2007 General Assembly Session Juvenile Justice Legislative Overview

This overview of legislation, as enacted by the 2007 General Assembly, relates to juvenile justice.

This handbook is intended only for use as a summary of those bills enacted during the 2007 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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PART I JUVENILE JUSTICE RELATED LEGISLATION

Compensation for Court-Appointed Attorneys

HB 2361 & SB 1168 - Compensation for Court-Appointed Counsel. **Page 9**
HB 2361 and SB 1168 amend Va. Code § 19.2-163 to raise the reimbursement caps for court-appointed council handling cases in circuit court and juvenile court. Effective July 1, 2007.

Juvenile Court Proceedings

HB 2660 – Ensuring the Completion of a Social History Prior to Commitment. **Page 12**
HB 2660 amends Va. Code §§ 16.1-273 and 16.1-278.7 to require a social history investigation be completed within 15 days of a juvenile's being committed to the Department of Juvenile Justice (DJJ). Effective July 1, 2007.

SB 1236 - Juvenile Offenses & Driver's License Suspension. **Page 14**
SB 1236 amends Va. Code § 16.1-278.9 by clarifying that the required loss of driving privileges is in addition to any other disposition the court may impose on the juvenile found delinquent for the offenses listed in Va. Code § 16.1-278.9. Effective July 1, 2007.

Emergency Detention Orders

HB 2530 & SB 738 - Psychiatric Inpatient Treatment of Minors Act & Special Justices. **Page 14**
HB 2530 amends Va. 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. Effective July 1, 2007.

Other Emergency Detention Order legislation of note: **Page 19**

- **HB 2955 – Temporary Detention Orders - Licensed Physician to Complete In-Person Evaluation**. HB 2955 amends Va. Code § 37.2-809 to require the magistrate to consider the recommendations of any treating or examining physician licensed in Virginia if available either verbally or in writing prior to rendering a decision.
- **SB 890 – Involuntary Mental Health Commitment & Emergency Custody Order to Include Transportation.** SB 890 amends Va. Code §§ 37.2-808 and 37.2-810 to allow the magistrate issuing an emergency custody order to specify in the order that transportation includes "transportation to a medical facility for a medical evaluation if a physician at the hospital in which the person subject to the emergency custody order may be detained requires a medical evaluation prior to admission."

Emergency Protective Orders & Domestic Violence

HB 2646 - Emergency Protective Orders & an Informational Brochure. **Page 19**
HB 2646 amends Va. Code § 16.1-253.4 relating to the issuance of an emergency protective order (EPO). Effective July 1, 2007.

Other Emergency Protective Orders & Domestic Violence legislation of note: **Page 21**

- **HB 1738 – Presumption of Further Abuse & the Issuance of Emergency Protective Orders.** HB 1738 amends Va. Code § 16.1-253.4 relating to issuance of emergency protective orders contemporaneously with assault warrants and the presumption that there is probable danger of further acts of family abuse.
- **HB 1982 & SB 1237 – Protective Orders & Minimum Mandatory Penalties for Second Offense for Violation**. HB 1982 & SB 1237 amend Va. Code §§ 16.1-253.2 and 19.2-120 relating to minimum mandatory sentences for subsequent violations of the provisions of protective orders.
- **HB 2576 – Extending Preliminary Protective Orders for Up to Six Months.** HB 2576 amends Va. Code §§ 16.1-253.1 and 20-103 relating to extending preliminary protective orders for up to six months when respondent fails to appear.
- **SB 938 - Address Confidentiality Program Pilot in Arlington County.** SB 938 amends Va. Code § 2.2-515.1 and adds § 2.2-515.2 relating to addressing confidentiality for victims of domestic violence.
- **HB 1916 - Family Life Education to Include Instruction on Dating Violence.** HB 1916 amends Va. Code § 22.1-207.1 relating to family life education and dating violence.

- **SB 800 – Employee Prospect may Give Consent to Release Criminal History Record Information to Potential Employer.** SB 800 amends Va. Code § 19.2-389 relating to criminal history record information.

Juveniles in Residential or Secure Facilities

HB 2890 - Damaging Fire Suppression Equipment in a Secure Facility a Class 1 Misdemeanor. **Page 39**
HB 2890 amends Va. Code § 18.2-477.2 making the act of damaging any fire protection or fire suppression system, equipment, or sprinkler system within a secure juvenile facility or detention home a Class 1 misdemeanor. Effective July 1, 2007.

SB 1208 - Background Checks for Work in Children's Residential Facilities. **Page 40**
SB 1208 amends Va. Code § 63.2-1726 relating to background checks required for children's residential facilities. Effective July 1, 2007.

HB 2845 & SB 1108 - Emergency Preparedness & Orders of Isolation and Quarantine. **Page 41**
HB 2845 and SB 1108 amend Va. Code §§ 32.1-42.1, 32.1-48.06, 32.1-48.09, 32.1-48.010, 32.1-48.012, 32.1-48.013, 32.1-48.014, 32.1-48.015, and 54.1-3408 and add § 32.1-48.013:1 relating to emergency preparedness. Effective July 1, 2007.

Comprehensive Services Act

SB 1332 – CSA Funding & Non-Mandated Children Requiring Mental Health Services. **Page 41**
SB 1332 amends Va. Code §§ 2.2-5211 and 2.2-5212 pertaining to Comprehensive Services Act (CSA) funding for non-mandated children. SB 1332 will not become effective unless reenacted by the 2008 Regular Session of the General Assembly.

Gang Legislation

HB 2524 - Gangs - Expanding the List of Predicate Criminal Acts to Include Project Exile. **Page 44**
HB 2524 adds Va. Code § 18.2-53.1 (Project Exile - use or display of firearm in committing felony) to the list of "predicate acts" for determination of criminal street gang member status. Effective July 1, 2007.

HB 2429– The Prosecution of Gang and Terrorism Crimes by the Attorney General. **Page 46**
HB 2429 amends Va. Code §§ 2.2-511 and 18.2-46.5 allowing the prosecution of terrorism and gang crimes by the Attorney General. Effective July 1, 2007.

Sex Offender Legislation

HB 2749 & SB 1071 - Sex Offender Registration will Require any Electronic Mail Address. **Page 47**
HB 2749 and SB 1071 amend Va. Code §§ 9.1-902, 9.1-903, 9.1-904, 9.1-912, 18.2-374.1, 18.2-374.1:1, and 18.2-374.3 and repeal § 18.2-374.1:2 to require a sex offender to include any electronic mail address and any instant messaging screen name that he uses or will use. Effective July 1, 2007.

HB 1923 - Sex Offender Registry Requirement for Persons Not Guilty by Reason of Insanity. **Page 51**
HB 1923 amends Va. Code § 9.1-901 to require a person found not guilty by reason of insanity on or after July 1, 2007, for an offense that requires registration in the Sex Offender and Crimes Against Minors Registry Act to register. Effective July 1, 2007.

Other Sex Offender Registry legislation of note: **Page 52**

- **HB 2345 - Sex Offender Registry & Automatic Notification for Nursing Homes by the State Police.** HB 2345 amends Va. Code §§ 9.1-914, 32.1-127, and 63.2-1732 to require nursing homes, certified nursing facilities, and assisted living facilities to register with the Department of State Police to receive automatic notification of the registration of sex offenders within the same or a contiguous zip code area as the home or facility. This bill is identical to SB 1229. Effective July 1, 2007.
- **HB 2346 - Residents in Nursing Homes and Assisted Living Facilities to be Given Information about the Sex Offender Registry.** HB 2346 amends Va. Code §§ 32.1-138 and 63.2-1808 to require nursing homes and assisted living facilities to provide the resident with notice of Virginia's sex offender registry and how to access the registry on the State Police's website. This bill is identical to SB 1228. Effective July 1, 2007.

Legislation relating to Sex Offender Treatment: **Page 52**

- **HB 2776 - Sex Offender Treatment Offices Prohibited in Certain Residential Areas.** HB 2776 provides that no individual shall knowingly provide sex offender treatment services to a convicted sex offender in an office or similar facility located in a residentially zoned subdivision. Effective July 1, 2007.

Legislation relating to the Sexually Violent Predators Act: **Page 52**

- **HB 2671 - Sexually Violent Predators & Civil Commitment.** HB 2671 amends Va. Code §§ 19.2-169.3, 37.2-900, 37.2-901 through 37.2-905, 37.2-906, 37.2-907, 37.2-908, 37.2-910, and 37.2-912 and adds §§ 37.2-905.1 and 37.2-905.2 to add several sexually violent offenses that will qualify a prisoner or incompetent defendant to be evaluated for civil commitment. Effective July 1, 2007.
- **SB 1203 - Sexually Violent Predators & Attorney General to Study Feasibility of Treatment Options, etc.** SB 1203 creates Va. Code § 37.2-921 relating to a study on the treatment options for civilly committed sexually violent predators. Effective July 1, 2007.

Legislation relating to Sex Crimes & Penalties: **Page 53**

- **HB 2068 – Class 1 Misdemeanor for Sexual Abuse Against a Child Between the Ages of 13 and 15.** HB 2068 amends Va. Code § 9.1-902 and adds § 18.2-67.4:2 so that it is a Class 1 misdemeanor for an adult to, with lascivious intent, commit sexual abuse against a child 13 years of age or older but under 15 years of age. Effective July 1, 2007.
- **HB 2980 & SB 1239 - Child Pornography & Seizure and Forfeiture of Equipment.** HB 2980 & SB 1239 amend Va. Code §§ 19.2-120 and 19.2-386.31 relating to the exploitation and solicitation of children for sexual purposes, the forfeiture of equipment, and the presumption against bail. Effective July 1, 2007.
- **HB 2344 & SB 927 - Sexual Offenses & Prohibiting Entry of those Convicted onto School Property.** HB 2344 & SB 927 amend Va. Code § 16.1-241 and add § 18.2-370.5 to make it a Class 6 felony for an adult who has been convicted of a sexually violent offense to enter school grounds without permission of the juvenile court. Effective July 1, 2007.
- **HB 1625 - Forfeiture of Office when a Person is Convicted for an Offense Requiring Registration on Sex Offender & Crimes Against Minors Registry.** HB 1625 amends Va. Code § 24.2-231 to require a person to forfeit office when convicted of an offense that requires registration on the Sex Offender Registry. Effective July 1, 2007.

Legislation relating to Sex Crimes & Criminal Procedure: **Page 54**

- **HB 3085 - Expands the Scope of Rape Shield Statute to include Prosecution for Taking Indecent Liberties.** HB 3085 amends Va. Code § 18.2-67.7 to expand the scope of the rape shield statute to include prosecutions for taking indecent liberties with children under Va. Code § 18.2-370, 18.2-370.01, or 18.2-370.1. Effective July 1, 2007.
- **HB 1793 - Sexually Abnormal Offense & Who may Conduct Mental Evaluation of Person Convicted Thereof.** HB 1793 amends Va. Code § 19.2-301 to provide that a judge may order a defendant convicted of a sexually abnormal offense to be examined by a licensed clinical social worker if a psychiatrist or clinical psychologist is not reasonably available. Effective July 1, 2007.
- **HB 2591 – Violent Sexual Offender & Notice to Defendant Prior to Punishment for Subsequent Offenses.** HB 2591 amends Va. Code § 18.2-67.5:3 relating to the punishment for subsequent convictions of violent felony sexual assault. Provides that the notice that the Commonwealth is required to give to the defendant that it will seek punishment available under the "two-time loser" sex offender statute shall be given in the indictment, information, or warrant. Effective July 1, 2007.

PART II MISCELLANEOUS LEGISLATION

Legislation relating to Substance Abuse: **Page 54**

- **HB 2678 - Opiate Addiction Treatment Centers to Refrain from Providing Services on Sunday.** HB 2678 amends Va. Code § 37.2-406 relating to conditions for initial licensure of certain providers of the treatment of persons with opiate addiction.
- **HB 3023 - Drug Treatment & Use of Synthetic Urine to Defeat.** HB 3023 adds Virginia Code § 46.2-341.18:2 to provide that the Commissioner of the Department of Motor Vehicles shall disqualify for a period of one year any commercial driver's license holder who has been convicted of a violation of Va. Code § 18.2-251.4 (falsifying urine tests).

- **HJ 683 & SJ 395 – JLARC to Study Actual Cost of Substance Abuse to State.** Directs JLARC to study the cost of substance abuse to the Commonwealth to determine the financial savings available to the Commonwealth as a result of providing treatment to offenders diverted from incarceration.

***Legislation relating to New Crimes*:** **Page 55**

- **HB 1795 - Identity Theft & Clarifying Reference to Person Who may be the Victim.** HB 1795 amends Va. Code § 18.2-186.3 to clarify that a victim of identity theft may be dead or alive.
- **HB 2055 – Prohibiting Trespassing on Public Transportation.** HB 2055 amends the Va. Code by adding §18.2-160.2 to provide that any person trespassing on a public transportation service is guilty of a Class 4 misdemeanor.
- **HB 2531 & SB 884 – A Hunter Must Identify Himself when Retrieving Hunting Dogs from Landowner's Property.** HB 2531 & SB 884 amend Va. Code § 18.2-136 to make it a Class 4 misdemeanor for a hunter to go on prohibited lands to retrieve his hunting dogs and refuse to identify himself.

Legislation relating to Criminal Procedure: **Page 55**

- **HB 2369 & SB 1104 – Insanity & Persons Acquitted by Reason Thereof.** HB 2369 & SB 1104 amend Va. Code §§ 19.2-182.2, 19.2-182.5, 19.2-182.6, 19.2-182.7, 19.2-182.10, and 19.2-182.11 relating to the disposition of persons acquitted by reason of insanity and conditional release orders.
- **SB 1103 – Restoration of Competency & Qualifications and Procedures of a Competency Evaluator.** SB 1103 amends Va. Code §§ 19.2-169.1, 19.2-169.2, and 19.2-169.3 relating to the disposition of incompetent defendants and the qualifications and procedures of a competency evaluator.
- **SB 880 - Court Records & Expungement Hearing to Occur if Person Granted Writ Vacating a Conviction.** SB 880 amends Va. Code §§ 19.2-327.5, 19.2-327.13, and 19.2-392.2 relating to automatic expungement of police and court records if a conviction has been vacated pursuant to a writ of actual innocence. This bill is similar to HB 2076.
- **SB 1282 - Law-Enforcement Officers & Removal of Their Land Records from Internet.** SB 1282 amends Va. Code § 18.2-186.4 relating to public records and protecting a law-enforcement officer's primary residence.

***Legislation relating to the Department of Correctional Education*:** **Page 56**

- **HB 2041 & SB 953 – The Department of Correctional Education to Develop Programs for Online Courses for Incarcerated Persons.** HB 2041 & SB 953 amend Va. Code § 22.1-343 to empower the Department of Correctional Education to develop programs for restricted Internet access to online higher education courses by incarcerated persons.
- **HB 2625 – Prisoners & Creating System for Identifying Department of Corrections Prisoners with Learning Disabilities.** HB 2625 amends Va. Code § 22.1-344.1 to provide that the Department of Correctional Education, in cooperation with the Department of Corrections (DOC), shall create a system for identifying prisoners with learning disabilities.
- **HB 2627 – Department of Correctional Education to Raise Standards in Literacy Program for DOC Inmates.** HB 2627 amends Va. Code § 22.1-344.1 to raise the standard of the functional literacy program from the eighth grade level to the twelfth grade or GED level.
- **HB 3191 - Incarcerated Persons & Access to Online Adult Literacy and GED Courses.** HB 3191 amends Va. Code § 22.1-343 to empower the Board of Correctional Education to develop programs to provide restricted Internet access to online secondary education or adult education and literacy programs.
- **SB 953 - Incarcerated Persons; Develop Accessibility to Higher Education Using Video-Conferencing Technology.** SB 953 amends Va. Code § 22.1-343 to empower the Department of Correctional Education to provide access to postsecondary education and vocational training using video-conferencing technology.
- **HB 2628 – The State Board of Correctional Education & Composition of Membership.** HB 2628 amends Va. Code § 22.1-341 to require the Governor to endeavor to select qualified appointees for the Board of Correctional Education.

***Legislation relating to the Department of Corrections*:** **Page 57**

- **HJ 652 & SJ 327 – Joint Subcommittee Studying Program for Prisoner Reentry to Society.** HJ 652 & SJ 327 continue the Joint Subcommittee to Study the Commonwealth's Program for Prisoner Reentry to Society for the purpose of receiving the recommendations and report of the Virginia Prisoner Reentry Policy Academy.

***Legislation relating to the Department of Social Services*:** **Page 57**

- **HB 2319 & SB 905 – Children's & the Parents' Right to Make Medical Decisions (Abraham's Law).** HB 2319 & SB 905 amend Va. Code § 63.2-100 to specify that a decision by parents or another person with legal authority over

a child to refuse a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care.

- **HB 2517 - Child Abuse or Neglect & Criminal History Records Check on Individuals Being Investigated.** HB 2517 amends Va. Code §§ 19.2-389 and 63.2-1505 relating to investigations of child abuse or neglect, criminal history records, and the dissemination of such information.
- **SB 944 - Child Support Orders & the Provision of Health Care Coverage.** SB 944 amends Va. Code §§ 63.2-1900, 63.2-1903, 63.2-1904, and 63.2-1916 relating to health care coverage provided by parents in child support orders.
- **HB 1687 – Criminal History Record Check & Exempting Birth Parents Revoking Voluntary Entrustment Agreement.** HB 1687 amends Va. Code § 63.2-901.1 to exempt birth parents revoking an entrustment agreement pursuant to Va. Code § 63.2-1223 or 63.2-1817, or revoking a placement agreement, from criminal history and central registry checks.
- **HB 2504 - Criminal History & Central Registry Check: Establish Mandatory Background Check for Foster and Adoptive Parents.** HB 2504 amends Va. Code § 63.2-901.1 relating to the mandatory criminal history and central registry check for placement of children with prospective foster or adoptive parents. The bill has an effective date of April 1, 2007.

Legislation relating to the Department of Education: **Page 58**

- **SJ 329 – Board of Education to Study High School Dropout and Graduation Rates.** SJ 329 requests the Board of Education to study high school dropout and graduation rates in the Commonwealth.

Legislation relating to the Freedom of Information Act (FOIA): **Page 58**

- **HB 1791 - Freedom of Information Act & Responses to Requests for Public Records.** HB 1791 amends Va. Code § 2.2-3704 to add an additional response to address situations when a public body receives a request for public records under FOIA but the records cannot be found or do not exist.
- **HB 1790 - Freedom of Information Act & the Sexually Violent Predators Act.** HB 1790 amends Va. Code § 2.2-3703 to provide that the Freedom of Information Act does not afford any rights to persons civilly committed pursuant to the Sexually Violent Predators Act.
- **SB 1369 - Freedom of Information Act & Expanding Current Record & Meeting Exemptions for Retirement Systems.** SB 1369 amends Va. Code §§ 2.2-3705.7 and 2.2-3711 to provide an exemption for the Virginia Retirement System (VRS) and a local retirement system for trade secrets provided by a private entity. The bill contains an emergency clause.

***Legislation relating to the General Assembly*:** **Page 59**

- **HB 1796 - General Assembly & Prefiling of Legislation.** HB 1796 amends Va. Code § 30-19.3 to clarify that following an election, legislation may be prefiled only by members and members-elect of the next regular session of the General Assembly.
  HB 2537 & SB 1139 - Administrative Process Act; Amends by Renumbering Provisions of Various Codes. HB 2537 & SB 1139 amend the Administrative Process Act by renumbering provisions relating to the promulgation of regulations by state agencies including public notice and participation and use of the Regulatory Town Hall throughout the process.

