

2006 General Assembly Session Juvenile Justice Legislative Overview



This overview of legislation, as enacted by the 2006 General Assembly, relates to juvenile justice.

This handbook is intended only for use as a summary of those bills enacted during the 2006 General Assembly session relating to the juvenile justice system. If you are using an electronic copy of this document, many of the bill numbers and Virginia Code citations are hyperlinked. By clicking on the bill number or Virginia Code citation, you should be able to access the enacted bill language or statute.

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JUVENILE COURT PROCEEDINGS & PROCEDURES

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HB 1017 amends Virginia Code § 16.1-260 relating to intake and alcohol-related offenses. Effective July 1, 2006.

SB 567 - Releasing Juvenile Information in the CCRE to the Criminal Sentencing Commission **Page 8**
SB 567 amends Virginia Code § 19.2-389.1 to allow the Virginia Criminal Sentencing Commission access to record information maintained in the Central Criminal Records Exchange (CCRE). Effective July 1, 2006.

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HB 622 – Writing Prescriptions in Juvenile Detention Facilities **Page 12**
HB 622 amends Virginia Code § 54.1-3408.01 relating to prescriptions written for patients residing in certain institutions. Effective July 1, 2006.

Sidebar (Carried-Over Legislation): HB 548 - DJJ to Pay for the Education of Juveniles in Detention **Page 12**
HB 548 would amend Virginia Code § 66-15 relating to education costs of committed juveniles. Continued to 2007 in House Committee on Health, Welfare and Institutions.

SEX OFFENDERS

SB 559 - Sex Offender and Crimes Against Minors Registry – Omnibus Crime Commission Legislation **Page 13**
For the purposes of this summary relating to juvenile justice, the legislation creates Virginia Code §§ 16.1-249.1, 16.1-278.7:01, and 16.1-278.7:02. Effective July 1, 2006.

Please Note the Below Additional Legislation Pertaining to Sex Offenders:

HB 1037 – Office of Sexually Violent Predators Services – Established in DMHMRSAS **Page 30**
HB 1037 adds Virginia Code § 37.2-900.1 relating to the Office of Sexually Violent Predator Services. Effective July 1, 2006.

HB 1359 & SB 318 – Home Electronic Monitoring of Sexually Violent Predators **Page 30**
HB 1359 and SB 318 amend Virginia Code §§ 37.2-910, 37.2-912, and 53.1-145 relating to civil commitment of sexually violent predators. An emergency exists, and this act is in force from its passage.

HB 1333 – The Sex Offender Registry – Additional Offenses & Penalties **Page 30**
HB 1333 amends Virginia Code §§ 9.1-902 and 18.2-472.1 requiring registration to the Sex Offender and Crimes Against Minors Registry (SOR) and to increase the penalty for subsequent violations for failing to register or providing false information. Effective July 1, 2006.

HB 1338 – Clarifying Definitions of Aggravated Sexual Battery & Sexual Battery **Page 30**
HB 1338 amends Virginia Code § 18.2-67.4 relating to punishment for sexual battery. Effective July 1, 2006.

SB 578 – Presumption of No Bail for Person Charged with Certain Sex Offenses **Page 30**
SB 578 amends Virginia Code § 19.2-120 relating to presumption of no bail when charged with certain sex offenses. The bill has an enactment clause making it contingent on there being an appropriation of funds to cover its costs in the general appropriation act passed during the 2006 Session of the General Assembly.

HJ 115 - Crime Commission to Study Institutional Programming for Sex Offenders **Page 31**
HJ 115 directs the Virginia State Crime Commission to study the need for additional institutional programming at the Department of Corrections.

HB 1066 – Child Abuse to Include Parents Who Allow Sex Offenders to Reside with their Child **Page 31**
HB 1066 amends Virginia Code §§ 16.1-228 and 63.2-100 relating to the definition of child abuse and neglect. Effective July 1, 2006.

Sidebar (Please Note the Following Legislation Relating Sex Offenders & Social Services):

HB 1156 – Confidentiality of Records of Sexual and Domestic Violence Victims **Page 32**
HB 1156 amends Virginia Code § 63.2-1612 and adds § 63.2-104.1 relating to confidentiality of records concerning sexual and domestic violence victims and locations of shelters. Effective July 1, 2006.

HB 1589 & SB 420 – Penalty for Sex Offender Employee or Volunteer in Family Day Home **Page 32**
HB 1589 and SB 420 amend Virginia Code § 63.2-1727 to make it a Class 1 misdemeanor for employing sex offenders in family day homes. Effective July 1, 2006.

SB 691 – Prohibiting Sexually Violent Offenders from Adopting **Page 33**
SB 691 creates Virginia Code § 63.2-1205.1 relating to who is eligible to adopt a child. Effective July 1, 2006.

GANG INFORMATION

HB 847 & SB 561 – Omnibus Crime Commission Gang Information Legislation **Page 33**
HB 847 and SB 561 amend Virginia Code §§ 2.2-2618, 16.1-300, 53.1-10, and 66-3.2 relating to criminal gang information in the custody of the Departments of Corrections and Juvenile Justice. Effective July 1, 2006.

Sidebar: HB 775 & SB 473 - Predicate Criminal Gang Crimes: Bomb Threats and Prostitution **Page 38**
HB 775 and SB 473 amend Virginia Code § 18.2-46.1 by adding threats to bomb (§ 18.2-83) and receiving money for procuring a person for prostitution (§ 18.2-356) to the definition of criminal street gang. Effective July 1, 2006.

HB 692 & SB 129 – Sharing Confidential Juvenile Gang Information with Law Enforcement **Page 39**
HB 692 and SB 129 amend Virginia Code § 16.1-309.1 relating to exceptions to confidentiality when a juvenile is identified as affiliated with a criminal street gang. Effective July 1, 2006.

HB 588 & SB 183 – Brandishing a Machete & Predicate Gang Crime **Page 40**
HB 588 and SB 183 amends Virginia Code § 18.2-46.1 and creates § 18.2-282.1 relating to brandishing a machete or other bladed weapon with intent to intimidate. Effective July 1, 2006.

Sidebar: HB 901 & SB 344 - Person on Probation Prohibited from any Contact with Gangs **Page 41**
HB 901 and SB 344 amend Virginia Code § 19.2-303 relating to criminal street gang members and conditions of probation. Effective July 1, 2006.

IMMIGRATION LEGISLATION

HB 1046 – Reporting Alleged Illegal Alien Delinquents to ICE **Page 42**
HB 1046 amends Virginia Code § 16.1-309.1 relating to reporting certain juveniles to the Immigration and Customs Enforcement Agency. Effective July 1, 2006.

Sidebar (Carried-Over Legislation): HB 1460 Street Gangs & Verification of Immigration Status **Page 43**
HB 1460 would amend the Code of Virginia by adding in Article 2.1 of Chapter 4 of Title 18.2 a section numbered 18.2-46.3:4 relating to investigation into legal presence in the United States following arrest for criminal street gang activity. Continued to 2007 in Senate Courts of Justice.

MENTAL HEALTH-RELATED LEGISLATION

HB 368 - Venue for Conducting Hearing for the Involuntary Commitment of a Minor **Page 44**
HB 368 amends Virginia Code §§ 16.1-340 and 16.1-341 relating to admissibility of state mental health facility recommendations during an involuntary commitment hearing for a minor. Effective July 1, 2006.

Sidebar: SB 290 - Special Justices for Psychiatric Inpatient Commitment of Minors Act **Page 46**
*SB 290 sought to amend Virginia Code §§ 16.1-336, 16.1-339, 16.1-341, 16.1-345.1, 16.1-348, 37.2-803, and 37.2-804 relating to Psychiatric Inpatient Treatment of Minors Act and special justices. **The bill failed to make it out of House Appropriations.***

GROUP HOMES

HB 577 – Regulatory Requirements for Children's Group Homes and Residential Facilities **Page 47**
HB 577 amends and reenacts §§ 22.1-323.2, 37.2-408, 63.2-1737, and 66-24 of the Code of Virginia and adds a section numbered 2.2-5211.1 relating to regulatory requirements for the licensure of, placements in, and reimbursement of, certain residential facilities for children. Effective July 1, 2006.

SB 190 - Summary Suspension of Licenses for Group Homes and Residential Facilities **Page 51**
SB 190 amends Virginia Code §§ 22.1-329, 37.2-418, 63.2-1737, and 66-24 and adds a section numbered 37.2-419.1 relating to summary suspension of licenses for group homes and residential facilities under certain circumstances. Effective July 1, 2006. Enactment clauses.

Sidebar: HJ 60 – JLARC to Evaluate CSA & Private Group Homes **Page 53**

SCHOOL-RELATED LEGISLATION

HB 95 & SB 656 – School Enrollment & Criminal/Delinquent Offense History **Page 55**
HB 95 and SB 656 amend Virginia Code § 22.1-3.2 relating to information required upon admission of new students. Effective July 1, 2006.

HB 1279 - Notification to School Principals by Law Enforcement when Student is Charged **Page 56**
HB 1279 amends Virginia Code § 22.1-279.3:1 relating to notification to principals when students are charged with certain crimes. Effective July 1, 2006.

MISCELLANEOUS JUVENILE-RELATED LEGISLATION

HB 45 & SB 362 - Eliminating Capital Punishment for Juveniles **Page 57**
HB 45 and SB 362 amend Virginia Code § 18.2-10 prohibiting to capital punishment for juveniles. Effective July 1, 2006.

- HB 1208 & SB 396 – Alcoholic Beverages & In-Home Exemption for Consumption by Another Underage** **Page 57**
HB 1208 and SB 396 amend Virginia Code § 4.1-200 relating to underage exemptions for consuming an alcohol beverage. Effective July 1, 2006.
- HB 1210 - Penalty for Underage Purchasing or Possession of Alcoholic Beverages** **Page 58**
HB 1210 amends Virginia Code § 4.1-305 relating to suspension of a driver's license for six months for a person over 18 but under 21 to purchase or possess alcoholic beverages. Effective July 1, 2006.
- HB 56 – Mandatory Reporting of Child Abuse or Neglect by Eligibility Workers** **Page 58**
HB 56 amends Virginia Code § 63.2-1509 relating to mandatory reporting of child abuse and neglect by eligibility workers. Effective July 1, 2007. Two Enactment Clauses.
- HB 1242 - Surveys and Questionnaires for Public School Students – New Requirements** **Page 58**
HB 1242 amends Virginia Code § 22.1-79.3 relating to surveys and questionnaires of public school students. Effective July 1, 2006.
- HB 1317 - Nationwide Criminal Background Check before Placement in Foster Care** **Page 58**
HB 1317 amends Virginia Code § 63.2-901.1 relating to background checks for foster parents. Effective July 1, 2006.
- SB 421 - Criminal History Record Information Check Required for those Providing Care to Children** **Page 58**
SB 421 amends Virginia Code §§ 32.1-126.01, 32.1-162.9:1, 63.2-1720, 63.2-1721, 63.2-1724, and 63.2-1725. Effective July 1, 2007.
- HB 1486 - Administrative Process Act & Summary Case Decisions** **Page 59**
HB 1486 amends Virginia Code § 2.2-4021 and adds a section numbered 2.2-4020.1 relating to the Administrative Process Act and summary case decisions. Effective July 1, 2006.

JUVENILE COURT PROCEEDINGS & PROCEDURES

HB 126 - Judge may Designate Venue for Detention Hearings. Delegate Kilgore

HB 126 amends Virginia Code § 16.1-250 relating to juvenile detention hearings. Effective July 1, 2006.

1.00 Summary - Judge may sit in Neighboring Court for the Detention Hearing

Virginia Code § 16.1-250 provides the procedures for conducting a detention hearing when determining whether or not a juvenile should be detained prior to trial. When a juvenile is taken into custody and not released as provided in Virginia Code §§ 16.1-247 or 16.1-248.1, the juvenile must appear before a judge on the next day on which the court sits, not to exceed 72 hours (96 hours if the 72-hour period expires on a Saturday, Sunday, or legal holiday). Language in Virginia Code § 16.1-250 required the judge to sit “within the county or city wherein the charge against the child is pending.” HB 126 allows the court to conduct a hearing in another county or city, but only if two-way electronic video and audio communication is available in the courthouse where the charge is pending.

2.00 Background - OAG Opinion

The issue leading to HB 126 arose after the Commonwealth’s Attorney for the City of Colonial Heights objected to the juvenile court judge’s requirement that the detention hearing be conducted in a juvenile court outside of the jurisdiction of the court where the offense occurred. The Commonwealth’s Attorney for the City of Colonial Heights requested the Attorney General issue an Official Opinion concerning the proper venue for juvenile detention hearings.

In early 2005, the Attorney General issued an Official Opinion concerning where judges must sit when conducting a detention hearing pursuant to Virginia Code § 16.1-250. The Attorney General found the Code to be clear that a case must be commenced in the jurisdiction where the offense occurred. The Opinion proved to be problematic for predominately rural jurisdictions where a judge may sit only weekly or bi-weekly. To address the issue, the Judicial Conference of Virginia for District Courts proposed this legislation in response to the Opinion of the Attorney General.

3.00 New Language in Subsection A of Virginia Code § 16.1-250

“In the event the court does not sit on the following day within the county or city wherein the charge against the child is pending, the court may conduct the hearing in another county or city, but only if two-way electronic video and audio communication is available in the courthouse of the county or city wherein the charge is pending.”

3.10 Electronic Equipment Must Be Available in the Original Court

A judge may sit in another court only if there is two-way electronic video and audio communication available in the courthouse where the charge is pending.

3.20 Now any Party may Appear Electronically

The former language only spoke to the child as being able to appear by electronic means, not the judge, the attorneys, or the parents. HB 126 clarifies that the attorney for the Commonwealth, the attorney for the child, and the parents or other legal guardian may appear in person or by electronic video and audio communication.

HB 1007 – Child Custody Reports to be Furnished 15 Days Prior to Hearing. Delegate Hurt

*HB 1007 amends Virginia Code § 16.1-274 relating to the time for filing child custody reports.
Effective July 1, 2006.*

1.00 Summary – When to File Child Custody Reports

HB 1007 amends Virginia Code § 16.1-274 relating to the time for filing child custody reports. HB 1007 requires that a child custody report be prepared pursuant to Virginia Code § 16.1-273 and be furnished to all attorneys representing parties in the matter 15 days prior to the hearing instead of five days.

2.00 Background – Resolving a Conflict Between Reports and Subpoenas

The underlying intent of the legislation is to resolve an apparent conflict between the timeframes for submitting a request for subpoenas in custody matters and the submission of the custody report. Under current law, custody reports are not required to be submitted to the attorneys for the parties until five days prior to the date of the hearing. However, pursuant to the Rules of the Supreme Court, any witness subpoenas issued by the court or the clerk must be served at least 10 days prior to trial. Attorney-issued subpoenas requiring attendance and testimony of witnesses or the production of documents at the hearing must be sent at least 14 days prior to the hearing. (See Virginia Code § 16.1-265.) The problem created by the conflicting timeframes involved an attorney's ability to request a subpoena for a witness or document not previously identified or known to the attorney until submission of the custody report. Due to the current timeframes, the only recourse available to the attorney would be to request a continuance in order to request any needed subpoenas. Requiring the custody report to be submitted prior to the deadlines for the issuance of subpoenas is intended to allow the attorney to review the report, request any additional subpoenas in a timely fashion, and avoid requesting a continuance.

3.00 Potential Impact upon DJJ

This bill changes the timeframe for filing of child custody reports from five to 15 days prior to the court hearing date, therefore requiring swifter completion and submission of such reports. Only a limited number of court service units complete these reports, and many have local agreements that the reports shall be completed by the local Department of Social Services. In FY 2005, the Department of Juvenile Justice (DJJ) completed 67 such reports and 111 reports in FY 2004.

**HB 1017 – Juvenile Intake: No Petitions – Only Summons for Certain Alcohol-Related Offenses.
Delegate [Hurt](#)**

HB 1017 amends Virginia Code § [16.1-260](#) relating to intake and alcohol-related offenses. Effective July 1, 2006.

1.00 Summary: Failure to take Breathalyzer - Summons in Lieu of Petition

Virginia Code § 16.1-260 provides the statutory authority for which a petition may be filed thereby initiating formal proceedings in juvenile court. HB 1017 amends Virginia Code § [16.1-260](#) relating to intake and alcohol-related offenses. The stated intent of the bill is to allow the issuance of a summons in lieu of a petition for alcohol-related driving offenses involving juveniles as is consistent with the same offenses involving adults. Therefore, when a juvenile refuses to take a breathalyzer for the offenses enumerated in Virginia Code §§ [18.2-51.4](#), [18.2-266.1](#), and [18.2-272](#), a summons rather than a petition may be issued. This legislation resulted from a recommendation from the Committee on District Courts.

