the-counter cold and cough medicines, including generic labels and store brands, Benylin DM, Mucinex DM, Robitussin, NyQuil, Dimetapp, Vicks, Coricidin, Delsym, TheraFlu, and others. Dextromethorphan has also found other uses in medicine, ranging from pain relief to psychological applications. It is sold in syrup, tablet, spray, and lozenge forms. In its pure form, dextromethorphan occurs as a white powder).

**Effect of the Bills:** The bills adds a new article numbered 1.3 in Chapter 7 of Title 18.2 of the *Code of Virginia* and creates three new sections §§ **18.2-265.19**, **18.2-265.20**, and **18.2-265.21**.

- § **18.2-265.19** defines Dextromethorphan as the dextrorotatory isomer of 3-methoxy-N-methylmorphinan and its salts. The section also provides definitions for the terms pharmacy, retail distributor and unfinished dextromethorphan.
- § **18.2-265.20** makes it illegal for any pharmacy or retail distributor to knowingly or intentionally sell or distribute any product containing dextromethorphan to a minor.
  - The pharmacy or retail distributor is not permitted to sell or distribute a product containing dextromethorphan to a purchaser unless a government issued document with a photo and date of birth verifying the purchaser is at least 18 years old. There is a \$25 civil penalty. The pharmacy is not required to request documentation of identification and age if the purchaser appears to be 25 years of age or older.
  - Failing to require the purchaser present identification is subject to a \$25 civil penalty after receipt of notice of noncompliance.
  - It is illegal for a minor to knowingly or intentionally purchase any product containing dextromethorphan. There is a \$25 civil penalty.
- § **18.2-265.21** states a person who distributes or possesses with the intent to distribute unfinished dextromethorphan is guilty of a Class 1 misdemeanor.
- The bill has a delayed effective date of January 1, 2015.

**Notes:**

- When exceeding label-specified maximum dosages, dextromethorphan acts as a dissociative hallucinogen. Its mechanism of action is via multiple effects, including actions as a nonselective serotonin reuptake inhibitor and a sigma-1 receptor agonist.
- Unfinished dextromethorphan means that substance that is represented for use, and that, when used in the compounding, manufacturing, processing, or packaging of a drug, becomes an active ingredient or a finished dosage form of the drug; however, “bulk drug substance” shall not include intermediates that are used in the synthesis of such substances.

## TRAFFIC OFFENSES (SPECIFIC TO MINORS)

### **HB 996 (Bulova) Driver's licenses' applicant less than 19 years old.**

**Current Law:** The *Code of Virginia* permits an individual at least 16 years and three months old but less than 18 years old, to apply for and receive a temporary driver's license valid for six months if he (i) certifies by signing, together with his parent or guardian, on a form prescribed by the Commissioner of the Department of Motor Vehicles (DMV) that he is a resident of the Commonwealth; (ii) is the holder of a valid driver's license from another state and (iii) has not been found guilty of or otherwise responsible for an offense involving the operation of a motor vehicle. No temporary license issued under this subsection shall be renewed, nor shall any second or subsequent temporary license under this subsection be issued to the same applicant without successfully completing a state approved driver education course.

**Effect of the Bill:** The bill amends § 46.2-334 of the *Code of Virginia* and changes the age requirement for receiving a temporary driver's license from 16 years and three months old but less than 18 years old to 16 years and three months old but less than **19** years old. The parent's signature is now only required, if applicable; and, if the applicant is a current driver, the individual's current valid driver's license can now be from any U.S. state, U.S. territory, Canadian province, or Canadian territory. Current law only permitted the current valid driver's license to be from a U.S. state.

- New language has been added to address the requirements for obtaining a permanent driver's license when the applicant has transferred to Virginia from another U.S. state, any U.S. territory, Canadian province, or Canadian territory.
  - Documentation of at least 30 hours of classroom instruction and six hours of in-car instruction from a government-approved program in the other U.S. state, U.S. territory, or Canadian province or territory.
  - If a transfer applicant successfully completes a government-approved classroom and in-car driver education program from another state or any U.S. territory, Canadian province, or Canadian territory, the applicant must present the certificate of completion, specifying the number of instructional hours, to the DMV.

**SB 205 (McWaters): Licensure and examination for persons age 19 or older.**

**Current Law:** Current law allows individuals age 19 or over (i) to obtain a learner's permit and hold such permit for 60 days and then take a behind-the-wheel examination administered by the Department of Motor Vehicles (DMV) or (ii) to take driver's education and then take a behind-the-wheel examination administered by the DMV. Individuals seeking a commercial driver's license or on medical review must take their behind-the-wheel examination administered by the DMV. Individuals who fail the behind-the-wheel test three times at DMV must return to DMV to take the test after completing requirements at a driver training school.

**Effect of the Bill:** The bill amends §§ 46.2-324.1, 46.2-325, 46.2-334, and 46.2-1702 of the *Code of Virginia*.

- § 46.2-324.1: Allows individuals age 19 or over the option of taking the behind-the-wheel examination at a driver training school (approved by DMV or the Department of Education) as long as they complete the current requirements already in place for persons under 19.
- § 46.2-325: Requires the DMV to administer the applicable examination after successful completion of the necessary courses to all individuals required to attend a driver training school.
- § 46.2-334: The bill also changes the word "minor" to students to allow students who are not minors the ability to take driver's education and behind-the-wheel examinations with their school or with a driver training school.
- § 46.2-1702: Class A licensees are prohibited from administering knowledge or behind-the wheel examinations.

