2008 General Assembly Session Juvenile Justice Legislative Training Manual

This overview of legislation, as enacted by the 2008 General Assembly, relates to juvenile justice.

This handbook is intended only for use as a summary of those bills enacted during the 2008 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 Code of Virginia citations are hyperlinked. By clicking on the bill number or Code of Virginia citation, you should be able to access the enacted bill language or statute.

For questions or issues concerning any of the information contained herein, please contact: Deron M. Phipps at Deron.Phipps@djj.virginia.gov or (804) 786-6407, or Janet Van Cuyk at Janet.VanCuyk@djj.virginia.gov or (804) 371-4097.

Significant Juvenile Justice Bills for the Department of Juvenile Justice (DJJ)

Juvenile Court Proceedings

Penalties Upon Adjudication or Conviction

Juvenile Records

Protective Orders & Domestic Relations

HB 753 & SB 540 VCIN & Sending Protective Order Information **Page 25**
HB 753 & SB 540 amend §§16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 19.2-152.8, 19.2-152.9, 19.2-152.10, and 19.2-390 of the Code of Virginia relating to protective orders and the Virginia Criminal Information Network (VCIN).

Other Domestic Relations-Related Legislation **Page 30**

- **SB 330 Custody & Visitation Cases & Admissibility of Mental Health Records.** *SB 330 repeals §20-124.3:1 of the Code of Virginia.*
- **SB 764 Address Confidentiality for Victims of Domestic Violence Pilot Program**. *SB 764 amends §2.2-515.2 of the Code of Virginia and amends and reenacts the second and third enactments of Chapter 599 of the Acts of Assembly of 2007.*
- **HB 1179 Assault & Battery Against Family Member & Presumption of Bail**. *HB 1179 amends §19.2-120 of the Code of Virginia by adding a presumption, subject to rebuttal, against admitting to bail any person who is arrested for felony assault and battery against a family or household member when that person has two previous convictions under §18.2-57.2 (assault and battery against a family or household).*
- **SB 173 Domestic Violence Cases & Retention of Records.** *SB 173 amends §§16.1-69.55 and 17.1-213 of the Code of Virginia relating to retention of records in domestic violence cases.*
- **HB 713 Extending Stalking Protective Orders up to Six Months if Respondent Fails to Appear at Hearing.** *HB 713 amends §19.2-152.9 of the Code of Virginia relating to preliminary protective orders in stalking cases.*
- **HB 965 Victims' Compensation Fund & Stalking Victims.** *HB 965 amends §19.2-368.2 of the Code of Virginia to allow people who have been stalked to be eligible to collect from the Victims' Compensation Fund.*
- **HB 1257 Child Support Enforcement & Intensive Case Monitoring Pilot Programs.** *HB 1257 authorizes DSS to establish, in four jurisdictions, intensive case monitoring pilot programs for child support enforcement to reduce jail overcrowding, provide less costly child support enforcement alternatives, and maximize the potential for child support payments.*
- **SB 313 No Child Support for Persons Sentenced to Life in Prison Without Parole**. *SB 313 amends §20-108.2 of the Code of Virginia to clarify that only parents who are imprisoned for life with no chance of parole are exempted from paying the presumptive minimum child support obligation of $65 per month.*
- **SB 633 Prisoners & Notification of Child Support Payments**. *SB 633 amends the Code of Virginia by adding §53.1-31.2.*

Sex Offender Legislation

SB 590 Sex Offender & Crimes Against Minors Registry (Compliance with Adam Walsh Act) **Page 32**
SB 590 amends §§9.1-902, 9.1-908, and 9.1-910 of the Code of Virginia relating to the Sex Offender Registry. Effective July 1, 2008.

HB 34 New Sexual Offense Against Children – Kissing a Child Under 13 **Page 35**
HB 34 amends §9.1-902 of the Code of Virginia and adds a section numbered 18.2-370.6 relating to sex offenses against children and the Sex Offender Registry. Effective July 1, 2008.

HB 902 Sex Offender Registration on All Vehicles **Page 36**
HB 902 amends §9.1-903 of the Code of Virginia relating to registration procedures under the Sex Offender and Crimes Against Minors Registry Act. Effective July 1, 2008.

HB 1044 & SB 114 Sex Offenders & Registration Requirements **Page 36**
HB 1044 & SB 114 amends §9.1-902 of the Code of Virginia to expand and clarify persons for whom registration or re-registration with the Sex Offender and Crimes Against Minors Registry (SOR) is required. Effective July 1, 2008.

HB 567 Sexual Offenses & Prohibiting Entry onto School Property **Page 38**
HB 567 amends §18.2-370.5 of the Code of Virginia relating to sex offenses prohibiting entry onto school property. Effective July 1, 2008.

HB 149 & SB 249 Independent Living Services Planning for Children 14 Years & Older **Page 49**
HB 149 & SB 249 amend §§16.1-228, 16.1-281 through 16.1-282.2, 63.2-100, 63.2-904 through 63.2-906, and 63.2-1819 of the Code of Virginia relating to plans for independent living services and arrangements for children 14 years of age or older. Effective July 1, 2008.

Other Foster Care Legislation **Page 49**

- **HB 1141 Foster Care & Termination of Independent Living Services for "Adult Foster Care Child".** *HB 1141 amends §63.2-905.1 of the Code of Virginia relating to foster care and the termination of independent living services by request of the person in foster care. Effective July 1, 2008.*

Mental Health Bill Summaries

HB 499 & SB 246 The Omnibus Mental Health Bill **Page 50**
HB 499 & SB 246 amend §§16.1-337, 19.2-169.6, 19.2-176, 19.2-177.1, 32.1-127.1:03, 37.2-800, 37.2-808, 37.2-809, 37.2-813 through 37.2-818, 37.2-821, and 53.1-40.2 of the Code of Virginia and add sections numbered 37.2-817.1 through 37.2-817.4 and add in Article 1 of Chapter 8 of Title 37.2 a section numbered 37.2-804.2 relating to involuntary commitment.

Other Mental Health Legislation Pertaining to Juveniles **Page 51**

- **HB 400 & SB 67 Inpatient Treatment & Parental Admission of Minors Incapable of Giving Consent.** *HB 400 & SB 67 amend §§16.1-336 and 16.1-339 of the Code of Virginia relating to parental admission of minors for inpatient treatment when minor is incapable of giving consent.*
- **HB 402 & SB 68 Involuntary Commitment Petition - Dismissal or Withdrawal.** *HB 402 & SB 68 amend §16.1-341 of the Code of Virginia.*
- **HB 582 & SB 276 Psychiatric Inpatient Treatment of Minors - Timing of Petition & Hearing Extended from 72 Hours to 96.** *HB 582 & SB 276 amend §§16.1-338 through 16.1-341 of the Code of Virginia relating to the timing of the petition and hearing in psychiatric inpatient treatment of minors proceeding.*
- **SB 247 Involuntary Commitment of Minors - Appointment of Counsel & Guardians Ad Litem (GAL).** *SB 247 amends §§16.1-339, 16.1-341, and 16.1-343 of the Code of Virginia relating to the appointment of counsel and the GAL in involuntary commitment of minor proceedings.*

Mental Health Legislation Pertaining to Court Procedures **Page 52**

- **HB 708 Temporary Detention Orders & Admission as Evidence.** *HB 708 amends §8.01-389 of the Code of Virginia.*
- **HB 1323 Temporary Detention Orders - Magistrates to Issue Based on Recommendation of Treating Physicians.** *HB 1323 amends §37.2-809 of the Code of Virginia.*
- **SB 142 Involuntary Commitment Hearings & Recordings.** *SB 142 amends §37.2-818 of the Code of Virginia relating to the recording of involuntary commitment hearings.*

Mental Health Legislation Pertaining to Disclosure/Sharing of Information **Page 52**

- **HB 576 Mental Health Records & Health Provider Shall Disclose Information as Necessary to Provide Care & Treatment of Minor.** *HB 576 amends §§16.1-337, 19.2-169.6, 32.1-127.1:03, 37.2-808, 37.2-809, and 37.2-817 of the Code of Virginia and adds in Article 1 of Chapter 8 of Title 37.2 a section numbered 37.2-804.2 relating to the sharing of mental health records.*
- **SB 336 Temporary Detention Order - Encryption of Medical Records not Required.** *SB 336 amends §37.2-809 of the Code of Virginia.*

Mental Health Legislation Pertaining to Custody/Transfer of Custody/Transportation **Page 53**

- **HB 401 & SB 81 Emergency Custody & Who may Accept Custody.** *HB 401 & SB 81 amend §37.2-808 of the Code of Virginia relating to who may take custody as relating to emergency custody.*
- **HB 583 Emergency Custody Orders & Extension of Time.** *HB 583 amends §37.2-808 of the Code of Virginia relating to extension of time of emergency custody orders.*
- **HB 707 Involuntary Commitment Hearings - Person Shall be Held in Custody until Released to Secure Facility.** *HB 707 amends §37.2-809 of the Code of Virginia relating to the custody of a person being evaluated for involuntary commitment.*

- **Item 381 (B) Secretary of Public Safety Offender Transition Study.**

Miscellaneous Crime Bills **Page 66**

- **HB 159 Receiving Stolen Property Used in Police Investigation.** *HB 159 amends §18.2-108 of the Code of Virginia relating to receiving stolen goods.*

- **HB 113 & SB 368 Killing a Law-Enforcement Officer While Eluding Police – Penalty.** *SB 368 amends §46.2-817 of the Code of Virginia relating to disregarding signals by a law-enforcement officer to stop and eluding police.*

- **HB 656 & SB 592 Animal Protection & Fighting.** *HB 656 & SB 592 amend §§3.1-796.113, 3.1-796.122, 3.1-796.124, and 18.2-403.2 and repeal §3.1-796.125of the Code of Virginia relating to animal protection.*

- **SB 26 Racketeer Influenced & Corrupt Organization (RICO) Act & Organized Dogfighting.** *SB 26 amends §18.2-513 of the Code of Virginia by adding dogfighting to the list of offenses qualifying under the RICO statutes.*

- **HB 995 Unlawful Filming of Another - Class 6 Felony.** *HB 995 amends §18.2-386.1 of the Code of Virginia relating to penalty for unlawful filming of another.*

- **SB 776 Concealed Weapons & Attorneys for Commonwealth.** *SB 776 amends §18.2-308 of the Code of Virginia.*

Drug Crimes **Page 67**

- **HB 21 Schedule I Hallucinogenic Drugs – Adding Salvia Divinorum & Salvinorin A Thereas**. *HB 21 amends §54.1-3446 of the Code of Virginia relating to inclusion of salvia divinorum and salvinorin A as Schedule I hallucinogenic drugs. Schedule I hallucinogenic drugs include opiates and opiate derivatives (heroin, morphine).*

- **HB 823 Schedule II Drugs – Adding Oripavine & Lisdexamfetamine.** *HB 823 amends §54.1-3448 of the Code of Virginia to add oripavine and lisdexamfetamine to the list of Schedule II drugs.*

- **HB 931 & SB 562 Methamphetamine - Manufacturing, Selling, Distributing, Penalty.** *HB 931 & SB 562 amend the Code of Virginia by adding a section numbered 18.2-248.03 relating to manufacturing, selling, and distributing of methamphetamine.*

- **SB 618 Petit Larceny: Person who is Convicted for Second Time Must Undergo Substance Abuse Screening.** *SB 618 amends §19.2-299.2 of the Code of Virginia relating to alcohol and substance abuse screening and assessment when a person is convicted of petit larceny for a second time.*

- **HB 1147 & SB 405 Controlled Substances: Nonresident Pharmacies Reporting & Approval Requirements.** *HB 1147 & SB 405 amend §§18.2-248, 54.1-3434.1, 54.1-3434.2, and 54.1-3434.4 of the Code of Virginia relating to Schedule VI drugs.*

Immigration **Page 69**

- **HB 820 Adult Inmates: Officer of Correctional Facility to Inquire about Citizenship.** *HB 820 amends §§19.2-294.2 and 53.1-218 of the Code of Virginia and adds in Chapter 7 of Title 19.2 a section numbered 19.2-83.2 relating to reports on alien status of jail and correctional facility inmates.*

Significant Juvenile Justice Bills for the Department of Juvenile Justice

HB 1207 Earned Sentence Credits for Juveniles Given "Blended Sentences"
Delegate Kenneth R. Melvin

HB 1207 amends §§16.1-272, 53.1-202.2, and 53.1-202.3 of the Code of Virginia pertaining to a juvenile convicted as an adult in circuit court and given a "blended sentence." Effective July 1, 2008.

1.00 Summary - Earned Sentence Credits for Juveniles Given "Active Blended Sentences"

HB 1207 amends the Code of Virginia to allow a juvenile who is convicted as an adult in circuit court and sentenced to an active term of incarceration with the Department of Corrections (DOC), but placed in a juvenile correctional center for part of that sentence, to be eligible to earn sentence credits while serving that portion of his sentence in a juvenile correctional center. Currently, a juvenile can earn sentence credits only after he transfers to an adult facility.

2.00 Sentencing a Juvenile Convicted as an Adult in Circuit Court: §16.1-272 of the Code of Virginia

Section 16.1-272 of the Code of Virginia provides the sentencing powers of the circuit court over a juvenile who is convicted as an adult. 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 §16.1-285.1 of the Code of Virginia to be followed by an active sentence to the DOC. Second, the circuit court may impose a juvenile disposition including commitment under subdivision (14) of §16.1-278.8 or §16.1-285.1 with a suspended adult sentence. 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.