1.01 And the Alcohol Offenses in Virginia Code §§ [18.2-51.4](#), [18.2-266.1](#) and [18.2-272](#), Please . . .

- **Maiming Resulting from Driving Intoxicated** - Virginia Code § [18.2-51.4](#) provides that a person who causes the serious bodily injury of another person resulting in permanent and significant physical impairment while driving intoxicated is guilty of a Class 6 felony.
- **Persons under age 21 Driving after Illegally Consuming Alcohol** - Virginia Code § [18.2-266.1](#) makes it unlawful for any person under the age of 21 to operate a motor vehicle after illegally consuming alcohol. A blood alcohol concentration of 0.02 percent or more is evidence of consumption.
- **Driving after Forfeiture of License** - Virginia Code § [18.2-272](#) makes it a Class 1 misdemeanor for a person to drive a motor vehicle during the time for which his driver's license was suspended for an alcohol-related driving offense to have consumed any alcohol and then drive.

**SB 567 - Releasing Juvenile Information in the CCRE to the Criminal Sentencing Commission.
Senator [Stolle](#)**

SB 567 amends Virginia Code § [19.2-389.1](#) to allow the Virginia Criminal Sentencing Commission access to record information maintained in the Central Criminal Records Exchange (CCRE). Effective July 1, 2006.

1.00 Summary - The Criminal Sentencing Commission Wants More Info

SB 567 amends Virginia Code § [19.2-389.1](#) to allow the Virginia Criminal Sentencing Commission access to record information maintained in the Central Criminal Records Exchange (CCRE). Access to

the information will be for research purposes only. The bill was a recommendation of the Virginia Criminal Sentencing Commission. The bill will directly affect the Virginia State Police, who maintain and operate the CCRE and the Virginia Criminal Sentencing Commission, who gain access to the CCRE information under the bill.

Sidebar (Crime Commission to Conduct Two-Year Study on the Juvenile Code): HJ 136 – Crime Commission to Study the Juvenile Justice System. Delegate Moran. HJ 136 directs the Virginia State Crime Commission to study Virginia’s juvenile justice system. This year’s most significant piece of legislation does not make a change to existing law, but it will lead to changes in the future. Delegate Moran introduced House Joint Resolution 136 that originally proposed a one-year study by the Virginia State Crime Commission to look at the American Bar Association’s (ABA) report from 2002 that assessed the quality of juvenile court proceedings. With Delegate Dave Marsden’s urging, the scope of the study was expanded to become a “mini-Recodification” of the juvenile code. The Crime Commission will be looking at the entire juvenile code as it relates to delinquency. Furthermore, the study will occur over two years.

In conducting its study, the Commission shall focus on recidivism, disproportionate minority contact with the justice system, improving the quality of and access to legal counsel based on the ABA recommendations, accountability in the courts, and diversion. The Crime Commission shall also analyze Title 16.1 of the Code of Virginia to determine the adequacy and effectiveness of Virginia’s statutes and procedures relating to juvenile delinquency.

The Crime Commission must complete its meetings for the first year by November 30, 2006, and for the second year by November 30, 2007. The chairman will submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the next Regular Session of the General Assembly for each year. Each executive summary will state if the Commission intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a House or Senate document.

Sidebar (Carried-Over Legislation): HB 712 - Duty of Person Taking a Juvenile into Custody. Delegate McQuigg. HB 712 would amend Virginia Code § 16.1-247 relating to the duties of a person taking a child into custody for interrogation. Continued to 2007 in House Courts of Justice. Committee action on continued legislation by midnight, December 8, 2006. HB 712 adds subsection K to Virginia Code § 16.1-247 pertaining to what must take place when a juvenile is taken into custody pursuant to Virginia Code § 16.1-246. HB 712 would require that, when a juvenile who is under the age of 14 years is taken into custody for allegedly committing a felony, a delinquent act that threatens public safety in the presence of a law-enforcement officer, or a Class 1 misdemeanor if it involves shoplifting, assault and battery, or a weapon on school property, the person taking the child into custody must tell the child whether or not he is at liberty to leave the interrogation. If the child is not at liberty to leave, then the person taking the child into custody must advise that (i) he is not at liberty to leave, (ii) he has the right to counsel and (iii) he has the right to have his parent, guardian, legal custodian, or other person standing in loco parentis present during the interrogation. If the child wants his attorney or his parent present during the interrogation, then the interrogation of the child cannot occur until the attorney or the parent is present. The person taking the juvenile into custody must make reasonable efforts to notify the parent and give the parent an opportunity to be present. If the parent cannot be located or identified, then the interrogation can proceed with a certified affidavit attesting to the same.

INCARCERATED JUVENILES

HB 1325 – DCSE to Issue Administrative Order for Child Support for Committed Youth. Delegate Caputo

HB 1325 amends Virginia Code § 16.1-290 relating to support for a committed juvenile. Effective July 1, 2006.

1.00 Summary – Administrative Child Support Orders for Committed Juveniles

HB 1325 amends Virginia Code § 16.1-290 relating to support for a committed juvenile. The bill allows the Department of Social Services (DSS) to establish the amount of the support obligation by the parents when a child is committed to the custody of the Department of Juvenile Justice (DJJ) and allows DJJ to collect child support from the parents from the date it receives the child.

2.00 Background - Prior Statutory Provisions (The Old Way)

Virginia Code § 16.1-290 requires a parent of a juvenile committed to a juvenile correctional center (JCC) to pay child support as long as that juvenile is committed. Prior to HB 1325, DJJ would file a child support application with the Division of Child Support Enforcement (DCSE) at the Department of Social Services at the time a juvenile was committed to a JCC. DCSE would determine the amount of the support owed by the parent for the juvenile through the Child Support Guidelines and would go to court for the purpose of seeking a court order for the support.

3.00 The Key Provisions of HB 1325 (The New Way)

- **Allows Administrative Orders:** HB 1325 gives DCSE the authority to issue an order of child support administratively for a juvenile committed to a JCC.
- **Requires Notice in Writing:** HB 1325 requires DJJ to provide notice in writing to the parent stating the parent's obligation to pay child support. This amendment is consistent with federal law.
- **Clarifies When Support is Due:** HB 1325 clarifies that the obligation to pay child support begins on the date the juvenile is received by DJJ.
- **Removes Archaic Language:** By request of DCSE staff and attorneys, HB 1325 removes archaic or unnecessary language from subsection A of the existing Code.

Sidebar: HB 1108 – The Effective Date for Court & Administrative Support Orders. Delegate Athey. *HB 1108 amends Virginia Code §§ 20-60.3 and 63.2-1916 relating to the effective date of support orders. Effective July 1, 2006.* HB 1108 specifies the date that judicial and administrative support orders are effective and payment due dates. A judicial support order is effective in an initial proceeding on the date of filing of the petition and in a modification proceeding the effective date may be the date of notice to the responding party. An administrative support order shall be effective on the date that notice of the review is served upon the non-requesting party. The first payment will be due on

the first day of the first month after the effective date. Payment will continue to be due on the first of each month thereafter. There are provisions for prorating payments for the first month.

HB 347 & SB 33 – DCE and Court-Ordered GED Participation.
Delegate Hamilton & Senator Potts

HB 347 and SB 33 amend Virginia Code §§ 22.1-223, 22.1-254, and 22.1-254.2 relating to the General Educational Development (GED) program. Effective July 1, 2006.

1.00 Summary – Court-Ordered GED Participation

HB 347 and SB 33 amend Virginia Code §§ 22.1-223, 22.1-254, and 22.1-254.2 relating to the General Educational Development (GED) program. HB 347 and SB 33 change the definition of “general educational development program” to include a program for adults who did not complete high school but also “*students*” with the permission of the superintendent of the school division, “*and those who have been ordered by a court to participate in the program.*” This legislation amends the “Compulsory School Attendance Law” to exempt from the law a “*person*” 16 to 18 years of age who is incarcerated in an adult correctional facility if that person is actively pursuing a GED certificate and a child who has obtained a GED certificate. The legislation also allows the local school board to determine the appropriate alternative education placement of the student whom a court has ordered into a GED program. HB 347 and SB 33 specify the persons eligible for a GED program to include “[p]ersons 16 years of age or older who have been expelled from school pursuant to §§ 22.1-277.06 through 22.1-277.08 . . . [and] [p]ersons required by court order to participate in the testing program.”

2.00 Change #1 – Court-Ordered Participation in GED Program

Virginia Code § 22.1-223 is the definition section for Article 3 of Chapter 13 pertaining to adult education. HB 347 and SB 33 change the definition of “general educational development program” to include a program for adults who did not complete high school but also “*students*” with the permission of the superintendent of the school division, “*and those who have been ordered by a court to participate in the program.*” The substantive change is allowing courts to order GED participation. The other amendments such as removing “youth” and substituting “students” in its place appears to be more technical in nature.

3.00 Change #2 – GED Exemptions to Compulsory School Attendance Law

Virginia Code § 22.1-254 is the “Compulsory School Attendance Law.” Pursuant to Virginia Code § 22.1-254, the “Compulsory School Attendance Law” applies to juveniles committed to a juvenile correction center until that juvenile obtains the age of 18. This legislation amends the “Compulsory School Attendance Law” to exempt from the law a “*person*” 16 to 18 years of age who is incarcerated in an adult correctional facility if that person is actively pursuing a GED certificate and a child who has obtained a GED certificate. The legislation also allows the local school board to determine the appropriate alternative education placement of the student whom a court has ordered into a GED program.

4.00 Change #3 – Expanded Eligibility Criteria for Participation

Virginia Code § 22.1-254.2 provides the statutory authority for testing for general educational development and provides the criteria for GED eligibility. HB 347 and SB 33 expand the persons eligible for a GED program to include “[p]ersons 16 years of age or older who have been expelled from school pursuant to §§ 22.1-277.06 through 22.1-277.08 . . . [and] [p]ersons required by court order to participate in the testing program.”

HB 622 – Writing Prescriptions in Juvenile Detention Facilities.
Delegate O'Bannon

HB 622 amends Virginia Code § 54.1-3408.01 relating to prescriptions written for patients residing in certain institutions. Effective July 1, 2006.

1.00 Summary – One Order Form for Multiple Prescriptions

Virginia Code § 54.1-3408.01 provides the statutory requirements for writing prescriptions. Under current law, the general rule is that prescription order forms must be for one prescription only. The current law does provide an exemption for charts orders in hospitals and long-term care facilities, for home infusion patients, hospice patients, and for the orders through pharmacies operated by various state agencies including the Departments of Juvenile Justice and Corrections.

HB 622 amends Virginia Code § 54.1-3408.01 relating to prescriptions written for patients residing in certain institutions. HB 622 expands the exemption to the “one prescription – one order form” rule to include adult and juvenile detention centers, local or regional jails, or work release centers operated by the Department of Corrections.

Sidebar (Carried-Over Legislation): **HB 548 - Requires DJJ to Pay for the Education of Juveniles Placed in Secure Facilities. Delegate Saxman.** *HB 548 would amend Virginia Code § 66-15 relating to education costs of committed juveniles. Continued to 2007 in House Committee on Health, Welfare and Institutions. Committee action on continued legislation by midnight, December 8, 2006.* HB 548 amends Virginia Code § 66-15 relating to the per diem cost to each locality for maintaining a child in a detention home. Under HB 548, DJJ would be required to pay the education expenses for any juvenile who is placed in a correctional residential facility and is educated by the local schools of a district other than his original district.

SEX OFFENDERS

SB 559 - Sex Offender and Crimes Against Minors Registry – Omnibus Crime Commission Bill. Senator Stolle

For the purposes of this summary relating to juvenile justice, the legislation creates Virginia Code §§ 16.1-249.1, 16.1-278.7:01, and 16.1-278.7:02. Effective July 1, 2006.

1.00 The Omnibus Sex Offender Bill

Several bills were enacted by the General Assembly during 2006 focusing upon strengthening sex offender laws. This legislation contains numerous changes in the laws regarding sex offenders. It would increase penalties for certain offenses, broaden the requirements for registration of sex offenders, enhance the accuracy of the sex offender registry, increase probationary supervision of sex offenders, and expand the number of offenders eligible for commitment as sexually violent predators.

1.01 One Senate Bill versus Several House Bills

All of the amended statutes and created statutes relate to the Sex Offender and Crimes Against Minors Registry; sex crimes; and the civil commitment of sexual predators. This summary will focus upon SB 559, which incorporates into one bill the provisions of the following individual House Bills: HB 846, HB 984, HB 1038, and HB 1333.

2.00 Overview of the Offenses Requiring Registration in Sex Offender and Crimes Against Minors Registry (Registry) – Chapter 9 of Title 9.1 of the Va. Code (§ 9.1-901 et seq.) (Not New)

The purpose of the Sex Offender and Crimes Against Minors Registry (hereinafter referred to as the “Registry”) is to assist the efforts of law-enforcement agencies and others to protect their communities and families from repeat sex offenders and to protect children from becoming victims of criminal offenders by helping to prevent such individuals from being allowed to work directly with children.

2.01 The Sex Offender Registry is Available Via the Internet

The Registry is available via Internet pursuant to Virginia Code § 9.1-913. The information available includes the offender’s name; the date and locality of the conviction with a brief description of the offense; his age; current address; and photograph.

2.02 Photographs of Adults & Juveniles

There is no distinction between an adult and a juvenile. Therefore, any juvenile who is required to register will have his photograph posted on the Internet. The information about whether or not an individual is wanted for failing to register or reregister is also available.

2.10 How Juveniles get on the Registry, Part I - Juveniles Convicted in Circuit Court for a Listed Offense Must Register: Va. Code § 9.1-901 (Old Law – Remains Same)

A juvenile convicted in circuit court for the murder of another juvenile will be required to register under the new provisions of this bill.

2.20 How Juveniles get on the Registry, Part II - Juveniles Adjudicated in Juvenile Court may be Required to Register (New as of 2005 General Assembly – HB 2318)

HB 2318 marked a substantial policy decision by the 2005 General Assembly relating to juveniles adjudicated delinquent for certain sex offenses in juvenile court. HB 2318 allows a juvenile court to order a juvenile to register when that juvenile is adjudicated delinquent for an offense that requires adult registration when other additional requirements are satisfied as summarized below.

2.21 Juvenile must be Over 13 Years of Age

The juvenile must be 13 years of age or older to be eligible for registration.

2.22 Factors the Court Must Consider before Ordering a Juvenile to Register

To determine whether or not to order a juvenile to register, the court must consider the following factors:

- the degree to which the delinquent act was committed with the use of force, threat, or intimidation;
- the age and maturity of the complaining witness;
- the age and maturity of the offender;
- the difference in the ages of the complaining witness and the offender;
- the nature of the relationship between the complaining witness and the offender;
- the offender's prior criminal history; and
- any other aggravating or mitigating factors relevant to the case warrants registration.

2.23 HB 2318 Only Applies to Offenses Committed after July 1, 2005

The registration changes made by HB 2318 only apply to offenses that occur on or after July 1, 2005. If a trial for a juvenile occurs after July 1, 2005, but the offense occurred prior to July 1, 2005, the new provisions of HB 2318 would not apply to that juvenile.

2.30 How Juveniles get on the Registry, Part III – Moving into Virginia

A juvenile may be required to register in Virginia if that juvenile moves to Virginia for any reason including residence, school, or employment. See Virginia Code §§ 9.1-905 (New residents and nonresident offenders; registration required) and 9.1-906 (Enrollment or employment at institution of higher learning; information required).

2.31 New Residents must Register: Va. Code § 9.1-905 (A)

A person “required to register” must register within **three days** of establishing a residence in Virginia. This requirement applies to juveniles and adults.

- **What is Residence?** Essentially, residence means both domicile and place of abode. See Virginia Constitution, Article II, § 1. To establish domicile, a person must live in a particular locality with the intention to remain there for an unlimited time.¹ A place of abode is the physical place where a person dwells.² Therefore, if a juvenile moves into Virginia by himself or with his family with the intention of establishing residence in Virginia, then that juvenile has **three days** to register with the State Police.
- **“Required to Register”:** Subsection A of Virginia Code § 9.1-905 states that all persons required to register must do so. “Required to register” seems to include those persons convicted of registerable offenses in Virginia and also in their former state.