## CRIMES (SEXUAL) AND SEX OFFENDERS

### **HB 235 (R.B. Bell) / SB 454 (Obenshain): Sex Offender and Crimes Against Minors Registry Act; solicitation of prostitution; pandering; minors.**

**Current Law:** The *Code of Virginia* requires individuals convicted of certain offenses to register on the Sex Offender and Crimes Against Minors Registry. The Code also makes pandering a Class 4 felony.

**Effect of the Bills:** The bills amend §§ **9.1-902** and **18.2-355** of the *Code of Virginia* to add any felony solicitation of prostitution from a minor (violation of § **18.2-346**) and any pandering involving a minor (new offense added to § **18.2-355**) to the offenses requiring registration on the Sex Offender and Crimes Against Minors Registry Act. The bills also clarify that a person who engages in pandering involving a minor is guilty of a Class 4 felony.

**Note:** Pandering involves taking or persuading, encouraging, or causing a person to enter a bawdy place or causing a person to be taken to any place for prostitution. A bawdy place is defined as any place within or without any building or structure which is used or is to be used for lewdness, assignation, or prostitution.

### **HB 326 (R.B. Bell): Unlawful dissemination or sale of images of another (“revenge porn”).**

**Current Law:** It is unlawful to knowingly and intentionally videotape, photograph, or film or create any video graphic or still image of any nonconsenting person if that person is totally or partially nude or “clad in undergarments” in certain places or from below if the purpose is to capture an image of the intimate parts or undergarments.

**Effect of the Bill:** The bill enacts § **18.2-386.2** to provide that a person is guilty of a Class 1 misdemeanor if he, with the intent to coerce, harass, or intimidate the depicted person, maliciously disseminates or sells any video graphic or still image created by any means whatsoever that depicts another person who is totally nude or in a state of undress so as to expose the genitals, pubic area, buttocks, or female breasts, where such person knows or has reason to know that he is not licensed or authorized to do so. Venue is where (1) the unlawful dissemination occurred or (2) where the image was produced, reproduced, found, stored, received or possessed.

The bill also amends § **18.2-386.1** relating to the crime of creating an image of a nonconsenting person by substituting the term “video graphic or still image created by any means whatsoever” for the current term “videotape, photograph, or film.”

**Note:** Internet service providers, electronic mail service providers, and any other information service, system, or access software provider utilized by the unlawful disseminator are exempted from the violation.

**HB 403 (R.B. Bell): Prior sex offenses admissible in evidence; sex crime against child.**

**Current Law:** Admission of prior offenses in criminal proceedings is subject to the rules of evidence.

**Effect of the Bill:** The bill enacts § 18.2-67.7:1 of the *Code of Virginia* to provide that, in a criminal case in which the defendant is accused of a felony sexual offense involving a child victim, evidence of the defendant's conviction of another sexual offense or offenses is admissible and may be considered for its bearing on any matter to which it is relevant. This rule of evidence is to be applied in conjunction with the Virginia Rules of Evidence.

**HB 567 (Watts): Assault by touching a person's intimate parts; penalty.**

**Current Law:** It is a Class 1 misdemeanor to commit sexual battery which involves the sexual abuse of (1) a person by force, threat, or intimidation; (2) an inmate by an employee, contractor, or volunteer of a correctional facility or jail; or (3) a probationer, parole, pretrial defendant, or post trial offender by an employee, contractor, or volunteer of the supervising agency.

**Effect of the Bill:** The bill amends § 18.2-67.4 of the *Code of Virginia* to provide that a person is guilty of sexual battery (punishable as a Class 1 misdemeanor) if he sexually abuses within a two-year period (1) more than one complaining witness or (2) one complaining witness on more than one occasion intentionally and without the consent of the complaining witness.

**Note:** Sexual abuse means an act committed with the intent to sexually molest, arouse, or gratify any person where the accused (1) intentionally touches the complaining witness's intimate parts or material directly covering such intimate parts; (2) forces the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts; (3) forces another person to touch the complaining witness's intimate parts or material directly covering such intimate parts; or (4) the accused causes or assists the complaining witness, who is under the age of 13, to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts.

**HB 1251 (Ramadan): Sex offenders; reregistration; name change.**

**Current Law:** The *Code of Virginia* establishes the registration procedures for individuals required to register on the Sex Offender and Crimes Against Minors Registry and the duration of the registration requirements.

**Effect of the Bill:** The bill amends §§ **9.1-903** and **9.1-908** of the *Code of Virginia* and provides that a person required to register with the Sex Offender and Crimes Against Minors Registry must reregister in person with the local law-enforcement agency within three days following a change of the person's name. Currently, there is no time specified for when such person has to reregister. The bill also requires any person confined in a jail, prison, or facility for individuals who have been civilly committed as a sexually violent predator to notify the Registry within three days following the name change.

The bill also requires that the information contained in the Registry must include any former name of a person required to register if he has lawfully changed his name during the period for which he is required to register. Persons required to register who have changed their name prior to July 1, 2014, who have not already reregistered following their name change, must register within three days of July 1, 2014.

**SB 14 (Garrett): Certain sex crimes.**

**Current Law:** The Supreme Court of the United States, in *Lawrence v. Texas*, 539 U.S. 558 (2003), held struck down Texas' anti-sodomy law and invalidated sodomy laws in thirteen other states. The *Code of Virginia* has a provision criminalizing sodomy between consenting adults.

**Effect of the Bill:** The bill does the following:

- Adds the words “anal intercourse, cunnilingus, fellatio, and anilingus” to numerous Code sections criminalizing certain conduct to clarify the behaviors that are prohibited.
- Clarifies the crimes that are prohibited by the crimes against nature statute (§ **18.2-361**). It removes sexual acts between consenting persons and retains bestiality and incest.
- Increases from \$10 to \$15 the additional fee placed upon each felony or misdemeanor conviction assessed as court costs and deposited into the state treasury and credited to the Internet Crimes Against Children Fund.
- States that an emergency exists and it is in force from its passage.