2.10 Changes to §16.1-272 of the Code of Virginia: Sentencing a Juvenile Convicted as an Adult – Only Juveniles Given Active Terms of Incarceration to DJJ & DOC are Eligible for Earned Sentence Credits (New).

HB 1207 amends §16.1-272 of the Code of Virginia by adding a new subsection D so that a juvenile sentenced pursuant to clause (i) of subdivision A 1 is only *"eligible to earn sentence credits in the manner prescribed by §53.1-202.2 for the portion of the sentence served as a serious juvenile offender under §16.1-285.1."* Therefore, only a juvenile who is given a determinate commitment as a serious offender that is then followed by an active term of incarceration with DOC is eligible to earn sentence credits. For example, DJJ has had juveniles committed to a juvenile correctional center until age 21. This commitment is then followed by 20 years of incarceration with DOC.

3.00 What Are Earned Sentence Credits? §53.1-202.2 of the Code of Virginia

Section 53.1-202.2 of the Code of Virginia allows a person, adult, or juvenile who is sentenced to DOC to be eligible to earn sentence credits for the duration of his incarceration. This individual can earn a maximum of 4.5 days for each 30 days served.

3.10 Who was Eligible for Earned Sentence Credits Prior to HB 1207?

A juvenile convicted as an adult of a violent juvenile felony in circuit court may be sentenced directly to DOC, with a portion of the sentence served with DJJ in a juvenile correctional center. Under the law prior to HB 1207, a juvenile given an "active blended sentence" was eligible to earn sentence credits only for the time served in the adult facility and was not eligible to earn sentence credits for the time served in a juvenile correctional center. However, a juvenile serving the complete sentence in an adult facility was eligible to earn sentence credits for the entire period of incarceration. In fact, prior to HB 1207, the below persons were eligible for earned sentence credits:

- An Adult in DOC is Eligible to Earn Sentence Credits.
- A Juvenile in DOC is Eligible to Earn Sentence Credits.
- An Adult in a Local Jail Awaiting Trial in Circuit Court is Eligible to Earn Sentence Credits (§53.1-187 of the Code of Virginia).
- A Juvenile in a Juvenile Detention Facility Awaiting Trial in Circuit Court is Eligible to Earn Sentence Credits (§53.1-187 of the Code of Virginia).

3.20 Changes to §53.1-202.2 of the Code of Virginia – Juveniles Serving Time with DJJ Prior to DOC Now Eligible (New)

HB 1207 adds subsection B to §53.1-202.2 of the Code of Virginia to make a juvenile convicted as an adult and sentenced as a serious juvenile offender under clause (i) of subdivision A 1 of §16.1-272 of the Code of Virginia to be eligible to earn sentence credits for the portion of the sentence served with DJJ.

3.21 Consideration Requires Adherence to Rules & Treatment Progress. For consideration for earned sentence credits, HB 1207 adds language to the new subsection B in §53.1-202.2 of the Code of Virginia that requires "*adherence to the facility's rules and the juvenile's progress toward treatment goals and objectives while sentenced as a serious juvenile offender under §16.1-285.1*."

4.00 §53.1-202.3 of the Code of Virginia - Rate at Which Sentence Credits may be Earned - Prerequisites

Section 53.1-202.3 of the Code of Virginia states that a maximum of four and one-half sentence credits may be earned for each 30 days served with the prerequisite that earning sentence credits is conditioned upon "full participation in and cooperation" with programs.

4.10 Changes to Prerequisites - §53.1-202.3 of the Code of Virginia (New). HB 1207 adds language in §53.1-202.3 of the Code of Virginia that for a juvenile sentenced to serve a portion of his sentence as a serious juvenile offender under §16.1-285.1 of the Code of Virginia, consideration for earning sentence credits is conditioned, in part, upon full participation in and cooperation with programs afforded to the juvenile during that portion of the sentence.

4.20 Changes to §53.1-202.3 of the Code of Virginia– DJJ to Provide Report (New). HB 1207 adds language in §53.1-202.3 of the Code of Virginia that requires DJJ to provide a report that describes the juvenile's adherence to the facility's rules and the juvenile's progress toward treatment goals and objectives while sentenced as a serious juvenile offender under §16.1-285.1.

5.00 Rationale: Equity, Fairness, Population Management

HB 1207 is about equity and fundamental fairness. Absent HB 1207, when two individuals receive adult sentences of the same length, a juvenile may serve more time due to his inability to earn credit for the time spent with DJJ. The prior system created a 15% disparity in actual time served. A juvenile serving his entire sentence in an adult correctional center would earn sentence credits during his entire period of incarceration. Thus, a juvenile serving his entire sentence with DOC had the opportunity to serve up to 15% less time incarcerated than a juvenile convicted of the same crime but serving the first portion of his sentence in a juvenile correctional facility that was then followed by an active term with DOC.

HB 1207 is about population management and being a motivational tool for a juvenile, who has been convicted as an adult, to perform well in a juvenile correctional center. Anecdotally, DJJ is aware of juveniles, who have been convicted as adults, intentionally acting or behaving in ways to be transferred to DOC so that they can begin earning sentence credits. Such behavior places the juveniles and staff at risk of harm and jeopardizes safety. Moreover, if that juvenile is transferred early to DOC to begin his adult sentence, that juvenile loses the opportunity to benefit from education, rehabilitation, and mental health services that are not available in adult facilities.

SB 472 Regulations for Children's Residential Facilities (Abolishing CORE)
Senator Emmett W. Hanger, Jr.

SB 472 amends §§22.1-323.2, 37.2-408, 63.2-1737, and 66-24 and adds §37.2-408.1 to the Code of Virginia relating to the regulation of group homes and residential facilities for children. Effective July 1, 2008.

1.00 Summary: Elimination of the Standards for the Interdepartmental Regulation of Children's Residential Facilities (CORE)

The bill removes the requirement for the Departments of Education (DOE), Juvenile Justice (DJJ), Social Services (DSS), and Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) to cooperate in reducing and simplifying the regulations involved in the licensing and certification of children's residential facilities (which will result in the elimination of the Office of Interdepartmental Regulations and the Standards for the Interdepartmental Regulation of Children's Residential Facilities). The bill continues to require cooperation of the agencies in fulfilling their respective licensing and certification responsibilities.

SB 472 further requires DOE to regulate educational programs provided in children's residential facilities and provides that DMHMRSAS, DSS, and DJJ will assume regulatory and licensing responsibilities for their respective children's residential facilities. Finally, it requires all regulation agencies to disseminate to local governments or post on the agencies' websites a list of regulated facilities with information on services provided.

2.00 Current Statutory/Regulatory Background: The CORE Regulations (22VAC42-11 et seq.)

Children's residential facilities regulated by the Board of Juvenile Justice currently must meet the requirements of the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-11-10 et seq.) and the Standards for Juvenile Residential Facilities (6VAC35-140 et seq.). However, legislation passed in the 2008 General Assembly session removes the requirement of each agency, and its corresponding Board, to cooperate regarding the regulation of children's residential facilities and makes the Board of Juvenile Justice the sole regulatory and licensing authority for secure residential facilities and the group homes/halfway houses operated or funded by DJJ. Consequently, the legislation eliminates the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-11-10 et seq.) as a governing regulation. See Chapter 873 of the 2008 Acts of the General Assembly.

2.10 DOE No Longer Regulates Residential Schools: §22.1-323.2 of the Code of Virginia

SB 472 removes the Board of Education's authority to regulate children's residential schools and requires DOE to promulgate regulations for educational programs in all children's residential facilities in the Commonwealth, including those regulated by DJJ. Thus, DOE is only regulating educational programs, not the actual residential facility.

2.11 DSS & DMHMRSAS to Assume Former DOE Facilities (nine total). DSS and DMHMRSAS would be responsible for licensing additional facilities that DOE can no longer license. Currently DOE is the lead regulatory authority for nine facilities. It is assumed that four to seven of the facilities would be added to the DSS caseload, which includes two large facilities with licensed capacities of 100 to 150.

2.20 DMHMRSAS Sole Regulatory Authority for Mental Health: §37.2-408 of the Code of Virginia

SB 472 maintains the authority of the Board of DMHMRSAS to regulate residential programs providing mental health, mental retardation, brain injury, or substance abuse services and requires that Department to promulgate regulations for the licensure of services provided in these children's residential facilities.

2.21 New Background Code Section Maintains Status Quo: §37.2-408.1 of the Code of Virginia. SB 472 also creates §37.2-408.1 in the Code of Virginia requiring background checks. This section is a restatement of existing Code language in §63.2-1726 and thereby maintains the status quo concerning background checks in children's mental health residential facilities.

2.30 DSS Solely to Regulate its Own Facilities: §63.2-1737 of the Code of Virginia

The substitute bill requires the Board of Social Services to promulgate regulations for the certification of children's residential facilities that provide social service programs, including group homes. It removes the requirement that interdepartmental regulations be established.

2.40 Impact on DJJ: §66-24 of the Code of Virginia

SB 472 results in the Board of Juvenile Justice serving as the sole regulatory and licensing authority for secure residential facilities and the group homes/halfway houses DJJ operates or funds. Currently these facilities are governed both by the CORE regulations, unless specifically exempted, and the applicable provisions of DJJ's residential regulations (6VAC35-140 et seq.).

2.41 Second Enactment Clause Requires New Regulations by October 1, 2009. SB 472 contains a second enactment clause that requires each affected agency's Board to promulgate regulations to implement the provisions of the act no later than October 31, 2009. Once each Board has promulgated new regulations, a third enactment clause states that the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-11-10 et seq.) will no longer be in effect.

2.42 DJJ's Effort to Comply: Initially Adopting CORE Regulations as Is. In order to comply with the statutory mandate, the Board of Juvenile Justice is enacting a new regulation, the Standards for the Interim Regulation of Children's Residential Facilities (6VAC35-51), which adopts the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-11-10 et seq.), less the requirement for interdepartmental cooperation, as a Board regulation. Since the Board of Juvenile Justice is adopting as a Board regulation a regulation currently in effect, minus the interdepartmental cooperation provision that was removed from the governing statutes in the 2008 General Assembly session, the Board is processing the action as exempt from the Administrative Process Act pursuant to §2.2-4006 of the Code of Virginia.

2.43 DJJ will be Promulgating Three New Regulations (Everything Old is New Again). Given the distinct characteristics of the types of facilities regulated by the Board of Juvenile Justice and the complexity of applying a single regulation to the appropriate facility, DJJ recommends separating the Board's residential regulations into three sets: (i) juvenile correctional centers, governing the Department's seven juvenile correctional centers, which the Board has the authority to regulate through §66-13 of the Code of Virginia; (ii) secure detention centers, governing pre- and post-dispositional detention home placements, which the Board has the authority to regulate through §16.1-322.7 of the Code of Virginia; and (iii) group homes and halfway houses, governing the 22 group homes and three halfway house programs, which the Board has the authority to regulate through §§16.1-309.9 and 66-24 of the Code of Virginia.

Juvenile Court Proceedings

SB 610 Compensation of Court-Appointed Attorneys in District Court
Senator Kenneth W. Stolle

SB 610 amends §19.2-163 of the Code of Virginia relating to compensation of court-appointed counsel. Effective July 1, 2008.

1.00 Summary: Compensating Court-Appointed Counsel in Juvenile Court

SB 610 amends §19.2-163 of the Code of Virginia relating to compensation of court-appointed counsel. SB 610 provides that counsel, who are appointed by the court to defend a juvenile in district court for an offense that would be a felony if committed by an adult, may request a waiver on the compensation cap up to certain specified amounts depending on the charges being defended when the effort expended, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver.

Due to fiscal impact concerns, House Appropriations reduced the amount for reimbursement originally proposed by SB 610 by over 50%. As amended, SB 610 sets the maximum amount of reimbursement to $650 for representation on an offense that would be a felony if committed by an adult that may be punishable by confinement in a state correctional facility for a period of more than 20 years or a violation of probation related to such offenses.

2.00 Historical Background: Lowest Compensation in the Nation

Virginia has notoriously compensated court-appointed counsel for cases in circuit court and juvenile court at the lowest level in the nation, 49 out of 50; so low that Virginia faced the threat of a lawsuit from the National Association of Criminal Defense Lawyers.

2.10 2007 General Assembly Doubled the Amount of Compensation in Circuit Court

During the 2007 session, the General Assembly raised the reimbursement rates for court-appointed counsel in juvenile court and in circuit court (see HB 2361 & SB 1168). As introduced, HB 2361 & SB 1168 left it to the Supreme Court to determine reimbursement rates, and there was no differentiation between juvenile court cases and circuit court cases. However, House Appropriations deleted the provisions relating to cases in juvenile court. The Governor offered amendments at the reconvened session to correct the inequity that were, for the most part, rejected. Therefore, the inequities in the reimbursement rates in the circuit court compared to the juvenile court were further exacerbated.

2.11 Current Compensation Rates for Circuit Court. Cases in circuit court are reimbursed, pursuant to §19.2-163 of the Code of Virginia as follows:

- Reimbursement for any misdemeanor: base compensation rate of $158;
- Reimbursement for any felony charge (other than those punishable by more than 20 years incarceration or death): base compensation rate of $445 with a waiver of an additional $155;
- Reimbursement for a felony charge punishable by confinement in the state correctional facility for a period of more than 20 years: base compensation rate of $1,235 with a waiver of an additional $850; and
- Reimbursement for a felony charge that may be punishable by death shall be at an amount deemed reasonable by the court.