2.32 Nonresidents Working or Attending School in Virginia Must Register: Va. Code § 9.1-905 (B)

A nonresident “offender” who enters Virginia for employment, to carry on a vocation, or as a student attending school will be required to register with the Sex Offender Registry.

- **“Extended Visits” Require Registration:** A nonresident must register **within three days** of entering Virginia for the purpose of an “extended visit.” “Extended visit” means a period of visitation for any purpose in Virginia for 30 days or more.
- **Accepting Employment Requires Registration:** When a nonresident **accepts** employment in Virginia, that person has three days to register. Employment also includes vocation. “Employment” and “vocation” include employment that is full-time or part-time for a period of time exceeding **14 days** or for an aggregate period of time exceeding **30 days** during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit.
- **Enrolling in a Virginia School Requires Registration:** When a nonresident enrolls in a Virginia school, then that person has three days from the date of enrollment to register with the Sex Offender Registry. “Student” means a person who is enrolled on a full-time or part-time basis in any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education.
- **Registration is with Local Law Enforcement:** Subsection B differs from subsection A in that subsection B specifically requires registration and reregistration “in person with the local law-enforcement agency.”

¹ See, *State-Planters Bank & Trust Co. v. Commonwealth*, 174 Va. 289, 295, 6 S.E.2d 629, 631 (1940).

² See Black's Law Dictionary 7 (6th ed. 1990).

- **Proof of Employment & Enrollment:** The nonresident must present proof of enrollment as a student or “suitable proof of temporary employment” in Virginia. See subsection C of Virginia Code § 9.1-905.
- **Government Issued Photo-ID Required for Registration:** A nonresident who is required to register must also present a “photo-identification form issued by a governmental agency of the person’s state of residence which contains the person’s complete name, gender, date of birth and complete address.” See subsection C of Virginia Code § 9.1-905.

2.40 Offenses for Which Registration is Required for Ten Years

Virginia Code § 9.1-902 lists the offenses for which registration is required as a “non-violent” sexual offender. Non-violent sexual offenses require registration for 10 years.

2.41 First Time Convictions for Which Registration is Required

A violation or attempted violation of the following offenses requires registration:

- § 18.2-63 (Carnal knowledge of child between 13 and 15 years of age),
- § 18.2-64.1 (Carnal knowledge of certain minors),
- § 18.2-67.2:1 (Marital sexual assault) [Repealed by Acts 2005, c. 631, cl. 2.],
- § 18.2-90 (Entering dwelling house with intent to commit rape), and
- § 18.2-374.1 (Production, publication, sale, possession with intent to distribute, financing, etc., of sexually explicit items involving children; presumption as to age).

2.42 Second Conviction Possessing Child Porn Requires Registration

A second or subsequent violation or attempted violation of subsection D of § 18.2-374.1:1 (Possession of child pornography – 2nd offense) requires registration.

2.43 Third Conviction for Sexual Battery and Other Specific Sex Crime Requires Registration

A third conviction of the following offenses requires registration:

- § 18.2-67.4 (Sexual battery),
- subsection C of § 18.2-67.5 (Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual battery, and sexual battery), or
- § 18.2-386.1 (Unlawful filming, videotaping, or photographing of another).

2.44 New Offenses Requiring Registration for Ten Years for First time Conviction after July 1, 2006

SB 559 amends subdivision 1 of subsection A of Virginia Code § 9.1-902 (Sex Offender and Crimes Against Minors Registry) to add the following offenses. Language in SB 559 specifically requires that the below offenses must be committed on or after July 1, 2006.

- **§ 18.2-91 (Burglary with Intent to Commit Another Felony).** After July 1, 2006, a **first time** burglary violation or attempted burglary violation of Virginia Code § 18.2-91 with the intent to commit any felony offense listed in Virginia Code § 9.1-902 requires registration. If a person commits burglary with the intent to commit an offense that requires registration, then that person will be required to register as a sexual offender for ten years.
- **Subsection A of § 18.2-374.1:1 (Possession of Child Pornography).** After July 1, 2006, a person who knowingly possesses any sexually explicit visual material utilizing or having as a subject a person less than 18 years of age is guilty of a Class 6 felony and will be required to register for a first time conviction. The violation or attempted violation of possession of child pornography requires registration. Prior to July 1, 2006, it took two convictions to require registration.

2.45 Additional Offenses Requiring Registration for Ten Years

SB 559 adds the below offense to subdivision 2 of subsection A of the Virginia Code § 9.1-902 (Sex Offender and Crimes Against Minors Registry). However, there is no language requiring that the offenses be committed on or after July 1, 2006.

- **Subsection B of Virginia Code § 18.2-374.3 (Use of a Computer for the Purpose of Taking Indecent Liberties with a Child or Mentally Incapacitated Person).** Using a computer for the purpose of soliciting a minor and taking indecent liberties of a child or of a person who is physically helpless or mentally incapacitated as defined in § 18.2-67.10 requires registration.
- **Homicide While Engaged in Act Rendering a Child Delinquent of Abuse and Neglect.** Committing a criminal homicide while causing or encouraging acts rendering a child delinquent in violation of clause (i) of Virginia Code § 18.2-371 or committing abuse or neglect of a child in violation of Virginia Code § 18.2-371.1 requires registration. The offenses must arise out of the same incident.

2.46 Federal Convictions Requiring Registration for Ten Years

A violation of Chapter 117 (18 U.S.C. § 2421 et seq. – Transporting Minors for Illegal Sexual Activity and Related Crimes) of Title 18 of the United States Code requires registration. These offenses involve child pornography and the sexual exploitation of children and crimes involving the transportation of individuals for illegal sexual activities. Offenses under Chapter 117 include:

- Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material;
- Custodian Permitting Minor to Engage in Sexually Explicit Conduct;
- Criminal Sexual Abuse & Attempt to Commit Criminal Sexual Abuse;
- Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape)

2.50 Offenses for Which Registration is Required for Life - Murder of a Child

2.51 Murder of a Child Under the Age of 15

Committing a murder in violation of Virginia Code §§ [18.2-31](#) or [18.2-32](#) where the victim is under 15 years of age requires registration for life.

2.52 Murder During Commission of Sexual Offense and the Victim is between the Age of 15 and 18 (New as of 2006)

If the victim is at least 15 years of age but under 18 years of age and the murder is related to an offense listed in Virginia Code § [9.1-902](#) (a sex offense), then registration is required for life.

2.60 Offenses for Which Registration is Required for Life – Violent Sexual Offenses

Virginia Code § [9.1-902](#) lists the offenses for which registration is required as a violent sexual offender. Violent sexual offenses require registration for life.

2.61 First Conviction for these Offenses Require Registration as a Sexually Violent Offender

A first time conviction for committing or attempting to commit one of the following “sexually violent offenses” requires registration:

- Clause (ii) of § [18.2-48](#) (Abduction with intent to defile),
- § [18.2-61](#) (Rape),
- § [18.2-67.1](#) (Forcible sodomy),
- § [18.2-67.2](#) (Object sexual penetration),
- § [18.2-67.3](#) (Aggravated sexual battery),
- § [18.2-67.4](#) (Sexual battery where the perpetrator is 18 years of age or older and the victim is under the age of six),
- subsections A and B of § [18.2-67.5](#) (Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual battery),
- § [18.2-370](#) (Taking indecent liberties with children), or
- § [18.2-370.1](#) (Taking indecent liberties with child by person in custodial or supervisory relations).

2.62 Second Conviction for these Offenses Requires Registration as Sexually Violent Offender

The following offenses are defined as sexually violent offenses and require registration when there is a second conviction:

- § [18.2-63](#) (Carnal knowledge of child between 13 and 15 years of age),
- § [18.2-64.1](#) (Carnal knowledge of certain minors),
- § [18.2-67.2:1](#) (Marital sexual assault) [Repealed by Acts 2005, c. 631, cl. 2.],

- § 18.2-90 (Entering dwelling house with intent to commit rape or the victim is a minor or is physically helpless or mentally incapacitated),

2.63 Second Conviction for these Offenses When the Victim is a Minor or Mentally Incapacitated Requires Registration as Sexually Violent Offender

A second conviction for the below offenses where the victim is a minor or is physically helpless or mentally incapacitated as defined in Virginia Code § 18.2-67.10 requires registration as a sexually violent offender:

- a violation or attempted violation of subsection A of § 18.2-47 (Abduction and kidnapping),
- § 18.2-67.4 (Sexual battery),
- subsection C of § 18.2-67.5 (Attempted sexual battery),
- clause (i) or (iii) of § 18.2-48 (Abduction with intent for immoral purpose - concubinage or prostitution),
- § 18.2-361 (Crimes against nature),
- § 18.2-366 (Adultery and fornication by persons forbidden to marry; incest), or
- § 18.2-374.1 (Production, publication, sale, possession with intent to distribute, financing, etc., of sexually explicit items involving children; presumption as to age).

The person must have been at liberty between such convictions.

2.64 Expanding the List of Sexually Violent Offenses – Multiple Statutory Burglary Charges – Only Offenses after July 1, 2006

SB 559 amends the definition of “sexually violent offense” in Virginia Code § 9.1-902 to include a violation or attempted burglary in violation of Virginia Code § 18.2-91 with the intent to commit any felony offense requiring registration as listed in Virginia Code § 9.1-902. If a person is convicted twice for committing burglary with the intent to commit an offense that requires registration, then that person will be required to register as a violent sexual offender for life.

- The person must have been at liberty between convictions or adjudications.
- Only those offenses committed after July 1, 2006 count.

3.00 Offenses Committed in Foreign Countries now Require Registration

SB 559 adds to the definition of a sexually violent offense those similar offenses under the laws of any foreign country or any political subdivision thereof.

4.00 Duration of Registration Requirement: Va. Code § 9.1-908

A person required to register or reregister will be required to register for ten years from the date of initial registration. A person convicted of a sexually violent offense, murder or marital sexual assault³ will be required to register and reregister for life.

5.00 Failure to Register is a Class 1 Misdemeanor or a Class 6 Felony

Failure to register is a Class 6 felony if the offender had been convicted of a sexually violent offense; for other listed offenses, failure to register is a Class 1 misdemeanor.

6.00 Information Needed from the Court, Local Law Enforcement, & the Sex Offender at the Time of Conviction & Sentencing: Va. Code § 9.1-903 (A)

Subsection A of Virginia Code § 9.1-903 provides the registration requirements for a person convicted of an offense that requires registration. The registration requirements apply to all persons convicted in circuit court, including juveniles. The registration requirements also apply to juveniles adjudicated delinquent for an offense in juvenile court and ordered to register pursuant to subsection C of Virginia Code § 9.1-902.

6.10 Court Must Order the Sex Offender to Provide Registration Information

Virginia Code § 9.1-903 requires the court to order the person to provide to the local law-enforcement agency of the county or city where he physically resides all information required by the State Police for inclusion in the Registry.

6.11 Law Enforcement must Immediately take Person into Custody to Register

SB 559 amends Virginia Code § 9.1-903 to require the court to immediately remand the person to the custody of the local law-enforcement agency for the purpose of obtaining the person's fingerprints and photographs as specified by the State Police for inclusion in the Registry.

6.20 Law Enforcement Must Submit Registration Information to State Police *Forthwith*

SB 559 further requires the local law-enforcement agency to forward *forthwith* all the necessary registration information to the State Police. Previously, law enforcement had seven days to forward the information to the State Police.

6.21 Information Needed from Local Law-Enforcement Agency: Va. Code § 9.1-903 (B)

Prior to SB 359, the local law-enforcement agency was required to submit two sets of fingerprints and two photographs. SB 359 now requires only one set of fingerprints and one photograph. However, now the person must provide his place of employment information also.

³ See Va. Code § 18.2-67.2:1.

6.22 New Information Required from Local Law Enforcement: DNA Sample

SB 559 requires the “*local law-enforcement agency*” to obtain from the person a sample of his blood, saliva, or tissue taken for DNA (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person. If a sample has been previously taken from the person, as indicated by the Local Inmate Data System (LIDS), no additional sample will be necessary.

6.30 Registration Requirements for the Person upon Release from Incarceration: Va. Code § 9.1-903 (B)

Subsection B of Virginia Code § 9.1-903 provides the timeframes for a person to register upon his release from incarceration or upon sentence if not incarcerated. Incarceration includes a juvenile in a juvenile correctional center or detention facility, and sentencing includes a disposition in the juvenile court.

6.31 Three Days to Register

Prior to SB 559, a person had ten days to register. SB 559 reduces that timeframe to three days.

6.32 New Information Required from the Person: Photograph

SB 559 amends subsection B of Virginia Code § 9.1-903 to require the person to submit to be photographed as part of the registration.

6.33 New Information Required from the Person: DNA Sample

SB 559 requires the person to submit a sample of his blood, saliva, or tissue taken for DNA (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person.

6.34 New Information Required from the Person: Place of Employment

SB 559 amends subsection B of Virginia Code § 9.1-903 to require the person to provide information regarding place of employment.

7.00 Reregistration Requirements for the Sex Offender: Va. Code § 9.1-903

SB 559 adds several new requirements and timeframes for a sex offender to reregister with the Sex Offender Registry.

7.10 Sex Offender must Reregister when Change in Residency: Va. Code § 9.1-903 (D)

SB 559 amends subsection D to require the person to reregister with the local law-enforcement agency following any change of residence within Virginia within three days following that change.

7.11 New Residence Outside of Virginia

If the new residence is located outside of the Commonwealth, the person must register in person with the local law-enforcement agency where he previously registered within ten days prior to his change of residence.

7.12 Probation/Parole Officer Becomes Aware of Change in Residency (Part Not New – Part New)

If a probation or parole officer becomes aware of a change of residence for any of his probationers or parolees required to register, the probation or parole officer must notify the State Police *forthwith* of learning of the change of residence. Prior to SB 359, the probation or parole officer had ten days.

7.20 Notification of Change in Employment: Va. Code § 9.1-903 (E)

SB 559 adds a new subsection E in Virginia Code § 9.1-903 to require a person to notify the local law-enforcement agency within three days following any change of the place of employment, whether within or without Virginia.

7.21 Probation/Parole Officer Must Notify Local Law of Change in Employment

If a probation or parole officer becomes aware of a change of the place of employment for any of his probationers or parolees required to register, the probation or parole officer must notify the State Police *forthwith*.

7.22 State Police Must Notify Out-of-State Local Law Enforcement of Out-of-State Employment

Whenever a person subject to registration in Virginia changes his place of employment to another state, the State Police must notify the designated law-enforcement agency of that state.

7.30 Reregistration Requirements for Persons Already Registered: Va. Code § 9.1-904

Virginia Code § 9.1-904 provides the timeframes for a person required to reregister from the date of the initial registration.

7.31 Annual Reregistration for Non-Sexually Violent Persons: Va. Code § 9.1-904(A) (Not New)

Virginia Code § 9.1-904 provides that a person required to register for a non-sexually violent offense or murder is required to reregister with the State Police on an annual basis from the date of the initial registration.

7.32 Reregistration for Sexually Violent Persons & Murderers: Va. Code § 9.1-904(A) (Not New)

Every person convicted of a sexually violent offense or murder is required to reregister with the State Police every 90 days from the date of initial registration.

7.40 Reregistration Following Conviction for False Information: Va. Code § 9.1-908

Registration for the non-sexually violent or murder offenses is ten years from the date of the initial registration. Offenses constituting sexually violent offenses require lifetime registration in the Registry.

7.41 Non-Sexually Violent Offenders Providing False Information or Not Providing Registration Information: Va. Code § 9.1-904(B) (New)

A person convicted of a non-sexually violent offense that requires registration who is subsequently convicted under Virginia Code § 18.2-472.1 of failing to register or reregister, or knowingly providing materially false information to the Sex Offender and Crimes Against Minors Registry must reregister every 180 Days.⁴

7.42 Sexually Violent Offenders & Murderers Providing False Information or Not Providing Registration Information: Va. Code § 9.1-904(B) (New)

A person convicted of a violation of § 18.2-472.1, in which the person is included on the Registry for a conviction of a sexually violent offense or murder, must reregister with the State Police every 30 days from the date of conviction.⁵

7.50 New Photograph every Two Years: Va. Code § 9.1-904(C) (New)

SB 559 adds subsection C to Virginia Code § 9.1-904 that requires every person required to register to be photographed by a local law-enforcement agency every two years commencing with the date of initial registration.