***Miscellaneous State Employee Legislation*:** **Page 59**

- **SB 1004 – Telecommuting & Use of Personal Computers.** SB 1004 amends Va. Code § 2.2-2817.1 relating to telecommuting and the use of personal computers.
- **HB 1830 - State Employees & Changes to Participation in Deferred Compensation Plan.** HB 1830 amends Va. Code §§ 51.1-600 and 51.1-601 and adds § 51.1-601.1 to change participation in the deferred compensation plan for new state employees to an "opt-out" plan rather than an "opt-in" plan.
- **HB 2096 Retirement System & Accumulated Contributions Includes all Employer-Paid, Tax-Deferred Contributions.** HB 2096 amends Va. Code §§ 51.1-124.3 and 51.1-142.2 to clarify that a member's "accumulated contributions" include all employer-paid, tax-deferred contributions.
- **HB 2097 – VRS & Exemptions for Purchase of Disability Determination Services from Public Procurement Act.** HB 2097 amends Va. Code § 51.1-124.32 to exempt the purchase of disability determination services by the Virginia Retirement System from the Public Procurement Act.

- **SB 1166 - Retirement System & Benefits for Certain State and Local Public Safety Officers.** SB 1166 amends Va. Code §§ 51.1-138 and 51.1-206 to make several changes to the benefits of state and local public safety officers and the funding of such benefits.
- **HJ 770 - Commending Virginia's State Employees for Their Charitable Giving in 2006.**

Immigration Commission Legislation: **Page 60**

- **HB 1673 – Commission on Immigration Created & Report.** HB 1673 amends Va. Code § 2.2-2101 and adds §§ 2.2-2530 and 2.2-2531 to create the Virginia Commission on Immigration as an advisory commission in the executive branch.

PART III LEGISLATION THAT FAILED **Page 60**

HB 1693 - Interrogations of Juveniles to be Electronically Recorded. HB 1693 amends Va. Code § 16.1-228 and adds § 16.1-274.2 relating to electronic recording of statements made by juvenile defendants.

HB 1770 - Juveniles - Destruction of Fingerprints and Photographs. HB 1770 amends Va. Code § 16.1-299 relating to the taking of a juvenile's fingerprints and photograph by law enforcement when taken into custody and charged with an act that, if committed by an adult, would be required to be reported to the Central Criminal Records Exchange (CCRE).

HB 1898 - Juvenile Interrogations - Allows Law Enforcement Access to a Juvenile in Detention. HB 1898 amends Va. Code § 16.1-300 relating to confidentiality of juvenile records held by DJJ.

HB 2047 - Juveniles - Duty of Person Taking Child into Custody. HB 2047 adds subsection K to Va. Code § 16.1-247 pertaining to what must take place when a juvenile is taken into custody pursuant to Va. Code § 16.1-246.

HB 2971 - Drug Treatment Court - Restricted to Cases Involving Possession of Drugs or Marijuana. HB 2971 restricts the use of Drug Treatment Courts to cases involving possession of drugs or marijuana and cases involving probation violations following conviction of drugs or marijuana possession.

HB 3006 - Immigration Status Investigation Following Conviction for Criminal Street Gang Activity. HB 3006 adds 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 of an adult or a juvenile and the family in the United States following the conviction or adjudication of the adult or juvenile for criminal street gang activity.

SB 876 - Gangs - Definition of Predicate Criminal Act. SB 876 amends Va. Code § 18.2-46.1 relating to predicate acts determining street gang membership status.

SB 1178 - Confidentiality of Juvenile Records – Opens Access by Request to Law Enforcement & School Administrators. SB 1178 amends Va. Code § 16.1-300 relating to confidentiality of juvenile records held by DJJ.

HB 1756 & SB 962 VaLORS - Adds DJJ Probation & Parole Officers.

PART I JUVENILE JUSTICE RELATED LEGISLATION

Compensation for Court-Appointed Attorneys

HB 2361 & SB 1168 - Compensation for Court-Appointed Counsel
Delegate Putney & Senator Stolle

HB 2361 and SB 1168 amend Va. Code § 19.2-163 relating to compensation of court-appointed counsel. Effective July 1, 2007.

1.00 HB 2361 & SB 1168 (Compensation for Court-Appointed Counsel) in a Nutshell

SB 1168 & HB 2361 address the reimbursement caps for court-appointed cases in circuit court and juvenile court. Virginia has notoriously compensated court-appointed cases at the lowest level in the nation, 50 out of 50; so low that Virginia faced the threat of a law suit from the National Association of Criminal Defense Lawyers. In juvenile court, the current reimbursement cap for court-appointed counsel is $120. Actual budgetary funding further limited reimbursement at $112 per case. In light of the Supreme Court's hourly reimbursement rate of $90 an hour, a juvenile charged with a felony in juvenile court will receive just about 1 ½ hours of representation for that charge. SB 1168 and HB 2361 double the fees in juvenile court to $240. There is no question that this legislation is a significant step in improving the quality of justice administered in Virginia's circuit court.

2.00 Appointing Counsel for Indigent Children (Not New)

Subsection C of Va. Code § 16.1-266 provides the juvenile court with the authority to appoint counsel in any case involving a child who is alleged to be in need of services, in need of supervision, or delinquent. In doing so, the court must determine whether the child is indigent under the guidelines set forth in Va. Code § 19.2-159.

2.01 Side Bar: Court Must Appoint Counsel for Detention Hearing

If the child does not already have an attorney, subsection B of Va. Code § 16.1-266 requires the juvenile court to appoint an attorney before conducting the detention hearing held pursuant to § 16.1-250. For the pre-trial detention hearing, the child will be presumed to be indigent.

3.00 Determination of Indigency: Va. Code § 19.2-159 (Not New)

The general rule is that a person will be determined to be indigent if his available funds are equal to or below 125% of the federal poverty income guidelines prescribed for the size of the household of the accused by the federal Department of Health and Human Services. The Supreme Court of Virginia distributes the annual updates of the federal poverty income guidelines made by the Department.

3.10 Public Defenders or Private Attorneys

In jurisdictions having a public defender's office, the counsel will be appointed from that office. In jurisdictions without a public defender's office, counsel will be appointed from a list of eligible attorneys maintained by the Indigent Defense Commission pursuant to Va. Code § 19.2-163.01.

4.00 Compensation for Court-Appointed Counsel: Va. Code § 19.2-163

Virginia Code § 19.2-163 provides the statutory authority for compensating court-appointed counsel. The reimbursement caps only apply to counsel appointed by the court to represent an indigent defendant. The caps do not apply to public offender offices.

4.10 Detailed Accounting Now Required (New)

HB 2361 & SB 1168 now require court-appointed counsel to submit a "detailed accounting of the time expended for that representation within 30 days of the completion of all proceedings in that court."

4.20 Compensation for Circuit Court Cases (Current Law)

In circuit court, there is no cap on court-appointed counsel fees for capital punishment cases. For felony cases punishable by imprisonment of 20 years or more, the reimbursement cap is $1,235. For all other felonies, the reimbursement cap is $445. For misdemeanor cases, the reimbursement cap is $158.

4.21 Increased Reimbursement Caps Felony Cases Only (New)

HB 2361 and SB 1168 raise the reimbursement caps for criminal cases in circuit court. The legislation allows the circuit court judge to authorize an additional $850 for the serious felony cases and $155 for lesser felony offenses. In circuit court, the cap for misdemeanor cases remains frozen at $158.

4.30 Compensation for Juvenile Court Cases (New)

In juvenile court, the current reimbursement cap is $120 for any offense. HB 2631 and SB 1168 allow the court in its discretion to waive the limitation of fees up to an additional $120 when the effort expended (the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances) warrants such a waiver.

4.40 Multiple Charges Gain One Fee (Not New)

Court-appointed counsel representing an indigent charged with repeated violations of the same section of the Virginia Code will be compensated in the amount for one charge if all of the charges arose out of the same incident, occurrence, or transaction and the offenses are tried as part of the same judicial proceeding.

4.50 Hourly Rate to be Established by the Supreme Court of Virginia (Not New)

Through guidelines, the Supreme Court of Virginia establishes the hourly rate for compensating court-appointed counsel. The current hourly rate is $90.00.

5.00 The Super Waiver (New)

Counsel appointed to represent an indigent accused in a "criminal case" may request an additional waiver exceeding the above reimbursement caps. The request for any additional amount must be submitted to the presiding judge, in writing, with a detailed accounting of the time spent and the justification for the additional amount.

5.01 The Presiding Judge will Decide the Amount

The presiding judge will determine whether the request for an additional amount is justified in whole or in part, by considering the effort expended and the time reasonably necessary for the particular representation.

5.02 Waiver must be Approved by the Chief Judge

The additional amount must then be approved by chief judge of the circuit court or district court.

5.10 Guidelines from the Executive Secretary of the Supreme Court of Virginia (New)

The Executive Secretary of the Supreme Court of Virginia will develop guidelines for determining additional amounts an attorney may be compensated for a complex or more difficult case.

5.11 Super Waiver has a Limited Pool of Funding

When the funds appropriated to pay for waivers become insufficient, the Executive Secretary of the Supreme Court of Virginia will no longer certify to the courts and no further waivers will be approved.

5.20 Defendant will be Assessed Court Costs for Representation (Not New)

If the defendant is convicted, the amount paid to the court-appointed attorney will be taxed against the defendant as a part of the costs of prosecution.

5.21 Assessed Costs to Defendant will not Include Super Waiver (New)

The defendant will not be taxed the amount of the "super waiver" if awarded to the court-appointed counsel. In that event, the amount taxed to the defendant will be limited to the amount awarded under the original fee caps.

6.00 Supreme Court must Track Expenditures (New)

Effective July 1, 2007, the Executive Secretary of the Supreme Court of Virginia must track and report the number and category of offenses charged involving adult and juvenile offenders in cases in which court-appointed counsel is assigned. The Executive Secretary must report the amounts paid by waiver above the initial cap to court-appointed counsel. The reports will be provided to the Governor, the House Appropriations Committee, and the Senate Finance Committee on a quarterly basis.

Juvenile Court Proceedings

HB 2660 – Ensuring the Completion of a Social History Prior to Commitment
Delegate Marsden

HB 2660 amends Va. Code §§ 16.1-273 and 16.1-278.7 to require that a social history investigation be completed within 15 days of commitment. Effective July 1, 2007.

1.00 Reader's Digest Version

HB 2660 amends Va. Code §§ 16.1-273 and 16.1-278.7 to require that a social history investigation be completed within 15 days of a juvenile's being committed to the Department of Juvenile Justice (DJJ). The intent of the introduced version of the bill was to require that a social history investigation be completed prior to a disposition/sentence of commitment to DJJ. However, that provision was removed in House Courts. The amended legislation requires the court to order that a social history be completed within 15 days of the court committing the juvenile to a juvenile correctional center unless a social history was previously completed. The amendments ensure that, if a social history has already been completed at the time of commitment, the court does not need to order a "second" social history.

2.00 Court-Ordered Social History: Va. Code § 16.1-273

Virginia Code § 16.1-273 allows the juvenile court to order the completion of a social history for a juvenile delinquent for most offenses. The juvenile court cannot order a social history for an adjudication of an offense involving a traffic violation, a violation of the game and fish law, or a violation of any city ordinance regulating surfing or establishing curfew violations.

2.10 After Adjudication, but before Final Disposition

Ordering the completion of a social history is discretionary. If the court does order the completion of a social history, it must be prior to final disposition.

2.20 Contents of the Social History (Not New)

If the court orders the completion of a social history, the social history must include a drug screening. Other than for a committed juvenile, the social history may include information on the juvenile's physical, mental and social conditions, an assessment of any affiliation with a criminal street gang as defined in Va. Code § 18.2-46.1, information about the personality of the child, and the facts and circumstances surrounding the violation of law for which the juvenile was adjudicated.

2.21 Required Information for Committed Juvenile (New)

Other than the required drug screening, the contents of the social history is discretionary. However, HB 2660 adds language mandating the inclusion of information on the juvenile's physical, mental and social conditions, an assessment of any affiliation with a criminal street gang as defined in Va. Code § 18.2-46.1, information about the personality of the child, and the facts and circumstances surrounding the violation when the social history is prepared for the purposes

of Va. Code § 16.1-278.7. Virginia Code § 16.1-278.7 pertains to the commitment of a juvenile to a juvenile correctional center.

3.00 Commitment of Juvenile to the Department of Juvenile Justice: Va. Code § 16.1-278.7

Virginia Code § 16.1-278.7 establishes the minimum age for commitment to the Department to be 11 years of age or older. HB 2660 adds language requiring the completion of a social history in order for the juvenile to be committed.

3.10 Court must Order Social History if not Previously Completed (New)

At the time the court commits a juvenile to the Department, the court must order the completion of a social history if a social history was not previously completed.

3.20 Fifteen Days to Complete the Social History (New)

If the court does order the social history, the social history must be completed within 15 days.

3.30 Regulations Already Require Social History (6VAC35-150-160)

The regulations "Standards for Nonresidential Services Available to Juvenile and Domestic Relations District Courts" require that a social history be prepared for each juvenile placed on probation supervision with a court service unit or committed to DJJ within timelines established by approved procedures. (See 6VAC35-150-160. Social history.)

4.00 Side Bar: Drug Screenings & Assessments under Va. Code § 16.1-273 (Not New)

Language in Va. Code § 16.1-273 requires a drug screening for all juveniles adjudicated delinquent for felony offenses and Class 1 and 2 drug-related misdemeanor offenses under Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2. If the drug screening indicates that the juvenile has a substance abuse or dependence problem, then an assessment must be completed by a certified substance abuse counselor.

4.10 Appropriations Act Removes Requirement for Drug Screenings & Assessments

Due to budgetary constraints, language in the Appropriations Act removes the requirement that social histories ordered by the court under Va. Code § 16.1-273 include a drug screening and assessment services. (See Acts 2007, Item 404, c. 847.)

5.00 Side Bar: Victim Impact Statement under Va. Code § 16.1-273 (Not New)

Subsection B of Va. Code § 16.1-273 allows the juvenile court to order a victim impact statement if the court determines that the victim may have suffered significant physical, psychological, or economic injury as a result of the violation of law. The court may order the statement on its own accord or by motion of the attorney for the Commonwealth with the consent of the victim. The preparation of a victim impact statement must be in accordance with the provisions of Va. Code § 19.2-299.1.

SB 1236 - Juvenile Offenses & Driver's License Suspension
Senator Obenshain

SB 1236 amends Va. Code § 16.1-278.9 by clarifying that a judge may impose all penalties allowable by law for juveniles found delinquent of offenses that require loss of driving privileges as set forth in that section. Effective July 1, 2007.

1.00 Summary: Suspension of Driver's License does not Preclude other Dispositions

Virginia Code § 16.1-278.9 requires the juvenile court to suspend or revoke the driver's license for a juvenile over the age of 13 and adjudicated delinquent for certain offenses or found to be a truant. The delinquency offenses generally include those relating to driving a motor vehicle while intoxicated, alcohol possession or consumption, drug distribution or possession, and possessing a weapon. Depending upon the severity of the offense or the number of offenses determines the length of time the driver's license will be suspended. The denial of the driver's license is in addition to any other disposition available to the court. This section of the Code requires the judge to take physical possession of the license at the time of disposition.

1.10 Amendment Appears to be Technical in Nature

This bill appears to propose a technical amendment to the section of the Code that specifies the listing of offenses that require the juvenile court to order the loss of driving privileges. The offenses included various alcohol- and drug-related charges, certain firearms offenses, and truancy. The bill seeks to clarify that the required loss of driving privileges shall be in addition to any other disposition the court may impose on the juvenile. Therefore, for the offenses listed in Va. Code § 16.1-278.9, the court may still impose the dispositions listed under Va. Code § 16.1-278.8 for a juvenile found delinquent. Apparently, some confusion existed as to whether or not the juvenile court could impose a full range of dispositions in addition to the loss of driving privileges.

Emergency Detention Orders

HB 2530 & SB 738 - Psychiatric Inpatient Treatment of Minors Act & Special Justices
Delegate Iaquinto & Senator Cuccinelli

HB 2530 amends Va. 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. Effective July 1, 2007.

1.00 Summary – Special Justices may Conduct Emergency Involuntary Admission Hearings

The Psychiatric Inpatient Treatment of Minors Act provides the statutory authority for the emergency and involuntary admission of a juvenile due to a serious mental illness or condition. Article 4 (§ 37.2-808 et seq. Emergency Custody and Voluntary and Involuntary Civil Admissions) of Chapter 8 of Title 37.2 provides the procedures for conducting an involuntary admission hearing. HB 2530 makes it clear that

retired and substitute judges as well as special justices are authorized to perform hearings under the Act and to receive compensation.

2.00 Background – 2003 Recodification of Mental Health Statutes

In 2003 through 2004, the Virginia Code Commission undertook the revision of Title 37.1 (Mental Health statutes). Title 37.1 was last revised in 1968. The Recodification Bill was enacted by the 2005 General Assembly. The removal of "special justice" from the Virginia Code was part of the recodification of Title 37.1. The changes took effect on October 1, 2005. The removal of "special justice" from the Virginia Code took most judicial districts by surprise.

2.10 Rationale for Removing "Special Justices" from the Code

The Code Commission determined that there was no authority in Title 37.1 for special justices to conduct involuntary commitment hearings. The Commission's decision was based in part on a 1996 Office of the Attorney General (OAG) opinion. The 1996 OAG opinion states that no statute in Title 37.1 specifically confers jurisdiction over the commitment or certification of minors to special justices. The authority granted to special justices by the General Assembly in Title 37.1 had 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. 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 guardian ad litem (GAL). Based on the OAG opinion and input from Title 37.1 task force members, special justices were not supposed to be doing minor commitment hearings. 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. This bill adds the necessary authority for special justices to conduct these hearings. (Title 37.1 was repealed and replaced by 37.2 in the 2005 recodification.)

The removal of the authority for special justices to conduct involuntary mental health commitments has proven to be a significant problem for many juvenile courts. For years, many juvenile courts relied upon special justices to conduct these proceedings. These hearings must occur within 24 hours (72 at the latest) of the involuntary commitment. Conducting these hearings within 24 hours without the benefit of having special justices has been very difficult for the juvenile courts. In addition, the juvenile courts experienced significant increases in court dockets. Subsequently, the issue has also become a problem for the court service units serving those juvenile courts. Several court service unit directors stated that without the ability of a special justice to handle theses cases, the mandatory statutory timeframes for conducting these hearings are missed. Consequently, the child in need of the mental health treatment may also suffer.

2.20 2006 General Assembly Action: SB 290

Senator Cuccinelli introduced SB 290 (Psychiatric Inpatient Commitment of Minors Act & Special Justices) during the 2006 session to address the issue created by the recodification of the mental health statutes. 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.

2.30 2007 General Assembly Action

During the 2007 session, three other bills were substantially similar to HB 2530 and SB 738 (HB 1925 - Delegate Griffith, SB 1269 - Senator Herring, and SB 739 - Senator Cuccinelli). HB 1925 was incorporated into HB 2530. SB 1269 was incorporated into SB 738. SB 739 died in Senate Courts (SB 739 only applied to the 2nd Judicial Circuit [Virginia Beach, Northampton, and Accomack] and the 19th Judicial Circuit [Fairfax County].)

3.00 Statutory Overview of the Psychiatric Inpatient Treatment of Minors Act (Article 16 of Chapter 11 of Title 16.1) (Current Law)

Article 16 of Chapter 11 of Title 16.1 (§ 16.1-335 et seq.) creates the "The Psychiatric Inpatient Treatment of Minors Act." The Act provides the statutory authority for the emergency and involuntary admission of a juvenile due to a serious mental illness or condition. Article 4 (§ 37.2-808 et seq. Emergency Custody and Voluntary and Involuntary Civil Admissions) of Chapter 8 of Title 37.2 provides the procedures for conducting an involuntary admission hearing.

3.10 Imminent Danger Due to Mental Illness: Va. Code § 37.1-67.01 or 37.1-67.1 (Not New)

Pursuant to Va. 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 magistrate may issue a temporary detention order (TDO). If the magistrate issues the TDO and the juvenile is admitted to a mental health facility for emergency inpatient treatment, the juvenile court must conduct a hearing on the emergency involuntary admission within 24 hours (72 at the latest) from the date of the issuance of the TDO. Prior to the recodification of the mental health statutes, many judicial districts relied upon special justices to conduct the hearing on the emergency involuntary admission.