2.12 Compensation Rates for Juvenile Court Prior to SB 610 (Same for General District): §16.1-266 of the Code of Virginia. The juvenile and domestic relations court has jurisdiction over delinquency cases on charges that would be misdemeanors and felonies if committed by adults. Subsection C of §16.1-266 of the Code of Virginia provides the juvenile court with the authority to appoint counsel in any case involving a child who is determined to be indigent and who is alleged to be in need of services, in need of supervision, or delinquent (about 85% of the state's criminal defendants are unable to pay for legal representation).

Under the law prior to SB 610, the reimbursement cap for court-appointed counsel was $120, with a waiver provision for an additional $120 when the effort, time, novelty, or difficulty of the issues warranted such a waiver. However, actual budgetary funding limited reimbursement to $112 per case. This rate applies regardless of whether the charges involve offenses that would be a misdemeanor or a felony if committed by an adult. 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 one and one-half hours of representation to prepare the juvenile's defense on the charge.

3.00 Increased Compensation Rates in Juvenile Court as a Result of SB 610 (New)

The reimbursement rate for compensating court-appointed counsel remains at the base level of $120 for all misdemeanor and felony cases. However, SB 610 amended §16.1-266 of the Code of Virginia so that the waiver rate for felony offenses with punishments of 20 years or more in confinement is increased to $650 "*when the effort expended, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver.*" The waiver rate for all of felonies and misdemeanor cases remains at an additional $120.

HB 1382 & SB 788 Department of Social Services (DSS) to File Support Petitions
Delegate Sal R. Iaquinto & Senator Frederick M. Quayle

HB 1382 & SB 788 amend §§8.01-271.1, 16.1-260, 16.1-278.15, 54.1-3900, and 63.2-1901 of the Code of Virginia relating to non-attorney employees of DSS. Effective July 1, 2008.

1.00 Summary: DSS to File Support Petitions

HB 1382 & SB 788 amend §§8.01-271.1, 16.1-260, 16.1-278.15, 54.1-3900, and 63.2-1901 of the Code of Virginia relating to non-attorney employees of DSS. The bill authorizes non-attorney employees of DSS to complete, sign, and file support-related petitions and motions in the juvenile and domestic relations (J&DR) courts. The bills were amended to clarify restrictions to the types of petitions that designated non-attorney DSS employees may complete and file. The bills also provide that any orders entered prior to the effective date of the legislation are not deemed void or voidable solely because the petitions and motions were signed by non-attorney employees.

2.00 The Law Prior to HB 1382 & SB 788

Section 8.01-271.1 of the Code of Virginia (signing of pleadings) states that an attorney must sign the pleadings of a represented party. Section §16.1-260 of the Code of Virginia (intake; petition) requires complaints, requests, and the processing of petitions in J&DR courts to be processed by intake officers unless specifically excepted in that Code section or as provided for in §16.1-259 of the Code of Virginia relating to cases of adults. One of the exceptions currently in §16.1-260 of the Code of Virginia states *"the Department of Social Services may file support petitions on its own motion with the clerk."*

3.00 The Intent of HB 1382 & SB 788 is to Codify Existing Practice

The intent of HB 1382 & SB 788 is to codify the existing practice of the Division of Child Support Enforcement (DCSE) for non-attorney DSS employees to complete, sign, and file petitions directly with the clerk of the J&DR courts (per the language in the amendment to §63.2-1901 of the Code of Virginia). The legislation is a reaction to a lawsuit against DSS, which was filed by an individual who was subject to a support petition, on the grounds that DSS non-attorney staff illegally filed petitions. The lawsuit seeks to have made void any orders issued under these petitions.

4.00 The Effect of the Amendments: The New Law

Section 16.1-260 of the Code of Virginia is the intake and petition section of the juvenile code. Section 63.2-1901 of the Code of Virginia is the purpose and power section of the Code for DSS and the collection of child support. The bills provide that §§16.1-260 and 63.2-1901 of the Code of Virginia can make exceptions to the requirement that an attorney may sign the pleadings of a represented party. The legislation allows designated non-attorney DSS employees to complete, sign, and file petitions in J&DR courts. The legislation was amended to limit petitions and motions relating to the establishment, modification, and enforcement of support in DSS cases as provided in the amendment to §63.2-1901 of the Code of Virginia. As passed, the legislation restricts the types of petitions to those relating to the establishment, modification, and enforcement of support-related DSS cases and defines its application to only "designated" non-attorney DSS employees.

4.10 What do the Other Statutes that are being Amended do? §§8.01-271.1, 16.1-278.15 and 54.1-3900 of the Code of Virginia

Section 8.01-271.1 of the Code of Virginia requires that the signing of pleadings, motions, and other papers be done by an attorney, but the amendments allow DSS-designated employees to sign such pleadings and motions. Section 16.1-278.15 of the Code of Virginia is the dispositional section for the juvenile court in matters pertaining to custody, visitation, and child support. The amendments to §16.1-278.15 of the Code of Virginia ensure that child custody, visitation, or support orders are not "*deemed void or voidable solely because the petition or motion that resulted in the order was completed, signed and filed by a nonattorney employee of the Department of Social Services*." Section 54.1-3900 of the Code of Virginia pertains to the unauthorized practice of law. The amendments to §54.1-3900 ensure that DSS staff filing child petitions, pleadings, or motions is not considered the unauthorized practice of law.

4.20 Amendments Declarative of Existing Law

A second enactment clause states that the amendments made by HB 1382 & SB 788 to subsection A of §16.1-260 and §54.1-3900 are declarative of existing law.

Other Court Proceedings Legislation

- **HB 282 & SB 46 Parentage Proceedings - Circuit Courts & Juvenile Courts to have Concurrent Jurisdiction (Delegate David J. Toscano & Senator Linda T. Puller).** *HB 282 & SB 46 amend §§16.1-241 and 20-49.2 of the Code of Virginia relating to jurisdiction in parentage proceedings.* HB 282 & SB 46 provide that circuit and juvenile and domestic relations district courts have concurrent original jurisdiction over proceedings to determine parentage only when the parentage of a child is at issue in any matter otherwise before the circuit court. In all other cases, the juvenile and domestic relations district court has exclusive original jurisdiction over parentage proceedings. As introduced, this bill was a recommendation of the Committee on District Courts and the Judicial Council.
- **HB 1213 & SB 227 HIV/Hepatitis Testing – Intake Petition when Lack of Parental Consent for Minors (Delegate Kenneth R. Melvin & Ryan T. McDougle).** *HB 1213 & SB 227 amend §32.1-45.1 of the Code of Virginia relating to consent for the testing of minors for HIV and hepatitis.* HB 1213 & SB 227 clarify the procedure for obtaining consent for testing for HIV or hepatitis B or C viruses of a minor when the person exposed is a health care provider, law-enforcement officer, or school board employee. HB 1213 & SB 227 provide that where a blood sample is required from a minor for testing, and the minor refuses to provide the sample, consent for obtaining the sample shall be obtained from the parent, guardian, or person standing in loco parentis of the minor. This legislation further provides that where the parent, guardian, or person standing in loco parentis of the minor withholds consent or is not reasonably available to consent, the person potentially exposed to HIV or hepatitis B or C viruses or the employer of such person *may petition the juvenile and domestic relations district court* in the county or city where the minor resides or resided or, in the case of a nonresident, the county or city where the health care provider, law-enforcement agency, or school board has its principal office for an order requiring the minor to provide a sample, submit to testing, and disclose the results.

Penalties Upon Adjudication or Conviction

HB 719 Underage Drinking & Driving: "Baby DUI"
Delegate William R. Janis

HB 719 amends §18.2-266.1 of the Code of Virginia relating to penalties for underage drinking and driving. Effective July, 1, 2008. The provisions of this act will expire on July 1, 2010.

1.00 Summary: Zero Tolerance for Underage Drinking & Driving - "Baby DUI"

HB 719 amends §18.2-266.1 of the Code of Virginia relating to penalties for underage drinking and driving. The bill, commonly referred to as the "baby DUI bill," makes underage drinking and driving punishable as a Class 1 misdemeanor. Prior to HB 719, the punishment was a loss of license for six months and a fine of no more than $500. HB 719 mandates forfeiture of such person's license to operate a motor vehicle for a period of one year from the date of conviction and either a mandatory minimum fine of $500 or 50 hours of community service.

The bill has a sunset date of July 1, 2010, and provides that the Department of Criminal Justice Services (DCJS) will report to the Chairmen of the House and Senate Committees for Courts of Justice on the bill's effect on Virginia's participation under the federal Juvenile Justice and Delinquency Prevention Act.

2.00 The Law Prior to HB 719 - Zero Tolerance for Underage Drinking & Driving, But Not a Class 1 Misdemeanor: §18.2-266.1 of the Code of Virginia

Under the law prior to HB 719, underage drinking and driving, with a blood alcohol count of 0.02-0.08%, was punishable by a suspension of driving privileges and a fine. Punishment alternatives did not include a period of incarceration.

2.10 Conflicts with Other Underage Drinking Laws: Possession/Consumption of Alcohol

Whereas underage drinking and driving is not a Class 1 misdemeanor, the purchase or possession of alcohol by a person under the age of 21 is currently a Class 1 misdemeanor and is punishable by a mandatory minimum fine of $500 or 50 hours of community service and by a period of license suspension from six months to one year (see §4.1-305 of the Code of Virginia). The law treated possession of alcohol by an underaged person more severely than underage drinking and driving. Furthermore, a person convicted of driving while intoxicated with a blood alcohol count of 0.08% or more is guilty of a Class 1 misdemeanor, and punishment shall include a mandatory minimum fine of $250 (see §18.2-270 of the Code of Virginia).

3.00 New Penalty: "Baby DUI" Now a Class 1 Misdemeanor

HB 719 increases the current penalties available under §18.2-266.1 of the Code of Virginia and, by making the offense a Class 1 misdemeanor, would make the offense punishable by up to one year of incarceration.

3.10 Penalty Includes One-Year Suspension, $500 Fine, or 50 Hours of Community Service

The punishment now includes forfeiture of the license to operate a motor vehicle for one year; previously, it was six months. The penalty also includes a "*mandatory minimum*" fine of $500 "*or performance of a mandatory minimum of 50 hours of community service*." Previously, the fine was up to $500.

4.00 Reenactment Clauses Place Sunset Date & Requires DCJS Report

The bill has a sunset date of July 1, 2010, and provides that DCJS will report to the Chairmen of the House and Senate Committees for Courts of Justice on the bill's effect on Virginia's participation under the federal Juvenile Justice and Delinquency Prevention Act.

4.10 Committee Testimony Raised Loss of Funding Concerns

In the Senate Courts of Justice subcommittee and committee discussions on this bill, DCJS testified that making this offense a Class 1 misdemeanor could result in the state losing federal grant funding. This concern initially resulted in the Senate Courts Committee failing to report the bill. However, upon reconsideration, the bill passed with two enactment clauses. The first enactment clause contains a sunset provision for July 1, 2010, and the second requires DCJS to report on the number of detentions pursuant to §18.2-266.1 of the Code of Virginia that are *"in violation of the federal Juvenile Justice and Delinquency Prevention Act."*

4.20 Possible Effect on Federal Grant Funding: The JJDP Act

The Juvenile Justice and Delinquency Prevention (JJDP) Act of 2002 (Public Law 107–273, 42 U.S.C. § 5601 *et seq.*) reauthorized the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to administer the Formula Grants program to support state and local delinquency prevention and intervention efforts and juvenile justice system improvements. DCJS administers the Formula Grant program plan authorized under the Act. To be eligible for funding under the Formula Grant program plan, each state must commit to achieve and maintain compliance with four "core" requirements, which are: (1) deinstitutionalization of status offenders; (2) separation of juveniles from adult offenders; (3) adult jail removal; and (4) disproportionate minority contact.

4.21 Noncompliance Could be Reduction in Federal Funds. The OJJDP guidance documents state that *"if a state, despite its good faith efforts, in any year fails to demonstrate compliance with any of the four requirements, its formula grant for the subsequent fiscal year is reduced by 20% for each requirement for which noncompliance occurs"* and, absent a waiver from OJJDP, the noncompliant state must use 50% of its allocations that fiscal year to achieve compliance. However, if a state is ineligible to receive or chooses not to participate in the Formula Grant program, the funds will be made available to local public and non-profit agencies in the state to carry out activities designed to bring the state into compliance with the core requirements.

4.22 Does "Baby DUI" Incarcerate Status Offenders? The federal government defines a status offender as a juvenile charged with or adjudicated for conduct that would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult. Examples provided in the OJJDP interpretive guidelines include truancy, curfew violations, incorrigibility, runaway, and underage possession and/or consumption of alcohol or tobacco. Thus, it appears that "baby DUI" and possession of alcohol would be included in the federal definition of a "status offense."

SB 222 Possession of Firearms by Juveniles Adjudicated Delinquent for Serious Offenses
Senator Ryan T. McDougle

SB 222 amends §18.2-308.2 of the Code of Virginia relating to possession of firearms by persons who commit felonies while juveniles. Effective July 1, 2008.

1.00 Synopsis: The Gun Ban Becomes Retroactive

SB 222 amends §18.2-308.2 of the Code of Virginia relating to possession of firearms by persons who commit felonies while juveniles. SB 222 imposes a lifetime ban on a juvenile 14 years or older for possessing a weapon after being adjudicated delinquent convicted for a serious felony (murder, kidnapping, robbery by the threat or presentation of firearms, or rape).

2.00 The No Gun Ban: §18.2-308.2 of the Code of Virginia

Section 18.2-308.2 of the Code of Virginia makes it a Class 6 felony for a person convicted of a felony to knowingly and intentionally possess or transport any firearm or stun weapon. There are mandatory minimum terms of incarceration for adults who violate this section multiple times or have a prior violent felony conviction.