- Photographs must be in color with the registrant facing the camera and clearly showing only the registrant's face and shoulders.
- No person other than the registrant may appear in the photograph submitted.
- The photograph must indicate the registrant's full name, date of birth, and the date the photograph was taken.

⁴ For a person convicted on a non-sexually violent offense, failing to register or reregister or knowingly providing materially false information to the Sex Offender and Crimes Against Minors Registry is a Class 1 misdemeanor. (See Virginia Code § 18.2-472.1.)

⁵ For persons convicted of a sexually violent offense or murder, failing to register or reregister or knowingly providing materially false information to the Sex Offender and Crimes Against Minors Registry is a Class 6 felony. (See Virginia Code § 18.2-472.1.)

- The local law-enforcement agency must “forthwith forward” the photograph and the registration form to the State Police.
- The local law-enforcement agency may electronically transfer a digital photograph containing the required information to the Sex Offender and Crimes Against Minors Registry within the State Police.

7.60 New Residents & Non-Residents Must Register within Three Days: Va. Code § 9.1-905

SB 559 reduces the timeframe for new residents and non-resident offenders to register from ten days to three days from the date of establishing residence or entering Virginia.

7.61 Non-residents Include Workers and College Students

Non-resident offenders entering Virginia for an extended visit, for employment, to carry on a vocation, or as a student attending school who are required to register in their state of residence must register within three days of entering Virginia. Employment must exceed 14 days or a combination exceeding 30 days during a calendar year. An extended visit means a period of 30 days or more.

8.00 Juvenile Detention Facilities to Provide Sex Offender Information: Va. Code § 16.1-249.1

SB 559 creates Virginia Code § 16.1-249.1 that requires notice to be given to the State Police when a juvenile who is required to register with the Sex Offender and Crimes Against Minors Registry is incarcerated in a secure facility.

8.01 Definition of a Secure Facility: Va. Code 16.1-228

A “secure facility” means a local, regional, or state public or private locked residential facility that has construction fixtures designed to prevent escape and to restrict the movement and activities of children held in lawful custody. These facilities include juvenile correctional centers and local detention facilities.

8.10 At the Time of Receipt, Submit Photograph & Fingerprints Forthwith that Day

At the time of receipt of any person who is required to register in the Sex Offender Registry, the secure facility must obtain from that person all necessary registration information, including fingerprints and photographs as required by the Department of State Police. The person must allow the photograph as part of the registration. The facility must then “*forthwith forward the registration information to the Department of State Police on the date of the receipt of the [ward/juvenile] prisoner.*”⁶

⁶ The new language in Virginia Code § 16.1-249.1 uses the term prisoner. The term “prisoner” is not generally used in the juvenile code and may cause some confusion.

8.20 Failure to Comply with the Provisions of Subsection A: Va. Code § 16.1-249.1 (B)

If a person required to register fails to comply with the provisions of subsection A, the secure facility must either investigate the reasons for the non-compliance or report the non-compliance to the State Police.

8.21 If there is Probable Cause, Obtain a Warrant or Assist with Indictment

“[I]f there is probable cause to believe a violation has occurred, obtain a warrant, or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person was received.”

8.22 Notification to State Police of Action Taken

Whatever the action taken by the secure facility, the secure facility must notify the State Police *forthwith* of the action.

9.00 DJJ to Provide Sex Offender Information: Va. Code § 16.1-278.7:01

SB 559 creates Virginia Code § 16.1-278.7:01 that requires notice to be given to the State Police when a juvenile who is required to register with the Sex Offender and Crimes Against Minors Registry is received by the Department of Juvenile Justice.

9.10 At the Time of Receipt, Submit Photograph & Fingerprints Forthwith that Day

“At the time or receipt of any person, for whom registration with the Sex Offender and Crimes Against Minors Registry is required”, DJJ must obtain from that person all necessary registration information, including fingerprints and photographs as approved by the Department of State Police. The person must allow the photograph as part of the registration.

9.11 Registration Information Must be Sent on Day of Receipt

The Department must “forthwith forward the registration information and photograph” to the State Police on the date of the receipt of the person.

9.20 Failure to Comply with the Provisions of Subsection A: Va. Code § 16.1-278.7:01(B)

If a person required to register fails to comply with the provisions of subsection A, the Department must either investigate the reasons for the non-compliance or report the non-compliance to the State Police.

9.21 If there is Probable Cause, Obtain a Warrant or Assist with Indictment

“[I]f there is probable cause to believe a violation has occurred, obtain a warrant, or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person was received.”

9.22 Notification to State Police of Action Taken

Whatever the action taken by the Department, the Department must notify the State Police *forthwith* of the action.

9.30 Duties of the Department before Releasing a Sex Offender Registrant: Va. Code § 16.1-278.7:02

SB 559 creates Virginia Code § 16.1-278.7:02 requiring the Department to perform several duties prior to releasing a person required to register with the Sex Offender and Crimes Against Minors Registry.

9.31 DJJ Must Inform the Sex Offender Registrant of his Duty to Register

Prior to the release or discharge of a person for whom registration with the Sex Offender Registry is required, DJJ must notify the person of his duty to register with the State Police.

9.32 Place of Employment

A person required to register must provide information regarding place of employment, if available, to DJJ.

9.33 Fingerprints & Photograph

The Department must obtain from that person all necessary registration information, including fingerprints and photographs as approved by the Department of State Police.

9.34 Duty to Reregister and Changes in Address

The Department must inform the person of his duties regarding reregistration and any future change of address.

9.35 Registration Material Must be Sent to State Police on Date of Person's Release

The Department shall forward the registration information to the Department of State Police on the date of the person's release or discharge.

9.40 Failure to Comply with the Provisions of Subsection A: Va. Code § 16.1-278.7:02(B)

If a person required to register fails to comply with the provisions of subsection A, the Department must either investigate the reasons for the non-compliance or report the non-compliance to the State Police.

9.41 If there is Probable Cause, Obtain a Warrant or Assist with Indictment

“[I]f there is probable cause to believe a violation has occurred, obtain a warrant, or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person was received.”

9.42 Notification to State Police of Action Taken

Whatever the action taken by the Department, the Department must notify the State Police *forthwith* of the action.

10.00 New School Requirements Concerning Sex Offenders

SB 559 requires schools to ensure that information relating to the Sex Offender Registry is relayed to certain persons.

10.10 Electronic Notice of Sex Offender Registration: Va. Code § 22.1-79

In addition to the duties of a school board, SB 559 requires the school board to ensure that the public schools within the school division are registered with the Department of State Police to receive electronic notice of the registration or reregistration of any sex offender within that school division.

10.20 Policies to Inform Parents About the Sex Offender Registry: Va. Code § 22.1-79.3

SB 559 requires local school boards to develop and implement policies to advise the parent of each student enrolled in the school division of the availability of information in the Sex Offender Registry and the location of the Internet website.

10.21 Develop Policies About Releasing Children to Non-Parents

Local school boards shall also develop protocols governing the release of children to persons who are not their parents.

10.30 Reporting of College Enrollment for Comparison in Sex Offender Registry: Va. Code § 23-2.2:1

Public and private two- and four-year institutions of higher education physically located in Virginia must electronically transmit enrollment data to the State Police for comparison with information contained in the Virginia Criminal Information Network and National Crime Information Center Convicted Sexual Offender Registry File. This applies to all applicants that are offered acceptance to attend the institution.

11.00 Limitations upon the Disclosure of Criminal Records in the Sex Offender Registry: Va. Code §§ 2.2-3706 and 2.2-3802

SB 559 amends Virginia Code § 2.2-3706 (the Freedom of Information Act) and § 2.2-3802 (Government Data Collection and Dissemination Practices Act) to exempt the records of the Sex Offender and Crimes Against Minors Registry maintained by the Department of State Police except for the information that is required to be posted on the Internet pursuant to Virginia Code § 9.1-913.

12.00 DCJS to Provide Assistance to Agencies about the Sex Offender Registry: Va. Code § 9.1-102

SB 559 amends the powers and duties of the Department of Criminal Justice Services (DCJS) to include advising criminal justice agencies regarding the investigation, registration, and dissemination of information requirements as they pertain to the Sex Offender and Crimes Against Minors Act in conjunction with the State Police and the State Compensation Board.

13.00 Summary of Changes Made Outside of the Juvenile Code⁷

This section of the summary is excerpted in part from the Fiscal Impact Statement issued by the Department of Planning and Budget on March 31, 2006.⁸

13.10 Increased Adult Sentences

The legislation provides for a minimum mandatory sentence of 25 years for persons convicted of rape, forcible sodomy, or object sexual penetration of a child under age 13, if the offender were more than three years older than the victim and the offense were committed during the commission of, or subsequent to, certain other sex-related offenses.⁹

13.20 Sex Offense Convictions Limiting Proximity to Day Care Centers: Va. Code § 18.2-370.2

Virginia Code § 18.2-370.2 lists those sex offenses prohibiting proximity to children. SB 559 prohibits persons convicted of an offense, on or after July 1, 2006, that prohibits proximity to children from loitering within 100 feet of a child day care program. Under the law prior to SB 359, a conviction for such an offense would “forever [prohibit the person] from loitering within 100 feet of the premises of any place he knows or has reason to know is a primary, secondary, or high school.”

13.21 Sex Offenses Prohibiting Residing & Working in or Near School: Va. Code §§ 18.2-370.3 & 18.2-370.4.

SB 559 prohibits anyone convicted of rape, forcible sodomy, or object sexual penetration of a child under age 13, if the offender were more than three years older than the victim and the offense were committed during the commission of, or subsequent to, certain other sex-related offenses, from residing within 500 feet of a school, and working on the property of a school or child day care center.

13.30 Sex Offender Registry Violations – Providing False Information: Va. Code § 18.2-472.1

The legislation increases the criminal penalties for Sex Offender Registry (SOR) violations. Under current law, for anyone convicted of a sexually violent offense or murder, any failure to register for the SOR, or providing false registration information, is a Class 6 felony. The legislation makes a second or

⁷ Parts of this section of the summary are excerpted from the Fiscal Impact Statement issued by the Department of Planning and Budget on March 31, 2006. See 03/31/06 Senate: Fiscal impact statement from DPB (SB559ER).

⁸ See 03/31/06 Senate: Fiscal impact statement from DPB (SB559ER).

⁹ See Va. Code § 18.2-48 (Abduction with intent to extort money or for immoral purpose); § 18.2-61 (Rape); § 18.2-67.1 (Forcible sodomy); § 18.2-67.2 (Object sexual penetration).

subsequent violation by anyone convicted of a sexually violent offense or murder a Class 5 felony. For all other sex offenders, violation of the SOR requirements is now a Class 1 misdemeanor. Under the legislation, a second or subsequent violation would be a Class 6 felony. SB 559 adds the requirement to reregister following any change of the place of employment.

13.40 Physical Verification by State Police or DOC for Failure to Register: Va. Code § 9.1-907

The legislation requires the State Police and the Department of Corrections (DOC) to physically verify the registration information of each SOR registrant who is not under the supervision of DOC. The verification would be completed within 30 days of any initial registration and semi-annually each year thereafter. Any change of address would also have to be physically verified within 30 days. DOC would be responsible for verifying the registration information of each SOR registrant who is under probation or parole supervision.

13.50 Adult Facilities to Provide Sex Offender Registration Information

Similar to the requirements placed on DJJ for committed juvenile sex offenders and in order to assist the State Police in ensuring that the SOR information is up-to-date and complete, DOC and local and regional jails are required, upon receiving any offender for whom SOR registration is required, to obtain the required SOR information and forward it to the State Police.¹⁰

13.60 DMV Must Submit Information to the State Police: Va. Code §§ 46.2-323, 46.2-324, 46.2-330 and 46.2-345

SB 559 requires the Department of Motor Vehicles (DMV) to submit to the State Police information from applications received for licenses and identification cards.

13.70 Probationary Supervision

For persons convicted of violations of SOR requirements, the legislation requires a judge to impose, in addition to any time served in jail or prison, a period of active post-release supervision by DOC. Furthermore, during the period of supervision, the offender would be subject to GPS monitoring.

14.00 Civil Commitment of Sexually Violent Predators (§§ 37.2-900 thru 37.2-919) – Brief Summary

SB 559 expands the list of offenses used to determine eligibility for consideration as a sexually violent predator. The legislation also requires a different assessment instrument, the Static-99, to be used instead of the RRASOR for detaining eligibility. For an offender convicted of rape, forcible sodomy, or object sexual penetration of a child less than 13 years old, a score of “4” or more would subject him to further consideration for involuntary commitment as a sexually violent predator. For offenders convicted of other predicate offenses, the minimum qualifying score would be “5.”

¹⁰ See Va. Code §§ 53.1-23.2 (DOC to give notice of the receipt of certain prisoners), § 53.1-115.1 (Superintendents of regional jails and regional jail-farms to make daily reports to Compensation Board), § 53.1-116.1 (Jailer to give notice of release of certain prisoners), § 53.1-116.1:01 (Jailer to give notice of intake of certain prisoners), § 53.1-121 (Sheriffs to make daily reports to Compensation Board), § 53.1-160.1 (DOC to give notice of Sex Offender Registry requirements to certain prisoners).

The legislation requires that any sexually violent predator placed on conditional release be subject to GPS monitoring and that the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) prepare a treatment plan to be followed by the offender while on conditional release. For those offenders on conditional release, who would also be under probation, parole, or post-release supervision by DOC, failure to comply with the terms of the treatment would be grounds for revocation of any suspended sentence.

The proposed legislation would establish within DMHMRSAS an Office of Sexually Violent Predator Services to administer the sexually violent predator treatment program.

Please note the following additional legislation pertaining to sex offenders.

HB 1037 - Office Sexually Violent Predators Services – Established in DMHMRSAS. Delegate Hamilton. *HB 1037 adds Virginia Code § 37.2-900.1 relating to the Office of Sexually Violent Predator Services. Effective July 1, 2006.* HB 1037 establishes within the Department of Mental Health, Mental Retardation and Substance Abuse Services, the Office of Sexually Violent Predator Services to administer provisions relating to the civil commitment of sexually violent predators.

HB 1359 & SB 318 - Electronic Monitoring of Sexually Violent Predators – Contracting with DOC. Delegate Bell & Senator Howell. *HB 1359 and SB 318 amend Virginia Code §§ 37.2-910, 37.2-912 and 53.1-145 relating to civil commitment of sexually violent predators. An emergency exists, and this act is in force from its passage.* HB 1359 and SB 318 authorize DMHMRSAS to contract with DOC to provide services for the monitoring and supervision of civilly committed sexually violent predators who are on conditional release.

HB 1333 - The Sex Offender Registry – Additional Offenses & Penalties. Delegate Bell. *HB 1333 amends Virginia Code §§ 9.1-902 and 18.2-472.1 requiring registration to the Sex Offender and Crimes Against Minors Registry (SOR) and to increase the penalty for subsequent violations for failing to register or providing false information. Effective July 1, 2006.* The amendment concerning additional offenses and penalties mirror the amendments modeled by SB 559 and were previously summarized.

HB 1338 - Delegate Bell – Clarifying Definitions of Aggravated Sexual Battery & Sexual Battery. Delegate Bell. *HB 1338 amends Virginia Code § 18.2-67.4 relating to punishment for sexual battery. Effective July 1, 2006.* HB 1338 removes language in the Code section defining and punishing sexual battery, a Class 1 misdemeanor, which is the same as language in the section defining and punishing aggravated sexual battery, a felony. HB 1338 removes “through the use of the complaining witness’s mental incapacity or physical helplessness.” Such conduct constitutes aggravated sexual battery under Virginia Code § 18.2-67.5 and is punishable as a Class 6 felony.

SB 578 - Presumption of No Bail for Person Charged with Certain Sex Offenses. Senator McDougle. *SB 578 amends Virginia Code § 19.2-120 relating to presumption of no bail when charged with certain sex offenses. The bill has an enactment clause making it contingent on there being an appropriation of funds to cover its costs in the General Appropriation Act passed during the 2006 Session of the General Assembly. There was no General Appropriation Act passed during the 2006 Session. In order for this bill to become effective, this clause needs to be removed.* SB 578 provides that

a person charged with aggravated sexual battery is rebuttably presumed ineligible for bail. Currently such a person is presumed ineligible when he is charged with a second such offense.