3.20 TDO (Involuntary Commitment) Hearing must be held within 72 Hours: Va. Code § 16.1-341

If a minor is taken into custody for the purpose of emergency mental health treatment and a TDO is issued, the juvenile and domestic relations district court must conduct a hearing no sooner than 24 hours and within 72 hours from the time of the issuance of the TDO.

3.30 Conducting the Involuntary Commitment Hearing: Va. Code § 16.1-344

Virginia Code § 16.1-344 provides for the conduct of the hearing. The court will summon to the hearing all material witnesses requested by either the minor or the petitioner. All testimony will be under oath. The rules of evidence will apply. There will be the opportunity to present evidence and cross-examine witnesses. The hearing will be closed to the public unless the minor and petitioner request that it be open.

3.40 Criteria for Determining Whether or not a Juvenile Should be Involuntarily Committed: Va. Code § 16.1-345

Virginia Code § 16.1-345 provides the criteria for determining whether or not a juvenile should be involuntarily committed to a mental health facility. The court must find by clear and convincing evidence that the criteria are satisfied. If the criteria are satisfied, the court "shall" order the involuntary commitment of the minor to a mental health facility for treatment. The placement cannot exceed 90 days.

3.50 Criteria for Involuntarily Committing a Juvenile for Mental Health Treatment (Not New)

The criteria for determining that a juvenile needs inpatient treatment as a result of a mental illness includes:

- the minor is a "serious danger" to himself or others to the extent that severe or irremediable injury is likely to result, or
- the minor is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner due to delusional thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control.

The court must also find that the juvenile is reasonably likely to benefit from the proposed treatment. If the court finds that the above criteria are met, it must order that the inpatient treatment is provided in the least restrictive alternative that meets the minor's needs. In the alternative, the court may order the minor to participate in outpatient or other clinically appropriate treatment.

4.00 The New Stuff: Substitute Judges, Retired Judges & Special Justices may Conduct Proceedings under the Psychiatric Inpatient Treatment of Minors Act

Below is the summary of the changes to Va. 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.

4.10 Definition Section Now Defines "Judge": Va. Code § 16.1-336 (New)

Virginia Code § 16.1-336 is the definition section for the Psychiatric Inpatient Treatment of Minors Act. HB 2530 & SB 738 amend Va. Code § 16.1-336 by adding the definition of a "judge."

4.11 A Judge now Includes a Retired Judge, Substitute Judge, or a Special Justice

For the purpose of the Psychiatric Inpatient Treatment of Minors Act, the definition of a judge means "*a juvenile and domestic relations district judge . . . [including] a retired judge sitting by designation pursuant to § 16.1-69.35, substitute judge, or special justice authorized by § 37.2-803*."

4.12 Specialized Training for the Retired Judge, Substitute Judge, or a Special Justice

In order to satisfy the definition of a 'judge," the retired judge, substitute judge, or special justice must complete a training program regarding the provisions of the Psychiatric Inpatient Treatment of Minors Act prescribed by the Executive Secretary of the Supreme Court.

5.00 Technical Changes (New)

The amendments to Va. Code §§ 16.1-339, 16.1-341, 16.1-345.1 are technical in nature. The amendments remove specific language referring to the "juvenile and domestic relations district judge." These amendments ensure that retired judges, substitute judges, and special justices may conduct proceedings involving the parental admission of an objecting minor 14 years of age or older (§ 16.1-339) or the involuntary commitment of a minor (§ 16.1-341) and that such proceedings may occur through electronic means (§ 16.1-345.1).

6.00 Judges must be Available 24/7: Va. Code § 16.1-348 (New)

Virginia Code § 16.1-348 requires the chief judge of every juvenile and domestic relations district court to ensure the availability of a judge seven days a week, 24 hours a day, for the purpose of performing the duties established by the Psychiatric Inpatient Treatment of Minors Act. Given the new definition of judge, the amendment ensures any person satisfying the new definition of "judge" has the authority to perform the duties established by the Psychiatric Inpatient Treatment of Minors Act.

7.00 The Official Definition of a Special Justice now Includes Retired and Substitute Judges: Va. Code § 37.2-803 (New)

Virginia Code § 37.2-803 allows the chief judge of each judicial circuit to appoint one or more special justices for the purpose of performing the duties required of a judge under Chapter 11 (Va. Code § 37.2-1100 et seq.) of Title 37.2 and also those under the Psychiatric Inpatient Treatment of Minors Act (Va. Code §§16.1-335 through 16.1-348). The original definition of a special justice only included a person licensed to practice law. The amendments expand the definition of a "special justice" to include "*a retired or substitute judge in good standing*."

8.10 Term Limits (New)

A special justice shall serve under the supervision and at the pleasure of the chief judge making the appointment "*for a period of up to six years*." However, the special justice may be reappointed and serve "*additional periods*" of up to six years. Note that there are no limitations upon the number of reappointments.

8.20 Training within Six Months of Appointment (Not New)

Within six months of appointment, each special justice must complete a minimum training program prescribed by the Executive Secretary of the Supreme Court.

8.30 Reimbursement for Conducting the Hearing: Va. Code § 37.2-804 (New)

The amendments to Va. Code § 37.2-804 ensure that the special justice, including retired or substitute judges, are reimbursed a fee and mileage for conducting these proceedings. The amendments also ensure that any attorney appointed to represent a person also is paid a fee.

Other Emergency Detention Order legislation of note:

- **HB 2955 – Temporary Detention Orders - Licensed Physician to Complete In-Person Evaluation. Delegate Bell.** HB 2955 amends Va. Code § 37.2-809 relating to temporary detention orders. HB 2955 requires the magistrate to consider the recommendations of any treating or examining physician licensed in Virginia if available either verbally or in writing prior to rendering a decision.

- **SB 890 – Involuntary Mental Health Commitment & Emergency Custody Order to Include Transportation. Senator Deeds.** SB 890 amends Va. Code §§ 37.2-808 and 37.2-810 relating to involuntary commitment and the custody orders. SB 890 allows the magistrate issuing an emergency custody order to specify in the order that transportation includes "*transportation to a medical facility for a medical evaluation if a physician at the hospital in which the person subject to the emergency custody order may be detained requires a medical evaluation prior to admission.*"

Emergency Protective Orders & Domestic Violence

HB 2646 - Emergency Protective Orders & an Informational Brochure
Delegate Marsden

HB 2646 amends Va. Code § 16.1-253.4 relating to the issuance of an emergency protective order. Effective July 1, 2007.

1.00 Summary: Informational Brochure to be Included with Emergency Protective Order

HB 2646 amends Va. Code § 16.1-253.4 relating to the issuance of an emergency protective order (EPO). Originally, the intent of HB 2646 was to have the issuance of an EPO serve as the petition for a preliminary protective order pursuant to Va. Code § 16.1-253.

As the bill was enacted, when an EPO is issued, the judge or magistrate will provide to the requesting party (the victim of the domestic violence or a law-enforcement officer) a copy of the petition for a protective order and any written information regarding protective orders including the telephone numbers of domestic violence agencies and legal referral sources on a form prepared by the Supreme Court.

2.00 Statutory Background: Issuing Protective Orders

There are four types of protective orders: an emergency protective order (Va. Code § 16.1-253.4.), a preliminary protective order for children (Va. Code § 16.1-253), a preliminary protective order for cases of family abuse (Va. Code § 16.1-253.1), and the final protective order (Va. Code § 16.1-279.1).

2.10 Purpose of a Protective Order: Preventing Family Abuse

The purpose of a protective order is to prevent family abuse. "Family abuse" means any act involving violence, force, or threat including, but not limited to, any forceful detention, that results in bodily injury or places one in reasonable apprehension of bodily injury and which is committed by a person against the person's family or household member. "Family or household member" means a spouse or former spouse,

whether or not he resides in the same home, the person's parents, stepparents, children, stepchildren, brothers, sisters, and half-brothers, half-sisters, grandparents, and grandchildren, regardless of whether or not such persons reside in the same home with the person. The definition of family member includes the person's mother- and father-in-law, sons- and daughters-in-law, brothers- and sisters-in-law when residing in the same home with the person. The definition of family member also captures any individual who has a child in common with the person and who cohabited within the previous 12 months.

2.20 Obtaining an Emergency Protective Order: Va. Code § 16.1-253.4

To obtain an EPO, a law enforcement officer or the alleged victim of domestic violence files a complaint with a juvenile intake officer at a court service unit or with a magistrate. Pursuant to Va. Code § 16.1-260, the intake officer must file a petition with the juvenile court or a magistrate when a complaint requesting an EPO or a preliminary protective order is received. Only the court or a magistrate may issue an EPO. An EPO may prohibit any future acts of family violence and prohibit the alleged abuser from entering the home or apartment. The EPO may be issued without the presence or testimony of the alleged abuser. The issuance of an EPO shall not be considered evidence of any wrongdoing by the respondent. The EPO is effective for only 72 hours unless the 72-hour period expires at a time that the Juvenile and Domestic Relations (J&DR) District Court is not in session. In that case, the order is extended to the next business day that the J&DR District Court is in session.

2.30 Obtaining the Preliminary Protective Order: Va. Code § 16.1-253

A preliminary protective order is the same as an EPO, but it lasts up to 15 days. Only a juvenile court judge can issue a preliminary protective order. The alleged abuser must be given the opportunity to be heard. The court can issue a preliminary protective order if it is necessary to protect a child's life, health, safety, or normal development pending the final determination of any matter before the court. The order may require a child's parents, guardian, legal custodian, other person standing in loco parentis, or other family or household member of the child to observe reasonable conditions of behavior for a specified length of time. A hearing must be held within 15 days of the issuance of the preliminary order.

2.40 A Preliminary Protective Order in Cases of Family Abuse: Va. Code § 16.1-253.1

A family member may petition the court for the issuance of a preliminary protective order against an allegedly abusing person in order to protect the health and safety of the petitioner or any family or household member of the petitioner. The order may be issued in an ex parte proceeding upon good cause shown when the petition is supported by an affidavit or sworn testimony before the judge or intake officer. Immediate and present danger of family abuse or evidence sufficient to establish probable cause that family abuse has recently occurred constitutes good cause.

The preliminary order is valid for 15 days. The order must specify a date for the full hearing. The hearing must be held within 15 days of the issuance of the preliminary order. At a full hearing on the petition, the court may issue a protective order pursuant to Va. Code § 16.1-279.1 if the court finds that the petitioner has proven the allegation of family abuse by a preponderance of the evidence.

2.50 Permanent Protective Order: Va. Code § 16.1-279.1

At a full hearing on the petition, the court may issue a permanent protective order if the court finds that the petitioner has proven the allegation of family abuse by a preponderance of the evidence. A permanent protective order may prohibit the abuser from contacting the victim or other family members, entering the home or residence, and any future family abuse. The permanent protective order may also require the abuser to provide for housing and medical treatment or require the abuser to attend counseling. The permanent protective order lasts up to two years.

3.00 Studying the Complexities of Protective Orders

Over the past five sessions, the General Assembly has attempted to address the complexities associated with the process of issuing protective orders. In 2002 the General Assembly required the Supreme Court to "establish reasonable judicial training regarding domestic violence and the resources available for victims in the Commonwealth of Virginia." (See Acts 2002, cc. 810 and 818.) Also in 2002, the General Assembly required the Commonwealth Attorney's Services Council to provide training to attorneys for the Commonwealth regarding the prosecution of domestic violence cases. (See Acts 2002, cc. 810 and 818.) In 2004 the General Assembly required the Virginia State Crime Commission, in conjunction with the Office of the Executive Secretary of the Supreme Court and DJJ, to develop a written statement explaining the conditions, procedures, and time limits applicable to protective orders issued pursuant to Va. Code §§ 16.1-253.1, 16.1-253.4, and 16.1-279.1. The Executive Secretary was required to make the written statement available to law enforcement and to each court service unit for distribution.

3.10 Attempting to Clarify the Complexities of Protective Orders

HB 2646 expands upon those efforts to clarify the process for issuing protective orders. As stated, the Supreme Court already has developed an informational form explaining the protective order process; and the form is available to law enforcement and court service units. At the time an EPO is issued, HB 2646 now requires the judge or magistrate to provide the Supreme Court's informational form be provided to the victim of the domestic violence or the law-enforcement officer requesting the EPO on behalf of a victim of domestic violence. In addition, a copy of the petition needed to initiate a preliminary protective order will also be provided. Whereas it would appear that there was no prohibition from taking such action, testimony suggested that such language was in fact needed to be able to provide the form at the time the EPO is issued.

Other Emergency Protective Orders & Domestic Violence legislation of note:

- **HB 1738 – Presumption of Further Abuse & the Issuance of Emergency Protective Orders. Delegate Fralin**. HB 1738 amends Va. Code § 16.1-253.4 relating to issuance of EPOs contemporaneously with assault warrants and the presumption that there is probable danger of further acts of family abuse. The bill creates the presumption of further family abuse when there already exists, or there is issued, a warrant for domestic assault. Such presumption may be rebutted by the alleged abused person.

- **HB 1982 & SB 1237 – Protective Orders & Minimum Mandatory Penalties for Second Offense for Violation**. **Delegate Lohr & Senator Obenshain.** HB 1982 & SB 1237 amend Va. Code §§ 16.1-253.2 and 19.2-120 relating to minimum mandatory sentences for subsequent violations of the provisions of protective orders. The punishment for any person convicted of a

second offense of violating a protective order within five years of a previous conviction for violating a protective order will include a mandatory minimum term of confinement of 60 days. A third conviction for violating a protective order within 20 years of the first conviction will mean that person is guilty of a Class 6 felony with a mandatory minimum term of confinement of six months. The bill also provides that there is a rebuttable presumption that bail should be denied to any person charged with a second or subsequent violation of a protective order

- **HB 2576 – Extending Preliminary Protective Orders for Up to Six Months Due to Lack of Service. Delegate Shannon**. HB 2576 amends Va. Code §§ 16.1-253.1 and 20-103 relating to extending preliminary protective orders for up to six months when respondent fails to appear. If the respondent fails to appear at the protective order hearing because the respondent was not personally served, the court may extend the protective order for a period not to exceed six months. The extended protective order must be served as soon as possible on the respondent.

- **SB 938 - Address Confidentiality Program Pilot in Arlington County. Senator Ticer.** SB 938 amends Va. Code § 2.2-515.1 and adds § 2.2-515.2 relating to addressing confidentiality for victims of domestic violence. This legislation requires the Statewide Facilitator for Victims of Domestic Violence in the Office of the Attorney General to establish the "Address Confidentiality Program" to protect victims of domestic violence by authorizing the use of designated addresses for such victims. The bill limits its application to Arlington County with a report from the Office of the Attorney General on evaluation of the program by December 31, 2007.

- **HB 1916 - Family Life Education to Include Instruction on Dating Violence. Delegate Ward**. HB 1916 amends Va. Code § 22.1-207.1 relating to family life education and dating violence. HB 1916 requires the Board of Education to incorporate instruction on dating violence and the characteristics of abusive relationships into its curriculum guidelines for family life education.

Other Victim's Rights legislation of note:

- **HB 2570 – Victims of Sexual Assault or Sexual Abuse Crimes & the Right to Nondisclosure of Certain Information. Delegate Shannon**. HB 2570 amends Va. Code § 19.2-11.2 relating to a crime victim's right to nondisclosure of name in sexual assault or sexual abuse cases on appeal. At the request of the victim to the Court of Appeals of Virginia or the Supreme Court of Virginia hearing, on or after July 1, 2007, the case of a crime involving any sexual assault or sexual abuse, the appellate decision will not contain the first or last name of the victim.

- **HB 3132 - Victims of Crime & Employers to Allow Leave to Attend Criminal Proceedings. Delegate Moran**. HB 3132 amends Va. Code § 19.2-11.01 and creates § 40.1-28.7:2 to allow employee leave for victims of crime. The amendments require employers to allow an employee who is a victim of a crime to leave work, without compensation, in order to be present at criminal proceedings relating to the crime. An employer may limit the leave if it creates an undue hardship. Employers are prohibited from dismissing an employee who is a victim of a crime because he exercises the right to leave work.

- **HB 2029 & SB 972 - Victim Notification through Statewide VINE System. Delegate Sherwood & Senator Howell.** HB 2029 & SB 972 amend Va. Code §§ 19.2-11.01, 53.1-133.02, and 53.1-160 relating to electronic victim notification through the Virginia Statewide VINE (Victim Information and Notification Everyday) System. HB 2020 and SB 972 allow the victim

notification currently required to be made by the Department of Corrections and local and regional jails to be made through the Virginia Statewide VINE (Victim Information and Notification Everyday) System or other similar electronic or automated system.

Duties of Probation & Parole Officers

HB 2201 & SB 1290 - Interstate Compact for Juveniles.
Delegate McQuigg & Senator Edwards

HB 2201 & SB 1290 amend Va. Code § 16.1-323, create § 16.1-323.1, and repeal §§ 16.1-324 through 16.1-330 relating to the Interstate Compact for Juveniles.

1.00 Summary: Virginia's Adoption of "The Interstate Compact for Juveniles"

HB 2201 & SB 1290 repeal the Interstate Compact Relating to Juveniles located in Article 14 (§ 16.1-323 et seq.) of Chapter 11 of Title 16.1 and replaces it with the current version of the Interstate Compact for Juveniles, which has already been enacted in 32 states and provides for enhanced accountability, enforcement, visibility, and communication in relation to tracking and supervising juveniles moving across state borders.

This legislation adopts the new interstate agreement that significantly updates the current law, a 50-year-old mechanism for tracking and supervising juveniles moving across state borders. The new Interstate Compact for Juveniles will provide enhanced accountability, enforcement, visibility, and communication. It updates a crucial, yet outdated, tool for ensuring public safety and preserving child welfare. In summary, the purpose of the Interstate Compact for Juveniles is to provide the framework for promoting public safety, ensuring the welfare of juveniles, and protecting victims within the states through control and regulation of the interstate movement of juveniles.

2.00 Background: The Current Interstate Compact Dates to 1955

The Interstate Compact for Juveniles was established in 1955 to manage the interstate movement of adjudicated youth, the return of non-adjudicated runaway youth, and the return of youth to states where they were charged with delinquent acts. The population managed by the Compact has dramatically grown over the past four decades; more than was anticipated in the original language. This growing juvenile population, combined with an outdated and antiquated Compact structure, has given root to growing public safety and juvenile welfare concerns in the states.

2.10 The Council of State Governments and Office of Juvenile Justice & Delinquency Prevention (OJJDP) Revised the Current Compact

The Council of State Governments, in cooperation with the OJJDP, lead the revision of the Interstate Compact for Juveniles. The new Compact language was subject to critique and comment through a mailing to 200 individuals, agencies, and associations. Transition and timing activities were identified as major concerns. As a result, the final Compact language raises the number of required jurisdictions (states, the District of Columbia, Puerto Rico, or territories) to 35 before implementation and added July

1, 2004, as the "earliest implementation date" so that states could evaluate and consider their participation.

3.00 Issue: Revising and Updating the Current Interstate Compact for Juveniles

The new Interstate Compact for Juveniles addresses many deficiencies and inconsistencies within the current juvenile compact system including enforcement, administration, finances, communications, data sharing, and training. In addition, the existing compact authority and structure are seriously outdated. Examples include:

- Limited knowledge of who is moving, where, and when they are going;
- Limited agreement between states regarding what supervision means;
- Limited ability and commitment to notify victims, communities, and law-enforcement officials of the movement of juveniles;
- The Association of Juvenile Compact Administrators may identify failures to comply with established rules, but it is severely limited in its ability to enforce compliance when that becomes necessary; and
- No recognized authority to promulgate rules.