2.10 The No Gun Ban Applies to Juvenile Adjudications

Section 18.2-308.2 of the Code of Virginia prohibits a person under the age of 29 to possess or transport any firearm or stun weapon if that person was adjudicated delinquent as a juvenile for a felony offense and was 14 years of age or older at the time of the offense. After the person obtains the age of 29, he can then carry a weapon.

2.20 Lifetime Ban on Juvenile Adjudications for Serious Offenses

There is a lifetime ban on possessing a weapon for a juvenile 14 years of age or older who is adjudicated delinquent in juvenile court for murder (§18.2-31 or §18.2-32), kidnapping (§18.2-47), robbery by the threat or presentation of firearms (§18.2-58), or rape (§18.2-61). However, under current law, the lifetime ban on possessing a weapon only applies to adjudications of delinquency for offenses after July 1, 2005. It is a Class 6 felony to illegally possess a weapon under this section of the Code of Virginia.

3.00 SB 222 Makes the Gun Ban Retroactive

Legislation in 2005 (HB 2722, Delegate James Scott) imposed the lifetime ban on a juvenile 14 years or older for possessing a weapon after being adjudicated delinquent convicted for a serious felony (murder, kidnapping, robbery by the threat or presentation of firearms, or rape). However, the ban only applied to convictions occurring after July 1, 2005. SB 222 removes "July 1, 2005" to have the lifetime ban apply to adjudications for those offenses that occurred prior to July 1, 2005.

3.10 What Does this Mean?

SB 222 means that any juvenile who was adjudicated delinquent for murder (§18.2-31 or §18.2-32), kidnapping (§18.2-47), robbery by the threat or presentation of firearms (§18.2-58), or rape (§18.2-61) and who was 14 years of age or older at the time of the offense is now banned from possessing a weapon no matter when the adjudication occurred.

3.20 Is SB 222 Constitutional?

SB 222 is retroactive. Two Virginia cases support the constitutionality of the law. In *Dobson v. Commonwealth*, the Virginia Court of Appeals found that §18.2-308.2 of the Code of Virginia did not criminalize an act previously committed, and the prohibition of firearm possession by convicted felons is not an unconstitutional *ex post facto* law because it comes about as a relevant incident to the state regulation of firearms. (See 23 Va. App. 286, 476, S.E.2d 512 (1996).) In an analogous issue, a federal District Court dismissed an inmate's challenge to Virginia's Sex Offender Registry because the Sex Offender Registry was civil in nature and did not violate the *ex post facto* law. Those two cases appear to support the concept that prohibitions or requirements that are civil in nature can be retroactive. It appears that the same belief underlies legislation attempting to make the Sex Offender Registry retroactive. (See *Ballard v. Chief of the FBI*, - F. Supp. 2d -, 2004 U.S. Dist. LEXIS 1095 (W.D. Va. Jan 20, 2004).)

Juvenile Records

HB 527 Retention of Fingerprints of Juveniles Given Deferred Dispositions in Felony Cases
Delegate Brenda L. Pogge

HB 527 amends §16.1-299 of the Code of Virginia relating to retention of fingerprints of juveniles given deferred disposition in a criminal case. Effective July 1, 2008.

1.00 Synopsis: Retention of Fingerprints of Juveniles Given Deferred Dispositions

HB 527 amends §16.1-299 of the Code of Virginia relating to retention of fingerprints of juveniles given deferred disposition in a criminal case. The bill requires that fingerprints of juveniles and reports of the case disposition, in cases involving an offense that would be a felony if committed by an adult that are deferred and subsequently dismissed pursuant to §16.1-278.8 of the Code of Virginia, be sent to the Central Criminal Records Exchange (CCRE) by the clerk of the court where the case is heard. Currently such fingerprints and case dispositions are forwarded only upon a finding of delinquency or guilt.

2.00 Submitting Fingerprints & Photograph to CCRE: §16.1-299 of the Code of Virginia (Current Law)

Section 16.1-299 of the Code of Virginia requires law-enforcement officers to take the fingerprints and photographs of a juvenile when that juvenile is arrested for a delinquent act that would be reportable to the CCRE pursuant to subsection A of §19.2-390 of the Code of Virginia (all felonies and most Class 1 and 2 misdemeanors except DUI, trespass, and disorderly conduct). Whenever fingerprints are taken, a copy must be filed with the juvenile court on forms provided by the CCRE and maintained separately from adult records. Under the law prior to HB 527, if the juvenile, no matter the age, is adjudicated delinquent or found guilty for a felony offense or an offense reportable to the CCRE, the court clerk must send copies of the juvenile's fingerprints and the case disposition to the CCRE.

3.00 The Amendments to §16.1-299 of the Code of Virginia by HB 527 (The New Stuff)

Under the law prior to HB 527, only convictions and adjudications required the court clerk to notify the CCRE. If the juvenile was given a deferred disposition, the clerk of the court did not submit fingerprints or a photograph to the CCRE. HB 527 changes the requirement to submit fingerprints and a photograph to include a felony offenses "*that is dismissed pursuant to the deferred disposition provisions of §16.1-278.8.*"

3.10 So, when are Fingerprints & the Disposition Sent by the Clerk to the CCRE?

The clerk of the court must forward copies of a juvenile's fingerprints and a report of the disposition to the CCRE and to the jurisdiction that made the arrest on a juvenile of any age when that juvenile:

- is convicted of a felony (not new),
- is adjudicated delinquent for a felony (not new),
- has a case involving a felony offense that is "*dismissed pursuant to the deferred disposition provisions of §16.1-278.8*"(NEW!), or
- is convicted or adjudicated delinquent for any offense requiring a report to the CCRE as required by subsection C of §19.2-390 (not new).

3.11 What Offenses Require Reports to the CCRE? §19.2-390 of the Code of Virginia. Subsection C of §19.2-390 of the Code of Virginia lists the offenses for copies of a juvenile's fingerprints and a report of the disposition must be sent to the CCRE and to the jurisdiction making the arrest by the clerk of the court which heard the case. The offenses requiring reports to the CCRE are:

- treason;
- any felony;
- any offense punishable as a misdemeanor under Title 54.1; or
- any misdemeanor punishable by confinement in jail except an arrest for trespass (§18.2-119, disorderly conduct (Article 2 of Chapter 9 of Title 18.2, §18.2-415 et seq.) or any similar ordinance of any county, city, or town, or desertion or nonsupport of spouse (§20-61).

3.20 When Case Can be Deferred & Dismissed in Juvenile Court – Delinquency Proceedings?

Subsection A of §16.1-278.8 of the Code of Virginia provides the juvenile court with the dispositional option for a juvenile found to be delinquent. Subdivision 4 allows the juvenile court to defer disposition for a specified time after which the charge may be dismissed by the judge if the juvenile exhibits good behavior during the period for which disposition is deferred. Subdivision 5 allows the court to withhold the disposition but place the juvenile on probation under such conditions and limitations as the court may prescribe. If the juvenile fulfills the terms and conditions, the court must discharge the juvenile and dismiss the proceedings against him. Thus, while the evidence is sufficient for a finding of guilt, the court shall discharge and dismiss the petition under these provisions without an adjudication of guilt.

4.00 Who has Access to the Information in the CCRE? §19.2-389 of the Code of Virginia

Section §19.2-389 of the Code of Virginia governs the dissemination of the criminal history records maintained in the CCRE. All criminal justice agencies have access to the information in the CCRE. The CCRE conducts criminal record searches for non-criminal justice entities and individuals for employment purposes as authorized by §19.2-389 of the Code of Virginia. Criminal record searches are authorized for employment purposes in such facilities as: licensed homes for adults, Virginia Power, district homes for adults, day care centers for children and adults, nursing homes, volunteers/employees of child welfare agencies, foster/adoptive cases, private security, and employment by certain school boards. Under the provisions of this bill, despite a juvenile court ruling that the case should be dismissed, the juvenile's fingerprints and case disposition will be included in the CCRE.

HB 1258 Expungement of Electronic Juvenile Court Records
Delegate Dave W. Marsden

HB 1258 amends §16.1-306 of the Code of Virginia relating to the destruction of juvenile records. Effective July 1, 2008.

1.00 Summary: Electronic Court Records Must be Expunged

HB 1258 requires that when a clerk destroys records pursuant to a juvenile record expungement, he shall destroy all records, including electronic records.

2.00 What Are the Expungement Laws for the Juvenile Court?

Section 16.1-306 of the Code of Virginia requires the juvenile court clerk on January 2nd of each year to destroy files, papers, and records, including electronic records, connected with any proceeding involving a juvenile if the juvenile has attained the age of 19 and five years have elapsed since the date of the last hearing in the case.

2.10 Felony Adjudications are Not Expunged

If the juvenile was found guilty of a delinquent act that would be a felony if committed by an adult, the records must be retained.

2.20 All Other Case Records must be Expunged

Excluding felony cases, §16.1-306 of the Code of Virginia covers all files, papers, and records connected with any proceeding involving a juvenile in that court.

2.30 What Does HB 1258 Do?

As enacted, HB 1258 only clarifies that the destruction of court records includes the destruction of those records in electronic format.

3.00 Record Destruction by Public Agencies, Including DJJ (Not New)

Record destruction for public agencies is governed by Chapter 7 of Title 42.1 (Virginia Public Records Act, §42.1-76 et seq.). Section 42.1-82 of the Code of Virginia requires the State Library of Virginia to issue regulations concerning procedures for the disposal, physical destruction, or other disposition of public records. Section 42.1-86.1 of the Code of Virginia prohibits any agency from destroying or discarding a public record unless the record appears on a records retention and disposition schedule approved by the State Library. Under the procedures issued by the State Library, DJJ destroys its records on a juvenile when that juvenile attains the age of 26.

HB 1254 Sharing Juvenile Records: Correct Name for ICE
Delegate Dave W. Marsden

HB 1254 amends §16.1-309.1 of the Code of Virginia relating to the sharing of juvenile record information (Correcting ICE). Effective July 1, 2008.

1.00 Summary: Correcting the Title of ICE in § 16.1-309.1 of the Code of Virginia

HB 1254 amends §16.1-309.1 of the Code of Virginia relating to the sharing of juvenile record information. As passed, the bill changes the name of the "United States Immigration and Customs Enforcement Agency" to the "Bureau of Immigration and Customs Enforcement of the United States Department of Homeland Security" as the agency to which a juvenile intake officer must report a juvenile who has been detained in a secure facility based on an allegation that the juvenile committed a violent juvenile felony and who the intake officer has probable cause to believe is in the country illegally.

2.00 What HB 1254 Would Have Done as Introduced & Amended by the House

As introduced, HB 1254 would have, for the first time, mandated all DJJ employees to release, to law enforcement and the local gang task force, information relating to criminal street gang involvement or the gang-related activity of others. The House amended the bill to also require the juvenile's identifying information to accompany any such release. In the Senate, concern was raised that the

House version was doing something never previously required of juvenile information and would have a chilling effect upon DJJ employees' relationships and communications with juveniles under supervision (because DJJ staff, including therapists in juvenile correctional centers, would have been required to disclose gang-related information obtained through any communications, including counseling or other treatment services). Members of the House supported and those of the Senate strongly opposed the mandated reporter part of the bill, and each chamber refused the amendments offered by the other. Ultimately, in conference committee, all amendments relating to the release of juvenile gang information were removed from the bill.

Protective Orders & Domestic Relations

HB 753 & SB 540 VCIN & Sending Protective Order Information
Delegate Christopher K. Peace & Senator Mark D. Obenshain

HB 753 & SB 540 amend §§16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 19.2-152.8, 19.2-152.9, 19.2-152.10, and 19.2-390 of the Code of Virginia relating to protective orders and the Virginia Criminal Information Network (VCIN).

1.00 Brief Synopsis: Expediting Submission of Protective Order Information in VCIN

HB 753 & SB 540 amend §§16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 19.2-152.8, 19.2-152.9, 19.2-152.10, and 19.2-390 of the Code of Virginia relating to protective orders and the Virginia Criminal Information Network (VCIN).

HB 753 & SB 540 provide that when a protective order is issued, the district court must forthwith, but no later than the end of the business day on which the order was issued, enter and transfer identifying information to VCIN. If the order is issued by the circuit court, the primary law-enforcement agency to whom the order was forwarded by the clerk of the court must enter the name of the person subject to the order and other appropriate information into VCIN. The bill also establishes the precise time when protective orders expire so that they can automatically be cleared from VCIN. The bill also requires, with some exceptions, that clerks make electronic reports of certain proceedings or adjudications to the Central CCRE and defines the term "electronic report."

2.00 Statutory Background: Issuing Protective Orders (Old Stuff)

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

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 that 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, 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, and 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 (EPO): §16.1-253.4 of the Code of Virginia

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 §16.1-260 of the Code of Virginia, 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 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: §16.1-253 of the Code of Virginia

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: §16.1-253.1 of the Code of Virginia

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 §16.1-279.1 of the Code of Virginia

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: §16.1-279.1 of the Code of Virginia

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 §§16.1-253.1, 16.1-253.4, and 16.1-279.1 of the Code of Virginia. The Executive Secretary was required to make the written statement available to law enforcement and to each court service unit for distribution.

4.00 What is Virginia Criminal Information Network or VCIN?

Chapter 2 (§52-12 et seq.) of Title 52 of the Code of Virginia establishes the Virginia Criminal Information Network to be maintained by the Department of State Police. VCIN is available to any department or division of state government meeting the definition of a criminal justice agency as contained in §9.1-101 of the Code of Virginia such as a county, city, or college campus police department, special police departments maintained by corporations in Virginia, and federal criminal justice agencies. The type of information available to law -enforcement agencies includes information relating to wanted persons, missing persons, stolen vehicles, and the issuance and existence of protective orders.