**SB 476 (Norment): Incest; definition of parent, includes step-parent, grandparent includes step-grandparent, penalty.**

**Current Law:** Section **18.2-366** makes adultery or fornication with a person's child or grandchild a Class 5 felony. If the child or grandchild is at least 13 but less than 18 years of age, the crime is a Class 3 felony.

**Effect of the Bill:** The bill amends § **18.2-366** of the *Code of Virginia* to provides that, for the purposes of the crime of incest, parent includes stepparent, grandparent includes step-grandparent, child includes stepchild, and grandchild includes step-grandchild.

**SB 537 (Norment) Offenses requiring registration; withdrawal of plea by certain defendants.**

**Current Law:** The *Code of Virginia* requires individuals convicted of certain offenses to register on the Sex Offender and Crimes Against Minors Registry. It provides that, prior to conviction for an offense requiring registration on the Sex Offender and Crimes Against Minors Registry due to the minority, physical helplessness, or mental incapacity of the victim, upon a determination by the court of the victim's age, physical helplessness, or mental incapacity, the court shall inform the defendant of his right to withdraw a plea of guilty or nolo contendere and, if the defendant chooses to withdraw his plea, the case shall be heard by another judge unless the parties agree otherwise.

**Effect of the Bill:** The bill amends § 9.1-902 of the *Code of Virginia* and provides the following:

- The judicial determination of the status of the alleged victim is only required when the indictment, warrant, or information does not allege that the victim was a minor, physically helpless, or mentally incapacitated.
- The requirement to advise the defendant of his right to make a motion to withdraw the plea is only required when the judicial determination is required (where the victim status is not alleged in the complaint).
- The provision for hearing by another judge, unless otherwise agreed, applies only when the court grants a defendant's motion to withdraw the plea rather than "if the defendant chooses to withdraw his plea."
- Judicial failure to make a determination as to the minority, physical helplessness, or mental incapacity of the victim or so advise the defendant of his right to make a motion to withdraw his plea does not otherwise invalidate the conviction.

## EDUCATION

### **HB 198 (Landes) / HB 752 (Rust) / SB 441 (Garrett): Elementary and secondary school students; expulsion**

**Current Law:** Current law requires schools to consider expulsion for violations of the federal Gun Free Schools Act of 1994. The expulsion sanction may not be imposed if “*special circumstances exist and no disciplinary action or other disciplinary action or another term of expulsion is appropriate.*” Current law also requires schools to consider expulsion if a student brings a controlled substance, imitation controlled substance, marijuana, or synthetic cannabinoids onto school property or a school-sponsored activity. The expulsion sanction may not be imposed if “*based on the facts of the particular case, that special circumstances exist and another action is appropriate.*”

**Effect of the Bills:** The bills amend §§ **22.1-277.07** and **22.1-277.08** of the *Code of Virginia* to:

- Include language stating that “*nothing in this section shall be construed to require a student’s expulsion regardless of the facts of the particular situation.*”
- Clarify that students who have committed certain weapons or drug offenses are not required to be expelled and the decision to impose expulsion as a sanction is discretionary.

### **HB 484 (Kory): Electronic cigarettes in public elementary and secondary schools.**

**Current Law:** The *Code of Virginia* does not contain a provision relating to electronic cigarettes in schools.

**Effect of the Bill:** The bill requires each school board to (i) develop and implement a policy to prohibit the use of electronic cigarettes on a school bus, on school property, or at a school-sponsored activity and (ii) include in its code of student conduct a prohibition against possessing electronic cigarettes on a school bus, on school property, or at a school-sponsored activity. The bill requires school boards to update their policies and codes of student conduct by July 1, 2015.

**HB 751 (Rust): Expulsion of students for certain drug offenses.**

**Current Law:** A school board has discretion based on applicable facts to not expel a student for bringing a controlled substance, imitation controlled substance, marijuana, or synthetic cannabinoids onto school property or a school-sponsored activity, if “*based on the facts of the particular case, that special circumstances exist and another action is appropriate.*”

**Effect of the Bill:** The bill amends §§ **22.1-277.07** and **22.1-277.08** of the *Code of Virginia* to:

- Allows a school administrator, pursuant to a school board policy, to determine whether a disciplinary action other than expulsion is appropriate for drug offenses depending on the facts of the particular situation. Specifically, it allows the school administrator to impose a sanction other than expulsion if “*special circumstances exist and no disciplinary action or other disciplinary action or another term of expulsion is appropriate.*”
- Adds clarifying language that “*nothing in this section shall be construed to require a student’s expulsion regardless of the facts of the particular situation.*”

**HB 758 (Rust): Teacher licensure requirements for career and technical education teachers.**

**Current Law:** The current law delineates the requirements to be completed for teachers seeking initial licensure. The current requirements do not specifically address career and technical education teachers.

**Effect of the Bill:** The bill amends § **22.1-298.1** of the *Code of Virginia* and defines the term industry certification credential. The bill requires all teachers seeking initial licensure with an endorsement in the area of career and technical education to successfully complete a Board of Education-approved industry certification examination, and to be issued a state professional license, or successfully complete an occupational competency examination in the area of endorsement.

**HB 851(LeMunyon) / SB 570 (Stuart): Assault and battery of school employees. See Crimes (General).**

**HB 930 (Greason) / SB 306 (Deeds): Standards of Learning assessments; reform.**

**Current Law:** The Virginia Board of Education (Board) requires end-of-course or end-of-grade tests for English, mathematics, science, and history and social science and determined for which grade levels the tests are conducted.