HJ 115 - The Crime Commission to Study Need for Additional Institutional Programming for Sex Offenders. Delegate Kilgore. HJ 115 directs the Virginia State Crime Commission to study the need for additional institutional programming at DOC. In conducting the study, the Crime Commission will examine the number of sex offenders housed at each facility, the current availability of instructional staff at each facility, the required additional staff and accompanying costs for expanding the SORT program, and the recidivism rate for sex offenders who have participated in the SORT program before their release. The Crime Commission must complete its meetings by November 30, 2006, and submit an executive summary of its findings and recommendations to the 2007 Regular Session of the General Assembly.

**HB 1066 – Definition of Child Abuse to Include Parents who allow Convicted Sex Offenders to Reside with that Parents’ Child.
Delegate Watts**

HB 1066 amends Virginia Code §§ 16.1-228 and 63.2-100 relating to the definition of child abuse and neglect. Effective July 1, 2006.

1.00 Summary – A New Type of Child Abuse & Neglect

HB 1066 provides that it may be child abuse or neglect when a parent or other person responsible for a child knowingly leaves that child alone in the same dwelling with a person to whom the child is not related and who the parent knows has been convicted of an offense against a minor for which registration is required as a violent sexual offender.

2.00 HB 1066 Expands the Definition of Child Abuse & Neglect in the Juvenile Code

Virginia Code § 16.1-228 provides the definitions of unique terms used in Chapter 11 of Title 16.1 (the Juvenile Code). Included in Virginia Code § 16.1-228 is a definition for child abuse and neglect. HB 1066 expands the definition of child abuse and neglect.

3.00 HB 1066 Expands the Definition of Child Abuse & Neglect in Title 63.2 (Social Services)

Virginia Code § 63.2-100 is the definition section for the Title of the Code pertaining to the Department of Social Services. Included in Virginia Code § 63.2-100 is a definition for child abuse and neglect.

4.00 The New Requirements for the New Type of Child Abuse or Neglect

The new language in Virginia Code §§ 16.1-228 and 63.2-100 is identical. Below is a breakdown of the elements establishing the new type of child abuse or neglect.

- **Parent or Caretaker:** The person alleged of the abuse or neglect must be the parent or caretaker of the alleged abused or neglected child.

- **Non-Related Violent Sex Offender:** The parent or caretaker must leave the child alone in a dwelling, including an apartment, with a non-relative who is required to register as a violent sexual offender pursuant to Virginia Code § 9.1-902.
- **Sex Offense Against a Child:** The violent sexual offense conviction resulting in registration must be for an offense against a child.
- **Parent Knows about Registration:** The parent or caretaker must know that the non-relative is required to register as a violent sex offender.
- **Substantial Risk of Physical or Mental Injury:** By leaving the child alone with the known violent sex offender creates a substantial risk of physical or mental injury to the child.

4.10 Probation Officers are Mandated Reporters of Child Abuse & Neglect

Virginia Code § 63.2-1509 requires certain professionals who have reason to suspect that a child is an abused or neglected child to report the matter immediately to child protective services unit in the local department of social services where the child resides or wherein the abuse or neglect is believed to have occurred. In lieu of making the report to the local department of social services, the mandated reporter call the State Department of Social Services' toll-free child abuse and neglect hotline. Probation officers are listed as mandated reporters.

Please Note the Following Legislation Relating to Sex Offenders & Social Services:

HB 1156 - Confidentiality of Records of Sexual and Domestic Violence Victims. Delegate Janis. *HB 1156 amends Virginia Code § 63.2-1612 and adds § 63.2-104.1 relating to confidentiality of records concerning sexual and domestic violence victims and locations of shelters. Effective July 1, 2006.* HB 1156 requires providers of sexual or domestic violence services to protect the confidentiality and privacy of adult, youth, and child victims of domestic violence, dating violence, sexual assault, or stalking and their families. A provider cannot disclose any personally identifying information or individual information collected in connection with services requested, utilized, or denied through sexual or domestic violence programs. In order to reveal individual client information, the provider must have the informed, written, reasonably time-limited consent of the person. HB 1156 requires the Director of the Department of Social Services to work with the Statewide Domestic Violence Coalition to develop policies and implement methods to ensure the confidentiality of victim records and records pertaining to the address or location of any shelter or facility assisted under the Family Violence Prevention and Services Act, 42 U.S.C. § 10401 et seq.

HB 1589 & SB 420 – Class 1 Misdemeanor to Operate Family Day Home if any Employee is Convicted Sex Offender. Delegate Gilbert & Senator Hanger. *HB 1589 and SB 420 amend Virginia Code § 63.2-1727 relating to the criminal penalty for employing sex offenders in family day homes. Effective July 1, 2006.* Virginia Code § 63.2-1727 makes it a Class 1 misdemeanor for a person to operate a family day home if he knows that any other person who resides in the home is a convicted sex offender. HB 1589 and SB 420 amend Virginia Code § 63.2-1727 to make it a Class 1 misdemeanor for a person to operate a family day home if he knows that any of the home's employees or volunteers are convicted sex offenders. This bill is identical to HB 1589.

SB 691 - Prohibiting Sexually Violent Offenders from Adopting. Senator Obenshain. *SB 691 creates Virginia Code § 63.2-1205.1 relating to who is eligible to adopt a child. Effective July 1, 2006.* SB 691 prohibits a person seeking to adopt who has been convicted of a sexually violent offense or an offense requiring registration in the Sex Offender Registry pursuant to Virginia Code § 9.1-902.

GANG INFORMATION

HB 847 & SB 561 – Omnibus Crime Commission Gang Information Legislation. Delegate Albo & Senator Stolle

HB 847 and SB 561 amend Virginia Code §§ 2.2-2618, 16.1-300, 53.1-10, and 66-3.2 relating to criminal gang information in the custody of the Departments of Corrections and Juvenile Justice. Effective July 1, 2006. 2nd Enactment Clause.

1.00 Summary - The Crime Commission’s Omnibus Gang Information Bill

HB 847 and SB 561 amend Virginia Code §§ 2.2-2618, 16.1-300, 53.1-10, and 66-3.2 relating to criminal gang information in the custody of the Departments of Corrections and Juvenile Justice. HB 847 and SB 561 require the Departments of Corrections and Juvenile Justice to collect information on individuals identified as gang members and transmit it to the Commonwealth's Attorneys' Services Council. The Council will disseminate the information to attorneys for the Commonwealth.

2.00 Background – HJ 573 Crime Commission Study on Gang Information

During the 2005 General Assembly session, HJ 573 was passed. HJ 573 stated that the prosecution of criminal gang activity is sometimes needlessly burdened by the necessity of proof of gang affiliation and gang conduct when the gang and its activity are easily determined on the basis of formerly identified characteristics of affiliation and conduct. Therefore, HJ 573 directed the Virginia State Crime Commission to study criminal street gang conduct and characteristics for the purpose of reducing the burden on prosecutors by producing a formal listing of gang names coupled with conduct and characteristics unique to those gangs. This bill is the result of the Crime Commission’s work on that resolution.

3.00 Amendment #1 – The Commonwealth Attorneys Services Council to Collect Gang Affiliation Data

Virginia Code § 2.2-2618 provides the powers and duties of the Commonwealth Attorneys Services Council. HB 847 and SB 561 expand the powers and duties of the Commonwealth Attorneys Services Council to include gathering and disseminating information to attorneys for the Commonwealth “*on individuals identified as criminal gang members, as transmitted by the Department of Corrections and the Department of Juvenile Justice.*”

4.00 Amendment #2 – Listing Persons with Legitimate Interests who may Access Records with a Court Order

The bills amend subsection A 6 of Virginia Code § 16.1-300 to specify that law-enforcement agencies, school administrations, and probation offices are included as entities that may examine certain juvenile records held by the Department of Juvenile Justice (DJJ) if there is a court order determining that they have a legitimate interest. The bills also clarify that the “legitimate interest” can be in the case, the work of the court, or the “*juvenile*.” Adding “juvenile” does not appear to be a substantive change.

4.01 A Court Order is Required under Subsection A 6 of Virginia Code § 16.1-300

Please note, subsection A 6 of Virginia Code § 16.1-300 requires a court order in order to release the confidential records on a juvenile in the custody of DJJ. Although this legislation specifies who may be considered a legitimate interest, a court order is still required before release can be made under this subsection.

5.00 Amendment #3 – Releasing Confidential Information to the Crime Commission

HB 847 and SB 561 amend subsection A 9 of Virginia Code § 16.1-300 to allow confidential juvenile records to be shared with any state criminal justice agency that is conducting research.

5.10 Released Information Must be Kept Confidential or “Sanitized”

The state criminal justice agency must agree that “*all information received shall be kept confidential, or released or published only in aggregate form.*”

5.20 Who is a Criminal Justice Agency?

“Criminal justice agency” means a court or any other governmental agency that performs the administration of criminal justice as its primary function, the Office of the Attorney General, and the Virginia State Crime Commission as defined in Virginia Code § 9.1-101.

6.00 Amendment #4 – Releasing Confidential Gang Information for Purposes of Criminal Gang Investigation

Arguably, this amendment is the most significant. HB 847 and SB 561 add subsection A 10 to Virginia Code § 16.1-300 thereby allowing confidential juvenile information contained in the social history to be released for the purpose of an investigation into criminal street gang activity.

6.10 Only Information in the Social History can be Released

Only gang-related information contained in the juvenile’s social history can be released. The General Assembly specifically exempted “*medical, psychiatric, and psychological records and reports.*”

6.20 Release of Confidential Gang Information can be to State Police & Local Law Enforcement

Gang-related confidential information contained in the juvenile’s social history can be released only to the “*Department of State Police or of a police department or sheriff’s office that is a part of or*

administered by the Commonwealth or any political subdivision thereof, and who is responsible for the enforcement of the penal, traffic, or motor vehicle laws of the Commonwealth.”

6.21 Boiler Plate Language Meaning State Police & Local Law Enforcement

The above italicized language is standard boiler plate language used to ensure coverage of all state and local law enforcement.

6.30 The Confidential Information Must Relate to Alleged Gang Activity

Releasing the information must be for the purpose of “*a criminal investigation into alleged criminal gang activity involving a predicate criminal act as defined in § 18.2-46.1 or information that a person is a member of a criminal street gang as defined in § 18.2-46.1.*”

6.31 The Definition of Criminal Street Gang Activity: Va. Code § 18.2-46.1

Virginia Code § 18.2-46.1 provides the definition of a “criminal street gang” to mean any ongoing organization, association, or group of three or more persons, whether formal or informal:

- (i) which has as one of its primary objectives or activities the commission of one or more criminal *activities*;
- (ii) which has an identifiable name or identifying sign or symbol; and
- (iii) whose members individually or collectively have engaged in the commission of, attempt to commit, conspiracy to commit, or solicitation of two or more predicate criminal acts, at least one of which is an act of violence, provided such acts were not part of a common act or transaction.

6.32 Definition of “Predicate Criminal Act”

An essential element of the definition of a criminal street gang requires that one of the gang’s primary functions is the commission of one or more predicate criminal acts. There are essentially two categories of predicate criminal acts. An “act of violence” as defined in subsection A of Virginia Code § 19.2-297.1 is one set of predicate criminal acts. The second category simply lists by statute those offenses that constitute a predicate criminal act.

What are the Acts of Violence?

“*Predicate criminal act*” means an act of violence as defined in subsection A of Virginia Code § 19.2-297.1 as listed below.

- 18.2-32 (First and second degree murder)¹¹,
- 18.2-35 (Voluntary manslaughter),
- 18.2-40 (Lynching deemed murder and punished as provided in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2)¹²,

¹¹ Subdivision (i.)(a.) under subsection A of Virginia Code § 19.2-297.1 states, “First and second degree murder and voluntary manslaughter under Article 1 (§ 18.2-30 et seq.)”

- [18.2-41](#) (Shooting, stabbing, etc., with intent to maim, kill, etc., by mob),¹³
- [18.2-47](#) (Felony abduction and kidnapping)¹⁴,
- [18.2-48](#) (Abduction with intent to extort money or for immoral purpose)¹⁵,
- [18.2-48.1](#) (Abduction by prisoners)¹⁶,
- [18.2-49](#) (Threatening, attempting, or assisting in such abduction)¹⁷,
- [18.2-49.1](#) (Violation of court order regarding custody and visitation)¹⁸,
- [18.2-51](#) (Shooting, stabbing, etc., with intent to maim, kill, etc.)¹⁹,
- [18.2-51.1](#) (Malicious bodily injury to law-enforcement officers, firefighters, et. al)²⁰,
- [18.2-51.2](#) (Aggravated malicious wounding)²¹,
- [18.2-52](#) (Malicious bodily injury by means of any caustic substance or agent or use of any explosive or fire)²²,
- [18.2-52.1](#) (Possession of infectious biological substances or radiological agents)²³,
- [18.2-53](#) (Shooting, etc., in committing or attempting a felony)²⁴,
- [18.2-58](#) (Robbery);
- [18.2-58.1](#) (Carjacking);
- [18.2-61](#) (Rape)²⁵,
- [18.2-63](#) (Carnal knowledge of child between thirteen and fifteen years of age)²⁶,
- [18.2-64.1](#) (Carnal knowledge of certain minors by DJJ staff, et. al)²⁷,
- [18.2-64.2](#) (Carnal knowledge of an inmate, parolee, probationer)²⁸,
- [18.2-67.1](#) (Forcible sodomy)²⁹,
- [18.2-67.2](#) (Object sexual penetration)³⁰,
- [18.2-67.3](#) (Aggravated sexual battery)³¹,

¹² Subdivision (i.)(b.) under subsection A of Virginia Code § [19.2-297.1](#) states, “Mob-related felonies under Article 2 (§ [18.2-38](#) et seq.)” Virginia Code § [18.2-39](#) states that an “act of violence by a mob upon the body of any person” that results in death constitutes a “lynching.” Lynching is deemed murder and punished as provided in Article 1 (§ [18.2-30](#) et seq.) of Chapter 4 of Title 18.2.

¹³ Subdivision (i.)(b.) under subsection A of Virginia Code § [19.2-297.1](#) states, “Mob-related felonies under Article 2 (§ [18.2-38](#) et seq.)” Every person composing a mob that “maliciously” wounds another person is guilty of a Class 3 felony.

¹⁴ Felony kidnapping or abduction offenses under Article 3 of Title 18.2 (§ [18.2-47](#) et seq.) are acts of violence.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ Any malicious felonious assault or malicious bodily wounding under Article 4 of Chapter 4 of Title 18.2 (§ [18.2-51](#) et seq.) is an act of violence.

²⁰ Id.

²¹ Id.

²² Id.

²³ Id.

²⁴ Id.

²⁵ Except as otherwise provided in § [18.2-67.5:2](#) or § [18.2-67.5:3](#), any felonious criminal sexual assault under Article 7 of Chapter 4 of Title 18.2 (§ [18.2-61](#) et seq.) is an act of violence.

²⁶ Id.

²⁷ Id.

²⁸ Id.

²⁹ Id.

³⁰ Id.

³¹ Id.

- [18.2-67.5](#) (Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual battery)³²,
- [18.2-77](#) (Arson when the structure was occupied)³³
- [18.2-79](#) (Class 3 Felony - burning or destroying public building),

Please note: Conspiracy to commit any of the violations enumerated above and violations as a principal in the second degree or accessory before the fact of the provisions enumerated above are considered acts of violence.

Prior convictions include convictions under the laws of any state or of the United States for any offense substantially similar to those listed under “acts of violence” if such offense would be a felony if committed in the Commonwealth.

What are the Specific Virginia Code Sections?