3.10 Interstate Commission to Resolve Conflicts

The new Compact also establishes an independent Interstate Commission. The Commission will have in place a staff and a committee structure that will permit identification of potential problems and a manageable process for addressing concerns of member states in a timely manner. The purpose of the Commission will be to attend to compliance concerns in the early stages and avert conflicts. With regard to authority, the revised Compact clarifies that the member states will have a contractual obligation to comply with the terms of the Compact as well as the by-laws and all rules promulgated by the National Commission. The new Compact provides various tools for compliance and enforcement. These tools range from technical assistance, mediation, and arbitration to suspension, termination, and legal action in federal court that will result in recovery of legal fees and costs by the prevailing party.

4.00 When will the New Compact Take Effect?

The Compact will take effect once it has been enacted into law by the 35th jurisdiction. Thirty-two states have adopted the Compact as of June 2006. Legislation is pending in five states.

States that have passed the Compact will join together and begin making administrative decisions, by-laws, and rules to govern signatory states. Non-member states may be present to voice their concerns but may not vote. When a state joins the Compact, after the initial 35, it will have an equal voice in all subsequent rule-making matters but will inherit the decisions made by other states during the start-up phase.

HB 3034 - DNA Data Bank - Reviewing Local Inmate Data System (LIDS) or the Juvenile Tracking System (JTS) to Ensure DNA Submission
Delegate Bell

HB 3034 amends Va. Code §§ 9.1-176.1, 16.1-237, 16.1-299.1, 19.2-303, 19.2-303.3, 19.2-310.2, and 53.1-145 relating to DNA analysis and the data bank. Effective date: July 1, 2007.

1.00 Summary: Reviewing LIDS or JTS to Ensure DNA Submission

For DJJ, HB 3034 amends Va. Code § 16.1-237 to add to the powers, duties, and functions of juvenile probation and parole officers. It requires probation and parole officers to verify at intake and again prior to discharge from supervision whether a required DNA sample has been taken of a juvenile offender as required by Va. Code § 16.1-299.1. If a DNA sample was not taken, the juvenile will be required to submit a sample.

The legislation also requires DJJ to verify, on an on-going basis, that DNA samples for applicable offenders have been received by the Department of Forensic Science. Currently, the Department of Forensic Science and DJJ are comparing their databases to ensure that appropriate samples have been taken. This will be a continuous process. If a sample is determined not to have been taken, DJJ will notify the court as required by the law; and the court shall require the person to submit a sample for DNA analysis.

2.00 Background on Current DNA Laws and Applicability to Juveniles

Virginia Code § 16.1-299.1 requires that a DNA sample of blood, saliva, or tissue be taken from a juvenile, 14 years of age or older, who is convicted or adjudicated delinquent of a felony. During an investigation into a serious sexually violent crime, it became evident that many DNA samples for both adults and juveniles were missing from the DNA data bank. To address the situation, the General Assembly enacted HB 3034 (2007 Acts of the General Assembly ch. 528) to ensure that all required DNA samples are taken in accordance with the law. The changes to the law become effective on July 1, 2007.

2.10 Adults Arrested for Violent Felonies

Virginia Code § 19.2-310.2:1 requires that a saliva or tissue sample be taken for DNA analysis after a person is arrested for a violent felony. For persons arrested for a violent felony, Va. Code § 19.2-310.3:1 requires the law-enforcement agency responsible for the arrest booking to take the sample. The required samples from persons who are not sentenced to a term of confinement shall be withdrawn at a time and place specified by the sentencing court. If the charge is dismissed or the defendant is acquitted, the Department of Forensic Science must destroy the sample. *This requirement does not apply to juveniles.*

2.20 Convicted Adults & Juveniles in Circuit Court

Virginia Code § 19.2-310.2 requires every person convicted as an adult to submit a sample of his blood, saliva, or tissue for DNA analysis. *This provision would apply to a juvenile tried and convicted in circuit court as an adult.* The LIDS tracks whether or not the sample is taken. A $25.00 fee will be assessed to the person. One-half of the fee is paid into the general fund of the locality where the sample was taken, and one-half of the fee is paid into the general fund of the state treasury.

2.30 DNA Samples for Juveniles Adjudicated Delinquent in Juvenile Court

Virginia Code § 16.1-299.1 requires that a DNA sample be taken from a juvenile for analysis upon conviction or adjudication of a felony. Specifically, a juvenile 14 years of age or older and convicted or adjudicated delinquent of a felony must have a sample of his blood, saliva, or tissue taken for DNA analysis. The DNA provisions of Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2 for the taking of DNA samples for adults apply to juveniles.

2.40 DNA Samples for Incarcerated Persons (RDC & Detention)

For persons who are to be incarcerated, Va. Code § 19.2-310.3 requires the sample to be taken at the receiving unit or at such other place as is designated by the Department of Corrections or, in the case of a juvenile, DJJ. The required samples from persons who are not sentenced to a term of confinement shall be withdrawn at a time and place specified by the sentencing court. Only a correctional health nurse technician or a physician, registered nurse, licensed practical nurse, graduate laboratory technician, or phlebotomist shall withdraw any blood sample to be submitted for analysis. The samples must be transported to the Department of Forensic Science within 15 days following withdrawal for analysis and storage in the DNA data bank.

2.41 Juveniles in Juvenile Correctional Centers (JCCs)

Virginia Code § 19.2-310.3 requires DJJ to take the sample of a juvenile 14 years of age or older who is adjudicated delinquent for a felony and incarcerated in a JCC.

2.50 Persons not Sentenced to Confinement but Required to Submit DNA

The required samples from persons who are not sentenced to a term of confinement shall be withdrawn at a time and place specified by the sentencing court. For persons not incarcerated, Va. Code § 19.2-310.3 requires the sentencing court to specify the time and place where the sample is to be taken. *This provision does apply to juvenile courts.* A survey of court service unit directors indicated that the vast majority of juvenile courts have procedures in place for the taking of a DNA sample upon adjudication for a felony.

3.00 New Requirements for DJJ & Probation & Parole Officers

HB 3034 requires juvenile probation and parole officers to check whether or not a sample has been taken.

3.10 New Duties for Juvenile Probation & Parole: Va. Code § 16.1-237

For juveniles in juvenile court, HB 3034 amends Va. Code § 16.1-237 relating to the powers, duties, and functions of probation and parole officers. HB 3034 adds subsection I stating that the juvenile probation or parole officer must "[d]*etermine by reviewing the Local Inmate Data System (LIDS) or the Juvenile Tracking System (JTS) upon intake and again prior to discharge whether a blood, saliva, or tissue sample has been taken for DNA analysis for each offender required to submit a sample pursuant to § 16.1-299.1 and, if no sample has been taken, require an offender to submit a sample for DNA analysis.*"

3.11 New Department Procedures

The Department is developing new procedures that will require probation and parole officers to review the JTS upon intake, and again prior to discharge, to determine whether or not a DNA sample has been taken of an offender who is required to submit a DNA sample. If it is determined that no DNA sample has been taken, the probation officer shall notify the juvenile of the requirement to submit a sample for DNA analysis.

3.20 New Central Office Duties to Compare JTS to DNA Data Bank

HB 3034 also amends Va. Code § 16.1-299.1 to require DJJ to verify that a DNA sample for an offender has been received by the Department of Forensic Science; and, if no sample has been received, notify the court, which shall then order that a sample be submitted for DNA analysis.

4.00 New Requirements on the Adult Side

In addition to the new duties placed upon DJJ and juvenile probation and parole officers, HB 3034 imposes similar duties upon the adult side.

4.10 Department of Corrections & Department of Forensic Science to Compare Data Banks

HB 3034 requires the Department of Forensic Science to provide to the Local Inmate Data System (LIDS) on a weekly basis the most current information submitted to the DNA data bank that it maintains regarding persons who are required to submit a blood, saliva, or tissue sample for DNA analysis pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2, as well as removing from LIDS and the data bank persons who are no longer eligible to be in the data bank. The Departments of Forensic Science and Corrections shall, on a quarterly basis, compare databases to ensure that the DNA data bank is complete and accurate.

4.20 Clerk's Office to Check LIDS for DNA Submission

The bill also provides that prior to or upon sentencing, the clerk of court is responsible for reviewing LIDS to determine whether a DNA sample has been submitted if the clerk has electronic access to LIDS in the courtroom. If electronic access is not available, or if the clerk determines that no DNA sample is stored in the DNA data bank, the court shall order that person required to submit a DNA sample to appear within 30 days to allow a sample to be taken by the sheriff or probation officer.

4.30 Adult Probation & Parole to Check LIDS for DNA Submission

The bill also provides that adult probation and parole officers, community-based probation programs, and sheriffs and regional jailers are required to review LIDS upon intake and again prior to discharge of an offender who is required to submit a DNA sample to determine whether a sample has been taken. If it is determined that no DNA sample has been taken, then the person shall be required to submit a sample for DNA analysis.

4.40 Adult Probation & Parole to Check LIDS for Out-of-State Offenders

Probation and parole officers are also required to take a DNA sample or verify that a DNA sample has been submitted to the DNA data bank for every offender accepted pursuant to the Interstate Compact for the Supervision of Adult Offenders (§ 53.1-176.1 et seq.) who has been convicted of an offense that would be considered a felony if committed in Virginia.

5.00 Report by Secretary of Public Safety on the Procedures for the Collection of DNA

HB 3034 requires the Secretary of Public Safety to review the procedures for the collection of DNA samples and submit a status report by November 1, 2007, to the Chairmen of the House Appropriations Committee, the Senate Finance Committee, the House Committee for Courts of Justice, and the Senate Committee for Courts of Justice.

Juveniles in Circuit Court

HB 3007 – In Circuit Court, Juvenile "Becomes" an Adult Only Upon Conviction
Delegate Marsden

HB 3007 amends Va. Code § 16.1-271 pertaining to a juvenile certified to be tried as an adult, but not convicted. Effective July 1, 2007.

1.00 Summary: In Circuit Court, Juvenile "Becomes" an Adult Only Upon Conviction

HB 3007 amends Va. Code § 16.1-271 pertaining to a juvenile certified to be tried as an adult, but not convicted. Under HB 3007, if a juvenile is tried as an adult, but is not convicted, jurisdiction over that juvenile for any future alleged delinquent or criminal behavior would be returned to the juvenile court. Under current law, once a juvenile is tried as an adult, no matter the outcome, that juvenile is treated as an adult in all future proceedings.

2.00 Statutory Background: Trying a Juvenile as an Adult: Va. Code § 16.1-269.1

Generally, there are three ways that Virginia law allows a juvenile 14 years of age or older to be transferred, certified, or waived to circuit court to be tried and convicted as an adult.[1] First, Va. Code § 16.1-269.1(B) mandates certification for trial as an adult for a juvenile who is 14 years of age or older when there is probable cause to believe the juvenile committed a certain offense such as murder or aggravated malicious wounding. Second, Va. Code § 16.1-269.1(C) provides that the attorney for the Commonwealth may request that a juvenile, 14 years of age or older, be tried as an adult when the juvenile is accused of certain other felonies, such as felony homicide, robbery, or rape.[2] Third, pursuant

1 A fourth way is direct indictment. If the juvenile court does not find probable cause to believe that the juvenile has committed the violent juvenile felony, then the attorney for the Commonwealth may seek a direct indictment in the circuit court. (See Va. Code § 16.1-269.1.) Also, a juvenile 14 years of age or older and charged with a felony may waive the jurisdiction of the juvenile court and have his case transferred to the circuit court. (See Va. Code § 16.1-270.)

2 The offenses for which a juvenile 14 years of age or older may be certified to be tried as an adult are: murder in violation of Va. Code § 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

to Va. Code § 16.1-269.1(A), if a juvenile, 14 years of age or older, is accused of any other felony, then by motion of the attorney for the Commonwealth, the juvenile court may conduct a transfer hearing. The purpose of the hearing is to decide if the juvenile should remain under the jurisdiction of the juvenile court or be transferred to the circuit court to be tried as an adult.

2.10 Old Law: Once an Adult, Always an Adult: Va. Code § 16.1-271

Prior to HB 3007, once a juvenile is transferred or certified to circuit court, the juvenile court loses jurisdiction over that juvenile immediately.[3] Virginia Code § 16.1-271 states that the "trial or treatment of a juvenile as an adult . . . shall preclude the juvenile court for taking jurisdiction of such juvenile for subsequent offenses committed by that juvenile." A juvenile who is tried and convicted in a circuit court as an adult would be considered and treated as an adult in any criminal proceeding resulting from any alleged future criminal acts and any pending allegations of delinquency that had not been disposed of by the juvenile court at the time of the criminal conviction.

2.20 Virginia Supreme Court: What Does "Treated as an Adult Mean?"

The Virginia Supreme Court has interpreted Va. Code § 16.1-271 to apply when a juvenile has been "treated as an adult" by the circuit court in any way. In *Cook v. Commonwealth*, the Court stated:

> The language of the statute could scarcely be more clear. Under Code § 16.1-271, a juvenile need not be convicted as an adult to be tried as an adult for all subsequent offenses without a transfer hearing in the juvenile court. The juvenile court loses jurisdiction over the juvenile upon future charges if he goes to trial or is treated as an adult by the court system. The word "treatment" cannot be interpreted as merely synonymous with the world "trial;" if it were, the inclusion of the world "treatment" in the statute would be redundant. (See *Cook v. Commonwealth*, 268 Va. 111, 114 [Va. 2004].)

The Court also pointed out that before Va. Code § 16.1-271 was amended in 1994, it stated that prior treatment or trial "shall not" divest the juvenile court of jurisdiction for subsequent offenses. The 1994 amendment deleted the word "not."

2.21 Side Bar: Juvenile Transfer Statutes in Other States

Juvenile transfer statutes in most other states require that a juvenile be convicted as an adult before the juvenile court is forever divested of jurisdiction over the juvenile. Thirty-three states and the District of Columbia have juvenile transfer statutes and, of those states, 27 require a juvenile be convicted as an adult in order for the juvenile court to lose jurisdiction. Only California[4], Delaware, Hawaii, Indiana, Michigan, Virginia, and Washington preclude the juvenile court from

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violation of § 18.2-54.1, adulteration of products in violation of § 18.2-54.1, 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, provided the attorney for the Commonwealth gives written notice of his intent to proceed pursuant to this subsection.

[3] See Va. Code § 16.1-271.

[4] Note that while California does not require a conviction, its statute does require that a juvenile be either 16 years of age or older and have committed an offense eligible for transfer before he can be automatically tried in adult court on a subsequent conviction. Cal. Welf. & Inst. Code § 707.01 (Deering 2006).

having any jurisdiction over a juvenile after the juvenile has been transferred regardless of whether or not the juvenile was convicted.[5]

2.30 The Issue of the Old Law: What Happens to a Juvenile Found Not Guilty

A juvenile could be certified or transferred to circuit court to be tried as an adult. Subsequently, the charges against the juvenile could be nolle prosequi, dismissed by the court, or the juvenile could be found not guilty. Nonetheless, the circuit court retains jurisdiction over that juvenile for any subsequent delinquent offenses by that juvenile. The situation exists where a juvenile could be transferred to circuit court and then the charges for which he was transferred are found to be baseless. Regardless, that juvenile will be treated as an adult in all future proceedings.

3.00 The New Law: In Circuit Court, Juvenile "Becomes" an Adult Only Upon Conviction

The amendment to Va. Code § 16.1-271 is simple. HB 3007 strikes "trial or treatment" and inserts "conviction." With that change, if a juvenile is tried as an adult, but is not convicted, jurisdiction over that juvenile for any future alleged delinquent or criminal behavior would be returned to the juvenile court.

3.10 Rationale for Making the Change

HB 3007 is simply a matter of fundamental fairness. Automatically treating children as adults when they were not previously convicted of an adult offense undermines the basis of the justice system that the accused is "innocent until proven guilty." Consequences flow from trying juveniles as adults, especially for those juveniles who were not convicted as adults, yet continue to be treated as adults in all future proceedings. If the rationale for transferring a juvenile is not found to exist through a conviction, jurisdiction over that juvenile should be returned to the juvenile court for all future proceedings.

HB 2053 – In Circuit Court, Sentencing a Juvenile Convicted of Capital Murder
Delegate McQuigg

HB 2053 amends Va. Code § 16.1-272 relating to sentencing of a juvenile convicted in circuit court of capital murder. Effective July 1, 2007.

1.00 Summary: Sentencing a Juvenile Convicted of Capital Murder

HB 2053 amends Va. Code § 16.1-272 relating to sentencing of a juvenile convicted in circuit court of capital murder. HB 2053 provides that, upon a finding of guilty of any felony charge, the court shall fix the sentence of a juvenile defendant without the intervention of a jury. Under previous law, the Code required the jury to fix the sentence in a capital case. The purpose of the legislation was to bring Va. Code § 16.1-272 in line with the U.S. Supreme Court's ruling in Roper v. Simmons 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

[5] Note that Missouri's statute requires that jurisdiction over the child revert to the juvenile court if the child is found not guilty in adult court but its courts have interpreted this such that if the case is dismissed, it is not the same as a "not guilty" verdict; and the child would continue to be tried in adult court for subsequent offenses. Mo. Rev. Stat. § 211.071 (Lexis 2006) and *State v. Davis*, 988 S.W.2d 68 (Mo. Ct. App. 1999).

of 18. (See 543 U.S. 551 [2005].) Given that a person convicted of capital murder while a juvenile may not be put to death, the Legislative Services summary states that the jury's involvement is no longer necessary. However, the amendment may have more of an impact than intended.

1.10 Intent to Comply with U.S. Supreme Court Decision in Roper v. Simmons

The stated intent of the legislation was to make the sentencing options for a juvenile convicted of capital murder consistent with legislation enacted in 2006. In 2006, the General Assembly enacted HB 45 and SB 362 amending Va. Code § 18.2-10 relating to capital punishment for juveniles. HB 45 and SB 362 brought Virginia's statutes into compliance with the U.S. Supreme Court's ruling in Roper v. Simmons 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. (See 543 U.S. 551 [2005].)

2.00 Statutory Background: Sentencing a Juvenile Convicted of Capital Murder

Virginia Code § 18.2-31 defines capital murder as a Class 1 felony. Virginia Code § 18.2-10 authorizes the punishment for conviction of a Class 1 felony as death, if the person so convicted was 18 years of age or older at the time of the offense and is not determined to be mentally retarded, or imprisonment for life. If the person was under 18 years of age at the time of the offense or was determined to be mentally retarded, the punishment is imprisonment for life.

2.10 Sentencing a Juvenile Convicted as an Adult: Va. Code § 16.1-272

Virginia Code § 16.1-269.1 provides the statutory authority for certifying or transferring a juvenile from the juvenile and domestic relations district court to the circuit court to be tried as an adult. For a juvenile 14 years of age or older who is alleged to have committed capital murder, certification to circuit court to be tried as an adult is mandatory. Virginia Code § 16.1-272 provides the sentencing powers of the circuit court over a juvenile who is convicted as an adult. Virginia Code § 16.1-272(A) provides three sentencing categories for a juvenile convicted in circuit court as an adult. Subsection (A)(1) provides the sentencing options for a juvenile convicted of a violent juvenile felony. Subsection (A)(2) provides the sentencing options for a juvenile convicted of a non-violent juvenile felony. Subsection (A)(3) provides the sentencing options for a juvenile convicted of a misdemeanor.

2.20 Sentencing a Juvenile Convicted of a Violent Felony

Capital murder is a violent juvenile felony. The circuit court has three sentencing options for a juvenile convicted of a violent juvenile felony. First, a juvenile convicted of a violent juvenile felony in circuit court may be committed to DJJ as a serious offender under Va. Code § 16.1-285.1 to be followed by an active sentence to the Department of Corrections. Second, the circuit court may impose a juvenile disposition including commitment under subdivision (14) of Va. Code § 16.1-278.8 or § 16.1-285.1 with a suspended adult sentence. Because the first two options allow for a juvenile disposition and an adult sentence, these two options are sometimes referred to as "blended sentences." The suspended adult sentence would be conditioned upon successful completion of the juvenile disposition. Third, the circuit court may impose only an adult sentence upon the juvenile that would be served in the same manner as an adult.