**Effect of the Bills:** The bills amend two sections of the *Code of Virginia* and add a new section to provide that the number and type of Standards of Learning assessments shall not exceed 17 specified assessments in grades three through eight. The bills require each

local school board to certify that it has provided instruction and administered an alternative assessment, in conformance with Board guidelines, for each subject area in which the Standards of Learning assessment was not administered. The bills also require the Secretary of Education to establish the Standards of Learning Innovation Committee to periodically review the Standards of Learning and assessments.

**HB 1110 (Toscano): Children placed in child-caring institutions or group homes; reimbursement of costs to educate.**

**Current Law:** A school division is required to be reimbursed from funds appropriated by the General Assembly for the cost of educating a child with and without disabilities when the child is not a resident of such school division under certain conditions.

**Effect of the Bill:** The bill amends § 22.1-101.1 of the *Code of Virginia* to require a school division to be reimbursed, for costs not covered by funds appropriated by the General Assembly, by the school division in which a child's custodial parent or guardian or most recent custodial parent or guardian resides for the costs of educating such child, whether disabled or not, who has been placed, not solely for school purposes, in foster care or a licensed child-caring institution or group home that is located within the geographical boundaries of the school division to be reimbursed.

**SB 448 (Norment): Hazing; penalty and institution policies.**

**Current law:** Hazing is a crime when it results in bodily injury. Schools, colleges and universities receiving appropriations from the state treasury are required to have policies and procedures that provide for expulsions or other appropriate discipline based on the facts and circumstances of each case of student hazing.

**Effect of the Bill:** Requires the policies of any public school or public institution of higher education regarding hazing to be consistent with model policies established by the Department of Education or the State Council of Higher Education for Virginia, as applicable, and directs such agencies to establish such model policies with the Department of Criminal Justice Services.



## MENTAL HEALTH

### HB 478 (Villanueva): Emergency custody orders; duration; notification.

#### Current Law:

- § 16.1-340 A minor may be held pursuant to an emergency custody order for four hours with a possible two-hour extension when the magistrate finds good cause. Law enforcement may not keep a minor meeting the criteria for an emergency custody order in custody for longer than four hours.
- § 16.1-345.4 An examination of a minor to certify to the court whether or not probable cause exists to believe the minor meets the criteria for involuntary inpatient treatment or mandatory outpatient treatment must be conducted immediately after the hearing to review the mandatory outpatient treatment plan but the period for the examination cannot exceed four hours.
- § 19.2-182.9 An adult shall remain in custody pursuant to an emergency custody order until a temporary detention order is issued or until he is released, but in no event shall the period of custody exceed four hours. The magistrate can grant a one-time two-hour extension for good cause.
- § 37.2-808 Law-enforcement may not keep an adult meeting the criteria for an emergency custody order in custody for longer than four hours.
- § 37.2-817.2 An examination of an adult to certify to the court whether or not probable cause exists to believe the adult meets the criteria for involuntary inpatient treatment or mandatory outpatient treatment must be conducted immediately at the individual's request. The person shall remain in custody until a temporary detention order is issued or until the person is released, but in no event shall the period of custody exceed four hours.

#### Effect of the Bill: The bill accomplishes the following:

- Extends the time that a minor or an adult may be held pursuant to an emergency custody order from four hours with a possible two-hour extension to eight hours.
- Provides that law-enforcement taking a person into emergency custody or executing an emergency custody order must notify the local community services board as soon as practicable after taking into custody or executing the order.
- Requires that a person who is the subject of an emergency custody order or temporary detention order be given a written summary of the procedures and statutory protections associated with such custody or detention.

- Directs the Governor’s Mental Health Task Force to study issues associated with law-enforcement’s involvement in the admission process and make recommendations designed to reduce the burden on law-enforcement resources

**SB 260 (Deeds): Emergency custody and temporary detention; psychiatric registry, period of custody.**

**Effect of the Bill:** The bill accomplishes the following:

- Extends the time that a person may be held pursuant to an emergency custody order from four hours with a possible two-hour extension to eight hours.
- Provides that a representative of the law-enforcement agency that takes the person into emergency custody or executes an emergency custody order must notify the local community services board as soon as practicable after the person is taken into custody or the order is executed.
- Provides further that an individual for whom a temporary detention order is issued shall be detained in a state facility unless the state facility or an employee or designee of the community services board is able to identify an alternative facility that is able and willing to provide temporary detention. Under no circumstances shall a state facility fail or refuse to admit an individual who meets the criteria for temporary detention unless an alternative facility has agreed to accept the individual. The state facility and the local community services board may continue to look for an alternative facility for an additional four hours. The provisions of this bill allowing for this additional four-hour period expire on June 30, 2018.
- Requires that a person who is the subject of an emergency custody order or temporary detention order be given a written summary of the procedures and statutory protections associated with such custody or detention.
- Directs the Department of Behavioral Health and Developmental Services to establish an acute psychiatric bed registry that will provide real-time information on the availability of beds in public and private psychiatric facilities and residential crisis stabilization units for individuals who meet the criteria for temporary detention. The provisions of the bill establishing such registry are subject to an emergency clause.
- Requires the Department of Behavioral Health and Developmental Services to submit an annual report to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees on the implementation of the provisions of the bill.
- Directs the Governor's Mental Health Task Force to study issues associated with law enforcement’s involvement in the admission process and make recommendations designed to reduce the burden on law-enforcement resources.

## PROTECTIVE ORDERS

### **HB 285 (R.B. Bell) / SB 71 (Stuart): Emergency protective orders; arrests for certain offenses.**

**Current Law:** Sections **16.1-253.4** and **19.2-81.3** of the Code of Virginia define law-enforcement officers who have the power to make arrests for certain offenses as (1) any employee of a police department or sheriff's office with responsibility for crime prevention and detection, and enforcement of penal, traffic or highway laws and (2) any member of an auxiliary police force.