The second category of predicate criminal acts lists by statute those offenses that constitute a predicate criminal act. “*Predicate criminal act*” includes the following Virginia Code sections:

- [18.2-42](#) (Assault or battery by mob),
- [18.2-46.3](#) (Recruitment of persons for criminal street gang),
- [18.2-51](#) (Shooting with intent to maim),
- [18.2-51.1](#) (Malicious bodily injury),
- [18.2-52](#) (Malicious bodily injury by caustic substance, etc.),
- [18.2-53](#) (Shooting, etc., in committing or attempting a felony),
- [18.2-55](#) (Bodily injuries caused by prisoners),
- [18.2-56.1](#) (Reckless handling of firearms; reckless handling while hunting),
- [18.2-57](#) (Assault and battery),
- [18.2-57.2](#) (Assault and battery against family member),
- [18.2-59](#) (Extorting money, etc., by threats),
- [18.2-121](#) (Entering property of another for purpose of damaging),
- [18.2-127](#) (Injuries to churches),
- [18.2-128](#) (Trespass upon church or school property),
- [18.2-137](#) (Injuring any property, monument, etc.),
- [18.2-138](#) (Damaging public buildings),
- [18.2-146](#) (Breaking, destroying, etc., vehicles),
- [18.2-147](#) (Entering or setting in motion vehicles), or
- any violation of a local ordinance adopted pursuant to § [18.2-138.1](#) (Damaging public buildings).
- subsection H, H 1 or H 2 of § [18.2-248](#) (“Drug King Pin Law”)
- [18.2-248.01](#) (Transporting controlled substances into the Commonwealth),
- [18.2-255](#) (Distribution of certain drugs to persons under 18 prohibited),
- [18.2-255.2](#) (Prohibiting the sale or manufacture of drugs on or near certain properties),
- [18.2-286.1](#) (Shooting from vehicles so as to endanger persons; penalty),
- [18.2-287.4](#) (Carrying loaded firearms in public areas prohibited; penalty), and

³² Id.

³³ Arson when the dwelling is occupied is a felony punishable by imprisonment for five years to life.

- [18.2-308.1](#) (Possession of firearm, stun weapon, or other weapon on school property prohibited).
- New 2006: §[18.2-83](#) (Bomb threats)
- New 2006: §[18.2-356](#) (Procuring person for purposes of prostitution)
- New 2006: §[18.2-282.1](#) (Brandishing a machete)

“Predicate criminal act” Requiring Second Offenses:

- a second or subsequent felony violation of subsection C of § [18.2-248](#) (Distribution et. al of Schedule I or II controlled substances),
- a second or subsequent felony of § [18.2-248.1](#) (Penalties for sale, gift, distribution or possession with intent to sell, give or distribute marijuana).

“Predicate criminal act” Includes Local Ordinance Violations:

Any violation of a local ordinance adopted pursuant to § [15.2-1812.2](#) (Willful and malicious damage to or defacement of public or private facilities).

“Predicate criminal act” Includes Offenses Committed Outside of Virginia Information Technologies Agency:

Any substantially similar offense under the laws of another state or territory of the United States, the District of Columbia, or the United States.

Sidebar (Other 2006 Legislation Add to List of Predicate Crimes): [HB 775](#) & [SB 473](#) - **Predicate Criminal Gang Crimes: Bomb Threats and Prostitution.** Delegate [Albo](#) & Senator [Norment](#). *HB 775 and SB 473 amend Virginia Code § [18.2-46.1](#) by adding threats to bomb (§ 18.2-83) and receiving money for procuring person for prostitution (§ 18.2-356) to the definition of criminal street gang. Effective July 1, 2006. HB 775 and SB 473 expand the list of predicate crimes necessary to satisfy the definition of criminal street gang by adding by adding threats to bomb (§ 18.2-83) and receiving money for procuring person for prostitution (§ 18.2-356).*

6.40 The Investigation Must be Authorized by the A.G. or Commonwealth Attorney

The confidential gang-related information can be used only in connection with a criminal investigation into alleged gang activity that is authorized by the Attorney General, the attorney for the Commonwealth, or in connection with a prosecution or proceeding in court.

7.00 Amendment #5 – Submitting Gang Information to the Commonwealth’s Attorney’s Services Council

Virginia Code § [66-3.2](#) is amended to require DJJ to submit information on juveniles identified as affiliated with a criminal street gang to the Commonwealth’s Attorney’s Services Council on a monthly basis.

7.10 A Monthly List of Committed Juvenile Gang Members – 14 Years and Older

On a monthly basis, the Director of DJJ must forward a list of juveniles, 14 years of age or older, who meet the below criteria:

- have been committed to DJJ,
- have been found guilty of a felony offense defined as a predicate criminal act under § 18.2-46.1, or have been adjudicated delinquent on the basis of an act that would be a felony and a predicate criminal act under § 18.2-46.1 if committed by an adult, and
- have been identified as belonging to a criminal gang.

The list must contain identifying information for each gang member, as well as the offense, court, and date of conviction or adjudication.

7.20 Corresponding Amendment to Virginia Code § 16.1-300

In light of that amendment, HB 847 and SB 561 add subsection A 11 to Virginia Code § 16.1-300 to allow confidential gang affiliation information to be shared with the Commonwealth's Attorneys' Services Council and any attorney for the Commonwealth.

8.00 Amendment #6 – DOC to Submit Gang Information to the Commonwealth's Attorney's Services Council

Virginia Code § 53.1-10 provides the powers and duties of Director of DOC. HB 847 and SB 561 add to that section the requirement that DOC collect data on inmates identified as affiliated with a criminal street gang. Similar to DJJ, DOC must also *“forward to the Commonwealth's Attorneys' Services Council, updated on a monthly basis, a list of all identified criminal gang members incarcerated in state correctional institutions. The list shall contain identifying information for each criminal gang member, as well as his criminal record.”*

9.00 A Second Enactment Clause

HB 847 and SB 561 contain a 2nd enactment clause that requires *“the information forwarded by the Department of Corrections and the Department of Juvenile Justice to the Commonwealth's Attorneys' Services Council shall be in a form mutually agreeable to all parties.”*

**HB 692 & SB 129 – Sharing Confidential Juvenile Gang Information with Law Enforcement.
Delegate Marsden & Senator O'Brien**

HB 692 and SB 129 amend Virginia Code § 16.1-309.1 relating to exceptions to confidentiality when a juvenile is identified as affiliated with a criminal street gang. Effective July 1, 2006.

1.00 Summary - Sharing Gang Intel with Law Enforcement

HB 692 and SB 129 amend Virginia Code § 16.1-309.1 relating to exceptions to confidentiality when a juvenile is identified as affiliated with a criminal street gang. Where consideration of public safety

requires, the Department of Juvenile Justice (DJJ) or a locally operated court service unit may release information about a juvenile who has been identified as affiliated with a criminal street gang as defined in § 18.2-46.1 to the State Police or local law-enforcement officer. The exchange of information must be for the purpose of an investigation into criminal street gang activity.

2.00 Background – Hindering investigations into Gang Activity

Issues were raised by law-enforcement officers and commonwealth’s attorneys concerning DJJ’s ability to share confidential juvenile records with law-enforcement officials during an investigation into alleged criminal street gang activity involving a juvenile. Under current law, information involving criminal street gang activity known to DJJ cannot be shared with local law enforcement without a court order. This legislation addresses that issue.

3.00 The Amendments - The Parameters for Releasing Gang-Related Information

- First, the release of such information must be made in light of public safety considerations.
- Second, the release of information is discretionary; the release of information is not mandated.
- Third, the release of information must be related to gang involvement by the juvenile or the gang activity of others.
- Fourth, the information to be released must be obtained from an investigation or supervision of a juvenile who has been identified as affiliated with a criminal street gang.
- Fifth, the release of information must be for the purpose of an investigation into criminal street gang activity.
- Finally, the release of information can be made only to the State Police and to local law enforcement.

HB 588 & SB 183 – Brandishing a Machete & Predicate Gang Crime.
 Delegate **Watts** & Senator **Puller**

HB 588 and SB 183 amends Virginia Code § 18.2-46.1 and creates § 18.2-282.1 relating to brandishing a machete or other bladed weapon with intent to intimidate. Effective July 1, 2006.

1.00 Summary - Brandishing a Machete & Predicate Gang Crime

HB 588 & SB 183 create a new crime of brandishing a machete with the intent to intimidate and includes such offense as one of the predicate criminal acts that defines street gang activity. The penalty for a violation of this section is a Class 1 misdemeanor, or if the violation occurs on or within 1,000 feet of any public, private, or religious school, a Class 6 felony. The bill makes an exception for excusable or justifiable self-defense.

2.00 The Elements of Brandishing a Machete with Intent to Intimidate: Va. Code § 18.2-282.1

HB 588 and SB 183 add a section of the Virginia Code creating the new crime of brandishing a machete.

2.01 New Law Covers Machetes and any weapon with a 12-inch or Longer Blade

The new crime covers a machete or any other weapon with an exposed blade that is 12 inches or longer in length.

2.02 Brandishing with Intent to Intimidate

The person must “point, hold, or brandish” the machete or other weapon “with the intent of intimidating any person or group of persons and in a manner that reasonably demonstrates that intent.”

2.03 A Person Can Brandish a Machete in Self-Defense

The new language specifically allows a person to brandish a machete if engaged in excusable or justifiable self-defense.

2.10 Penalty for Brandishing a Machete – Class 1 Misdemeanor

A person convicted of brandishing a machete is guilty of a Class 1 misdemeanor.

2.11 Felony if on or near School

If the violation occurs upon any public, private, or religious elementary, middle, or high school, including buildings and grounds or upon public property within 1,000 feet of such school property, the crime rises to a Class 6 felony.

3.00 Expands the List of Predicate Crimes Under the Definition of Gang Crime

HB 588 and SB 183 expand the list of predicate crimes necessary to satisfy the definition of criminal street gang to include brandishing a machete in violation of Virginia Code § 18.2-282.1.

Sidebar: HB 901 & SB 344 - Person on Probation Prohibited from any Contact with Gangs. Delegate Iaquinto & Senator Obenshain. *HB 901 and SB 344 amend Virginia Code § 19.2-303 relating to criminal street gang members and conditions of probation. Effective July 1, 2006.* Virginia Code § 19.2-303 allows the circuit court to suspend imposition of a sentence in whole or part and place the convicted person in probation under such conditions as the court determines. HB 901 and SB 344 allows the court, after conviction of an active participant or member of a criminal street gang, to place as a condition of probation, reasonable restrictions on those persons with whom the accused may have contact. The restrictions may include prohibiting the accused from having contact with anyone whom he knows to be a member of a criminal street gang. However, the person may have contact with a family or household member as defined in § 16.1-228.

IMMIGRATION LEGISLATION

HB 1046 – Reporting Alleged Illegal Alien Delinquents to ICE Delegate Reid

HB 1046 amends Virginia Code § 16.1-309.1 relating to reporting certain juveniles to the Immigration and Customs Enforcement Agency (ICE). Effective July 1, 2006.

1.00 Summary - Reporting Alleged Illegal Alien Delinquents to ICE

HB 1046 amends Virginia Code § 16.1-309.1. HB 1046 provides that a juvenile intake officer shall report to the United States Immigration and Customs Enforcement Agency a juvenile who has been detained in a secure facility based on an allegation that he committed a violent juvenile felony and who the intake officer has probable cause to believe is in the United States illegally.

2.00 The Initial Bill – All Delinquency Petitions Would Need to be Reviewed for Suspicion

As originally introduced, HB 1046 required a juvenile intake officer to report to the United States Immigration and Customs Enforcement Agency (USICEA) a juvenile who is the subject of a petition alleging he committed an act that would be a crime if committed by an adult and who has also been found to be in the United States illegally. The House attempted to limit the scope of legislation by requiring a report if there is a “reason to suspect” the juvenile is an undocumented person after an Immigration Alien Query to the Virginia Criminal Information Network. The Immigration Alien Query to the Virginia Criminal Information Network failed to address the intent of the Patron. Subsequently, the Senate rewrote the bill. Senate Courts amendments significantly narrowed the scope of the legislation.

3.00 What is Virginia Code § 16.1-309.1?

Virginia Code § 16.1-309.1 provides exceptions to the general rules of confidentiality found in Virginia Code §§ 16.1-300 (DJJ Records), 16.1-301 (Law Enforcement Records), and 16.1-305 (Court Records). Virginia Code § 16.1-309.1 allows for the public release of confidential information about a juvenile when consideration of public interest requires it because the juvenile has been adjudicated delinquent or convicted of a specified offense. For example, a juvenile court judge shall make available the name and address of a juvenile when that juvenile has been adjudicated delinquent for an act that would be a Class 1, 2, or 3 felony, forcible rape, robbery or burglary, or a related burglary offense. DJJ can release identifying information about a juvenile who has escaped from a juvenile correctional center.

4.00 The New Language in Virginia Code § 16.1-309.1 - What HB 1046 Allows

HB 1046 adds subsection G that states:

G. Notwithstanding any other provision of Article 12 (§ 16.1-299 et seq.), an intake officer shall report to the United States Immigration and Customs Enforcement Agency a juvenile who has been detained in a secure facility based on an allegation that the juvenile committed a violent

juvenile felony and who the intake officer has probable cause to believe is in the United States illegally.

4.10 Bottom-line - What Does the New Language Require?

If a juvenile is incarcerated in a detention facility prior to trial for a violent juvenile felony, then the intake office **must** report that juvenile to ICE if the intake officer has probable cause to believe that the juvenile is in the United States illegally.

4.11 Notwithstanding What?

Webster’s Encyclopedic Unabridged Dictionary defines “notwithstanding” as meaning “in spite of, without being opposed or prevented by.”

4.12 And Those Violent Juvenile Felonies . . .

Virginia Code § 16.1-228 defines a “violent juvenile felony” as meaning any of the delinquent acts enumerated in subsection B or C of § 16.1-269.1 when committed by a juvenile 14 years of age or older.

Those violent juvenile felonies under subsection B are,

- capital murder as defined in § 18.2-31,
- first and second degree murder as defined in § 18.2-32,
- lynching as defined in § 18.2-40, and
- aggravated malicious wounding as defined in § 18.2-51.2.

Those violent juvenile felonies under subsection C are,

- felony homicide in violation of § 18.2-33
- felonious injury by mob in violation of § 18.2-41,
- abduction in violation of § 18.2-48,
- malicious wounding in violation of § 18.2-51,
- malicious wounding of a law-enforcement officer in violation of § 18.2-51.1,
- felonious poisoning in violation of § 18.2-54.1,
- adulteration of products in violation of § 18.2-54.2,
- robbery in violation of § 18.2-58,
- carjacking in violation of § 18.2-58.1,
- rape in violation of § 18.2-61,
- forcible sodomy in violation of § 18.2-67.1, or
- object sexual penetration in violation of § 18.2-67.2.

Sidebar (Carried-Over Legislation): **HB 1460 - Street Gangs - Verification of Immigration Status upon Conviction of Crime.** Delegate **Marsden**. *HB 1460 would amend the Code of Virginia by adding in Article 2.1 of Chapter 4 of Title 18.2 a section numbered 18.2-46.3:4 relating to investigation into legal presence in the United States following arrest for criminal street gang activity. Continued to*

2007 in Senate Courts of Justice. Committee action on continued legislation by midnight, December 8, 2006. For any person convicted of a criminal street gang violation pursuant to Virginia Code §§ 18.2-46.2 or 18.2-46.3, or adjudication of a juvenile for a delinquent act that would be a violation of § 18.2-46.2 or 18.2-46.3, the probation and parole officer shall verify the person's immigration status through the Virginia Criminal Information Network Immigration Alien Query . If the officer discovers that the person is in the United States illegally, he shall report this status to the United States ICEA. The officer shall contact the United States ICEA and report any information he may have regarding the person, the family, and household members.

MENTAL HEALTH RELATED LEGISLATION

HB 368 - Venue for Conducting Hearing for the Involuntary Commitment of a Minor. Delegate Carrico

HB 368 amends Virginia Code §§ 16.1-340 and 16.1-341 relating to admissibility of state mental health facility recommendations during an involuntary commitment hearing for a minor. Effective July 1, 2006.

1.00 Summary – Venue is Where the Juvenile is Located

HB 368 amends Virginia Code §§ 16.1-340 and 16.1-341 relating to the emergency involuntary admission of a juvenile because of a serious mental illness or condition. HB 368 requires the juvenile court where the juvenile is located to conduct the emergency temporary detention order (TDO) hearing rather than the juvenile court where the juvenile originally resided. HB 368 also adds language stating that the state mental health facility recommendations may be admissible during an involuntary commitment hearing of a minor.

2.00 Statutory Background – Emergency TDO: Va. Code § 16.1-340

Virginia Code § 16.1-340 provides the authority for the emergency involuntary admission of a minor, including a minor in detention or shelter care, by taking that minor into custody for inpatient treatment because probable cause exists to believe the minor is mentally ill and in need of hospitalization.

2.10 The Procedures for an Emergency TDO

The procedures specified in Article 4 (§ 37.2-808 et seq.) of Chapter 8 of Title 37.2 govern the emergency involuntary admission of a minor.

2.20 Imminent Danger Due to Mental Illness or Substantially Unable to Care for Himself

Pursuant to Virginia Code §§ 37.1-67.01 or 37.1-67.1, a juvenile must present an imminent danger to himself or others as a result of the mental illness or is so seriously mentally ill as to be substantially unable to care for himself. In such a situation, a TDO may be issued.