5.00 The Changes to the Protective Orders: Who Enters Information into VCIN?

HB 753 & SB 540 change who is responsible for initially entering information about the issuance of a protective order into VCIN and expedite the timeframes for entering the information. Under current law, the local law-enforcement agency is responsible for entering the name of the person subject to the protective order and other appropriate information required by the State Police into VCIN. When the juvenile court issues a protective order under §§16.1-253, 16.1-253.1, 16.1-253.4 and 16.1-279.1 of the Code of Virginia, law enforcement enters the order into VCIN upon receipt of the order.

5.10 The Juvenile Court Will Now Enter the Protective Order Information (New)

HB 753 & SB 540 now require the court issuing the protective order to enter the order and all other required information into VCIN "forthwith" but in no case later than the end of the business day. The information required by VCIN can be sent electronically. A copy of the protective order and an addendum containing other identifying information must be sent to *"the primary law-enforcement agency responsible for service and entry of protective orders."* Upon receipt of the order and addendum by the primary law-enforcement agency (local law enforcement), the local law-enforcement agency must verify and enter any modification as necessary to the identifying information and other appropriate information previously entered into VCIN. The local law-enforcement agency must then provide service in person on the allegedly abusing person as provided in §16.1-264 of the Code of Virginia.

5.20 When Circuit Court Issues Protective Order, Circuit Court Shall Enter Information* (New)

If the protective order is issued by the circuit court, the clerk of the circuit court shall *"forthwith forward an attested copy of the order and an addendum containing identifying information to the primary law-enforcement agency providing service and entry of protective orders . . ."* Upon receipt of the order and addendum, the local law-enforcement agency must then enter the required information into VCIN. The local law-enforcement agency is then required to make service on the allegedly abusing person.

> *However, there is a caveat. The second enactment clause exempts the circuit court from this requirement until July 1, 2009, if the circuit court is not part of the Supreme Court's case management system.

5.30 Receipt of Service Information Goes into VCIN Immediately (New)

Upon receipt of the return of service or other proof of service pursuant to subsection C of §16.1-264 of the Code of Virginia, the clerk shall forthwith forward an attested copy of the preliminary protective order to the primary law-enforcement agency, and the agency shall forthwith verify and enter any modification as necessary into VCIN.

5.40 Protective Order - Modified or Dissolved Information Goes into VCIN Immediately (New)

If the protective order is later dissolved or modified, a copy of the dissolution or modification order must be sent immediately to the primary law-enforcement agency responsible for service and entry of protective orders. The primary law-enforcement agency must *"verify and enter any modification as necessary to the identifying information"* required by VCIN immediately.

6.00 Stalking Orders

A stalking order can be issued when there is probable cause to believe that the person is subject to being or has been subjected to stalking or a criminal offense resulting in a serious bodily injury to the alleged victim, and a warrant for the arrest of the alleged stalker has been issued. A stalking order can prohibit contacts by the respondent with the alleged victim or that person's family and any other conditions necessary to prevent acts of stalking, or criminal offenses resulting in injury to person or property, including any communication of any kind. Similar to protective orders, there are three types of stalking orders (an emergency stalking order, a preliminary stalking order, and the final stalking order). The timeframes for issuing the stalking orders and their validity are similar, too.

6.10 Emergency Stalking Orders: §19.2-152.8 of the Code of Virginia

Section 19.2-152.8 of the Code of Virginia provides the circuit court, the juvenile court or a magistrate the authority to issue an EPO in stalking cases in order to protect the health or safety of any person.

6.11 Expiration is Now the End of the Next Business Day (New). An EPO expires at the *"end of the third day following issuance."* If the expiration occurs at a time that the court is not in session, the EPO shall be extended until the end of the next business day that the court that issued the order is in session. The Code previously stated that the protective order would expire at 5:00 p.m. on the next business day.

6.20 Preliminary Stalking Orders: §19.2-152.9 of the Code of Virginia

Section 19.2-152.9 of the Code of Virginia allows the court to issue a preliminary protective order. The preliminary order is valid for 15 days.

6.30 The "Final or Permanent" Stalking Order: §19.2-152.10 of the Code of Virginia

Section 19.2-152.10 of the Code of Virginia gives the court the authority to issue a protective order. The protective order may be issued for a specified period; however, a protective order may not be issued for a period longer than two years.

6.31 Clarification on Two-Year Expiration Date (New). HB 753 & SB 540 added language to §19.2-152.10 of the Code of Virginia that the "*protective order shall expire at the end of the last day identified for the two-year period and if no date is identified, it shall expire at the end of the two years following the date of issuance*."

7.00 Electronic Court Reports to the CCRE (New)

Section 19.2-390 of the Code of Virginia requires local law enforcement, court clerks and other state agencies to make reports to the CCRE or VCIN. When a warrant or capias has been issued, subsection B of §19.2-390 of the Code of Virginia requires local law enforcement to enter all required information into VCIN within 72 hours. The information shall include the person's name, date of birth, and social security number. Subsection C requires the circuit court clerk or the juvenile court clerk to make a report to the

CCRE on the disposition of the case. HB 753 & SB 540 insert language allowing that report to be made electronically.

7.10 Definition of "Electronic Report" (New)

HB 753 & SB 540 add language to §19.2-390 of the Code of Virginia defining "electronic report." An "*electronic report . . . means a report transmitted to, or otherwise forwarded to, the Central Criminal Records Exchange in an electronic format approved by the Exchange*." The new language also requires that the report contain "*the name of the person convicted and all aliases . . . the date and locality of the conviction, his date of birth, social security number, last known address, and specific reference to the offense including the Virginia Code section and any subsection, the Virginia crime code for the offense, and the offense tracking number for the offense for which he was convicted*."

7.00 Second Enactment Clause: Delayed Effective Date for Some Circuit Courts

The effective date is July 1, 2008, for juvenile courts and those circuit courts using the Supreme Court's case management system. For those circuit courts not using the Supreme Court's case management system, the effective date is July 1, 2009.

Other Domestic Relations-Related Legislation

- **SB 330 Custody & Visitation Cases & Admissibility of Mental Health Records (Senator Frederick M. Quayle).** *SB 330 repeals §20-124.3:1 of the Code of Virginia*. Prior to SB 330, §20-124.3:1 of the Code of Virginia provided that in cases in which custody or visitation of a child is at issue, the mental health records concerning a parent were privileged and confidential, and the mental health care provider could not be required to testify on behalf of or against a parent or any of the parent's adult relatives. With §20-124.3:1 gone, the mental health records concerning a parent can be used, and the mental health care provider can be required to testify.
- **SB 764 Address Confidentiality for Victims of Domestic Violence Pilot Program (Senator Patricia S. Ticer).** *SB 764 amends §2.2-515.2 of the Code of Virginia, and amends and reenacts the second and third enactments of Chapter 599 of the Acts of Assembly of 2007*. During the 2007 session, the General Assembly enacted SB 938 (Senator Ticer) that required the Statewide Facilitator for Victims of Domestic Violence in the Office of the Attorney General to establish an "Address Confidentiality Program" to protect victims of domestic violence by authorizing the use of designated addresses for such victims. The program was launched as a pilot and limited to Arlington County. In the 2008 session, SB 764 expands the pilot program to include the counties of Albemarle, Arlington, Augusta, Dickenson, Fairfax, Henry, Lee, Rockbridge, Russell, Scott, Washington, and Wise as well as the Cities of Buena Vista, Charlottesville, Lexington, Martinsville, Norfolk, and Roanoke. SB 764 amends §2.2-515.2 of the Code of Virginia to allow staff at domestic violence programs to assist a person with determining whether the person is eligible and should apply for the address confidentiality program. SB 764 also removes persons who are on parole or probation or the sex offender registry from participating in the address confidentiality program. SB 764 continues the pilot program until the 2011 General Assembly session.

- **HB 1179 Assault & Battery Against Family Member & Presumption of Bail (Delegate L. Scott Lingamfelter)**. *HB 1179 amends §19.2-120 of the Code of Virginia by adding a presumption, subject to rebuttal, against admitting to bail any person who is arrested for felony assault and battery against a family or household member when that person has two previous convictions under §18.2-57.2 (assault and battery against a family or household).*
- **SB 173 Domestic Violence Cases & Retention of Records (Senator Harry B. Blevins).** *SB 173 amends §§16.1-69.55 and 17.1-213 of the Code of Virginia relating to retention of records in domestic violence cases.* SB 173 provides that records in cases involving misdemeanor convictions for assault and battery against a family or household member pursuant to §16.1-253.2 of the Code of Virginia or violating a protective order under §18.2-57.2 of the Code of Virginia shall be retained for 20 years. A third conviction for these crimes within 20 years is a felony; however, currently, such records are required to be retained only for 10 years.
- **HB 713 Extending Stalking Protective Orders up to Six Months if Respondent Fails to Appear at Hearing (Delegate William R. Janis).** *HB 713 amends §19.2-152.9 of the Code of Virginia relating to preliminary protective orders in stalking cases.* HB 713 allows the court to extend a preliminary protective order for a period of up to six months if the respondent fails to appear at the hearing. Language mirrors subsection B of §16.1-253.1 of the Code of Virginia relating to preliminary protective orders in family abuse cases.
- **HB 965 Victims' Compensation Fund & Stalking Victims (Delegate Stephen C. Shannon)**. *HB 965 amends §19.2-368.2 of the Code of Virginia to allow people who have been stalked to be eligible to collect from the Victims' Compensation Fund.*
- **HB 1257 Child Support Enforcement & Intensive Case Monitoring Pilot Programs (Delegate Dave W. Marsden).** *HB 1257 authorizes DSS to establish, in four jurisdictions, intensive case monitoring pilot programs for child support enforcement to reduce jail overcrowding, provide less costly child support enforcement alternatives, and maximize the potential for child support payments.* Non-custodial parents (NCP) for whom routine enforcement processes have proven ineffective would be referred to this program by judges in four courts or by voluntary participation. As amended, this bill has an enactment clause that provides it shall not become effective unless a general fund appropriation is provided by the 2008 General Assembly.[1]
- **SB 313 No Child Support for Persons Sentenced to Life in Prison Without Parole (Senator John S. Edwards)**. *SB 313 amends §20-108.2 of the Code of Virginia to clarify that only parents who are imprisoned for life with no chance of parole are exempted from paying the presumptive minimum child support obligation of $65 per month.* Under the law prior to SB 313, all parents who are imprisoned with no chance of parole are exempted.
- **SB 633 Prisoners & Notification of Child Support Payments (Senator Patricia S. Ticer)**. *SB 633 amends the Code of Virginia by adding §53.1-31.2*. SB 633 requires DOC, working in cooperation with the Division of Child Support Enforcement, to identify, at least annually, prisoners of whom child support payments are required pursuant to a court order and the amount of child support required of the prisoner pursuant to the order.

[1] See Fiscal Impact Statement, Department of Planning and Budget, February 28, 2008, at http://leg1.state.va.us/cgi-bin/legp504.exe?081+oth+HB1257FER122+PDF.

Sex Offender Legislation

SB 590 Sex Offender & Crimes Against Minors Registry (Adam Walsh Act)
Senator Janet D. Howell

SB 590 amends §§9.1-902, 9.1-908, and 9.1-910 of the Code of Virginia relating to the Sex Offender Registry. Effective July 1, 2008.

This bill was submitted on behalf of the Office of the Attorney General with the intent to bring Virginia into compliance with the federal Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. § 16901 et seq.).

1.00 How does a Juvenile Get Placed on the Sex Offender & "Murderer" Registry?

Generally, there are three ways under current law for a juvenile to be required to register:

- "*From Circuit Court*" - a juvenile who has been convicted as an adult in circuit court of an offense for which registration with the Sex Offender Registry is required, whether sentenced as an adult or juvenile;
- "*From Juvenile Court*" - a juvenile, over the age of 13 at the time of the offense, adjudicated delinquent of an offense for which registration is required, with the exception of murder and criminal homicide, and so ordered to register by the juvenile court; and
- "*From Out of State*" - a juvenile who moves into Virginia for the purpose of residing, attending school, or employment and is required to register as a sex offender in his former state or was convicted of an offense in his former state that would require registration in Virginia.

Once a juvenile is ordered to register, the same registration requirements imposed on adults apply to that juvenile. There is no distinction between an adult and a juvenile. Therefore, any juvenile who is required to register will have his photograph, residence, and place of employment posted on the Internet. Like an adult, a juvenile must reregister in person within ***three days*** of a change in residence and employment. The juvenile must reregister electronically or in person within 30 minutes of changing his electronic mail address information.

2.00 New Offenses Requiring Registration: Solicitation of a Minor Via Electronic Means

Under current law, only subsection C of §18.2-374.3 of the Code of Virginia (solicitation of a child under 15 for sexual acts via computer or other electronic means) is an offense requiring registration on the Sex Offender Registry (SOR). SB 590 adds the remainder of the offenses under §18.2-374.3 of the Code of Virginia to the list of crimes requiring registration as a non-violent sex offender (15 years). Those offenses concern use of a communications system as follows.

2.10 Use of Communications System to Solicit Indecent Liberties or Child Pornography: §18.2-374.3 (B) of the Code of Virginia

For *any person* using a communications system to procure or promote the use of a minor for taking indecent liberties with a child (§18.2-370) or producing child pornography (§18.2-374.1), a

violation of subsection B of §18.2-374.3 of the Code of Virginia is a Class 6 felony. Subsection B does not distinguish between adults and juveniles.