**Effect of the Bills:** Adds special conservators of the peace to the list of law-enforcement personnel who may obtain an emergency protective order and make arrests for assault and battery of a household member, stalking, and violation of a protective order.

### **HB 335 (Bell) / SB 151 (Stuart): Family abuse protective orders; motor vehicles.**

**Current Law:** Permits the judge to grant the petitioner of the protective order temporary possession or use of the motor vehicle owned by the petitioner alone or jointly owned by the petitioner and the respondent.

**Effect of the Bills:** The bill amends § **16.1-279** of the *Code of Virginia* and retains the current status of the law and permits the court to (1) direct a respondent to maintain insurance, registration, and taxes on a motor vehicle and (2) enjoin the respondent from terminating such insurance, registration, and taxes when the court has granted the petitioner use or possession of the vehicle.

### **HB 972 (Cline): Protective orders; companion animals.**

**Current Law:** The current law related to protective orders does not address the status or possession of companion animals (e.g., family pets).

**Effect of the Bill:** The bill amends §§ **16.1-253**, **16.1-253.1**, **16.1-253.4**, **16.1-279.1**, **19.2-152.8**, **19.2-152.9**, and **19.2-152.10** of the *Code of Virginia* and authorizes the court to include in a protective order provisions granting petitioner possession of a companion animal when the petitioner is the owner of the animal. The provisions are applicable to all emergency, preliminary, and active protective orders.

**Note:** "Owner" of the companion animal means any person who (1) has a right of property in the animal; (2) keeps the animal; (3) has the animal in his or her care; or (4) acts as custodian of the animal.



## SOCIAL SERVICES

### **HB 334 (R.B. Bell) / SB 421 (McDougle): Local multidisciplinary child sexual abuse response teams.**

**Current Law:** There are no requirements relating to multidisciplinary responses to child sexual abuse.

**Effect of the Bills:** The bills enact § 15.2-1627.5, of the *Code of Virginia* and require the attorney for the Commonwealth in each jurisdiction to establish a multidisciplinary child sexual abuse response team to conduct regular reviews of new and ongoing reports of felony sex offenses in the jurisdiction involving a child and the investigations thereof. The team may, at the request of any member of the team, conduct reviews of any other reports of child abuse and neglect or sex offenses in the jurisdiction involving a child and the investigations thereof. The team is required to meet “frequently enough” to ensure that no new or ongoing reports go more than 60 days without being reviewed by the team. The bill requires the following individuals or designees to participate in the reviews:

- The attorney for the Commonwealth;
- Law-enforcement officials responsible for the investigation of sex offenses involving a child in the jurisdiction;
- A representative of the local child protective services unit;
- A representative of a child advocacy center serving the jurisdiction, if one exists; and
- A representative of an Internet Crimes Against Children task force affiliate agency serving the jurisdiction, if one exists.

The attorney for the Commonwealth *may* invite other individuals, or their designees, including the school superintendent of the jurisdiction; a representative of any sexual assault crisis center serving the jurisdiction, if one exists; the director of the victim/witness program serving the jurisdiction, if one exists; and a health professional knowledgeable in the treatment and provision of services to children who have been sexually abused.

**HB 405 (R.B. Bell) / SB 284 (Howell): Suspected child abuse or neglect; reports to law enforcement.**

**Current Law:** Requires the local department of social services, upon receipt of a complaint, to report immediately to the attorney for the Commonwealth and the local law-enforcement agency suspected abuse or neglect involving (1) death of a child; (2) injury or threatening injury to the child in which a felony or Class 1 misdemeanor is also suspected; (3) sexual abuse, suspected sexual abuse, or other sexual offense involving a child; (4) abduction of a child; (5) felony or Class 1 misdemeanor drug offenses involving a child; or (6) contributing to the delinquency of a minor. It also requires the local department of social services to make available to the attorney for the Commonwealth or local law enforcement agency the records of the case.

**Effect of the Bills:** Requires the local department of social services to notify the local Commonwealth's Attorney and local law-enforcement "immediately, but no more than two hours" of receipt of a child abuse or neglect complaint involving one of the six scenarios listed above. It clarifies that the local department of social services is required to provide the attorney for the Commonwealth and law-enforcement with its records and information relating to the complaint. It further requires the local department of social services, within two days of reporting to the attorney for the Commonwealth and law-enforcement, to complete a written report documenting that the report was made. This report is required to be maintained in the record of the investigation.

**HB 412 (Anderson): Child welfare agencies; criminal history background checks.**

**Effect of the Bill:** Requires the Department of Social Services (VDSS) to convene a work group to review state and federal laws and regulations governing criminal background checks for child care providers in the Commonwealth and develop a plan to implement a national fingerprint based criminal background check. VDSS is required to report its findings to the Governor and the General Assembly by November 1, 2014.

**HB 522 (R.P. Bell): Comprehensive Services Act for At-Risk Youth and Families; appeals.**

**Current Law:** The current law outlines the powers and duties of the community and policy management teams.

**Effect of the Bill:** Requires community policy and management teams to establish policies and procedures for appeals of decisions made by local family assessment and planning teams regarding services to be provided to the youth and family pursuant to an individual family services plan.

The policies and procedures are for appeals brought by youth and their families and do not apply to appeals made for denial of foster care benefits (which are appealed to the Commissioner) or in accordance with Individuals with Disabilities in Education Act.