3.00 What HB 2053 Did: A Subtle, but Substantive Change

Virginia Code § 16.1-272 states that, "Upon a finding of guilty of any charge other than capital murder, the court shall fix the sentence without the intervention of a jury." HB 2053 removes "other than capital murder."

3.10 Old Law: Only a *Jury* Sentences a Juvenile Convicted of Capital Murder

Under prior law, Va. Code § 16.1-272 required a jury to impose the sentence upon a juvenile convicted of capital murder. For all other offenses, the circuit court will sentence the juvenile. The jury's only sentencing option for a juvenile convicted of capital murder was to impose an adult sentence. The jury did not share the dispositional options provided to the circuit court. A jury does not have the dispositional option of giving a juvenile convicted of capital murder a "blended sentence." Therefore, for a juvenile convicted of capital murder, the jury's only sentencing option was life imprisonment with the Department of Corrections.

3.20 New Law: Only the *Circuit Court* Sentences a Juvenile Convicted of Capital Murder

HB 2053 removes the ability of a jury to impose the sentence upon a juvenile convicted of a capital murder. The circuit court would have the sole ability of sentencing such a juvenile. Therefore, the circuit court now has the sentencing options for a juvenile convicted of capital murder as it does for a juvenile convicted of any violent juvenile felony. Removing the power to sentence from the jury and placing it with the circuit court gives more dispositional options for a juvenile convicted of capital murder. For a juvenile convicted of capital murder, the court may impose a "blended sentence."

SB 874 - Speedy Trial for Adults Coming from District Court
Senator McDougle

SB 874 amends Va. Code § 19.2-243 relating to speedy trials for adults whose preliminary hearings are held in a juvenile and domestic relations district court. Effective July 1, 2007.

1.00 Summary: Speedy Trial for Adults Coming from District Court

SB 874 amends Va. Code § 19.2-243 relating to speedy trials for adults whose preliminary hearings are held in a juvenile and domestic relations district court.

1.10 Issue: Did Speedy Trial Apply to Adults Coming from Juvenile Court?

This bill was introduced because of concerns that the speedy trial protections in Va. Code § 19.2-243 did apply to an adult charged with felony domestic violence in juvenile court and then tried in circuit court. Technically, that appears to be a valid concern given the construction of the language. However, it appears that most courts did extend the speedy trial protections to adults coming from juvenile court.

1.11 How an Adult Offender may Start in Juvenile Court then go to Circuit Court

Virginia Code § 16.1-241 is the jurisdiction section for the juvenile court. Subsections I and J under Va. Code § 16.1-241 provide for the prosecution and punishment of adults in cases involving the abuse or neglect of a child, cases of domestic violence, and violations of custody and visitation orders under Va. Code § 18.2-49.1. However, if any of those offenses is a felony, the jurisdiction of the juvenile court is limited to determining whether or not there is probable cause. The trial of the adult for the felony domestic violence offense will occur in circuit court.

2.00 Statutory Background: Speedy Trial: Va. Code § 19.2-243

Virginia Code § 19.2-243 is the "speedy trial" section that places a limitation on prosecution of a felony due to the lapse of time after a finding of probable cause for an adult. Under the prior law, Va. Code § 19.2-243 applied only to adults and those juveniles certified or transferred to be tried as adults. If an adult, or a juvenile being tried as an adult, is incarcerated prior to trial for an alleged felony offense, the trial must be commenced within five months from the date probable cause was found, or the charge will be dismissed. If the adult, or juvenile being tried as an adult, is not incarcerated for the alleged felony, prosecution must be commenced within nine months. There are provisions to toll the statute.

3.00 The Fix – Two Amendments

SB 874 does ensure that the speedy trial provisions apply to an adult charged with a felony and whose case began with a preliminary hearing in juvenile court. A strict reading of Va. Code § 19.2-243 suggests that the speedy trial provisions apply only to those cases arising from general district court and not from juvenile court. The first amendment fixes the problem; the second amendment may have created a problem. SB 874 removed "general" that made it clear that the statute applied both to general district court and juvenile and domestic relations district court. The second amendment changed "accused" to "adult."

3.10 The First Amendment - Remove "General"

Virginia Code § 19.2-243 stated "Where a general district court has found that there is probable cause to believe that an adult has committed a felony," then the speedy trial provisions apply. However, SB 874 makes two amendments. SB 874 strikes the word "general" in Va. Code § 19.2-243 leaving "district court." The general rule is that the term "general district court" applies only to general district courts, but that the usage of "district court" covers both general district courts and juvenile courts. By removing the word "general," the amendment fixes the issue and ensures that the speedy trial provisions apply to matters arising out of the juvenile courts.

3.20 The Second Amendment may have Negative Unintended Consequences

No one opposed the intent of the legislation to fix a legislative oversight; however, there are many who have concerns with the "fix." The controversial amendment changed "accused" to "adult." Changing "accused" to "adult" may have significant unintended consequences.

4.00 Will Changing "Accused" to Adult" be Interpreted as Meaning the Speedy Trial Provisions under Title 19.2 do not Apply to Juvenile Court Delinquency Cases under Title 16.1?

The second amendment may have a very significant unintended consequence because it changed the word "accused" to "adult." The change introduces an ambiguity by referring only to "an adult" as falling under the Act after a preliminary hearing in any district court. As suggested below, courts have held that the speedy trial provisions applied to a juvenile transferred or certified to circuit court to be tried as an adult. Arguably, by changing "accused" to "adult" it appears that the General Assembly is specifically limiting the provisions of the speedy trial protections to only adults. That amendment appears to limit the speedy trial provisions in Va. Code § 19.2-243 only to adults and would not cover a juvenile transferred or certified to circuit court to be tried as an adult.

4.10 The Current Language in Speedy Trial Provisions Applies to Juveniles in Circuit Court

There are two cases that suggest the speedy trial provisions did apply to juveniles transferred or certified to circuit court to be tried as adults under the prior law. (See Price v. Commonwealth, Record No. 2313-96-1, 25 Va. App. 655; 492 S.E.2d 447; 1997 Va. App. LEXIS 666, October 28, 1997, Decided; and Jackson v. Commonwealth, Record Nos. 971720, 971721, SUPREME COURT OF VIRGINIA, 255 Va. 625; 499 S.E.2d 538; 1998 Va. LEXIS 75, April 17, 1998, Decided, Certiorari Denied January 11, 1999, Reported at: 1999 U.S. LEXIS 115.) Moreover, subsection F under Va. Code § 16.1-269.6 states that the speedy trial provisions under Va. Code § 19.2-243 are tolled when a juvenile appeals his transfer to circuit court to be tried as an adult.

4.20 Concern that Speedy Trial would Apply to Juvenile Court Cases

There was testimony suggesting that the term "adult" needed to be included in the new language to ensure that the speedy trial provisions under Va. Code § 19.2-243 would not apply to delinquency cases in juvenile court. This argument seems hollow for two reasons. First, the term "accused" has been in the existing Code language and there has never been any interpretation that the speedy trial provisions in Title 19.2 applied to delinquency proceedings in Title 16.1. Second, case law and Official Opinions rendered by the Office of the Attorney General have been clear that the proceedings in juvenile court are civil in nature.[6] In Conkling v. Commonwealth, the Virginia Court of Appeals essentially said that the General Assembly needed to state in that criminal statute that the provisions apply to juvenile court proceedings in order for such provisions to apply.[7] The Conkling opinion lists the prior Attorney General Opinions that consistently indicate the proceedings in juvenile court are not criminal and support the suggestion that Title 19.2 does not apply to juvenile court proceedings.[8]

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[6] "The rule in Virginia has been clear for some time that proceedings in juvenile court are civil, and not criminal, in nature." Lewis v. Commonwealth, 214 Va. 150, 153, 198 S.E.2d 629, 632 (1973).

[7] In Conkling, the court held that, because the Virginia Legislature chose not to include juvenile adjudications as prior convictions for enhancement purposes under Va. Code Ann. § 18.104, said juvenile adjudications could not be used to enhance a sentence thereunder. Thus, a defendant's felony conviction was reversed, and the matter was remanded for misdemeanor sentencing. See Conkling v. Commonwealth Record No. 1917-04-1 , COURT OF APPEALS OF VIRGINIA , 45 Va. App. 518; 612 S.E.2d 235; 2005 Va. App. LEXIS 173, May 3, 2005, Decided.

[8] See Att'y Gen. Ann. Rep.: 1978-1979 at 83, 78-79 Va. AG 83 (juvenile court finding of "not innocent" on marijuana charge does not bar probation as a first time offender for later adult offense); 1977-1978 at 203, 77-78 Va. AG 203 (delinquency adjudication not conviction of a crime for purposes of § 19.2-305.1(A)); 1976-1977 at 138, 76-77 Va. AG 128 ("not innocent" finding does not subject juvenile to additional court costs under § 19.2-368.18), and at 322, 76-77 Va. AG 322 (juvenile proceedings are not criminal in nature); 1975-1976 at 187, 188, 75-76 Va. AG 187, 188 (juvenile proceedings are not criminal cases), at 194, 75-76 Va. AG 194 (juvenile not subject to civil disabilities attached to a felony conviction), at 195-75-76 Va. AG 195 (juvenile sentenced to jail is not convicted of felony or misdemeanor), at 198, 75-76 Va. AG 198 ("felony" and "misdemeanor" designations inappropriate in juvenile proceedings), and at 199, 75-76 Va. AG 199 (juvenile proceedings are civil in nature); 1974-1975 at 227, 74-75 Va. AG 227 (juvenile court dispositions do not have the attendant

4.21 Sidebar: The Speedy Trial Provisions for Juveniles in Juvenile Court

Title 16.1 currently has statutory provisions similar to the "speedy trial" provisions in Title 19.2. Virginia Code § 16.1-277.1 states that if a child is detained in secure detention and there is no adjudicatory or transfer hearing conducted by the court within 21 days, that juvenile will be released from the detention facility. Following the adjudicatory or transfer hearing for a child being detained in detention, the dispositional hearing must occur within 30 days of that hearing, or the child will be released from detention.

If the child is not detained prior to trial in a detention facility or released from a detention facility after being confined, an adjudicatory or transfer hearing on the merits of the petitions before the court must be conducted within 120 days from the date the petitions were filed. However, there is nothing in the Code that specifies what will happen if the hearing does not occur within 120 days. It is generally presumed that the petitions against the juvenile will be dismissed, but the Code does not state that. There are Code provisions for tolling the time limitations specified in Va. Code § 16.1-277.1.

***Other Circuit Court legislation of note*:**

- **HB 1895 - Sentencing Commission to Report on any Departure by a Judge from Jury Sentence. Delegate Albo**. HB 1895 amends Va. Code §§ 19.2-295, 19.2-298.01, and 19.2-303 relating to judge sentencing and mandatory reports to the Virginia Criminal Sentencing Commission. When the circuit court modifies a sentence that was fixed by a jury, the court must file a written explanation for the modification. The written explanation regarding departure from or modification of a sentence fixed by a jury will be forwarded to the Virginia Criminal Sentencing Commission.

Confidential Juvenile Records Sharing

HB 2661 - Releasing Confidential Records for Consideration for Admission
Delegate Marsden

HB 2661 amends Va. Code § 16.1-300 relating to the confidentiality of reports and records on juveniles appearing in juvenile court or under the custody or supervision of the Department of Juvenile Justice. Effective July 1, 2007.

1.00 The Section of the Code being Amended: Va. Code § 16.1-300

Virginia Code § 16.1-300 provides the statutory authority for certain persons to access confidential juvenile records and reports. Virginia Code § 16.1-300 covers all social, medical, psychiatric and psychological reports and records of a child who is or has been before the court, under supervision, or receiving services from a court service unit or committed to the Department.

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civil disabilities associated with adult convictions); 1960-1961 at 175 (adjudication of delinquency is not considered conviction of a crime). 87-88 Va. AG 260, 260-61.

2.00 The Amendment: Releasing Confidential Records for Consideration for Admission

HB 2661 amends subdivision 7 of Va. Code § 16.1-300 (A) to allow confidential juvenile records and reports to be released to any person, agency, or institution having a legitimate interest when release of the confidential information is for the consideration of admission to any group home, residential facility, or postdispositional facility.

2.10 HB 2661 Adds Language Requiring the Destruction of the Records

Copies of the records must be destroyed if the juvenile is not admitted to the group home, residential facility, or postdispositional program.

3.00 Intent of the Amendments

HB 2661 ensures that confidential juvenile records and reports can be shared with a group home residential facility or postdispositional detention facility for the purpose of assessing whether or not a child should be admitted.

3.10 Actual Impact: More Clarifying than Substantive?

Arguably, court service unit staff have such authority under the existing language in subsection A of Va. Code § 16.1-300.

3.11 Releasing Information for Admission to a Private Facility

Under existing language in subdivision 7 of Va. Code § 16.1-300 (A), confidential records and reports can be shared with any person, agency, or institution when release of the confidential information is for the provision of treatment or rehabilitation services for the juvenile who is the subject of the information. It would appear that releasing confidential information to determine whether or not a child is admissible into a facility falls under “the provision of treatment or rehabilitation services.”

3.12 Releasing Information for Admission to Post-Dispositional Detention

Under existing language in subdivision 7 of Va. Code § 16.1-300 (A), confidential information can be released when the requesting party has custody or is providing supervision for a juvenile and the release of the confidential information is in the interest of maintaining security in a secure facility as defined by Va. Code § 16.1-228. Also, as stated above, subdivision 7 of Va. Code § 16.1-300 (A) allows the release of the confidential information for the provision of treatment or rehabilitation services for the juvenile who is the subject of the information. It would appear that releasing confidential information to determine whether or not a child is admissible into a postdispositional detention program falls under “the provision of treatment or rehabilitation services.” Arguably, those provisions capture postdispositional detention facilities.

3.13 Releasing Information for Admission to a Group Home

Subdivision 2 under Va. Code § 16.1-300 (A) allows confidential records and reports to be shared with any public agency, child welfare agency, private organization, facility, or person who is treating or providing services to the child pursuant to a contract with DJJ or pursuant to the Virginia Juvenile Community Crime Control Act. Subdivision 2 would capture group homes and any other residential facility in which DJJ would place a juvenile.

HB 2631 & SB 915 - Sharing Student Records & FERPA
Delegate Reid & Senator Lambert

HB 2631 & SB 915 amend Va. Code § 22.1-287 relating to limitations on access to student records. Effective July 1, 2007.

1.00 Summary: Sharing Student Records & FERPA

HB 2631 & SB 915 amend Va. Code § 22.1-287 relating to limitations on access to student records; exception. Originally HB 2631 and SB 915 amended Va. Code §§ 16.1-330.1 and 22.1-288.2 to authorize school personnel to disclose identifying information from a student's educational records to members of the Serious or Habitual Offender Comprehensive Action Programs (SHOCAP) Committee and the staff of member agencies for the purpose of furthering the ability of the juvenile justice system to effectively serve the student prior to adjudication.

As passed, HB 2631 and SB 915 amend only Va. Code § 22.1-287. Any reference to SHOCAP in Va. Code § 16.1-330.1 is removed. Now HB 2631 and SB 915 relate only to a school's ability to release confidential scholastic records on a juvenile. Virginia Code § 22.1-287 places restrictions on access to scholastic records. HB 2631 and SB 915 add a new paragraph that allows the principal or his designee to disclose identifying information from a student's scholastic record for the purpose of furthering the ability of the juvenile justice system to effectively serve the pupil prior to adjudication.

1.10 Stated Intent of the Legislation

This legislation was submitted on behalf of the Office of the Attorney General. The intent of the legislation is to allow schools greater flexibility to share records with juvenile justice professionals for the purpose of diverting students from becoming involved in the juvenile justice system while complying with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99).

2.00 The Changes Impact Va. Code § 22.1-287 (Limiting Access to Scholastic Records)

HB 2631 & SB 915 add a new paragraph that allows the principal or his designee to disclose identifying information from a student's scholastic record for the purpose of furthering the ability of the juvenile justice system to effectively serve the pupil prior to adjudication. The actual impact of the bill appears to be minimal if any. Subsection A of Va. Code § 22.1-287 already allows scholastic information to be shared with "any person . . . under judicial process." Outside of a "judicial process," subdivision 5 of Va. Code § 22.1-287 (A) allows school staff to share any records about a student to state or local law-enforcement or correctional personnel and probation or parole officers.

2.10 The Actual Amendments: New Subdivision in Paragraph D of Va. Code § 22.1-287

HB 2631 & SB 915 add a new subdivision to paragraph D of Va. Code § 22.1-287. The new language allows "identifying information" in a student's record to be released to attorneys for the Commonwealth, court service units, juvenile detention centers or group homes, mental and medical health agencies, state and local children and family service agencies, and DJJ and the staff of such agencies. However, the purpose for releasing the information is limited to providing services to that student prior to adjudication.

Other Confidential Records legislation of note:

- **HB 2520 – Health Records Privacy & Exceptions to Disclose Records to Law-Enforcement Officers. Delegate Iaquinto**. HB 2520 amends Va. Code § 32.1-127.1:03 relating to the release of confidential health records for the purpose of law-enforcement investigations. HB 2520 allows information to be released to law-enforcement officials for the purpose of identifying or locating a suspect, fugitive, person required to register with the Sex Offender and Crimes Against Minors Registry Act, a material witness, or a missing person. Information may be shared with law-enforcement officials regarding the death of an individual for the purpose of alerting law enforcement of the death if the health care entity has a suspicion that such death may have resulted from criminal conduct. Certain record information may be shared with law-enforcement officials if the health care entity believes in good faith that the information disclosed constitutes evidence of a crime that occurred on its premises. HB 2520 specifies the type of information that may be disclosed.

- **SB 800 – Employee Prospect may give Consent to Release Criminal History Record Information to Potential Employer. Senator Ruff.** SB 800 amends Va. Code § 19.2-389 relating to criminal history record information. Virginia Code § 19.2-389 allows the dissemination of criminal history record information contained in the Central Criminal Records Exchange to certain entities. SB 800 allows an employer or prospective employer to make a written request for conviction data about a person to the Central Criminal Records Exchange or the criminal justice agency in cases of offenses not required to be reported to the Exchange. The person on whom the data is being obtained must provide consent in writing to the request and has presented a photo-identification to the employer or prospective employer. The employer must cover the cost of the records.

Juveniles in Residential or Secure Facilities

HB 2890 - Damaging Fire Suppression Equipment in Secure Facilities a Class 1 Misdemeanor
Delegate Phillips

HB 2890 amends Va. Code § 18.2-477.2 making the act of damaging any fire protection or fire suppression system, equipment, or sprinkler system within a secure juvenile facility or detention home a class 1 misdemeanor. Effective July 1, 2007.

1.00 Summary: Damaging Fire Sprinklers in Secure Facilities now a Class 1 Misdemeanor

HB 2890 amends Va. Code § 18.2-477.2 to make it a Class 1 misdemeanor to damage any fire protection or fire suppression system, equipment, or sprinkler system within a "secure juvenile facility or detention home."

1.10 Minor Inconsistency in the Nomenclature

The language in the bill referring to a "secure juvenile facility" is not completely consistent with nomenclature in the juvenile code. Virginia Code § 16.1-228 (the definition section of the juvenile code) refers only to a "secure facility," not a "secure juvenile facility." Please note: The language in the bill referring to "secure juvenile facility" is existing law and appears to be a minor discrepancy. That language dates to the creation of the statute in 1999.

2.00 Statutory Background: Punishment for Offenses Committed in a Secure Facility

Under the old law, Va. Code § 18.2-477.2 made it unlawful for a person detained in a secure juvenile facility or detention home to commit any of the offenses enumerated in subsections 1 through 9 of § 53.1-203. A violation of this section is punishable as a Class 1 misdemeanor.