2.30 A Magistrate will Issue the Emergency TDO

Pursuant to Virginia Code § 37.2-808, a magistrate will issue, upon the sworn petition of any responsible person or upon his own motion, an emergency custody order when there is probable cause to believe that a person within his judicial district meets the required criteria for admission.

2.40 Judicial Review with 24 Hours (72 to 96 at the Latest)

If a juvenile is admitted to a mental health facility for emergency inpatient treatment, the juvenile court must conduct a hearing on the emergency admission within 24 hours (72 at the latest) from the date of the issuance of the TDO. Under current law, the hearing can be held where the juvenile is located or where the juvenile resides.

3.00 Legislative Background – The Issue of Venue has been Problematic

Prior to 2004, the Virginia Code did not specify which juvenile court had jurisdiction to hear the above-mentioned matters. Problems arose when some judicial districts refused jurisdiction over a hearing because of confusion concerning proper venue. In 2004, Delegate Hamilton introduced HB 580 to clarify that the juvenile court *servicing the jurisdiction in which the minor is located or resides* has jurisdiction to conduct the emergency TDO hearing. This problem occurred in the past for DJJ when a ward in a juvenile correctional center in Chesterfield (i.e., RDC or Bon Air) was sent to the Commonwealth Center in Staunton via a TDO. Because the jurisdiction of the court to conduct the hearing was not specified in the Virginia Code, DJJ was required to retrieve the ward from Staunton and return him to Chesterfield for the commitment hearing.

3.10 2005 Legislation Allows for Hearings to be Conducted Electronically

Legislation enacted during the 2005 session (HB 578) allows these proceedings to be conducted electronically. HB 578 provides that petitions and orders for emergency custody, temporary detention, and involuntary commitment of minors may be filed, issued, served, or executed by electronic means, with or without the use of two-way electronic video and audio communication. HB 578 creates Virginia Code § [16.1-345.1](#) to allow the juvenile court to use electronic communication when conducting an emergency custody proceeding pursuant to § [37.1-67.01](#), a temporary detention proceeding pursuant to § [37.1-67.1](#), or an involuntary commitment proceeding pursuant to § [16.1-341](#).

3.20 Again About Venue, HB 368 (2006) Goes Beyond HB 580 (2004)

HB 368 goes further than HB 580 by requiring the juvenile court where the juvenile is located to conduct the emergency TDO hearing. Therefore, if a juvenile in a detention facility or a juvenile correctional center required emergency inpatient mental health treatment at the Commonwealth Center, the TDO hearing would occur in Staunton rather than the court where the juvenile originally resided. This bill will eliminate any confusion concerning the appropriate venue for conducting the hearing. The bill may further reduce the unnecessary transportation of a juvenile between where the juvenile originally resides (home, juvenile correctional center, or detention facility) and the location of the emergency inpatient treatment facility.

3.21 Example of Potential Impact - The Commonwealth Center in Staunton

The Commonwealth Center in Staunton had 480 admissions during the last year. Not all of those admissions were involuntary and, thereby, necessitated a TDO hearing. However, HB 368 would require all involuntary TDO petitions to be filed by the intake officer in Staunton and hearings held in the Staunton J&DR Court. Southwest State Mental Hospital in Marion County would also experience a similar impact. These localities in the jurisdictions where the mental health treatment facilities are located have significant concerns about incurring a substantially disproportionate financial and resource impact as a result of these hearings being conducted in those jurisdictions.

Sidebar (The below legislation failed to make it out of House Appropriations): SB 290 - Special Justices for Psychiatric Inpatient Commitment of Minors Act. Senator Cuccinelli. SB 290 sought to amend Virginia Code §§ 16.1-336, 16.1-339, 16.1-341, 16.1-345.1, 16.1-348, 37.2-803, and 37.2-804 relating to Psychiatric Inpatient Treatment of Minors Act and special justices. The bill failed to make it out of House Appropriations.

- **Summary - Bringing Back Special Justices:** SB 290 sought to make it clear that retired judges, substitute judges, and special justices are authorized to perform hearings under the Act and to receive compensation.
- **Background – 2003 Recodification of Mental Health Statutes:** The Virginia Code Commission, in 2003, undertook the revision of Title 37.1, Institutions for the Mentally Ill; Mental Health Generally, of the Code of Virginia. Title 37.1 was last revised in 1968. The Recodification Bill was enacted by the 2004 General Assembly. The changes made by to Virginia Code §§ 16.1-339 and 16.1-348 were part of the recodification of Title 37.1, including the removal of “special justice” from the definition of “judge.”
- **Rationale for Removing “Special Justices” from the Code:** Concerning the removal of “special justice,” in the process of the revision of Title 37.1, the Code Commission determined that the definition of the word “judge” in Title 37.1 no longer worked for the title, especially after the addition of the sexually violent predator court proceedings to the title, which are being done by circuit court judges. In reviewing the provisions where a cross reference was made to “judge as defined in Title 37.1” elsewhere in the Virginia Code, the Code Commission made clarifying changes only. Based on the AG opinion below and input from Title 37.1 task force members, special justices are not supposed to be doing minor commitment hearings under current law. While the Commission noted that, in practice, special justices might be doing such hearings in certain places, adding them into the statute would be a substantive change in law not within the purview of the Code Commission.
- **1996 OAG Opinion:** The 1996 OAG opinion states that no statute in Title 37.1 specifically confers to special justices jurisdiction over the commitment or certification of minors. The authority granted to special justices by the General Assembly in Title 37.1 has not been extended to any of the provisions contained in Title 16.1. Therefore, only specific provisions contained in Title 16.1 will authorize special justices to perform the judicial functions prescribed in that title. Contrary to Title 37.1, however, there are no provisions in Title 16.1 that expressly provide for the appointment and

use of special justices at civil commitment hearings of juveniles. The only function that a special justice could perform under Title 16.1 was appointing the GAL.

- **SB 290 Passed the Senate, but Died in House Appropriations:** SB 290 passed Senate Courts, Senate Finance, and the full Senate without opposition. SB 290 passed House Courts of Justice without opposition. However, the bill died after concerns about the fiscal impact and training issues were raised in House Appropriations.
- **Concerns About Fiscal Implications of Enactment of SB 290:** Currently, special justices who conduct mental commitment hearings are paid \$86.25 per hearing. Sitting juvenile judges who conduct such hearings do not receive any compensation for those hearings in addition to their allotted salary. According to the Supreme Court, there were approximately 1,585 juvenile mental commitment hearings conducted by juvenile judges. If all of the mental commitment hearings of juveniles currently conducted by judges were to be conducted by special justices, the annual fiscal impact of this legislation on the Involuntary Mental Commitment Fund would be \$136,700.

GROUP HOMES

HB 577 – Regulatory Requirements for Children's Group Homes and Residential Facilities. Delegate Nixon

HB 577 amends and reenacts §§ 22.1-323.2, 37.2-408, 63.2-1737, and 66-24 of the Code of Virginia and adds a section numbered 2.2-5211.1 relating to regulatory requirements for the licensure of, placements in, and reimbursement of certain residential facilities for children. Effective July 1, 2006. 2nd & 3rd Enactment Clauses.

1.00 Summary – New Regulatory Requirements for Private Group Homes

HB 577 amends and reenacts §§ 22.1-323.2, 37.2-408, 63.2-1737, and 66-24 of the Code of Virginia and adds a section numbered 2.2-5211.1 relating to regulatory requirements for the licensure of, placements in, and reimbursement of certain residential facilities for children. The bill requires that the Boards and Departments of Education, Juvenile Justice, Mental Health, Mental Retardation and Substance Abuse Services, and Social Services promulgate regulations including specific conditions of licensure for group homes. A second enactment requires emergency regulations for the licensure and certification requirements, and a third enactment requires that the emergency regulations include provisions addressing HB 2461 (2005) and SB 1304 (2005). This bill is a recommendation of the Joint Subcommittee Studying Private Youth and Single Family Group Homes pursuant to HJR 685 (2005).

2.00 Background – Joint Subcommittee Studying the Privatization of Group Homes

The 2005 General Assembly passed HJR 685 creating the Joint Subcommittee Studying Private Youth and Single Family Group Homes. The resolution asked the joint subcommittee to look at licensing requirements, enforcement, and other issues that affect the integration of youth group home residents into the community. The subcommittee studied “the excessive concentration of single family group homes in certain neighborhoods and any possible adverse effects.” Administrative staff support was provided by the Office of the Clerk of the House of Delegates and legal staffing was provided by the

Division of Legislative Services. Technical assistance was provided by the Departments of Juvenile Justice, Social Services, Education and DJJ, DSS, DOE, and Mental Health, Mental Retardation and Substance Abuse Services. The joint subcommittee submitted its findings and recommendations to the 2006 General Assembly. This bill is a recommendation of the Joint Subcommittee Studying Private Youth and Single Family Group Homes pursuant to HJR 685 (2005).

3.00 Overview of the Pertinent Statute Applying to DJJ: Va. Code § 66-24

HB 577 amends each respective Title of the Code for the Boards and Departments of Education, Juvenile Justice, Mental Health, Mental Retardation and Substance Abuse Services, and Social Services to promulgate regulations including specific conditions of licensure for group homes. For the purposes of DJJ, this summary will focus on the amendments to Virginia Code § 66-24.

3.10 Authority to Promulgate the CORE Regulations: Va. Code § 66-24 (A) (New 2005)

Subsection A of Virginia Code § 66-24 provides the statutory authority for DJJ “to cooperate with other state departments in fulfilling their respective licensing and certification responsibilities and in reducing and simplifying the regulations involved in the licensing or certification of children’s residential facilities.” This Code section gives the Board of Juvenile Justice the power to promulgate the “CORE” regulations that allow DJJ to assist and cooperate with other state departments (formally known as the Standards for Interdepartmental Regulation of Residential Facilities for Children).

3.20 DJJ Community Group Homes or Other Residential Care Facilities: Va. Code § 66-24 (B) (Not New)

Subsection B gives DJJ the authority to establish a system of community group homes or other residential care facilities. The Department may acquire, construct, contract for, or rent for the care of juveniles in direct state care pending development of more permanent placement plans.

3.21 Board Certification Required for Community Group Homes

Any community group home or other residential care facility that DJJ may contract for or rent for the care of juveniles in direct state care shall be licensed or certified in accordance with the regulations of the Board.

3.22 Permanent Placements Require Additional Services

Any more permanent placement plans shall consider adequate care, treatment, suitable education, training, and employment for such juveniles, as is appropriate.

3.30 DJJ Staff or Contract with Private Entities: Va. Code § 66-24 (C) (Not New)

Subsection C allows DJJ to employ personnel for community group homes or other residential care facilities or to contract with private entities for their operation.

3.40 State Board Must Promulgate Regulations for Certification/Licensure: Va. Code § 66-24 (D) (Not New)

The State Board of Juvenile Justice must promulgate regulations for licensure or certification of community group homes or other residential care facilities that contract with or are rented for the care of juveniles in direct state care.

3.41 Additional Regulatory Requirements due to 2005 Legislation

The Board's regulations shall address the services required to be provided in such facilities as it may deem appropriate to ensure the welfare and safety of the juveniles. In addition, the Board's regulations must include:

- (i) **Nexus Between Physical Structure & Needs of the Juvenile Residents** - specifications for the structure and accommodations of such facilities according to the needs of the juveniles to be placed in the home or facility;
- (ii) **Activity & Curfew Rules** - rules concerning allowable activities, local government- and group home- or residential care facility-imposed curfews, and study, recreational, and bedtime hours; and
- (iii) **Community Liaison** - a requirement that each home or facility have a community liaison who shall be responsible for facilitating cooperative relationships with the neighbors, the school system, local law enforcement, local government officials, and the community at large.

4.00 New Regulatory Requirements for "Licensee"

With respect to the juvenile justice system and DJJ, the bill adds the following requirements to Virginia Code § 66-24 that impose specific responsibilities on the Board and the Department of Juvenile Justice. The Board's regulations for issuing a group home license or license renewal must include the following requirements:

4.10 DJJ Must Interview the Applicant

Department personnel must personally interview the applicant for the license to determine the qualifications of the owner or operator before granting an initial license.

4.20 Applicant Must Provide Evidence of Experience

The applicant for the license must provide evidence of having relevant prior experience before any initial license is granted.

4.30 Evidence of Staff Training

The applicant for the license must provide evidence of staff participation in training on appropriate siting of the residential facilities for children, good neighbor policies, and community relations.

4.40 Screening Process for Appropriate Residents

The applicant for the license must be required to screen residents prior to admission to exclude individuals with behavioral issues, such as histories of violence that cannot be managed in the relevant residential facility.

5.00 New Department Notification Requirements Involving Group Homes

Newly created subsection F in Virginia Code § 66-24 creates several new notice provisions requiring either DJJ or the licensee to notify certain parties in certain situations.

5.10 DJJ must Notify Local Governments et al., of Status-Changing Violations

The Department must notify *“relevant local governments and placing and funding agencies, including the Office of Comprehensive Services, of multiple health and safety or human rights violations in residential facilities for which the Department serves as lead agency when such violations result in the lowering of the licensure or certification status of the facility to provisional.”*

5.20 DJJ must Notify Local Governments et al., of Initial Application or Application for Renewal

The Department must notify *“in a timely manner the relevant local government offices concerning the application for initial licensure or certification of or renewal, denial, or provisional licensure or certification of any residential facility for children located in the locality.”*

5.30 Licensee must Self-Report Lawsuits and Criminal Charges

The Department must require *“all licensees or certificate holders to self-report lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges that may have been made relating to the health and safety or human rights of residents.”*

5.40 Licensee must Provide Proof of “Expertise”

The Department must require *“proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's operational plan.”*

6.00 2nd Enactment Clause – Emergency Regulations

HB 577 requires the Boards of Education, Mental Health, Mental Retardation and Substance Abuse Services, Social Services, and Juvenile Justice to promulgate regulations to implement the provisions of the legislation within 280 days of enactment.

7.00 3rd Enactment Clause – Emergency Regulations must Address Last Year’s Legislation

During the 2005 session, the General Assembly enacted HB 2461 and SB 1304 relating to licensed or certified group homes or other residential facilities. Those bills required the agencies mentioned above to promulgate regulations concerning the requirements for operating group homes and other residential care facilities. HB 577 requires the provisions in HB 2461 and SB 1304 to be included in the emergency regulations.

SB 190 - Summary Suspension of Licenses for Group Homes and Residential Facilities. Senator Martin

SB 190 amends Virginia Code §§ 22.1-329, 37.2-418, 63.2-1737, and 66-24 and adds a section numbered 37.2-419.1 relating to summary suspension of licenses for group homes and residential facilities under certain circumstances. Effective July 1, 2006. Enactment clauses.

1.00 Summary – Authority to Immediately Suspend Group Home License

SB 190 amends and reenacts §§ 22.1-329, 37.2-418, 63.2-1737, and 66-24 of the Code of Virginia and adds a section numbered 37.2-419.1 relating to summary suspension of licenses for group homes and residential facilities under certain circumstances. It authorizes the Superintendent of Public Instruction, the Director of the Department of Juvenile Justice, and the Commissioner of Social Services to issue orders of summary suspension of a license to operate a group home or other residential facility for children in cases of immediate and substantial threat to the health, safety, and welfare of residents.

2.00 Background – Joint Subcommittee Studying the Privatization of Group Homes

As with HB 577, this bill is a recommendation of the Joint Subcommittee Studying Private Youth and Single Family Group Homes pursuant to HJR 685 (2005). As DMHMRSAS obtained identical summary suspension authority for children’s group homes and residential facilities in 2005, this bill is intended to provide consistency in the legal authority for the interdepartmental licensure program for children’s residential facilities by giving all four departments the authority to address egregious circumstances while ensuring due process for the licensees or certificate holders.

3.00 Authority to Issue a Summary Order of Suspension – New

SB 190 adds subsection E to Virginia Code § 66-24 to allow the Director of DJJ to issue a summary order of suspension of a license or certificate of a group home or residential facility regulated by DJJ.

3.10 Immediate & Substantial Threat to Health, Safety, and Welfare of the Juveniles

To issue a summary order of suspension, conditions or practices must exist in the home or facility that pose an immediate and substantial threat to the health, safety, and welfare of the juveniles.