**HB 709 (Gilbert): Child abuse or neglect investigations; time for determination.**

**Current Law:** The local department of social services is required to report whether an allegation of suspected child abuse or neglect is founded or unfounded within 45 days and may be extended to 60 days if the local department of social services has “written justification.”

**Effect of the Bill:** Provides for an extension of the time period during which a local department of social services must determine if a report of child abuse or neglect is founded from 60 to 90 days in cases in which the investigation is being conducted in cooperation with a law-enforcement agency and both parties agree that circumstances so warrant.

**HB 683 (Herring): Investigation of alleged child abuse and neglect; agreements with school divisions.**

**Current Law:** Each local department and local school division is required to adopt a written interagency agreement as a protocol for investigating child abuse and neglect reports against school personnel.

**Effect of the Bill:** Requires local departments of social services and local school divisions to develop written interagency agreements for the investigation of all complaints of child abuse or neglect. Currently, local departments and local school divisions must enter into written interagency agreements for investigation of complaints of child abuse and neglect involving school personnel only.

**SB 284 (Howell): Kinship care; regulations.**

**Current Law:** There are no regulations governing the placement of children in kinship care as an alternative to placement in foster care.

**Effect of the Bill:** Requires the Virginia Department of Social Services to provide draft regulations for the placement of children in kinship care to avoid foster care placement no later than January 1, 2016.

**SB 400 (Reeves): Kinship foster care; removal.**

**Current Law:** The local board shall is required to determine whether a child has a relative who is eligible to become a kinship foster parent. Kinship foster care placements are subject to all requirements and eligible for all services of foster care placement.

**Effect of the Bill:** Provides that a child placed in kinship foster care shall not be removed from the physical custody of the kinship foster parent, provided the child has been living with the kinship foster parent for six consecutive months and the placement continues to meet approval standards for foster care, unless the kinship foster parent consents to the removal; removal is agreed upon at a family partnership meeting; removal is ordered by a court of competent jurisdiction; or removal is warranted pursuant to § **63.2-1517** of the *Code of Virginia*.

## MISCELLANEOUS

### **HB 17 (Marshall): Warrant requirement for cellular telephone, etc., as tracking device and obtaining location data.**

**Current Law:** A provider of electronic communication service or remote computing service may disclose a record or other information pertaining to a subscriber or customer of such service, excluding the contents of electronic communications, to an investigative or law-enforcement officer only pursuant to: (1) a subpoena issued by a grand jury of a court of this Commonwealth; (2) a search warrant issued by a magistrate, general district court or a circuit court; (3) a court order for such disclosure issued as provided in this section; or (4) the consent of the subscriber or customer to such disclosure.

**Effect of the Bill:** Provides that a cellular phone or other wireless telecommunications device is a tracking device when it is used to track the movement of a person and that such use requires a warrant issued by a judicial officer. The bill also provides that the “location data” of a customer of an electronic communication service or a remote computing service may only be retrieved from the provider by warrant or consent of the customer. Location data is defined as any data or information that tracks, either at a point in time or over a period of time, the location of a subscriber or customer of a provider of electronic communication service or a remote computing service as determined by the location of an electronic device to which the subscriber or customer has legal title, claim, right, custody, or ultimate control.

Clarifies that the location data shall be “real-time” location data. It adds that the data can be obtained through an administrative subpoena issued pursuant to § 19.2-10.2 and that the customer may consent but the consent is not required. It also adds that the electronic communication services shall disclose the real-time location data but not a record of the contents of the electronic communications. The substitute also adds parameters of how an investigator or law-enforcement office may obtain real-time data location when disclosure of real-time location data is not prohibited by federal law.

**SB 97 (Reeves): Minimum clearance for passing bicycles, etc.**

**Current Law:** Any driver of any vehicle overtaking a bicycle, electric personal assistive mobility device, electric power-assisted bicycle, moped, animal, or animal-drawn vehicle proceeding in the same direction shall pass at a reasonable speed with a minimum clearance distance of two feet.

**Effect of the Bill:** Increases from two to three feet the minimum clearance between a passing vehicle and a bicycle, electric personal assistive mobility device, electric power-assisted bicycle, moped, animal, or animal-drawn vehicle.

## STUDIES

### **HB 1106 (Hope): Virginia Commission on Youth; review and report on the use of seclusion and restraint in schools.**

Requires the Virginia Commission on Youth, in consultation with the Department of Education and the Department of Behavioral Health and Developmental Services, to review (i) statewide policies and regulations on the use of seclusion and restraint in public and private elementary and secondary schools and (ii) methods used in other states to reduce and eliminate the use of seclusion and restraint in public and private elementary and secondary schools. The bill requires the Commission to make recommendations for the modernization of Virginia's policies and regulations on the use of seclusion and restraint in schools and submit its recommendations no later than November 30, 2014, to the General Assembly. The Virginia Commission on Youth shall report its findings to the Governor and the 2015 Regular Session of the General Assembly.

### **SJ 47 (Deeds) / SJ 16 (Howell): Study; mental health and the criminal justice system.**

Establishes a joint subcommittee to study mental health and the criminal justice system. The joint subcommittee shall consist of 12 legislative members.

The joint subcommittee may appoint work groups to assist it with its work. In conducting its study, the joint subcommittee shall (i) review and coordinate with the work of the Governor's Task Force on Improving Mental Health Services and Crisis Response; (ii) review the laws of the Commonwealth governing the provision of mental health services, including involuntary commitment of persons in need of mental health care; (iii) assess the systems of publicly funded mental health services, including emergency, forensic, and long-term mental health care and the services provided by local and regional jails and juvenile detention facilities; (iv) identify gaps in services and the types of facilities and services that will be needed to serve the needs of the Commonwealth in the twenty-first century; (v) examine and incorporate the objectives of House Joint Resolution 240 (1996) and House Joint Resolution 225 (1998) into its study; (vi) review and consider the report *The Behavioral Health Services Study Commission: A Study of Virginia's Publicly Funded Behavioral Health Services in the 21st Century*; and (vii) recommend statutory or regulatory changes needed to improve access to services, the quality of services, and outcomes for individuals in need of services.