2.20 Use of Computers or Other Electronic Means to Solicit Child Between 15 & 18: §18.2-374.3 (D) of the Code of Virginia

For any person using a communications system to solicit a child 15 years of age but less than 18 years of age to engage in sexual acts if the perpetrator is at least seven years older than the child, a violation of subsection D of §18.2-374.3 of the Code of Virginia is a Class 5 felony. A second conviction requires a mandatory minimum of one year in prison.

2.30 Soliciting Via Electronic Means Any Child under 18 for Prostitution, Sex or Pornography: §18.2-374.3 (E) of the Code of Virginia

For any person over 18 using a communications system to solicit any person he knows or has reason to believe is a child less than 18 years of age for prostitution (§18.2-355), crimes against nature (§18.2-361), producing child pornography (§18.2-374.1), or possessing child pornography (§18.2-374.1:1), a violation of subsection E of §18.2-374.3 of the Code of Virginia is a Class 5 felony.

3.00 New Length of Time for Registering for Non-Violent Sexual Offenses: 15, 25, & Life

Section 9.1-902 of the Code of Virginia defines those offenses that are considered violent sexual offenses and those that are not. Section 9.1-910 of the Code of Virginia defines the length of time a person must register before petitioning the court for relief. Under current law, a person convicted of a violent sexual offense must register for life, and a person convicted of a "non-violent" offense cannot petition the court for relief until 10 years has passed. SB 590 amends §9.1-910 of the Code of Virginia to divide the registration requirements for "non-violent" sexual offenses into two categories.

3.10 Category 1: Non-Violent Sex Offenders Register for 15 Years

SB 590 now requires a person convicted of a "non-violent" sexual offense to register for 15 years rather than 10 years.

3.20 Category 2: Pedophiles Register for 25 Years

If a person is convicted of §18.2-64.1 (carnal knowledge of certain minors involved in the juvenile justice system), subsection C of §18.2-374.1:1 (producing child pornography), or subsection C, D, or E of §18.2-374.3 (solicitation of a minor under 15 years of age by electronic means) of the Code of Virginia, then that person will be required to register for 25 years.

3.30 Category 3: New Crimes Defined as Violent Sex Offenders Register for Life

SB 590 added two new offenses under the definition of violent sexual offender that requires lifetime registration.

4.00 New Violent Sex Offender: Carnal Knowledge of a Child 13 or 14 years Old

SB 590 requires persons convicted of carnal knowledge of a child 13 or 14 years of age to register as a violent sex offender if the person convicted was more than five years older than the victim (subsection A of §18.2-63 of the Code of Virginia, carnal knowledge if the victim is age 13 or 14 - two or more convictions would still be required for subsection B of §18.2-63).

4.10 What is the Law Under §18.2-63 of the Code of Virginia? Carnal Knowledge of a Minor

Subsection A of §18.2-63 of the Code of Virginia makes it a Class 4 felony for a person to engage in consensual sexual intercourse with a child between 13 and 15 years of age. Subsection B makes it a Class 6 felony if a minor engages in sexual intercourse with a child 13 years of age but under 15 years of age when the accused is more than three years older than the child. It is a Class 4 misdemeanor if the victim is between the ages of 13 and 15 and the perpetrator is less than three years older than the child.

5.00 Does Significantly Scaled Down Version Comply with Adam Walsh?

Due to a significant fiscal impact, a scaled down version of SB 590 was passed. The provision of SB 590 that allowed the Commonwealth's attorney the discretion to have a juvenile 14 years of age or older transferred to circuit court when that juvenile is alleged to have committed sexual battery was removed. The provision increasing the first-time conviction for failure to register or reregister from a Class 1 misdemeanor to a Class 6 felony was removed. The most expensive provisions requiring the State Police and probation officers to verify the registration information of sexually violent offenders quarterly instead of semiannually were removed from the bill.

5.10 The Adam Walsh Act

Changes to the federal law will have significant impact upon adult and juvenile sex offenders in Virginia. (See the Adam Walsh Child Protection and Safety Act of 2006, 42 USCS §§ 16901 et seq. [enacted July 27, 2006].) The purpose of the Act is to protect the public, in particular children, from violent sex offenders through the establishment and utilization of a comprehensive national system for the registration of sex offenders. The Act provides for state conformity to various aspects of sex offender registration, including:

- information that must be collected,
- duration of registration requirement for classification of offenders,
- verification of Registry information,
- access to and sharing of information, and
- penalties for failure to register.

This is a federal mandate. A state's failure to comply with the federal requirements within three years of the implementation of the Act will result in a 10% reduction in funding under the Omnibus Crime Control and Safe Street Act of 1968 (OCCSSA). The Act also offers grants to jurisdictions in enforcing registration requirements. The Act defines a conviction for the purposes

of registration and classification to include juvenile adjudications if the juvenile offender is at least 14 years of age at the time of the offense and the offense adjudicated is comparable or more severe than the federal offense of aggravated sexual abuse (as described in 18 USCS §2241) or was an attempt or conspiracy to commit such offense. The Act defines a three-tier classification for sex offenders. This classification system expands the length of time from 15 years to life that a sex offender must remain on the Registry depending on the severity of the sexual abuse.

5.20 Recent Legislative Event – Illinois

The legislators overrode Governor Blagojevick's veto of a bill allowing judges to decide whether juveniles who committed sex crimes can be removed from the state's SOR if they are *"no longer a danger to the public."* This changes a 2006 law that requires juvenile offenders to register on the adult sex offender list when they turn 17. The override means that, beginning June 1, 2008, juvenile offenders guilty of a felony will be able to petition a judge for removal from the list five years after being sentenced. Juveniles guilty of misdemeanors will be able to petition within two years of sentencing.

Other states, such as Delaware and Florida, have recently implemented laws that would put them into compliance with, and may be interpreted as stricter than, the Adam Walsh Act.

5.30 Recent Court Events – Retroactivity

In May 2007, the Attorney General of the United States issued proposed Guidelines for the Implementation of the Adam Walsh Act. The Guidelines provided that implementation of the Act will be retroactively applied. The Guidelines anticipate individuals who: (1) are currently incarcerated or under supervision, either for the predicate sex offense or other crime; (2) are already registered or subject to a pre-existing sex offender registration requirement under the jurisdiction's law; or (3) reenter the jurisdiction's justice system because of a conviction for some other crime (whether or not a sex offense) will be required to register. The constitutionality (under *ex post facto* challenges) of the retroactive application of the Act remains in dispute and is a subject of litigation in numerous state and federal district courts.

HB 34 New Sexual Offense Against Children – Kissing a Child Under 13
Delegate Riley Ingram

HB 34 amends §9.1-902 of the Virginia Code and adds a section numbered 18.2-370.6 relating to sex offenses against children and the Sex Offender Registry. Effective July 1, 2008.

1.00 New Sex Crime - French Kissing a Child Under the Age of 13: §18.2-370.6 of the Code of Virginia

HB 34 amends §9.1-902 of the Code of Virginia and adds a section numbered 18.2-370.6 relating to sex offenses against children and the SOR. A person 18 years of age or older who, with lascivious intent, kisses a child under the age of 13 on the mouth while knowingly and intentionally penetrating the mouth of such child with his tongue is guilty of a Class 1 misdemeanor.

2.00 Sex Offender Registry for 15 Years

If a person is convicted of kissing a child under the age of 13, that person will be required to register as a sex offender with the State Police for 15 years after July 1, 2008.

HB 902 Sex Offender Registration on All Vehicles
Delegate Robert W. Mathieson

HB 902 amends §9.1-903 of the Code of Virginia relating to registration procedures under the Sex Offender and Crimes Against Minors Registry Act. Effective July 1, 2008.

1.00 What Must a Person Submit at Registration – Picture, Blood, Home, Job, Etc.?

Section 9.1-903 of the Code of Virginia provides the registration requirements for persons who must register as a sex offender under the Sex Offender and Crimes Against Minors Registry Act. Every person required to register must register in person within three days of release from confinement in a state, local, or juvenile correctional facility in a state civil commitment program for sexually violent predators. If a sentence of confinement is not imposed, registration must be done within three days of suspension of the sentence or, in the case of a juvenile, of disposition. A person required to register must submit to being photographed, having a sample of his blood, saliva, or tissue taken for DNA (deoxyribonucleic acid) analysis, providing electronic mail address information, having his fingerprints and palm prints taken, providing information regarding his place of employment, and providing vehicle registration information for all vehicles.

2.00 The New Stuff: All Motor Vehicles, Watercraft, & Aircraft Registration Information is Required

Under the law prior to HB 902, a sex offender must have provided vehicle registration information for all vehicles. However, §9.1-903 of the Code of Virginia does not define "vehicle." HB 902 amends §9.1-903 of the Code of Virginia to clarify that a sex offender must register all vehicles, including registration information on motor vehicles, watercraft, and aircraft.

HB 1044 & SB 114 Sex Offenders & Registration Requirements
Delegate Vivian E. Watts & Senator Ryan T. McDougle

HB 1044 & SB 114 amend §9.1-902 of the Code of Virginia to expand and clarify persons for whom registration or re-registration with the Sex Offender and Crimes Against Minors Registry (SOR) is required. Effective July 1, 2008.

1.00 Registration & Registration Requirements - Timeframes

Section 9.1-902 of the Code of Virginia provides the registration and reregistration requirements for sex offenders. HB 1044 & SB 114 amend §9.1-902 of the Code of Virginia to expand and clarify persons for whom registration or re-registration with the Sex Offender and Crimes Against Minors Registry (SOR). The penalties for providing materially false information to the Registry or failure to meet the registration or re-registration requirements are delineated in §18.2-472.1 of the Code of Virginia. If any of the

registrant's prior convictions is defined as a "sexually violent" offense, a first SOR violation is a Class 6 felony, while a second or subsequent violation is a Class 5 felony. If none of the registrant's prior convictions is defined as a "sexually violent" offense, a first SOR violation is a Class 1 misdemeanor, while a second or subsequent violation is a Class 6 felony.[2]

2.00 HB 1044 & SB 114 Appear to make Technical Amendments

HB 1044 & SB 114 appear to make technical amendments to subsection B of §9.1-902 of the Code of Virginia by moving language from clause 2 to clause 1 within subsection B (subsection C of §18.2-374.3 [use of a communications system to solicit indecent liberties]). HB 1044 & SB 114 add two former sections of the Code to clause 1. One of the two additions involves former subsection D of §18.2-374.1:1 (second or subsequent possession of child pornography). That offense was moved into subsection B of §18.2-341.1:1 in the 2006 session of the General Assembly and currently requires compliance with the Registry requirements. The other addition involves the former clause (iv) of subsection B of §18.2-374.3 (the use of communications systems to solicit a child for indecent liberties). That offense was redefined to eliminate the linkage to the indecent liberties statute (§18.2-370) by explicitly describing the behaviors used to define indecent liberties. As the crimes involved in the two former statutes still require registration, subsection F of §9.1-902 should still require SOR registration. That subsection defines an "(o)ffense for which registration is required" to include any similar offense under the laws of any political subdivision of the United States.

3.00 Prior Legislative History

The General Assembly has revisited §9.1-902 of the Code of Virginia several times in the past five sessions. In the 2007 session, the section was reorganized as part of an expansion of the offenses requiring registration and the information required of registrants. (The legislation also restructured the penalties involving child pornography.) In the 2006 session, there was an expansion of the offenses requiring registration, and the penalties for SOR violations were increased for second violations. In the 2006 session, the offenses requiring registration were expanded, and registration included most juveniles adjudicated delinquent for a Registry offense. In the 2003 session, SOR was moved from Title 19.2 as part of the recodification of Title 9 (now Title 9.1). In addition, the 2006 session of the General Assembly restructured §18.2-472.1 of the Code of Virginia penalties to increase the seriousness of a second or subsequent violation.

[2] This summary is taken from the Virginia Criminal Sentencing Commission. See, Virginia Criminal Sentencing Commission, Fiscal Impact Statement for Proposed Legislation, ID#: 08-4644824, 12/14/2007.

HB 567 Sexual Offenses & Prohibiting Entry onto School Property
Delegate Anne B. Crockett-Stark

HB 567 amends §18.2-370.5 of the Code of Virginia relating to sex offenses prohibiting entry onto school property. Effective July 1, 2008.

1.00 No Violent Sex Offenders on School Property During School Activities

HB 567 amends §18.2-370.5 of the Code of Virginia relating to sex offenses prohibiting entry onto school property. Section 18.2-370.5 of the Code of Virginia makes it a Class 6 felony when adults, convicted of sexually violent offenses, enter onto the property of a school or a child day care center during school hours except when voting or as permitted by a court order. HB 567 provides that every adult who is convicted of a sexually violent offense, as defined in §9.1-902 of the Code of Virginia, shall be prohibited from entering and being present upon any property he knows or has reason to know is a public or private elementary or secondary school or child day center property during school-related and school-sponsored activities. Currently, the prohibition only applies during school hours.

1.10 Petition for Limited Access

Under certain circumstances detailed in the statute, an adult prohibited from entrance may petition a J&DR court or circuit court where the school or day care center is located for permission to enter the property.

1.20 As Introduced, HB 567 Would Have Banned Sex Offenders Completely

As introduced, HB 567 would have banned violent sexual offenders from school property completely and forever. However, there were concerns that schools play host to non-school activities such as religious activities and Alcoholics Anonymous. Therefore, the ban was limited to school-sponsored activities.