3.20 Director of DJJ may take Other Necessary Action in Addition to Suspension

The issuance of the summary order of suspension does not preclude the Director from taking other actions in accordance with the law.

3.30 Process for Revocation, Denial, or Other Action Must be Initiated

The summary order of suspension must be issued in conjunction with a proceeding for revocation, denial, or other action.

4.00 Process for Issuing a Summary Order of Suspension – New

Newly created subsection F provides the process and procedures for issuing a summary order of suspension.

4.10 Summary Suspension Effective Upon Issuance

The summary order of suspension takes effect upon its issuance and must be served on the licensee or certificate holder as soon as practicable by personal service and certified mail, return receipt requested, to the address of record of the licensee or certificate holder.

4.20 Summary Suspension Order Must State Date of Hearing

The order must state the time, date, and location of a hearing to determine whether the suspension is appropriate.

5.00 The Summary Order of Suspension Hearing within Three days

The Director of DJJ or his designee must convene a hearing within three business days after the issuance of the summary order of suspension.

5.10 Results of the Hearing – Director may Sustain or Reverse the Suspension

After the hearing, the Director may issue a final order of summary suspension or may find that such summary suspension is not warranted by the facts and circumstances presented. The Director must issue a written final order.

5.20 Final Order Must State Appeal Rights

A final order of summary suspension must include notice that the licensee or certificate holder may appeal the Director's decision to the appropriate circuit court no later than 10 days following issuance of the order.

5.21 Circuit Court will look at Reasonable Grounds to Revoke License

The sole issue on appeal to the circuit court will be if the Director had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding.

5.30 Outcome of Appeal Does not Impact Actual Revocation Process

The concurrent revocation, denial, or other proceeding will not be affected by the outcome of any hearing on the appropriateness of the summary suspension.

6.00 Failure to Comply with Summary Order of Suspension is a Class 2 Misdemeanor

The willful and material failure to comply with the summary order of suspension or final order of summary suspension is punishable as a Class 2 misdemeanor.

7.00 Relocation Assistance of Other State Agencies

The Director may require the cooperation of any other state agency or subdivision in the relocation of the juveniles who are residents of a home or facility whose license or certificate has been summarily suspended and in any other actions necessary to reduce the risk of further harm to such residents.

8.00 2nd Enactment Clause – Emergency Regulations

As with HB 577, SB 190 requires the Boards of Education, Mental Health, Mental Retardation and Substance Abuse Services, Social Services, and Juvenile Justice to promulgate regulations to implement the provisions of the legislation within 280 days of enactment.

Sidebar (CSA & Group Home Study by JLARC): [HJ 60](#) – Joint Legislative Audit and Review Commission (JLARC) to Evaluate the Administration of the Comprehensive Services Act (CSA) & Private Group Homes. Delegate Nixon. This resolution furthers the work initiated by the Joint Subcommittee Studying Private Youth and Single Family Group Homes pursuant to HJR 685 (2005) by requiring the Joint Legislative Audit and Review Commission to conduct a two-year study on Group Homes and the Comprehensive Services Act (CSA).

Reasons the Joint Subcommittee Wanted the JLARC Study:

- The Joint Subcommittee was concerned with the total general fund cost of the CSA program (more than \$194 million in fiscal year 2001), the average rate at which these costs have been increasing (approximately 10% annually) for services, and containing costs in the treatment and care of children served through the CSA.
- The Joint Subcommittee believes that the Interdepartmental Regulatory process is redundant and that duplicative regulatory requirements are unnecessary.
- The Joint Subcommittee was “disconcerted by the failure of the interdepartmental program to take steps to develop regulations to implement requirements enacted by House Bill No. 2461 and Senate

Bill No. 1304 in 2005 and concerned about the bureaucratic weight caused by requiring four regulatory boards and their departments to ‘cooperate’ in setting and enforcing facility standards.”

- The Joint Subcommittee found gaps in statewide data on the rates being paid by localities for group home reimbursement of CSA children.
- The Joint Subcommittee was concerned with “the glaring fact that many children are placed out of their home jurisdictions into such group homes and the apparent lack of monitoring of placements across jurisdictional lines by the responsible parties.”

Two-Year JLARC Study. HJ 60 directs JLARC to evaluate the administration of the Comprehensive Services Act. In conducting its study, JLARC will:

1. Evaluate the costs, quality, and reimbursement of children’s residential services;
2. Examine the interdepartmental regulation of these facilities;
3. Assess the administration of the CSA by state and local governments, including the methodology for projecting caseloads and the costs and adequacy of funding to administer the program at the state and local levels; and
4. Ascertain the total costs of CSA residential services for state and local governments and offer recommendations to improve services and contain costs.

Cross-Jurisdictional Impacts: The study will look at children placed across jurisdictional lines when appropriate services are not available in their communities. The study will look at the impact of cross-jurisdictional placements on CSA children without immediate access to their families, communities, and support networks. The study will look at the cross-jurisdiction impact upon local jurisdictions, including services that are not reimbursed through CSA, such as law enforcement, fire protection, mental health services, and education. The study will evaluate if steps should be taken to increase services in the home jurisdictions of such children and identify barriers to serving CSA children in their communities.

Quality & Capacity of Services: The study will evaluate the quality and capacity of services available to and provided for CSA children and their families. The study will evaluate if CSA children receive appropriate care, case management, education, supervision, and quality assurance by the funding jurisdiction.

Fiscal Impact Upon Localities: The study will look at the benefits of requiring the local entity responsible for the placement of children across jurisdictional lines, due to a lack of appropriate services and facilities in the home locality, to initiate the development of community-based services, including group homes or other services, to serve the needs of such children and their families, and to stimulate the implementation of community-based services.

Standards for Interdepartmental Regulation of Children’s Residential Facilities: The study will assess the regulatory structure and implementation of the Standards for Interdepartmental Regulation of Children’s Residential Facilities to determine if the interdepartmental program should be continued and if returning the regulatory responsibility for residential facilities to the relevant state agencies would

increase accountability and ensure the safety, health, and welfare of the children placed in residential facilities.

Technical Assistance: Technical assistance will be provided to the Joint Legislative Audit and Review Commission for this study by the Office of Comprehensive Services and the Departments of Social Services, Education, Juvenile Justice, and Mental Health, Mental Retardation and Substance Abuse Services.

Meetings: The Joint Legislative Audit and Review Commission shall complete its meetings for the first year by November 30, 2006, and for the second year by November 30, 2007.

Briefing: In each year, the Chair shall brief the Joint Subcommittee to Study the Cost Effectiveness of the Comprehensive Services for At-Risk Youth and Families Program Senate Joint Resolution No. 96 (2006) no later than November 1.

Executive Summary: The Chair must submit to the House Committee on Finance, the House Committee on Appropriations, the Senate Committee on Finance, the Senate Committee on Education and Health, the House Committee on Health, Welfare and Institutions, and the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the next Regular Session of the General Assembly.

Contents of the Executive Summary: Each executive summary shall state if the Chairman intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a House or Senate document. The executive summaries and reports shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

SCHOOL-RELATED LEGISLATION

HB 95 & SB 656 – School Enrollment & Criminal/Delinquent Offense History. Delegate Lewis & Senator Rerras

HB 95 and SB 656 amend Virginia Code § 22.1-3.2 relating to information required upon admission of new students. Effective July 1, 2006.

1.00 Summary – Criminal/Delinquent Offense History Prior to Enrollment

HB 95 and SB 656 are identical and amend Virginia Code § 22.1-3.2 relating to information required upon admission of new students. HB 95 and SB 656 require a parent, guardian, or other person having control or charge of a child of school age to provide to a public school, upon registration of a student, information concerning certain criminal convictions or delinquency adjudications. When the registration results from foster care placement, the information shall be furnished by the local social services agency or licensed child-placing agency that made the foster care placement.

2.00 The Law Prior to [HB 95](#) & [SB 656](#)

Virginia Code § [22.1-3.2](#) requires a parent or other legal guardian to provide certain information to a school prior to enrolling in that school. Under the law prior to [HB 95](#) and [SB 656](#), the parent or legal guardian was required to provide the school a sworn statement or affirmation indicating if the student has been expelled from school attendance at a private school or in a public school in Virginia or any another state. The behavior leading to the expulsion must involve weapons, alcohol or drugs, or the willful infliction of injury to another person. This requirement did not change.

3.00 New Requirement – Statement Concerning Prior Convictions & Adjudications

[HB 95](#) and [SB 656](#) now require the parent or other legal guardian to provide the school with a sworn statement or affirmation stating if the student has been found guilty of or adjudicated delinquent for any offense listed in subsection G of § [16.1-260](#) in Virginia. The adjudications or convictions include similar offenses in other states, the District of Columbia, and territories of the United States.

3.10 New Requirement – Reenrolling Foster Care Children

[HB 95](#) and [SB 656](#) require the local social services agency or licensed child-placing agency that made the foster care placement to provide the above information when attempting to reenroll a child placed in foster care pursuant to Virginia Code § [63.2-100](#).

3.20 Criminal Penalty for False Information (Not New)

It is a Class 3 misdemeanor for a person to make a materially false statement or affirmation.

**[HB 1279](#) - Notification to School Principals by Law Enforcement when Student is Charged
Delegate [Barlow](#)**

HB 1279 amends Virginia Code § [22.1-279.3:1](#) relating to notification to principals when students are charged with certain crimes. Effective July 1, 2006.

1.00 Summary - Notification that Student is Charged & Released on Bond

[HB 1279](#) amends the requirement that principals or their designees receive notification from local law-enforcement authorities when students in their school commit certain crimes to require that such notification be given, whether the student is released to the custody of his parent or, if 18 years of age or more, is released on bond. The bill further requires that any school superintendent who receives notification that a juvenile has committed an act that would be a crime if committed by an adult pursuant to subsection G of § [16.1-260](#) to report such information to the principal of the school in which the juvenile is enrolled.

2.00 Mandatory Law Enforcement Notification to Principals (Same)

Virginia Code § 22.1-279.3:1 requires law enforcement authorities to report to the school principal and superintendent reports involving incidents occurring on a school bus, on school property, or at a school-sponsored activity involving:

- the assault or assault and battery, without bodily injury;
- the assault and battery that results in bodily injury, sexual assault, death, shooting, stabbing, cutting, or wounding;
- any conduct involving alcohol, marijuana, a controlled substance, imitation controlled substance, or an anabolic steroid, including the theft or attempted theft of student prescription medications;
- any threats against school personnel;
- the illegal carrying of a firearm (defined in § 22.1-277.07);
- any illegal conduct involving firebombs, explosive materials or devices, hoax explosive devices (defined in § 18.2-85), explosive or incendiary devices (defined in § 18.2-433.1), or chemical bombs (described in § 18.2-87.1);
- any threats or false threats to bomb (described in § 18.2-83) made against school personnel involving school property or school buses; and
- stalking of any person as described in § 18.2-60.3.

3.00 Notification of Student's Release to Principal (New)

HB 1279 adds the requirement that the law enforcement agency making the report to the school principal must also state if the student was released to the custody of his parent or released on bond.

4.00 School Superintendent Must Provide Info to School Principal

HB 1279 also adds the requirement that the school superintendent who receives notification that a juvenile has committed an act that would be a crime if committed by an adult pursuant to subsection G of § 16.1-260 must forward the information to the principal of the school in which the juvenile is enrolled.

MISCELLANEOUS JUVENILE-RELATED LEGISLATION

HB 45 & SB 362 - Eliminating Capital Punishment for Juveniles. Delegate Callahan & Senator Ticer. *HB 45 and SB 362 amend Virginia Code § 18.2-10 relating to capital punishment for juveniles. Effective July 1, 2006.* HB 45 and SB 362 bring Virginia's statutes into compliance with the U.S. Supreme Court's ruling, *Roper v. Simmons*, 543 U.S. 551 (2005), that it is a violation of the Eighth and Fourteenth Amendments of the U.S. Constitution to execute a person who is under the age of 18. What made passage of this legislation interesting is that 38 Republicans voted against the bills. They expressed concern in taking the juvenile death penalty off the books in the event the Supreme Court decision was overturned due to a potential conservative shift on the bench due to the appointment of two new Justices.

HB 1208 & SB 396 – Alcoholic Beverages & In-Home Exemption for Consumption by Another Underage. Delegate Moran & Senator McDougle. *HB 1208 and SB 396 amend Virginia Code § 4.1-200 relating to underage exemptions for consuming an alcohol beverage. Effective July 1, 2006.* HB

[1208](#) & [SB 396](#) allows a person under the age of 21 to consume an alcoholic beverage served in the home of another if accompanied by his parent, guardian, or spouse and that person is 21 years of age or older.

HB 1210 - Penalty for Underage Purchasing or Possession of Alcoholic Beverages. Delegate Moran. *HB 1210 amends Virginia Code § 4.1-305 relating to underage purchasing or possession of alcoholic beverages. Effective July 1, 2006.* HB 1210 makes it a mandatory six-month suspension of the person's driver's license for a person age 18 or older to whom an alcoholic beverage may not lawfully be sold to purchase, consume, or possess alcohol in violation of Virginia Code § 4.1-304.

HB 56 – Mandatory Reporting of Child Abuse or Neglect by Eligibility Workers. Delegate Fralin. *HB 56 amends Virginia Code § 63.2-1509 relating to mandatory reporting of child abuse and neglect by eligibility workers. Effective July 1, 2007. Two Enactment Clauses.* HB 56 requires any person employed by a local department of social services who determines eligibility for public assistance to report suspected child abuse or neglect to the local department or the Department of Social Services' toll-free child abuse and neglect hotline. DSS must provide training to implement the bill's provisions.

HB 1242 - Surveys and Questionnaires for Public School Students – New Requirements. Delegate Hugo. *HB 1242 amends Virginia Code § 22.1-79.3 relating to surveys and questionnaires of public school students. Effective July 1, 2006.* HB 1242 requires the school board to notify parents in writing, not less than 30 days before, that a questionnaire or survey that requests sexual information of students is to be administered. The notice must include the nature and types of questions, the purposes and age-appropriateness of the survey, and how any findings or results will be disclosed. It further requires that parents be allowed to review the questionnaire or survey. This bill prohibits administering any questionnaire or survey that requests sexual information to any student in kindergarten through eighth grade. It also prohibits school personnel who administer a questionnaire or survey from disclosing personally identifiable information unless required by federal or state law or regulation.

HB 1317 - Nationwide Criminal Background Check before Placement in Foster Care. Delegate Cosgrove. *HB 1317 amends Virginia Code § 63.2-901.1 relating to background checks for foster parents. Effective July 1, 2006.* HB 1317 requires a nationwide criminal background check through the CCRE for any individual with whom the local board or agency is considering placing a child on an emergency, temporary, or permanent basis, including the birth parent of a child in foster care placement. In emergency circumstances, a statewide Virginia Criminal Information Network search may still be performed to satisfy the background check requirement, provided that a national search is also performed within three days afterwards. The child shall be removed from the home immediately if any adult resident, within three days of the child's placement, fails to provide fingerprints and written permission to perform a national criminal history record check when requested.

SB 421 - Criminal History Record Information Check Required for those Providing Care to Children. Senator Hanger. *SB 421 amends Virginia Code §§ 32.1-126.01, 32.1-162.9:1, 63.2-1720, 63.2-1721, 63.2-1724, and 63.2-1725. Effective July 1, 2007.* SB 421 requires all businesses and organizations that provide care to children, the elderly, or disabled to request a national criminal background check of all employees and volunteers. The bill is contingent upon an appropriation of funds during the 2007 Session of the General Assembly and being signed into law by the Governor. The fiscal impact has been estimated by DJJ at \$3,924,912 and will require 49 positions in FY08 (the first

year the proposal would be effective) and \$2,290,760 and 49 positions in FY09 to maintain this level of staffing.

HB 1486 - Administrative Process Act & Summary Case Decisions. Delegate Janis. *HB 1486 amends Virginia Code § 2.2-4021 and adds a section numbered 2.2-4020.1 relating to the Administrative Process Act and summary case decisions. Effective July 1, 2006.* HB 1486 authorizes requests for summary case decisions by persons who have (i) applied for a permit, certificate, license, or other approval from an agency, or (ii) received notice of a potential violation or other deficiency from an agency. The bill sets out the requirements for making such a request and the process by which summary case decisions are to be conducted. The bill provides that in these instances the requestor waives his right to an informal fact-finding proceeding and a formal hearing or other evidentiary hearing on the issue to be decided by the summary case decision.