In reviewing the need for facility beds at the community level, the joint subcommittee shall give consideration to whether the current fiscal incentives for expanding regional jail capacity should be eliminated and replaced with a new incentive for construction, renovation, or enlargement of community mental health facilities or programs, which

may or may not be co-located with selected jails on a regional basis. The joint subcommittee shall consider the appropriate location of such facilities; cooperative arrangements with community services boards, behavioral health authorities, and public and private hospitals; licensing, staffing, and funding requirements; and the statutory and administrative arrangements for the governance of such facilities. The joint subcommittee shall give consideration to the development of such facilities or programs on a pilot basis.

**SJ 24 (Favola) Study; expungement of juvenile records.**

Directs the Virginia State Crime Commission to study expungement of juvenile records. The study shall (i) review all laws related to confidentiality and retention of juvenile court records, (ii) report on at what time and by whom juvenile record information can be accessed, (iii) determine whether existing confidentiality and destruction of records laws are being complied with, (iv) examine the impact on youthful offenders of having a juvenile record, and (v) make recommendations regarding improvements in the laws that would assist juvenile offenders while allowing law-enforcement to maintain the safety of the citizens of the Commonwealth.

## SUPPLEMENTAL INFORMATION

### Synthetic Marijuana

**HB 1112** and **SB 594** amend all Code provisions related to synthetic marijuana (previously called synthetic cannabinoids). All references to synthetic cannabinoids have been struck from the Code.

- Synthetic marijuana has been re-titled “cannabimimetic agents” and defined as a Schedule I substance (in **54.1-3446** of the Code of Virginia).
- In all but one circumstance, the crime (VCC) and penalty actions related to cannabimimetic agents are the same as those applicable to Schedule I substances.
- Simple possession of a “cannabimimetic agent” (synthetic marijuana) is a Class I misdemeanor pursuant to **18.2-250** of the Code of Virginia (versus a Class 5 felony for simple possession of all other Schedule I substances). The VCC for this is new and is NAR-3163-M1 (for the violation of 18.2-250 (A)(a) related to simple possession of a cannabimimetic agent).
- Note: all other offenses related to “cannabimimetic agents” will be treated the same as all other Schedule I substances.
- Note: All provisions related to marijuana (not synthetic) remain unchanged.
- **§ 2.2-4006. Exemptions from requirements of this article and § 54.1-3443. Board to administer article.**
  - The Board of Pharmacy is exempt from the Virginia Register Act and is able to amend regulations for Schedule I and II drugs in consultation with the Department of Forensic Science if it is determined the substance should be classified as a Schedule I or II drug.
- **§ 54.1-3446. Schedule I.**
  - The term synthetic cannabinoids has been struck throughout the *Code of Virginia* (*Code*). The term cannabimimetic agents is the term that is now used when referencing a substance containing bath salt and bath salt like products. Cannabimimetic agent are now classified by the Code of Virginia as a Schedule I drug § **54.1-3446**.
  - The term cannabimimetic agent is not seen throughout the *Code* because most sections that included the term synthetic cannabinoid also referenced Schedule I substances and due to the cannabimimetic reclassification as a Schedule I drug referencing the substance separately is no longer necessary.
  - Defines a controlled substance to mean substances included in 54.11-3401 (Schedule I) and previously included synthetic cannabinoids.

**The following sections of the Code strike the term synthetic marijuana and reference Schedule I drugs and are applicable to the youth served or the services provided by the Department of Juvenile Justice.**

- § 16.1-260. Intake; petition; investigation.
  - List the crimes for which and intake officers is required to a file a report with the division superintendent of the school division when a petition is filed.
  - Includes manufacture, sale, gift, distribution, or possession of Schedule I or II previously listed synthetic cannabinoids.
- § 16.1-278.8:01. Juveniles found delinquent of first drug offense; screening; assessment; drug tests; costs and fees; education or treatment programs.
  - Requires the juvenile or circuit court to have a juvenile who has not previously been found delinquent of a drug offense for Schedule I, II, III, IV, V and VI, marijuana, or imitation controlled substances undergo substance abuse screening in addition to ordering substance abuse treatment or education if appropriate. This section previously included synthetic cannabinoids.
- **§18.2-248.1:1 Repealed**
  - Repealed section addressed penalties for possession, sale, gift, or distribution of or possession with intent to sell, give or distribute synthetic marijuana.
- § 18.2-46.1. Definitions.
  - Removes §18.2-248.1:1 from the list of predicate criminal acts used to define activity of a criminal street gang.
- § 18.2-250. Possession of controlled substances unlawful.
  - Possession of a Schedule I or II drug is a Class 5 felony but there is an exception for cannabimimetic agents.
  - Possession of a cannabimimetic agent is a Class 1 misdemeanor unless you are an inmate in a penal institution then it is still a Class 5 felony
- § 18.2-255. Distribution of certain drugs to persons under 18 prohibited; penalty.
  - It is illegal for any person who is at least 18 years of age to knowingly or intentionally (i) distribute any drug classified in Schedule I, II, III or IV or marijuana to any person under 18 years of age who is at least three years his junior or (ii) cause any person under 18 years of age to assist in such distribution of any drug classified in Schedule I, II, III or IV or marijuana. This section previously included synthetic marijuana.
  - It is illegal for any person who is at least 18 years of age to knowingly or intentionally (i) distribute any imitation controlled substance to a person under 18 years of age who is at least three years his junior or (ii) cause any person under 18 years of age to assist in such distribution of any imitation controlled substance. Any person violating this provision shall be guilty of a Class 6 felony.
- § 18.2-255.1. Distribution, sale or display of printed material advertising instruments for use in administering marijuana or controlled substances to minors; penalty.
  - It shall be a Class 1 misdemeanor for any person knowingly to sell, distribute, or display for sale to a minor any book, pamphlet, periodical or other printed matter which he knows advertises for sale any instrument, device, article, or contrivance for advertised use in unlawfully ingesting, smoking, administering, preparing or growing marijuana or a controlled substance. This section previously included synthetic marijuana.
- § 18.2-255.2. Prohibiting the sale or manufacture of drugs on or near certain properties; penalty.