2.00 2007 Legislation Banned Violent Sexual Offenders from School Property

Section 18.2-370.5 of the Virginia Code was enacted by the General Assembly in 2007 with the restriction that the prohibition applies only during school hours (see HB 2344 & SB 927). Prior to this enactment and beginning July 1, 2006, adults convicted of certain sex offenses were prohibited only from working on school property (see §18.2-370.4 of the Code of Virginia).

2.10 Impact Upon CSUs & Juvenile Courts (Intake Petitions)

The judiciary, court clerk's offices, and juvenile court services units were affected when individuals sought to petition for permission to enter school or day care property due to legislative changes made in 2007. Last year, HB 2344 & SB 927 amended §16.1-241 of the Code of Virginia, which is the jurisdictional section for the juvenile court. HB 2344 & SB 927 allowed an adult prohibited from entry onto school property under §18.2-370.5 of the Code of Virginia to petition the J&DR 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. Pursuant to §16.1-260 of the Code of Virginia, the processing of petitions to initiate a case in juvenile court was the responsibility of the intake officer.

HB 223 Sex Offenders & Banning Proximity to Children
Delegate John A. Cosgrove

HB 223 amends §§18.2-10 and 18.2-370.2 of the Code of Virginia relating to sex offenses prohibiting proximity to children. Effective July 1, 2008.

1.00 Sex Offender Ban on Proximity to Locally Operated Playgrounds, Athletic Fields, & Gymnasiums

HB 223 amends §§18.2-10 and 18.2-370.2 of the Code of Virginia relating to sex offenses prohibiting proximity to children. Essentially, HB 223 bans certain sex offenders from coming within 100 feet of any locally operated playground, athletic field, or gymnasium.

2.00 Before HB 223, Law Banned Certain Sex Offenders from Proximity to Primary, Secondary, & High Schools

Prior to HB 223, §18.2-370.2 of the Code of Virginia banned an "adult" convicted of a sexual offense prohibiting proximity to children from loitering within 100 feet of the premises of any place he knew or had reason to know was a primary, secondary, or high school.

2.01 Only Offenses After July 1, 2000. The school ban only applies to offenses occurring on or after July 1, 2000.

2.02 Ban Only Applies to Adults & Convictions. The ban only applies to adults and only to convictions. Adjudications in juvenile court do not fall under the ban.

2.03 No Right to Petition for Relief of Limited Access. The ban is "forever." There is no method for petitioning the court for relief from the ban. Also, unlike §18.2-370.5 of the Code of Virginia, there is no method for petitioning the court for limited access.[3]

2.10 Child Day Care Proximity Ban Began in 2006

In 2006 the General Assembly prohibited any adult who committed an offense prohibiting proximity to children from loitering within 100 feet of the premises of any place he knew or had reason to know was a child day program as defined in §63.2-100 of the Code of Virginia. The ban only applies to offenses occurring on or after July 1, 2006. The ban is forever.

2.11 What are Child Day Programs? Section 63.2-100 of the Code of Virginia defines "child day program" as "*a regularly operating service arrangement for children*

[3] In 2007 the General Assembly enacted HB 2344 & SB 927 that created §18.2-370.5 of the Code of Virginia 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. The sexually violent offender may petition the juvenile court for limited access.

where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period."

3.00 The New Proximity Ban: Playgrounds, Athletic Fields, & Gymnasiums (New Stuff)

HB 223 adds subsection C to §18.2-370.2 of the Code of Virginia to prohibit an adult who is convicted of an offense prohibiting proximity to children *"be forever prohibited from going, for the purpose of having any contact whatsoever with children that are not in his custody, within 100 feet of the premises of any place owned or operated by a locality that he knows or should know is a playground, athletic field or facility, or gymnasium."*

3.01 Ban only Applies to Offenses Occurring on or After July 1, 2008

The ban only applies *"when the offense occurred on or after July 1, 2008."*

4.00 What are the Offenses Prohibiting Proximity to Children?

Subsection A of §18.2-370.2 of the Code of Virginia lists the offenses prohibiting proximity to children. The list of offenses includes a violation of the offenses or an attempt to commit a violation of the offense. The list is divided into three categories.

4.10 Category 1: Victim is a Minor

The first category involves offenses where the victim is a minor. Those offenses are:

- subsection A of §18.2-47 (abduction and kidnapping),
- clause (ii) of §18.2-48 (abduction of any person with intent to defile),
- clause (iii) of §18.2-48 (abduction of a child under 16 for the purpose of prostitution),
- subsection B of §18.2-361 (crimes against nature), and
- subsection B of §18.2-366 (adultery and fornication by persons forbidden to marry).

4.20 Category 2: Sex Offenses Involving Children

The second category involves criminal sexual conduct where the victim is a child. Those offenses are:

- (ii) subsection A (iii) of §18.2-61 (rape of child under 13),
- §18.2-63 (carnal knowledge of child between 13 and 15),
- §18.2-64.1 (carnal knowledge of certain minors by DJJ staff et al.),
- subdivision A 1 of §18.2-67.1 (forcible sodomy of child under 13),
- subdivision A 1 of §18.2-67.2 (object sexual penetration of child under 13),
- subdivision A 1 of §18.2-67.3 (aggravated sexual battery of a child under 13),
- A 4 (a) of §18.2-67.3 (aggravated sexual battery of a child between 13 and 15 with force),
- §18.2-370 (taking indecent liberties with children),
- §18.2-370.1 (taking indecent liberties with child by person in custodial relationship),
- clause (ii) of §18.2-371 (consensual sexual intercourse with a child 15 or older),

- §18.2-374.1 (producing child pornography),
- §18.2-374.1:1 (possession or distributing child pornography), and
- §18.2-379 (employing or permitting minor in child pornography).

4.30 Category 3: Those Offenses Committed after July 1, 2006

As of July 1, 2006, "offense prohibiting proximity to children" includes a violation of §18.2-472.1 (failure to properly register as a sex offender) of the Code of Virginia when the offense requiring registration was one of the above-listed offenses.

HB 622 Sexual Offenders Cannot Reside Within 500 Feet of Public Park
Delegate Robert H. Brink

HB 622 adds subsection C to §18.2-370.3 of the Code of Virginia that bans sex offenders from residing within 500 feet of public parks. Effective July 1, 2008.

1.00 What was the Law Prior to HB 622? Ban on Residences Near Schools & Day Care Centers

Under the law prior to HB 622, §18.2-370.3 of the Code of Virginia prohibited a person convicted after July 1, 2006, of raping a child under the age of 13 (clause (iii) of subsection A of §18.2-61), forcible sodomy of a child under the age of 13 (subdivision A 1 of §18.2-67.1), or object sexual penetration of a child under the age of 13 (subdivision A 1 of §18.2-67.2) from residing within 500 feet of the premises of any place he knows or has reason to know is a child day center as defined in §63.2-100 of the Code of Virginia, or a public or private primary, secondary, or high school. A violation would be a Class 6 felony. The violent sex offense of the child must have been done during the commission of a kidnapping (§18.2-47 or §18.2-48), burglary (§18.2-89, 18.2-90, or 18.2-91), or an aggravated malicious wounding (§18.2-51.2).

1.10 §18.2-370.3 of the Code of Virginia Applies Only to Adults & New Residences

Section 18.2-370.3 of the Code of Virginia applies only to adults. Section 18.2-370.3 of the Code of Virginia is not retroactive. A sex offender is not in violation of §18.2-370.3 of the Code of Virginia if the sex offender resided within 500 feet of a residence before the conviction.

2.00 New: Sex Offenders Cannot Reside Near Public Parks as of July 1, 2008

HB 622 adds subsection C to §18.2-370.3 to the Code of Virginia that bans sex offenders from residing within 500 feet of public parks. The ban from residing within public parks mirrors the prohibition from residing near schools and daycare centers. The ban applies to sex offenders convicted of raping a child under the age of 13, forcible sodomy of a child under the age of 13, or object sexual penetration of a child under the age of 13. The violent sexual offense must have occurred during the commission of a kidnapping, burglary, or an aggravated malicious wounding (§18.2-51.2). The ban only applies to convictions after July 1, 2008. A sex offender is not in violation of §18.2-370.3 of the Code of Virginia if the sex offender resided within 500 feet of a residence before the conviction.

HB 534 Cross Checking Sex Offender Information Between State Police & Department of Motor Vehicles
Delegate Robert W. Mathieson

HB 534 amends §46.2-330 of the Code of Virginia relating to sex offenders and expiration and renewal of driver's licenses. Effective July 1, 2009.

1.00 What is §46.2-330 of the Code of Virginia? Driver's License Renewal

Section 46.2-330 of the Code of Virginia establishes when a person is required to renew his driver's license. A driver's license shall expire on the applicant's birthday in years in which the applicant attains an age equally divisible by five.

1.10 Applying or Renewing a Driver's License: Sex Offender Registry Comparison & Photo

Subsection F of §46.2-330 of the Code of Virginia requires the Division of Motor Vehicles (DMV) to electronically transmit application information to the State Police for comparison with information contained in VCIN and the National Crime Information Center Convicted Sexual Offender Registry Files at the time of the renewal of a driver's license. SB 534 adds the requirement that DMV must also send the photograph of the applicant. If the comparison shows that the person has failed to register, then the State Police must obtain a warrant or assist in obtaining an indictment charging a violation of §18.2-472.1 of the Code of Virginia in the jurisdiction in which the person last registered or reregistered or in the jurisdiction where the person made application for licensure.

2.00 New: Now the State Police Must Send DMV SOR Information

HB 534 now requires the State Police to electronically transmit to DMV information on each person required to register as a sex offender. The information includes the person's name, all aliases that he has used or under which he may have been known, his date of birth, and social security number as set out in §9.1-903 of the Code of Virginia.

3.00 New: Sex Offenders Must have Photo Taken by DMV, No Waiver

Subsection C of §46.2-323 of the Code of Virginia requires persons applying for a driver's license to have a photograph taken. HB 534 adds subsection F 2 to §46.2-330 of the Code of Virginia that states that DMV may not waive the photograph requirement for sex offenders.

4.00 Delayed Effective Date: January 1, 2009

Other Sex Offender Legislation

- **HB1439 & SB 241 School Employees Convicted of Certain Sex Offenses or Founded Cases of Child Abuse (Delegate Jeffrey M. Frederick & Senator L. Louise Lucas).** *HB 1439 & SB 241 amend §§ 22.1-253.13:7, 22.1-298.1, 22.1-313, and 63.2-1503 of the Code of Virginia and add a section numbered 19.2-291.1 relating to certain crimes committed by persons holding licenses issued by the Board of Education.* The bills require the clerk of court to notify the Superintendent of Public Instruction and the division superintendent of the conviction of any individual holding a license issued by the Board of Education for a felony involving the sexual molestation, physical or sexual abuse, or rape of a child or involving drugs pursuant to Article 1 (§18.2-247 et seq.) of Chapter 7 of Title 18.2. The bill also requires local school boards to develop policies and procedures for addressing complaints of sexual abuse of a student by a teacher. The State Board of Education must address complaints of sexual abuse of a student by a teacher in its regulations, including termination of a licensed employee because of certain criminal convictions or a founded child abuse or neglect case.
- **HB 844 & SB 74 The Sex Offender Registry & Victim Notification via SAVIN (Delegate Beverly J. Sherwood & Senator Janet D. Howell).** *HB 844 & SB 74 amend the Code of Virginia by adding in Chapter 9 of Title 9.1 a section numbered 9.1-922 relating to the Sex Offender and Crimes Against Minors Registry. Emergency Enactment Clause. Effective from its Passage (March 2, 2008).* HB 844 & SB 74 create §9.1-922 of the Code of Virginia. Upon request of the Compensation Board, the State Police shall provide the Statewide Automated Victim Notification (SAVIN) system with Registry data in an electronic format. The Board or its contractor may use the data for verification of registrant status and notification of victims and law enforcement regarding changes in status of persons on the Registry and shall ensure the confidentiality and security of the data.
- **HB 830 Sex Offender & Affidavit as Evidence when Failure to Register (Delegate Terry G. Kilgore).** *HB 830 amends §18.2-472.1 of the Code of Virginia.* Section 18.2-472.1 of the Code of Virginia provides the penalties for a sex offender who fails to register, reregister, or provides misinformation. Section §9.1-907 of the Code of Virginia provides the procedures to be taken for a sex offender's failure to register or reregister. Whenever a sex offender fails to register or reregister, the State Police will forward to the jurisdiction an affidavit signed by the custodian of the records that such person failed to comply with the duty to register or reregister.[4] The affidavit will be admitted into evidence as prima facie evidence of the failure to comply with the duty to register or reregister in any trial for the violation of §18.2-472.1 of the Code of Virginia. HB 830 simply allows the accused in any hearing or trial in which an affidavit from the State Police is issued and admitted into evidence as required in §9.1-907 of the Code of Virginia to have the right to call the custodian of records issuing the affidavit as an adverse witness. Such witness shall be summoned and appear at the cost of the Commonwealth.
- **HB 597 & SB 608 Sex Crimes: Repeal of the Subsequent Marriage of a Child 14 or Older Defense (Delegate Jennifer L. McClellan & Senator Kenneth W. Stolle).** *HB 597 & SB 608 amend §§18.2-371 and 20-48 of the Code of Virginia and repeal §18.2-66.* Section §18.2-66 of the Code of Virginia created the statutory authority of "subsequent marriage" as a defense of engaging in consensual sexual intercourse with a child 14 years of age or older. The repeal of §18.2-66 of the Code of Virginia removes an exemption for certain individuals who are charged with carnal knowledge of a child in instances where the child is at least 14 years old, the act is

[4] See §9.1-907 of the Code of Virginia.

consensual, and the accused subsequently marries the child. Prior to HB 597 and SB 608, §18.2-66 of the Code of Virginia stated that a court must dismiss the indictment found against the accused if, at the time the spouse reaches the age of 16, the couple is still married and the accused is fulfilling marital obligations. If the accused deserts the spouse without just cause before the spouse reaches the age of 16, the indictment shall be tried.