2.10 The Offenses in Va. Code § 53.1-203

Virginia Code § 53.1-203 provides a list of felony offenses committed by prisoners in adult facilities. That list includes:

- escape,
- damaging property in an effort to escape or aid an escape,
- making or possessing any type of tool to escape,
- making or possessing a tool capable of causing injury or death,
- possessing any type of chemical compound not lawfully received,
- possessing a controlled substance or marijuana,
- possessing a firearm or ammunition,
- using an device or substance or causing to be burned or destroyed, any personal property, and
- conspiring with another prisoner or other prisoners to commit any of the foregoing acts.

3.00 Issue: Va. Code § 53.1-203 has 10 Subsections, not Nine

Prior to legislation in 2006, there were only nine subsections. Last year, the General Assembly added a new subsection that adds the act of damaging any fire protection or fire suppression system, equipment, or sprinkler system to the list of crimes.

3.10 Patron Carried the Department of Corrections Bill in 2006

The patron of this bill carried an almost identical bill on behalf of the Department of Corrections during the 2006 session (HB 629).

3.20 Felony for an Adult, Class 1 Misdemeanor for a Juvenile

Please note: It is a Class 6 felony for an adult prisoner to commit one of the listed enumerated acts but only a Class 1 misdemeanor for a juvenile.

SB 1208 - Background Checks for Work in Children's Residential Facilities
Senator Hanger

SB 1208 amends Va. Code § 63.2-1726 relating to background checks required for children's residential facilities. Effective July 1, 2007.

1.00 Background Checks for Work in Children's Residential Facilities

SB 1208 amends Va. Code § 63.2-1726 relating to background checks required for children's residential facilities. SB 1208 amends the background law that requires children's residential facilities to conduct national fingerprint criminal background investigations and CPS registry checks on all staff, volunteers, and contractual service workers who provide service on a regular basis and will be alone with children. SB 1208 changes the list of barrier crimes in Va. Code § 63.2-1726 to be consistent with other barrier crimes for other Department of Social Services (DSS) and Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) facilities. (A barrier crime law is already in effect for DMHMRSAS-regulated facilities.) The House amendment added Military Affairs to the list of agencies for which the barrier crimes apply.

2.00 The New Barrier Crimes

The additional offenses include abduction, carjacking, threats, stalking, use of a machine gun, child pornography, incest, and felony drug possession to the list of crimes that preclude employment at children's residential facilities. The additional offenses parallel those identified as "barrier crimes" in Va. Code §§ 63.2-1719 and § 37.2-314. SB 1208 permits a children's residential facility to hire applicants with a misdemeanor conviction for assault and battery, provided 10 years have elapsed and the offense did not occur in the context of former employment or volunteer work. This bill amends Va. Code § 63.2-1726 so that a person convicted of or with pending charges of any of the barrier crimes could not be hired or provide services. SB 1208 would prevent persons with a founded Child Protective Services (CPS) report from being hired or providing services. This bill requires that the results of the criminal

background investigation be received before the person could work with children. SB 1208 requires the results of the CPS investigation be received before the person can work alone with children.

2.10 Applicability to DJJ

The provisions of this bill would apply to VJCCCA group homes regulated by DJJ. The new provisions would prohibit staff from working with children until the criminal history background check has been obtained. Currently, group homes are allowed, via State Board standards, to have the person work in the program pending the receipt of the FBI fingerprint results as long as the person works with a staff member who has a completed background check. If the results are not obtained promptly, the potential employee may seek employment elsewhere. Therefore, the new amendments could have an effect on adequate child supervision if there is a significant delay in filling the position. Some group home placements are partly funded through Title IV-E funds. In order for those funds to be used, there would have to be barrier crimes in the employment of staff in the group homes. SB 1208 retains DJJ's ability to obtain Central Registry information but does not provide a barrier as it does for the other agencies.

2.20 Effective Date

The new requirements apply only to persons who were not working or volunteering at a facility prior to July 1, 2007.

HB 2845 & SB 1108 - Emergency Preparedness & Orders of Isolation and Quarantine
Delegate O'Bannon & Senator Wampler

HB 2845 and SB 1108 amend Va. Code §§ 32.1-42.1, 32.1-48.06, 32.1-48.09, 32.1-48.010, 32.1-48.012, 32.1-48.013, 32.1-48.014, 32.1-48.015, and 54.1-3408 and add § 32.1-48.013:1 relating to emergency preparedness. Effective July 1, 2007.

HB 2845 & SB 1108 expand law enforcement's authority to carry forth the quarantine/isolation orders of the Commissioner of Health during a disease outbreak. Further, law-enforcement agencies have the power to detain or arrest any person identified as in violation of quarantine/isolation orders or for whom probable cause exists that he may fail or refuse to comply with any such order.

Comprehensive Services Act

SB 1332 – CSA Funding & Non-Mandated Children Requiring Mental Health Services
Senator Devolites Davis

SB 1332 amends Va. Code §§ 2.2-5211 and 2.2-5212 pertaining to Comprehensive Services Act (CSA) funding for non-mandated children. SB 1332 will not become effective unless reenacted by the 2008 Regular Session of the General Assembly.

1.00 Summary: CSA Funding for Non-Mandated Children w/o Giving Up Custody

SB 1332 amends Va. Code §§ 2.2-5211 and 2.2-5212 pertaining to Comprehensive Services Act (CSA) funding for non-mandated children. SB 1332 adds a new subdivision to Va. Code § 2.2-5211 that allows

CSA funding to be provided to a child requiring mental health services without having to be placed in foster care provided the child meets the new statutory criteria. For a non-mandated child to be eligible, the following statutory criteria must be satisfied:

- a licensed mental health professional designated by the Family Assessment and Planning Team or by a juvenile court services intake officer must conclude that the child's behavior, conduct, or condition presents or results in a serious threat to his well-being and physical safety; or, if he is under the age of 14, his behavior, conduct, or condition presents or results in a serious threat to the well-being and physical safety of another person;
- that mental health services are required to prevent placement in foster care;
- that without the mental health services, the Family Assessment Planning Team, in collaboration with the child's parents or guardians, indicates that foster care is the planned arrangement for the child;
- the mental health services are not covered by private insurance; and
- the child is not eligible for Medicaid upon initial evaluation of these criteria.

1.10 Reenactment Clause

There is a reenactment clause stating that SB 1332 will not become effective unless reenacted by the 2008 Regular Session of the General Assembly

2.00 Statutory Background on CSA Funding

CSA is administered by the State Executive Council for Comprehensive Services for At-Risk Youth and Families, including the administration of policies regarding the use and distribution of the state pool of funds as established under § 2.2-5211(A) and made available by the General Assembly. To receive funding from the state pool of funds, the child or family also must meet the eligibility requirements contained in § 2.2-5212.

Funding pursuant to the Comprehensive Services Act is directed at five target populations of children. (See Va. Code § 2.2-5211(B) (1)-(5).) Of those five target populations, only three are "mandated," meaning that funds must be provided for necessary services. State and local funding must be provided in sum sufficient amounts to cover children in the three mandated categories. Virginia Code § 2.2-5211(C) lists the following three mandated categories: children in special education, children with disabilities, and children in foster care. It is the interpretation of the provision of service requirements for the third mandated group (children who are placed in foster care for the purpose of receiving services) that creates a custody relinquishment dilemma.

2.10 Legislative Catalyst – Giving Up Custody to Get Mental Health Services

An incident several years ago brought this flaw in the current law to light. A child in Northern Virginia with special needs required residential treatment. There was no disagreement between the parents of the child and the local DSS that the child needed the treatment. However, the family could not afford to pay for the treatment, and insurance did not cover it. The local department agreed that CSA could pay for the placement. However, in order to get CSA funding, the parents had to relinquish custody to the local DSS for the purpose of placing the child in foster care. When the parents did relinquish custody, local DSS filed a child support claim against the parents as required by law. The parents were furious.

3.00 Recent Official Opinion from the Office of the Attorney General

Directly related to this bill is an Official Opinion from the Attorney General concerning whether or not Va. Code § 63.2-905 requires parents to relinquish custody of a child for placement in foster care in order to receive needed mental heath services. The Attorney General released an opinion on December 6, 2006, in which he said statutory and constitutional provisions require mandated services pursuant to CSA to be provided to eligible children who are in need of such mental health services without their parents having to relinquish custody to local social services agencies.

4.00 Legislative Intent

The issue SB 1332 attempts to rectify is the statutory provisions of the CSA that require parents to choose between maintaining their family unit and receiving urgently needed mental health treatment for their troubled child. As the OAG opinion stated, this "Hobson's choice" occurs because under CSA, parents may access funds for mental health services only by relinquishing custody of their child by agreement with their local social services agency. Once the child is placed in foster care, mental health services are mandated by CSA. The Attorney General found such a requirement to be statutorily and constitutionally dubious.

In order to ensure that a family does not need to relinquish custody of a child for placement in foster care, SB 1332 amends Va. Code §§ 2.2-5211 and 2.2-5212. The amendments were crafted as narrowly as possible to address the OAG custody issue while maintaining the integrity of the three mandated categories (children in special education; children with disabilities; and children in foster care) without creating a fourth mandated category. Essentially, the amendments attempt to mandate CSA funding for services to a child who would have been placed in foster care had it not been for the provision that those mental health services were not covered by private insurance or Medicaid.

4.10 OAG Working with the Patron on the Legislation

The Attorney General's Office has been working with the patron on passage of this bill. Please note: Delegate Fralin had two bills that attempted to deal with similar issues. HB 2150 and HB 2620 addressed foster care services for children not in foster care and CSA funding without relinquishing custody. HB 2150 died in General Laws. HB 2620 died in House Appropriations.

4.20 Why the Delay? Significant Fiscal Implications

The Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) reports that there are 2,627 children on waiting lists to receive behavioral health services. Some of these children may have been served through the CSA and foster care systems. Currently, there are around 700 children receiving services to prevent foster care placements through CSA primarily to obtain mental health services. Some communities access these services through the foster care mandate via voluntary parental agreements (noncustodials), entrustments, or court orders. Some communities provide community services for these children through CSA prevention foster care services. Finally, some children are served through non-mandated funds available through CSA or the Mental Health Initiative fund in DMHMRSAS. Localities reported to DSS that 419 children entered foster care through voluntary parental agreements (noncustodials) solely to obtain mental health services in FY2006. In addition, local

DSS reported that 96 children entered foster care through delinquency petitions solely to obtain mental health services. The fiscal impact statement indicates that, for each additional 100 youth added to the program; an additional $1.7 million GF and $620,064 local share will be required.

Gang Legislation

HB 2524 - Gangs - Definition of Predicate Criminal Act to Determine Membership
Delegate Iaquinto

HB 2524 amends Va. Code § 18.2-46.1 relating to predicate acts determining street gang membership status. Effective July 1, 2007.

1.00 Summary: Expanding the List of Predicate Criminal Acts to Include Project Exile

HB 2524 amends Va. Code § 18.2-46.1 relating to predicate acts determining street gang membership status. HB 2524 adds Va. Code § 18.2-53.1 (use or display of firearm in committing felony) to the list of "predicate acts" for determination of criminal street gang member status. Virginia Code § 18.2-53.1 is also known as "Project Exile." Virginia Code § 18.2-53.1 makes it a felony with a minimum mandatory five-year sentence for a person to use a firearm while committing specific violent crimes. Those crimes are murder, rape, forcible sodomy, inanimate or animate object sexual penetration as defined in Va. Code § 18.2-67.2, robbery, carjacking, burglary, malicious wounding as defined in § 18.2-51, malicious bodily injury to a law-enforcement officer as defined in § 18.2-51.1, aggravated malicious wounding as defined in § 18.2-51.2, malicious wounding by mob as defined in § 18.2-41, or abduction.

2.00 Statutory Background: The Criminal Street Gang Laws

Virginia Code §§ 18.2-46.2 and 18.2-46.3 make participating in gang activity and recruiting persons into a gang a crime. 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, with identifiable gang signs and emblems and whose primary purpose is engaging in criminal conduct. 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. Under current law, predicate crimes include: Shooting with Intent to Maim, Malicious Bodily Injury, Shooting in Committing or Attempting a Felony, Assault and Battery, and Entering Property of Another for Purpose of Damaging.

Under Va. Code § 18.2-46.2, a criminal street gang member who knowingly participates in any predicate criminal act for the benefit of, or at the direction of, the gang is guilty of a Class 5 felony. If the offender is 18 years of age or older and knows that the gang includes a juvenile member, he is guilty of a Class 4 felony. Under subsection A of Va. Code § 18.2-46.3, any person who solicits or recruits another to participate in or become a member of a criminal street gang is guilty of a Class 1 misdemeanor. Any person 18 years of age or older who attempts to recruit a juvenile is guilty of a Class 6 felony.

2.10 The Impact of the Gang Laws

According to the Sentencing Commission, for FY 2004 and 2005, a total of 34 offenders held pre- or post-trial in jail were convicted of gang-related crimes under Va. Code §§ 18.2-46.2 or 18.2-46.3. In three of the 34 cases, offenders were convicted under § 18.2-46.3 for recruiting juveniles to become

members of a street gang, a Class 6 felony. In eight of the 34 cases, offenders were convicted under § 18.2-46.2 for participation in a criminal act to benefit the street gang, a Class 5 felony. In the remaining 23 cases, offenders were convicted under § 18.2-46.2 for participation in a criminal act to benefit a street gang that has juvenile members, a Class 4 felony.

3.00 Legislative History of the Gang Laws

During the 2000 session, the General Assembly enacted SB 143 thereby creating Article 2.1 (Crimes by Gangs) of Title 18.2, including Va. Code §§ 18.2-46.2 and 18.2-46.3, to address gang-related crimes. The gang crime statutes went largely underutilized. After an apparent increase in gang-related crimes, Attorney General Jerry Kilgore convened in May 2003 an Anti-Gangs Task Force composed of General Assembly members, law-enforcement officials, community leaders, etc. The work of that task force resulted in legislation during the 2004 session that included expanding the list of predicate crimes and enhancing punishments for committing gang-related crimes.

3.10 Expanding the List of Predicate Criminal Acts

Legislation enacted during the 2005 and 2006 sessions further expanded the list of predicate crimes. The predicate crimes added in 2005 were Va. Code §§ 18.2-42 (Assault or battery by mob), 18.2-56.1 (Reckless handling of firearms; reckless handling while hunting), 18.2-59 (Extorting money, etc., by threats), 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 18.2-308.1 (Possession of firearm, stun weapon, or other weapon on school property prohibited). The predicate crimes added in 2006 were Va. Code §§ 18.2-83 (Bomb threats), 18.2-356 (Procuring person for purposes of prostitution), and 18.2-282.1 (Brandishing a machete).

3.20 Nexus to Violence & Gang-Related Activity Reinserted

Originally, HB 2524 added "*any felony involving the use of a firearm or other weapon"* to the list of "predicate acts" for determination of criminal street gang member status and removed the requirement that one of the predicate criminal acts must be an act of violence. The original bill was problematic in that it set precedent in two ways. First, the original bill removed the requirement that one of the predicate criminal acts must be an act of violence. Second, the current list of predicate crimes is specified according to specific statutory references. The purpose of using specific criminal statutes to define a gang is to ensure a nexus with those activities commonly associated with criminal gang activity (prostitution, drug distribution). HB 2524 added an entire category of offenses by simply including any felony offense that involves the use of a weapon.

The bill, as passed, addresses both of those issues. First, the requirement that one of the predicate criminal acts must be an act of violence is reinserted. Second, the substitute bill expands the list of predicate crimes by specifying a criminal statute (Project Exile) rather than a broad category of "gun-related offenses."

HB 2429 – The Prosecution of Gang and Terrorism Crimes by the Attorney General
Delegate Albo

HB 2429 amends Va. Code §§ 2.2-511 and 18.2-46.5 relating to the prosecution of terrorism and gang crimes by the Attorney General.

1.00 Amendment #1: The Prosecution of Gang and Terrorism Crimes by the Attorney General

Virginia Code § 2.2-511 lists the types of cases and crimes in which the Attorney General may institute or conduct criminal prosecutions in the circuit court. Such cases include violations of the Alcoholic Beverage Control Act (§ 4.1-100 et seq.), election and the electoral process violations, the theft of state property, violations of the criminal laws involving child pornography and sexually explicit visual material involving children, and violations of the Virginia Computer Crimes Act. HB 2429 expands that list to provide that the Attorney General, with the concurrence of the local attorney for the Commonwealth, may assist in the prosecution of certain gang and terrorism crimes when committed on the grounds of a state correctional facility.

1.10 The New Crimes the Attorney General can Prosecute

Specifically, the criminal statutes in which the Attorney General may prosecute are Va. Code §§ 18.2-46.2 (Prohibited criminal street gang participation), 18.2-46.3 (Recruitment of persons for criminal street gang), and 18.2-46.5 (Committing, conspiring, and aiding and abetting acts of terrorism prohibited).

1.20 The Alleged Crimes must Occur on the Grounds of a State Correctional Facility

Again, the violations must be committed on the grounds of a state correctional facility.

2.00 Amendment #2: New Terrorism Crime

Virginia Code § 18.2-46.5 makes it a crime to commit, conspire and aid and abet acts of terrorism.

2.10 Criminal Definition of Terrorism: Va. Code § 18.2-46.4

Virginia Code § 18.2-46.4 defines what constitutes terrorism. An act of terrorism means an act of violence under Va. Code § 19.2-297.1 (A)(i.) committed with the intent to intimidate the civilian population or disrupt the conduct or activities of state or federal government.

2.20 Class 2 Felony when Act of Violence is Punishable by 20 to Life

A person who commits, conspires to commit, or aids and abets the commission of an act of terrorism is guilty of a Class 2 felony if the base offense of the act of terrorism is punishable by 20 years to life in prison.

2.30 Class 3 Felony when Act of Violence is Punishable by Less than 20

A person who commits, conspires to commit, or aids and abets the commission of an act of terrorism is guilty of a Class 3 felony if the maximum penalty for the base offense of the act of terrorism is less than 20 years' imprisonment.

2.40 The New Crime: Solicitation is a Class 4 Felony

A person who solicits, invites, recruits, encourages, or otherwise causes or attempts to cause another to participate in an act or acts of terrorism is guilty of a Class 4 felony.

Sex Offender Legislation Sex Offender Legislation

HB 2749 & SB 1071 - Sex Offender Registration and Electronic Mail Address & Enhanced Punishments
Delegate Hurt & Senator McDougle

HB 2749 and SB 1071 amend Va. Code §§ 9.1-902, 9.1-903, 9.1-904, 9.1-912, 18.2-374.1, 18.2-374.1:1, and 18.2-374.3 and repeal § 18.2-374.1:2 relating to child pornography and sex offender registration requirements. Effective July 1, 2007.

1.00 HB 2749 & SB 1071 Add to the Omnibus Sex Offender Legislation of 2006

HB 2749 and SB 1071 build upon the 2006 Sex Offender legislation by adding additional registration requirements for persons required to register as sex offenders and enhance penalties for persons convicted of certain child pornography crimes.

1.10 Refresher on the Omnibus Sex Offender Legislation of 2006

In 2006, the General Assembly enacted SB 559 (Sex Offender and Crimes Against Minors Registry – Omnibus Crime Commission Legislation.).[9] This legislation contained numerous changes in the laws regarding sex offenders. It increased penalties for certain offenses, broadened the requirements for registration of sex offenders, enhanced the accuracy of the sex offender registry, increased probationary supervision of sex offenders, and expanded the number of offenders eligible for commitment as sexually violent predators. For the purposes of this summary relating to juvenile justice, the legislation created Va. Code §§ 16.1-249.1, 16.1-278.7:01, and 16.1-278.7:02.

- SB 559 created Va. Code § 16.1-249.1 requiring local detention facilities to obtain from a person who is required to register all the necessary registration information including fingerprints and photographs. Facilities are to submit the information to the State Police on the date of the receipt of the person. If the detention facility becomes aware that the person has failed to register, the facility must investigate the failure or request the State Police to promptly investigate.
- Similar language was contained in newly created Va. Code § 16.1-278.7:01 to require the DJJ to collect the same information upon receipt of a juvenile committed to the Department.