- It is illegal to manufacture, sell or distribute or possess with intent to sell, give or distribute any controlled substance, imitation controlled substance, or marijuana in the following locations/properties.
  - the property, including buildings and grounds, of any public or private elementary, secondary, or post secondary school, or any public or private two-year or four-year institution of higher education, or any clearly marked licensed child day center.
  - public property or any property open to public use within 1,000 feet of the property
  - any school bus
  - school bus stop, or upon either public property or any property open to public use which is within 1,000 feet of such school bus stop, during the time when school children are waiting to be picked up and transported to or are being dropped off from school or a school-sponsored activity
  - any publicly owned or publicly operated recreation or community center facility or any public
  - mental health facility or upon public property or property open to public use within 1,000 feet of such an institution.
- This section previously included synthetic marijuana.
- § **18.2-308.4**. Possession of firearms while in possession of certain substances.
  - It is illegal for any person to unlawfully possess Schedule I or II drug and simultaneously with knowledge and intent possess any firearm. Class 6 felony.
  - It is illegal for any person to possess, use, or attempt to use any pistol, shotgun, rifle, or other firearm or display such weapon in a threatening manner while committing or attempting to commit the illegal manufacture, sale, distribution, or the possession with the intent to manufacture, sell, or distribute a Schedule I or Schedule II drug. Class 6 felony.
  - This section previously included synthetic marijuana
- § **18.2-474.1**. Delivery of drugs, firearms, explosives, etc., to prisoners or committed persons.
  - It is illegal to deliver, attempt to deliver, or conspire with another to deliver to any prisoner or to any person committed to the Department of Juvenile Justice in any juvenile correctional center any controlled substance. Class 5 felony.
- § **19.2-83.1**. Report of arrest of school employees and adult students for certain offenses.
  - Requires state officials, agencies and all law enforcement to report (1) arresting a person who is known or discovered by the arresting official to be a full-time, part-time, permanent, or temporary teacher or other employee in any public school division in this Commonwealth for a felony or a Class 1 misdemeanor or an equivalent offense in another state and (2) arresting a student who is age 18 or over in a public school who was arrested for any of the multiple enumerated offenses including the manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances. This section previously included synthetic marijuana.
- § **22.1-277.08**. Expulsion of students for certain drug offenses.
  - Students shall be expelled from school for bringing a controlled substance, imitation controlled substance, or marijuana onto school property or school sponsored activity. The school administrator pursuant to school board policy, or a school board may, however, determine, based on the facts of a particular situation that special circumstances exist and no disciplinary action or another disciplinary action or another term of expulsion is appropriate. This section previously included synthetic marijuana.

- § **22.1-279.3:1**. Reports of certain acts to school authorities.
  - This section provides and enumerated list of the offenses law enforcement is required to report to the division superintendent and principal when an incident occurs on school property, school bus, or school sponsored activity.
  - The list includes any conduct involving alcohol, marijuana, a controlled substance, imitation controlled substance, or an anabolic steroid on a school bus, on school property, or at a school-sponsored activity, including the theft or attempted theft of student prescription medications. This section previously included synthetic marijuana.
- § **54.1-3401**. Definitions.
  - The term "controlled substance" includes a controlled substance analog that has been placed into Schedule I or II by the Board pursuant to the regulatory authority in subsection D of § **54.1-3443**.
  - Control substance analog is defined.

**The following sections of the Code strike the term synthetic marijuana and reference Schedule I drugs but are not applicable to the services provided by the Department of Juvenile Justice.**

- § **15.2-907**. Authority to require removal, repair, etc., of buildings and other structures harboring illegal drug use.
- § **18.2-251**. Persons charged with first offense may be placed on probation; conditions; substance abuse screening, assessment treatment and education programs or services; drug tests; costs and fees; violations; discharge.
- § **18.2-258**. Certain premises deemed common nuisance; penalty.
- § **18.2-258.02**. Maintaining a fortified drug house; penalty
- § **18.2-258.1**. Obtaining drugs, procuring administration of controlled substances, etc., by fraud, deceit or forgery.
- § **18.2-308.09**. Disqualifications for a concealed handgun permit
- § **18.2-308.1:5**. Purchase or transportation of firearm by persons convicted of certain drug offenses prohibited.
- § **19.2-187**. Admission into evidence of certain certificates of analysis.
- § **19.2-386.22**. Seizure of property used in connection with or derived from illegal drug transactions.
- § **19.2-386.23**. Disposal of seized controlled substances, marijuana, and paraphernalia.
- § **19.2-386.24**. Destruction of seized controlled substances or marijuana prior to trial.
- § **19.2-386.25**. Judge may order law-enforcement agency to maintain custody of controlled substances, etc.
- § **24.2-233**. Removal of elected and certain appointed officers by courts.
- § **53.1-145**. Powers and duties of probation and parole officers.
- § **53.1-203**. Felonies by prisoners; penalties.