[9] SB 559 incorporated similar provisions of the following House Bills: HB 846, HB 984, HB 1038, and HB 1333.

- SB 559 also created Va. Code § 16.1-278.7:02 requiring DJJ to resubmit the necessary registration materials, including fingerprints and a photograph to the State Police, and notify the State Police of the juvenile's impending release. Virginia Code § 16.1-278.7:02 also requires DJJ to give notice to the person of his duty to register with the State Police.

2.00 Changes to the Requirements for Registering as a Sex Offender with the State Police

HB 2749 and SB 1071 add additional registration requirements for person required to register as sex offenders.

2.10 Technical Amendments to Va. Code § 9.1-902 (Offenses Requiring Registration)

Virginia Code § 9.1-902 lists the offenses requiring registration in the Sex Offender and Crimes against Minors Registry. The changes to Va. Code § 9.1-902 are technical in nature and reflect the changes to the child pornography crimes in Va. Code §§ 18.2-374.1 and 18.2-374.1:1 Those changes include defining child pornography and enhancing the punishments.

2.20 Registration now Requires Email & Internet IDs: Va. Code § 9.1-903 (New)

Virginia Code § 9.1-903 provides the process for registering. For example, a person required to register must submit to be photographed, have a sample of his blood, saliva, or tissue taken for DNA analysis, and provide information regarding his place of employment. HB 2749 and SB 1071 now require the person to "*provide electronic mail address information, any instant message, chat or other Internet communication name or identity information that the person uses or intends to use*."

2.21 Change in Email Address or Internet ID Requires Reregistration within 30 Minutes

A sex offender must register any changes in email addresses, instant message, or other identity information within 30 minutes of such change.

2.22 Probation or Parole Officer must Notify State Police

If a probation or parole officer "*becomes aware*" of the change to the email address or other Internet communication name or identity information, then the probation or parole officer must notify the State Police immediately.

2.30 Registration also Requires Email & Internet IDs: Va. Code § 9.1-904 (New)

Virginia Code § 9.1-904 requires non-sexually violent offenders and non-murderers to reregister with the State Police on an annual basis from the date of the initial registration. Virginia Code § 9.1-904 requires sexually violent offenders and murderers to reregister with the State Police every 90 days from the date of initial registration. This section of the Code was amended to require the person registering to submit "*electronic mail address information, any instant message, chat or other Internet communication name or identity information that he uses or intends to use*."

2.40 Internet Service Providers to Share Information with State Police: Va. Code § 9.1-904 (New)

Virginia Code § 9.1-904 was also amended to require the person to give consent to "*a business or organization that offers electronic communications or remote computer services to provide to the Department of State Police any information pertaining to that person necessary to determine the veracity of his electronic identity information in the registry*."

2.50 State Police may Share Information with Internet Providers: Va. Code § 9.1-912 (New)

Virginia Code § 9.1-912 provides how Registry information will be disseminated to local law-enforcement and criminal justice agencies. HB 2749 and SB 1071 add subsection C to Va. Code § 9.1-912 to allow the State Police to send a registered offender's email address, instant message, or other identity information to an Internet Service or electronic communication provider "*for the purpose of prescreening users or for comparison with information held by the requesting business or organization*."

2.51 Agreement to Notify State Police of Sex Offender

In order to obtain the information from the Department of State Police, the requesting business or organization must agree to notify the State Police when a comparison indicates that a registered sex offender's electronic mail address information and any other Internet communication name or identity information is being used on their system.

3.00 Changes to the Child Pornography Laws: Va. Code §§ 18.2-374.1, 18.2-374.1:1, 18.2-374.3

Virginia Code §§ 18.2-374.1, 18.2-374.1:1, 18.2-374.3 make it a crime to produce, possess, and distribute child pornography. HB 2749 and SB 1071 clarify the definition of child pornography and enhance the punishments.

3.10 Producing or Making Child Pornography is a Crime: Va. Code § 18.2-374.1

Virginia Code § 18.2-374.1 makes it a crime to make or produce child pornography.

3.11 New Definition of Child Pornography: Va. Code § 18.2-374.1

HB 2749 and SB 1071 create a new subdivision in Va. Code § 18.2-374.1 that defines child pornography and enhances the punishments. For purposes of punishing production, child pornography means sexually explicit visual material that uses an identifiable minor, and that for purposes of punishing possession or reproduction, a person depicted by text or title or who appears to be less than 18 years of age in sexually explicit material is inferred to be less than 18 years of age.

3.12 Penalties when Subject of Child Pornography is under 15 (New)

Any person who violates Va. Code § 18.2-374.1, and the subject of the child pornography is a child less than 15 years of age, will be punished by imprisonment from five to 30 years in a state correctional facility. If the person is at least seven years older than the subject of the child

pornography, the person will receive a sentence of imprisonment from five to 30 years with a mandatory minimum term of five years. A second or subsequent conviction will mean a sentence of 15 to 40 years with a mandatory minimum term of 15 years.

3.13 Penalties when Subject of Child Pornography is 15 to 18 (New)

A person who violates Va. Code § 18.2-374.1, and the subject of the child pornography is a person at least 15 but less than 18 years of age, shall receive a sentence of from one to 20 years in a state correctional facility. If the person is seven years older than the subject of the child pornography, the person will receive a sentence of from three to 30 years in a state correctional facility with a three-year mandatory minimum term of imprisonment. A second or subsequent violation will be punishable by a term of imprisonment from 10 to 30 years with a 10-year mandatory minimum term of imprisonment.

3.20 Possession & Distribution of Child Pornography: Va. Code § 18.2-374.1:1

Virginia Code § 18.2-374.1:1 provides the penalties for the possession, reproduction, distribution, and facilitation of child pornography. A person who knowingly possesses child pornography is guilty of a Class 6 felony. A second or subsequent conviction is a Class 5 felony.

3.21 New Mandatory Minimums for Distributing Child Pornography (New)

A person who copies, buys, sells, gives away, or distributes child pornography with "lascivious intent" will receive a sentence of from five to 20 years in a state correctional facility. A second or subsequent conviction will mean a sentence of from five to 20 years with a five-year mandatory minimum term of imprisonment.

3.22 Operating Child Pornography Internet Website: Class 4 Felony (New)

HB 2749 and SB 1071 make it a Class 4 felony for a person to intentionally operate an Internet website for the purpose of facilitating the payment for access to child pornography.

3.23 Child Status can be Inferred by Title or Appearance (New)

It may be inferred by text, title, or appearance that a person who is depicted as or presents the appearance of being less than 18 years of age in sexually explicit visual material is less than 18 years of age.

3.24 Lawfully Held Material (New)

It will not be a criminal offense to possess such materials for a bona fide medical, scientific, governmental, or judicial purpose by a physician, psychologist, scientist, attorney, or judge who possesses such material in the course of conducting his professional duties as such.

3.30 Use of Electronic Means to Facilitate Crimes Involving Children: Va. Code § 18.2-374.3

It is a Class 6 felony to use a computer or any other electronic means for the purpose of procuring or promoting the use of a minor for any activity in violation of Va. Code § 18.2-370 (Indecent Liberties with Children) or § 18.2-374.1 (Producing Child Pornography). It is a Class 5 felony for a person to solicit sexual contact with a child under the age of 15 via electronic means. It is a Class 5 felony for a person to expose himself or propose that the child expose himself via electronic means.

3.31 Mandatory Minimum Sentences for Soliciting a Child under the Age of 15 (New)

If the person is at least seven years older than the child he knows or has reason to believe is less than 15 years of age, that person will receive a sentence of from five to 30 years with a five-year mandatory minimum term of imprisonment. A second or subsequent violation will mean a sentence of from 10 to 40 years with a 10year mandatory minimum term of imprisonment.

3.32 Mandatory Minimum Sentences for Soliciting a Child between 15 & 18 (New)

A person who uses a communications system, including computers or any other electronic means, to solicit a child he knows or has reason to believe is at least 15 years of age but less than 18 years of age and the person is at least seven years older than the child is guilty of a Class 5 felony. A second or subsequent violation will mean a sentence of from one to 20 years with a one-year mandatory minimum term of imprisonment.

3.40 Virginia Code § 18.2-374.1:2 is Repealed

Just enacted in 2006, Va. Code § 18.2-374.1:2 is now repealed. Virginia Code § 18.2-374.1:2 made it a Class 4 felony to use the Internet for facilitating the payment for child pornography. That section of the Code was incorporated into the above sections.

HB 1923 - Sex Offender Registry Requirement for Persons Not Guilty by Reason of Insanity
Delegate Griffith

HB 1923 amends Va. Code § 9.1-901 relating to sex offender registry and persons found not guilty by reason of insanity. Effective July 1, 2007.

A person found not guilty by reason of insanity on or after July 1, 2007, for an offense that requires registration in the Sex Offender and Crimes Against Minors Registry Act shall be required to register. A person in the custody of the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services, or on conditional release on or after July 1, 2007, who was found not guilty by reason of insanity for an offense set forth in Va. Code § 9.1-902 shall be required to register.
HB 1923 clarifies that the provisions of the Sex Offender and Crimes Against Minors Registry Act apply retroactively except as provided under subsection C of Va. Code § 9.1-902. Subsection C is the section of the Code that provides the juvenile court with the discretion to order a juvenile to register. This provision in HB 1923 is declaratory of existing law.

Other legislation relating to the Sex Offender Registry[10]:

- **HB 2345 - Sex Offender Registry & Automatic Notification for Nursing Homes by the State Police. Delegate Bell**. HB 2345 amends Va. Code §§ 9.1-914, 32.1-127, and 63.2-1732 relating to sex offender registry and nursing homes and assisted living facilities. HB 2345 requires nursing homes, certified nursing facilities, and assisted living facilities to register with the Department of State Police to receive automatic notification of the registration of sex offenders within the same or a contiguous zip code area as the home or facility. The bill also requires such entities to ascertain, before admission, whether a potential admittee is a registered sex offender if it is anticipated that the admittee will stay for more than three days or if the admittee does in fact stay for more than three days. This bill is identical to SB 1229.

- **HB 2346 - Residents in Nursing Homes and Assisted Living Facilities to be Given Information about the Sex Offender Registry. Delegate Bell**. HB 2346 amends Va. Code §§ 32.1-138 and 63.2-1808 relating to sex offender registry and residents in nursing homes and assisted living facilities. HB 2346 requires nursing homes and assisted living facilities, at the time a resident is admitted and during his stay, to provide the resident with notice of Virginia's sex offender registry and how to access the registry on the State Police's website. The language is similar to the requirement in the Virginia Residential Property Disclosure Act. This bill is identical to SB 1228.

Legislation relating to Sex Offender Treatment [11]:

- **HB 2776 - Sex Offender Treatment Offices Prohibited in Certain Residential Areas. Delegate Athey**. HB 2776 provides that no individual shall knowingly provide sex offender treatment services to a convicted sex offender in an office or similar facility located in a residentially zoned subdivision.

Legislation relating to the Sexually Violent Predators Act[12]:

- **HB 2671 - Sexually Violent Predators & Civil Commitment. Delegate Griffith.** HB 2671 amends Va. Code §§ 19.2-169.3, 37.2-900, 37.2-901 through 37.2-905, 37.2-906, 37.2-907, 37.2-908, 37.2-910, and 37.2-912 and adds §§ 37.2-905.1 and 37.2-905.2 relating to the criteria and offenses for which a person may be civilly committed as a sexually violent predator. It adds the following as sexually violent offenses that qualify a prisoner or incompetent defendant to be evaluated for civil commitment: capital murder in the commission of, or subsequent to a rape or attempted rape; sodomy or forcible sodomy or object sexual penetration; capital murder in the commission of an abduction committed with intent to defile the victim; and first and second degree murder when the killing was in the commission of, or attempt to commit rape, forcible sodomy, or object sexual penetration. HB 2671 allows the CRC to have 120 instead of 90 days after receiving the name of an individual eligible to be evaluated for civil commitment to complete its assessment and submit its recommendation to the Attorney General and revises the CRC's criteria for assessment and provides that a quorum is four rather than five members.

- **SB 1203 - Sexually Violent Predators & Attorney General to Study Feasibility of Treatment Options, etc. Senator Hanger.** SB 1203 creates Va. Code § 37.2-921 relating to a study on the

[10] The summaries are taken from The Division of Legislative Services at http://leg1.state.va.us/071/lis.htm.
[11] The summary is taken from The Division of Legislative Services at http://leg1.state.va.us/071/lis.htm.
[12] The summaries are taken from The Division of Legislative Services at http://leg1.state.va.us/071/lis.htm.

treatment options for civilly committed sexually violent predators. It provides that the Department of Mental Health, Mental Retardation and Substance Abuse Services and the Attorney General's Office shall examine, as possible components of conditional release of civilly committed sexual violent predators, the feasibility of the use of physical castration as a treatment option and the use of residential housing facilities, operated by the Commonwealth or by private providers contracted with the Commonwealth on property owned by the Commonwealth, and shall report the results of the examination to the Governor and the General Assembly by December 1, 2008.

Legislation relating to Sex Crimes & Penalties[13]:

- **HB 2068 – Class 1 Misdemeanor for Sexual Abuse against a Child between the Ages of 13 and 15. Delegate Cosgrove**. HB 2068 amends Va. Code § 9.1-902 and adds § 18.2-67.4:2 relating to indecent liberties with children. It provides that it is a Class 1 misdemeanor for an adult to, with lascivious intent, commit sexual abuse against a child 13 years of age or older but under 15 years of age. A person convicted of this offense will have to register with the Sex Offender and Crimes Against Minors Registry.

- **HB 2980 & SB 1239 - Child Pornography & Seizure and Forfeiture of Equipment. Delegate Bell & Senator Obenshain.** HB 2980 & SB 1239 amend Va. Code §§ 19.2-120 and 19.2-386.31 relating to the exploitation and solicitation of children for sexual purposes, the forfeiture of equipment, and the presumption against bail. It provides that all equipment and other personal property used in connection with the possession, production, distribution, publication, or sale of child pornography, or in connection with solicitation of a minor for child pornography shall be subject to seizure and forfeiture. This bill also provides a person charged with violating Va. Code § 18.2-374.1 (crimes involving child pornography) or § 18.2-374.3 (use of communications system to procure minors for various sexual offenses involving children) is rebuttably presumed ineligible for bail when the offender has reason to believe that the solicited person is a child under 15 years of age and the offender is at least five years older than the solicited person.

- **HB 2344 & SB 927 - Sexual Offenses & Prohibiting Entry of those Convicted onto School Property. Delegate Bell & Senator Norment**. HB 2344 & SB 927 amend Va. Code § 16.1-241 and add § 18.2-370.5 relating to sex offenses prohibiting entry onto school property. Provides that an adult who has been convicted of a sexually violent offense is guilty of a Class 6 felony if he enters or is present, during school hours, upon any property he knows or has reason to know is a public or private elementary or secondary school or child day center property, unless he (i) is lawfully voting; (ii) is a student enrolled at the school; or (iii) has received a court order allowing him to enter upon such property. The bill provides that such an adult may petition the juvenile and domestic relations district court or circuit court in the county or city where the school or child day center is located for permission to enter such property. For good cause shown, the court may issue an order permitting the petitioner to enter and be present on such property, subject to restrictions the court deems appropriate.

- **HB 1625 - Forfeiture of Office when a Person is Convicted for an Offense Requiring Registration on Sex Offender & Crimes Against Minors Registry. Delegate Ingram**. HB 1625 amends Va. Code § 24.2-231 to require a person to forfeit office when convicted of an offense that requires registration on the Sex Offender Registry.

[13] The summaries are taken from The Division of Legislative Services at http://leg1.state.va.us/071/lis.htm.

Legislation relating to Sex Crimes & Criminal Procedure[14]:

- **HB 3085 - Expands the Scope of Rape Shield Statute to include Prosecution for Taking Indecent Liberties. Delegate Shannon**. HB 3085 amends Va. Code § 18.2-67.7 relating to the admission of evidence in cases of taking indecent liberties with children. It expands the scope of the rape shield statute to include prosecutions for taking indecent liberties with children under Va. Code § 18.2-370, 18.2-370.01, or 18.2-370.1. Currently, the statute only applies to prosecutions of criminal sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2.

- **HB 1793 - Sexually Abnormal Offense & Who may Conduct Mental Evaluation of Person Convicted Thereof. Delegate Griffith**. HB 1793 amends Va. Code § 19.2-301 relating to the mental examination of a person convicted of a sexually abnormal offense. It provides that a judge may order a defendant convicted of a sexually abnormal offense to be examined by a licensed clinical social worker if a psychiatrist or clinical psychologist is not reasonably available. The licensed clinical social worker must be certified as a sex offender treatment provider and qualified by experience and by specialized training approved by the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services to perform such evaluations. Under current law, the evaluation would have to be performed by a psychiatrist or psychologist.

- **HB 2591 – Violent Sexual Offender & Notice to Defendant Prior to Punishment for Subsequent Offenses. Delegate Janis**. HB 2591 amends Va. Code § 18.2-67.5:3 relating to the punishment for subsequent convictions of violent felony sexual assault. It provides that the notice that the Commonwealth is required to give to the defendant that it will seek punishment available under the "two-time loser" sex offender statute and shall be given in the indictment, information, or warrant.

PART II MISCELLANEOUS LEGISLATION[15]

Legislation relating to Substance Abuse:

- **HB 2678 - Opiate Addiction Treatment Centers to Refrain from Providing Services on Sunday with Exception. Delegate O. Ware.** HB 2678 amends Va. Code § 37.2-406 relating to conditions for initial licensure of certain providers. HB 2678 provides that no provider shall be required to conduct, maintain, or operate services for the treatment of persons with opiate addiction through the use of methadone or other opioid replacements on Sunday except when such service is provided by a hospital licensed by the Board of Health or the Commissioner or is owned or operated by an agency of the Commonwealth. It requires that the Department of Health shall develop guidelines or regulations to ensure the appropriate health, welfare, and safety of consumers and the security of take-home doses.

- **HB 3023 - Drug Treatment & Use of Synthetic Urine to Defeat. Delegate Fralin.** HB 3023 adds Va. Code § 46.2-341.18:2 to provide that the Commissioner of the Department of Motor Vehicles shall disqualify for a period of one year any commercial driver's license holder who has been convicted of a violation of Va. Code § 18.2-251.4 (falsifying urine tests).

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[14] The summaries are taken from The Division of Legislative Services at http://leg1.state.va.us/071/lis.htm.
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- **HJ 683 & SJ 395 – JLARC to Study Actual Cost of Substance Abuse to State. Delegate Landes & Senator Hanger**. HJ 683 and SJ 395 direct JLARC to study the cost of substance abuse to the Commonwealth to determine the financial savings available as a result of providing treatment to offenders diverted from incarceration.

***Legislation relating to New Crimes*:**

- **HB 1795 - Identity Theft & Clarifying Reference to Person Who may be the Victim. Delegate Griffith.** HB 1795 amends Va. Code § 18.2-186.3 to clarify that a victim of identity theft may be dead or alive.

- **HB 2055 – Prohibiting Trespassing on Public Transportation. Delegate McQuigg.** HB 2055 amends Va. Code by adding § 18.2-160.2 to provide that any person who enters or remains upon or within a vehicle operated by a public transportation service without the permission of, or after having been forbidden to do so by, the owner, lessee, or authorized operator thereof is guilty of a Class 4 misdemeanor.

- **HB 2531 & SB 884 – A Hunter must Identify Himself when Retrieving Hunting Dogs from Landowner's Property. Delegate Landes & Senator Deeds**. HB 2531 & SB 884 amend Va. Code § 18.2-136 to provide that a hunter who goes on prohibited lands to retrieve his hunting dogs and willfully refuses to identify himself when requested to do so by the landowner is guilty of a Class 4 misdemeanor.

Legislation relating to Criminal Procedure:

- **HB 2369 & SB 1104 – Insanity & Persons Acquitted by Reason Thereof. Delegate Brink & Senator Puller**. HB 2369 & SB 1104 amend Va. Code §§ 19.2-182.2, 19.2-182.5, 19.2-182.6, 19.2-182.7, 19.2-182.10, and 19.2-182.11 relating to the disposition of persons acquitted by reason of insanity. The bills provide that the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services can designate a community services board or behavioral health authority other than the one serving the locality where the acquittee was acquitted to submit and receive reports and implement conditional release orders. The bill also adds, where omitted, the term "or behavioral health authority" wherever the term "community services board" appears.

- **SB 1103 – Restoration of Competency & Qualifications and Procedures of a Competency Evaluator. Senator Puller**. SB 1103 amends Va. Code §§ 19.2-169.1, 19.2-169.2, and 19.2-169.3 relating to the disposition of incompetent defendants. It updates provisions on the qualifications and procedures of a competency evaluator. SB 1103 clarifies the role of the director of the community services board or behavioral health authority in restoring the competency of a defendant who is receiving treatment on an outpatient basis. The bill also provides that the director is to make and receive reports regarding the competency of the defendant.

- **SB 880 - Court Records & Expungement Hearing to Occur if Person Granted Writ Vacating a Conviction. Senator Deeds**. SB 880 amends Va. Code §§ 19.2-327.5, 19.2-327.13, and 19.2-392.2 relating to expungement of police and court records. It provides for an automatic expungement if a conviction has been vacated pursuant to a writ of actual innocence and requires that electronic records be included in the expungement. This bill is similar to HB 2076.

- **SB 1282 - Law-Enforcement Officers & Removal of Their Land Records from Internet. Senator Stosch.** SB 1282 amends Va. Code § 18.2-186.4 relating to public records and protecting a law-enforcement officer's primary residence. SB 1282 includes identification of the person's primary residence address in the statute prohibiting the publishing of a person's name or photograph along with identifying information. The bill also states that if any person violates the statute (Va. Code § 18.2-186.3), and he knew or had reason to know that the person he was identifying was a law-enforcement officer, he is guilty of a Class 6 felony instead of a Class 1 misdemeanor.

***Legislation relating to Department of Correctional Education (DCE)*:**

- **HB 2041 & SB 953 – DCE to Develop Programs for Online Courses for Incarcerated Persons. Delegate Hamilton & Senator Quayle.** HB 2041 & SB 953 amend Va. Code § 22.1-343 to empower DCE to develop programs for restricted Internet access to online higher education courses by incarcerated persons.

- **HB 2625 – Prisoners & Creating System for Identifying Department of Corrections Prisoners with Learning Disabilities. Delegate Reid.** HB 2625 amends Va. Code § 22.1-344.1 to provide that the Superintendent of DCE, in cooperation with the Department of Corrections, shall create a system for identifying prisoners with learning disabilities.

- **HB 2627 – DCE to Raise Standards in Literacy Program for Department of Corrections Inmates. Delegate Reid.** HB 2627 amends Va. Code § 22.1-344.1 to raise the standard of the functional literacy program from the eighth grade level to the twelfth grade or General Education Development (GED) level. The bill also requires the program to include a strategic plan for encouraging enrollment in college or an accredited vocational training program or other accredited continuing education program.

- **HB 3191 - Incarcerated Persons & Access to Online Adult Literacy and GED Courses. Delegate McClellan.** HB 3191 amends Va. Code § 22.1-343 to empower the Board of Correctional Education to develop programs to provide restricted Internet access to online secondary education or adult education and literacy programs leading to a diploma or GED program and testing.

- **SB 953 - Incarcerated Persons; Develop Accessibility to Higher Education Using Video Conferencing Technology. Senator Quayle.** SB 953 amends Va. Code § 22.1-343 to empower DCE to provide access to postsecondary education that includes college credit, certification through an accredited vocational training program, or other accredited continuing education program, using videoconferencing technology.

- **HB 2628 – The State Board of Correctional Education & Composition of Membership. Delegate Reid.** HB 2628 amends Va. Code § 22.1-341 to require the Governor to endeavor to select qualified appointees for the Board of Correctional Education. The bill modifies the ex officio membership of the Board by removing the chairman of the Virginia Parole Board and adding the Assistant Superintendent for Special Education and Student Services in the Department of Education and the Chancellor of the Virginia Community College System. Also, the bill allows ex officio members to designate others to serve in their places.

***Legislation relating to Department of Corrections (DOC)*:**

- **HJ 652 & SJ 327 – Joint Subcommittee Studying Program for Prisoner Reentry to Society. Delegate Welch & Senator Puller**. Continues the Joint Subcommittee to Study the Commonwealth's Program for Prisoner Reentry to Society for the purpose of receiving the recommendations and report of the Virginia Prisoner Reentry Policy Academy. This resolution is a recommendation of the Joint Subcommittee to Study the Commonwealth's Program for Prisoner Reentry to Society, and is identical to SJR 327 (Puller).

***Legislation relating to the Department of Social Services*:**

- **HB 2319 & SB 905 – Children's & the Parents' Right to make Medical Decisions (Abraham's Law). Delegate Welch & Senator Rerras.** HB 2319 & SB 905 amend Va. Code § 63.2-100 to specify that a decision by parents or another person with legal authority over a child to refuse a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such decision is made jointly by the parents or other person with legal authority for the child, and the child; (ii) the child has reached 14 years of age and is sufficiently mature to have an informed opinion on the subject of his medical treatment; (iii) the parents or other person with legal authority, and the child have considered alternative treatment options; and (iv) the parents or other person with legal authority, and the child believe in good faith that such decision is in the child's best interest. HB 2319 and SB 905 stipulate that this test shall not be construed to limit the provisions of Va. Code § 16.1-278.4 on children in need of services.

- **HB 2517 - Child Abuse or Neglect & Criminal History Records Check on Individuals being Investigated. Delegate Iaquinto.** HB 2517 amends Va. Code §§ 19.2-389 and 63.2-1505 relating to investigations of child abuse or neglect, criminal history records, and the dissemination of such information. It authorizes dissemination of criminal history record information and search results from the child abuse and neglect registry of individuals and other adult household members to support removal of a child during an evaluation for placement or to support an investigation of child abuse or neglect. Such information may be admissible in court if an abuse or neglect petition is filed; however, if the individual who is the subject of such information contests its accuracy through testimony under oath, the court shall not receive the information without certified copies of the individual's conviction.

- **SB 944 - Child Support Orders & the Provision of Health Care Coverage. Senator Quayle.** SB 944 amends Va. Code §§ 63.2-1900, 63.2-1903, 63.2-1904, and 63.2-1916 relating to health care coverage provided by parents in child support orders. It authorizes dissemination of criminal history record information and search results from the child abuse and neglect registry of individuals and other adult household members to support removal of a child during an evaluation for placement or to support an investigation of child abuse or neglect. Such information may be admissible in court if an abuse or neglect petition is filed; however, if the individual who is the subject of such information contests its accuracy through testimony under oath, the court shall not receive the information without certified copies of the individual's conviction.

- **HB 1687 – Criminal History Record Check & Exempting Birth Parents Revoking Voluntary Entrustment Agreement. Delegate Toscano.** HB 1687 amends Va. Code § 63.2-901.1 to exempt birth parents revoking an entrustment agreement pursuant to Va. Code § 63.2-1223 or 63.2-1817 or revoking a placement agreement from criminal history and central registry checks.

- **HB 2504 - Criminal History & Central Registry Check: Establish Mandatory Background Check for Foster and Adoptive Parents. Delegate Toscano.** HB 2504 amends Va. Code § 63.2-901.1 relating to criminal history and central registry check for placement of children. It establishes mandatory background checks for prospective foster or adoptive parents that consist of three parts: (i) a sworn statement or affirmation disclosing whether an individual has a criminal conviction, pending charges, or has been the subject of a founded case of child abuse or neglect; (ii) fingerprinting forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation to obtain criminal history information; and (iii) searches of the central child abuse and neglect registry maintained pursuant to Va. Code § 63.2-1515 and similar registries required by federal law in any other state where a prospective parent or other adult in the home has resided in the preceding five years. HB 2504 provides that in the case of an emergency, a local board must search the central registry and obtain a written affirmation from the individual prior to placement. The bill prohibits approval of foster or adoptive homes where an individual has record of an offense set forth in Va. Code § 63.2-1719 or a founded complaint of child abuse or neglect as maintained in registries pursuant to § 63.2-1515 and the Adam Walsh Child Protection and Safety Act (42 U.S.C.S. 16901 et seq.). The bill has an effective date of April 1, 2007.

Legislation relating to the Department of Education:

- **SJ 329 – Board of Education to Study High School Dropout and Graduation Rates. Senator Locke.** SJ 329 requests the Board of Education to study high school dropout and graduation rates in the Commonwealth. In conducting its study, the Board of Education shall: (i) evaluate the relevancy of the current process and procedures for defining, counting, and reporting school dropout statistics and consider the need for revisions in such process and procedures and compliance by school divisions; (ii) determine the number of students who dropped out of school before the seventh grade and the reasons therefor and the number of students who graduated annually for school years 2003, 2004, 2005, and 2006; (iii) ascertain whether, by whom, and the manner in which students at risk of dropping out are counseled to remain in school; (iv) identify local school division initiatives and efforts to retain and retrieve students at risk of dropping out, particularly student populations with low high school graduation rates; and (v) recommend such policy, statutory, fiscal, or regulatory changes as the Board may deem necessary to increase the high school graduation rates, particularly among student populations with high dropout rates. The Board must submit its executive summary and report to the 2008 Session of the General Assembly.

Legislation relating to the Freedom of Information Act (FOIA):

- **HB 1791 - Freedom of Information Act & Responses to Requests for Public Records. Delegate Griffith.** HB 1791 amends Va. Code § 2.2-3704 to add an additional response to address situations when a public body receives a request for public records under FOIA but cannot find the requested records or the requested records do not exist. The bill clarifies the other responses to requests for public records under FOIA. The bill also contains technical amendments.

- **HB 1790 - Freedom of Information Act & Access by Persons Civilly Committed under Sexually Violent Predators. Delegate Griffith.** HB 1790 amends Va. Code § 2.2-3703 to provide that the Freedom of Information Act does not afford any rights to persons civilly

committed pursuant to the Sexually Violent Predators Act except in exercising their constitutionally protected rights.

- **SB 1369 - Freedom of Information Act & Expanding Current Record & Meeting Exemptions for Retirement Systems. Senator Bell**. SB 1369 amends Va. Code §§ 2.2-3705.7 and 2.2-3711 to provide an exemption for the Virginia Retirement System (VRS) and a local retirement system for trade secrets provided by a private entity to the extent that the disclosure of such records would have an adverse impact on the financial interest of the VRS or local retirement system. The bill contains an emergency clause.

***Legislation relating to the General Assembly*:**

- **HB 1796 - General Assembly & Prefiling of Legislation. Delegate Griffith.** HB 1796 amends Va. Code § 30-19.3 to clarify that following an election, legislation may be prefiled only by members and members-elect of the next regular session of the General Assembly. Current law allows a member of the General Assembly who is retiring or who was not re-elected to prefile legislation until the convening of the next regular session of the General Assembly when his or her term of office expires.

- **HB 2537 & SB 1139 - Administrative Process Act; Amends by Renumbering Provisions of Various Codes. Delegate Landes & Senator Wagner**. **HB 2537 & SB 1139** amend the Administrative Process Act by renumbering provisions relating to the promulgation of regulations by state agencies including public notice and participation and use of the Regulatory Town Hall throughout the process. In addition the bill clarifies the process for promulgating emergency regulations and provides for such regulations to be adopted, in certain instances, upon consultation with the Attorney General and approval of the Governor. Under the bill, the duration of an emergency regulation may be extended for up to six months beyond the initial one-year effective period if approved by the Governor. The bill also: (i) changes the venue for informal fact-finding proceedings and formal hearings to the city or county where the administrative agency maintains its principal office or as the parties may otherwise agree; (ii) authorizes agencies using the fast-track rulemaking process to provide for a public comment period of 30 days after the publication of the regulation in the Virginia Register and requires the Department of Planning and Budget to provide economic impact analysis within 30 days for such regulations; and (iii) authorizes an additional 30 days for the Department of Planning and Budget to complete fiscal impact statements under certain circumstances. The bill makes technical amendments and removes an obsolete provision.

  HB 2537 & SB 1139 amend Va. Code §§ 2.2-4001, 2.2-4003, 2.2-4006, 2.2-4007, 2.2-4007.1, 2.2-4009, 2.2-4011, 2.2-4012, 2.2-4012.1, 2.2-4013, 2.2-4014, 2.2-4015, 2.2-4027, 2.2-4031, 3.1-398, 28.2-1507, 32.1-325, 35.1-14, 59.1-153, 62.1-44.15, 62.1-246, and 63.2-217. HB 2537 & SB 1139 add Va. Code §§ 2.2-4007.01 through 2.2-4007.07.

***Miscellaneous State Employee Legislation*:**

- **SB 1004 – Telecommuting & Use of Personal Computers. Senator Devolites Davis.** SB 1004 amends Va. Code § 2.2-2817.1 relating to telecommuting and the use of personal computers. It authorizes a state agency to allow eligible employees to use computer equipment not owned or leased by the Commonwealth to telecommute, if such use is technically and economically practical, and so long as such use meets information security standards as established by the

Virginia Information Technologies Agency, or the employee receives an exception from such standards approved by the CIO of the Commonwealth or his designee.

- **HB 1830 - State Employees & Changes to Participation in Deferred Compensation Plan. Delegate Putney.** HB 1830 amends Va. Code §§ 51.1-600 and 51.1-601 and adds § 51.1-601.1 to change the participation in the deferred compensation plan for new state employees hired on or after January 1, 2008, to an "opt-out" rather than an "opt-in" plan.

- **HB 2096 Retirement System & Accumulated Contributions Include all Employer-Paid, Tax-Deferred Contributions. Delegate Tata.** HB 2096 amends Va. Code §§ 51.1-124.3 and 51.1-142.2 to clarify that a member's "accumulated contributions" include all employer-paid, tax-deferred contributions. The bill also makes a technical change.

- **HB 2097 – Virginia Retirement System (VRS) & Exemptions for Purchase of Disability Determination Services from Public Procurement Act. Delegate Tata.** HB 2097 amends Va. Code § 51.1-124.32 to exempt the purchase of disability determination services by the VRS from the Public Procurement Act.

- **SB 1166 - Retirement System & Benefits for Certain State and Local Public Safety Officers. Senator Stolle.** SB 1166 amends Va. Code §§ 51.1-138 and 51.1-206 to make several changes to the benefits of state and local public safety officers and the funding of such benefits. All deputy sheriffs would become members of the Law Enforcement Officers' Retirement System (LEOs) beginning July 1, 2008. State police officers would receive a 1.85% average final compensation retirement multiplier and would continue to receive the additional annual supplement.

- **HJ 770 - Commending Virginia's State Employees for Their Charitable Giving in 2006. Delegate Armstrong.**

Immigration Commission Legislation:

- **HB 1673 – Commission on Immigration Created & Report. Delegate Marshall, R.G.** HB 1673 amends Va. Code § 2.2-2101 and adds §§ 2.2-2530 and 2.2-2531 to create the Virginia Commission on Immigration as an advisory commission in the executive branch. The purpose of the Commission is to study, report, and make recommendations to address the costs and benefits of immigration on the Commonwealth, including the impact on education, health care, law enforcement, local demands for services and the economy, and the effect on the Commonwealth of federal immigration and funding policies. The Commission expires on August 1, 2009. This bill incorporates HJR 776 (Saxman).

PART III LEGISLATION THAT FAILED

Below is a summary of those bills of interest that failed in either the House or the Senate (again, not a comprehensive list).

HB 1693 - Interrogations of Juveniles to be Electronically Recorded. HB 1693 amends Va. Code § 16.1-228 and adds § 16.1-274.2 relating to electronic recording of statements made by juvenile

defendants. HB 1693 would require law enforcement to electronically record all custodial interrogations of juveniles suspected of committing a violent juvenile felony when the interrogation takes place "in a place of detention." As a part of the electronically recorded interrogation, the juvenile must be given the requisite Miranda warnings and knowingly, intelligently, and voluntarily waive any rights set out in the warning. Failure to electronically record a juvenile's custodial interrogation will be a factor for consideration by the trial court in determining the admissibility of a statement.

HB 1770 - Juveniles - Destruction of Fingerprints and Photographs. HB 1770 amends Va. Code § 16.1-299 relating to the taking of a juvenile's fingerprints and photograph by law enforcement when taken into custody and charged with an act that, if committed by an adult, would be required to be reported to the Central Criminal Records Exchange (CCRE). The bill summary on Legislative Information Services (LIS) states that the intent of the bill is to provide that if a petition or warrant is not ultimately filed against a juvenile whose fingerprints or photographs are taken when the juvenile is taken into custody and charged with an act, that if committed by an adult would be required to be reported to the CCRE, the fingerprints and photographs must be destroyed within 60 days. However, the new language in subsection A mirrors existing language in subsection C. Therefore, the bill appears to make no substantive change.

HB 1898 - Juvenile Interrogations - Allows Law Enforcement Access to a Juvenile in Detention. HB 1898 amends Va. Code § 16.1-300 relating to confidentiality of juvenile records held by DJJ. The original bill allowed law enforcement access to a detained child and all of his confidential records and reports for the purpose of conducting an investigation into an offense that would be a felony, but the felony investigation cannot be related to the offense for which the juvenile is being detained. The interrogation of the juvenile must be for a new or additional felony and not for the offense for which the juvenile is being detained.

HB 2047 - Juveniles - Duty of Person Taking Child into Custody. HB 2047 adds subsection K to Va. Code § 16.1-247 pertaining to what must take place when a juvenile is taken into custody pursuant to Va. Code § 16.1-246. HB 2047 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, 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, 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, the interrogation can proceed with a certified affidavit attesting to the same.

HB 2971 - Drug Treatment Court - Restricted to Cases Involving Possession of Drugs or Marijuana. HB 2971 restricts the use of Drug Treatment Courts to cases involving possession of drugs or marijuana and cases involving probation violations following conviction of drugs or marijuana possession.

HB 3006 - Immigration Status Investigation Following Conviction for Criminal Street Gang Activity. HB 3006 adds 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 of an adult or a juvenile and the family in the United States following the conviction or adjudication of the adult or juvenile for criminal street gang activity.

If a person is convicted or adjudicated delinquent of a gang crime under Va. Code § 18.2-46.2 or 18.2-46.3, the probation and parole officer must "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 must report that status to the United States Immigration and Customs Enforcement Agency (USICEA). The probation or parole officer may also report any information he has regarding the immigration status of the other household members.

SB 876 - Gangs - Definition of Predicate Criminal Act. SB 876 amends Va. Code § 18.2-46.1 relating to predicate acts determining street gang membership status. SB 876 allows a person to be charged for criminal street gang participation for the first offense of manufacturing, selling, giving, distributing, or possessing a controlled substance or imitation controlled substance with the intent to manufacture, sell, give, or distribute the substance. Currently, a person can be charged for criminal street gang participation only for a second or subsequent violation of such crime.

SB 1178 - Confidentiality of Juvenile Records – Opens Access by Request to Law Enforcement & School Administrators. SB 1178 amends Va. Code § 16.1-300 relating to confidentiality of juvenile records held by DJJ. SB 1178 allows any "law-enforcement agency, attorney for the Commonwealth, school administration, or probation officer" access to a juvenile's confidential records and reports if the requesting party has a legitimate interest in the case.

This bill would have opened all social, medical, psychiatric, and psychological reports and records of children who are or have been before the court, under supervision, or receiving services from a court service unit or who are committed to DJJ to any law-enforcement agency, attorney for the Commonwealth, or school administrator for the sole purpose of having a legitimate interest. There was no nexus requiring any type of services or treatment for the child in question in order to release such confidential information.

HB 1756 & SB 962 VaLORS - Adds DJJ Probation & Parole Officers.