- **HB 1043 & SB 164 No Polygraphs for Sexual Offense Victims (Delegate Vivian E. Watts & Senator L. Louise Lucas).** *HB 1043 & SB 164 amend §19.2-9.1 of the Code of Virginia*. No law-enforcement officer, attorney for the Commonwealth, or other government official will ask or require a victim of an alleged sexual offense to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an offense.
- **HB 1395 & SB 786 Domestic & Sexual Assault Policies (Delegate Rob B. Bell & Senator Robert C. Deeds).** *HB 1395 & SB 786 amend §9.1-102 of the Code of Virginia and add in Title 9.1 a chapter numbered 13, consisting of sections numbered 9.1-1300 and 9.1-1301. HB 1395 & SB 786 repeal §19.2-81.4 of the Code of Virginia.* HB 1395 & SB 786 require the State Police and all local law enforcement (including sheriffs and campus police) to establish written policies and procedures regarding a law-enforcement officer's response to an alleged criminal sexual assault in violation of Article 7 (Va. Code §18.2-61 et seq.) of Chapter 4 of Title 18.2. The policies must provide guidance as (i) training; (ii) compliance with §§19.2-9.1 and 19.2-165.1 of the Code of Virginia; (iii) transportation of alleged sexual assault victims; and (iv) the provision of information on legal and community resources available to alleged victims of sexual assault. DCJS must provide technical support and submit a report on the status of implementing such policies and procedures.

Gang-Related Legislation

HB 1510 State Police Report on Statewide Gang-Related Criminal Information
Delegate Joe T. May

HB 1510 amends the Code of Virginia by adding §52-28.1 relating to reporting of gang-related criminal information.

1.00 State Crime Report to Carry Gang Data

HB 1510 amends the Code of Virginia by adding §52-28.1 relating to reporting of gang-related criminal information. The bill requires the State Police to include arrest statistics for violations of §§18.2-46.2, 18.2-46.3, 18.2-46.3:1, 18.2-46.3:3, and 18.2-55.1 of the Code of Virginia, which relate specifically to gang-related criminal incidents in the annual Crime in Virginia report.

2.00 The Uniform Crime Reporting System

Under the law prior to HB 1510, Title 52 of the Code of Virginia creates the Department of State Police and provides the statutory authority for its duties and responsibilities. Chapter 6 (§§52-25 et al., Uniform Crime Reporting Program) of Title 52 requires the Superintendent of the State Police to establish a uniform crime reporting system for the purpose of receiving and publishing crime statistics of offenses known, persons arrested, persons charged, and other information pertaining to the investigation of crime and the apprehension of criminals. Section 52-30 of the Code of Virginia requires the State Police to send

the report to the Federal Bureau of Investigation. The report does not contain identifying information. The information in the report is in aggregate form.

2.10 HB 1510, as Introduced, was Very Broad in Scope

As originally introduced, the scope of the arrest data to be included in the report was very broad, and the bill language was vague regarding how information would have been determined to be gang-related versus non-gang-related. The initial substitute adopted by the House of Delegates addressed these issues by limiting the arrest data to that related to gang-related predicate criminal incidents pursuant to §18.2-46.1 of the Code of Virginia. Thereafter, the Senate Courts of Justice committee addressed additional concerns that the term "gang-related predicate criminal act" was open to interpretation and would result in data that was inconsistent and thus not comparable across local jurisdictions. As currently amended, the bill is intended to produce data that is consistent in the way it is collected and comparable across all jurisdictions on criminal street gang activities.

3.00 The Changes Made by HB 1510: Gang Arrest Data Will Included in Report

The result of this bill will be that arrest statistics related to violations of §§18.2-46.2 (prohibited criminal street gang participation), 18.2-46.3 (recruitment of persons for criminal street gang), 18.2-46.3:1 (third or subsequent conviction of criminal street gang crimes), 18.2-46.3:3 (enhanced punishment for gang activity taking place in a school zone), and 18.2-55.1 (hazing of youth gang members unlawful) of the Code of Virginia will be included in the annual Crime in Virginia report. The information provided will be generic and demographical in nature.

Another Gang Bill to Note

- **HB 1117 ABC Board & Suspension & Revocation of Licenses if Meeting Place of Street Gang (Delegate Paula J. Miller).** *HB 1117 amends §4.1-225 of the Code of Virginia relating to alcoholic beverage control suspension and revocation of licenses due to criminal street gang activity.* Section 4.1-225 of the Code of Virginia provides the grounds on which the ABC Board may suspend or revoke alcoholic beverage licenses. HB 1117 amends §4.1-225 of the Code of Virginia so that the ABC Board may suspend or revoke an alcoholic beverage license if it has reasonable cause to believe that the licensee has allowed the premises to become a meeting place or rendezvous for "*members of a criminal street gang as defined in §18.2-46.1*" or persons of ill repute.

Foster Care/Independent Living

HB 1489 DSS & Local DSS to do All Foster Care Plans & Reviews
Delegate William H. Fralin, Jr.

HB 1489 amends §§16.1-281, 16.1-282, and 16.1-282.1 of the Code of Virginia relating to the foster care plan. Effective July 1, 2008.

1.00 Synopsis: DSS & Local DSS to do All Foster Care Plans & Reviews

Prior to HB 1489, a local board of social services or any public agency designated by the community policy and management team would be required to develop a foster care plan for a child placed in foster care through an agreement with the parents or where the local board of social services or the public agency has taken legal custody of the child for the purpose of obtaining services for the child. HB 1489 removes all public agencies, other than a local board of social services, from doing foster care plans.

2.00 Overview of Foster Care Plan & Reviews (Law Remains the Same)

Below is a review of the statutes pertaining to the foster care plan and foster care review and hearing. Substantively, there are no changes other than only DSS and the local DSS will be involved.

2.10 Creation of the Foster Care Plan: §16.1-281 of the Code of Virginia

Section 16.1-281 of the Code of Virginia requires the foster care plan. Prior to HB 1489, a local board of social services or any public agency designated by the community policy and management team would be required to develop a foster care plan for a child placed in foster care through an agreement with the parents or where the local board of social services or the public agency has taken legal custody of the child for the purpose of obtaining services for the child.

2.20 Foster Care Review at Six Months: §16.1-282 of the Code of Virginia

Section 16.1-282 of the Code of Virginia requires a foster care review hearing to be conducted within six months on any child who is a subject of a foster care plan that has been filed with the court pursuant to §16.1-281 of the Code of Virginia.

2.30 Permanency Planning Hearing for Child in Foster Care: §16.1-282.1 of the Code of Virginia

Section 16.1-282.1 of the Code of Virginia requires the court to conduct a permanency planning hearing within 11 months of the foster care review hearing.

HB 825 Minimum Training Requirements for Foster Care & Adoption Workers
Delegate Mamye E. BaCote

HB 825 amends the Code of Virginia relating to minimum training requirements for foster care and adoption workers by adding in Chapter 9 of Title 63.2 a section numbered 63.2-914 and by adding in Article 1 of Chapter 12 of Title 63.2 a section numbered 63.2-1220.1. Effective date July 1, 2008.

1.00 Minimum Training Requirements for Adoption Workers: §§63.2-914 & 63.2-1220.1 of the Code of Virginia (New)

HB 825 requires DSS, pursuant to Board regulations, to establish minimum training requirements and educational programs for foster and adoption workers and supervisors employed by local departments of social services.

- *Technical Note*: Chapter 9 of Title 63.2 is "Foster Care" and Chapter 12 of Title 63.2 is "Adoption."

2.00 Second Reenactment Clause: No New Cost to Localities

A second enactment clause in the bill states that "any costs associated with complying with the provisions of this act shall be absorbed by DSS within the funds appropriated to it by the General Assembly for training and assistance to local staff.

HB 850 & SB 643 Code of Ethics Agreement for Foster Home Placements
Delegate Robert D. Orrock, Sr. & Senator Patricia S. Ticer

HB 850 & SB 643 amend §§63.2-900 and 63.2-902 of the Code of Virginia relating to a Code of Ethics in foster care entrustment agreements. Effective July 1, 2008.

1.00 One Line Synopsis: Code of Ethics Agreement for Foster Home Placements

HB 850 & SB 643 amend §§63.2-900 and 63.2-902 of the Code of Virginia relating to a Code of Ethics in foster care entrustment agreements.

2.00 Regulations Pertaining to Entrustment Agreements: §§63.2-900 & 63.2-319 of the Code of Virginia (No Change)

Section 63.2-900 of the Code of Virginia, in accordance with §63.2-319, allows the local board of social services to enter into entrustment agreements with a parent or parents for the purpose of placing a child under the age of 18 with a suitable family home, a children's residential facility or an independent living arrangement. Section 63.2-900 of the Code of Virginia requires the State Board of Social Services to develop regulations for entering into entrustment agreements.

2.10 New Stuff: State Board Policy Containing a Foster Care Code of Ethics

HB 850 & SB 643 amend §63.2-900 of the Code of Virginia to require that the State Board also develop foster care policy that includes, at a minimum, *"a Code of Ethics and mutual responsibilities for all parties to the agreement."*

3.00 With Entrustment Agreement, there Must be A Written Agreement: §63.2-902 of the Code of Virginia

For a local board of social services to enter into an entrustment agreement with a family for the placement of a child, §63.2-902 of the Code of Virginia requires a written agreement with the head of such placement (home or facility). The written agreement must provide that the authorized representatives of the local board or agency shall have access at all times to the child and to the home or facility. The written agreement must provide that the head of the home or facility will release custody of the child to the local board or agency whenever, in the opinion of the local board or agency or the Commissioner of DSS, it is in the best interests of the child.

3.10 New Stuff: The Written Agreement Must Contain New Board Policy

HB 850 & SB 643 amend §63.2-900 of the Code of Virginia to require that the agreement contains the requirements of the State Board foster care policy as developed pursuant to §63.2-900 of the Code of Virginia, including the Code of Ethics.

4.00 New Stuff: Second Enactment Clause Requiring State Board Action & Model Entrustment Agreement

A second enactment clause in HB 850 & SB 643 requires the State Board of Social Services to develop the foster care entrustment agreement policy by January 1, 2009. The new foster care policy must establish the requirements of the agreement signed by foster parents prior to placement of children in their home in accordance with subsection C of §63.2-900 of the Code of Virginia.

4.10 State Board of Social Services Must Ensure Solicitation of Public Opinion

In approving the foster care policy, the Board must ensure that DSS has secured input from representatives from foster and adoptive families, local boards and departments, child-placing agencies, judicial staff, youth in foster and adoptive homes, and such other advocates or experts as the Board deems necessary.

4.20 The New State Board Policy will Include Model Agreement

The second enactment clause requires that the new policy also contains a model entrustment agreement form. Through the new policy, the model agreement will include:

- the identification of mutual responsibilities for foster parents, foster care workers, and directors of child-placing agencies, including local departments of social services; and,
- a Code of Ethics for all parties to the agreement.

4.30 All Local DSS must use Model Entrustment Agreement

The model agreement shall be used by all local departments of social services and private agencies and shall require the signature of each foster parent and worker as well as the local department of social services' or child-placing agency's chief executive officer or designee.

HB 149 & SB 249 Independent Living Services Planning for Children 14 Years & Older
Delegate William H. Fralin, Jr. & Senator Janet D. Howell

HB 149 & SB 249 amend §§16.1-228, 16.1-281 through 16.1-282.2, 63.2-100, 63.2-904 through 63.2-906, and 63.2-1819 of the Code of Virginia relating to plans for independent living services and arrangements for children 14 years of age or older. Effective July 1, 2008.

1.00 Independent Living Services Planning for Children 14 Years & Older

The substantive change made by HB 149 & SB 249 is to amend §16.1-281 of the Code of Virginia to require that the foster care plan for a child who is 14 years of age and older and placed in foster care to include "specific independent living services" that will be provided to him. HB 149 & SB 249 add definitions of "Independent Living Arrangement" and "Independent Living Services" to §§16.1-228 and 63.2-100 of the Code of Virginia. HB 149 & SB 249 replace the term "independent living placement" with the term "independent living arrangement." HB 149 & SB 249 clarify that local departments of social services and child-placing agencies may provide independent living services to persons between 18 and 21 years of age if that person was in foster care on his 18th birthday.

1.10 Fiscal Implications - Foster Care Plan for Youth 14 & Up

HB 149 & SB 249 lower the age of children (from 16 to 14 years and older) who are required to have a foster care plan that describes in writing their needs and goals in specific areas as well as an outline of necessary services. DSS does not believe this change will have any fiscal or staffing implications. Since the impacted youth, in the 14-18 age group are already in foster care and receiving services, additional resources should not be needed to develop the required plan.[5]

Other Foster Care Legislation

- **HB 1141 Foster Care & Termination of Independent Living Services for "Adult Foster Care Child" (Delegate William H. Fralin, Jr.).** *HB 1141 amends §63.2-905.1 of the Code of Virginia relating to foster care and the termination of independent living services by request of the person in foster care. Effective July 1, 2008.* Section 63.2-905.1 of the Code of Virginia allows local departments of social services to provide independent living services to persons between 18 and 21 years of age who are in the process of transitioning from foster care to self-sufficiency. HB 1141 allows the adult person who was committed or entrusted to a local board of social services or licensed child-placing agency to discontinue receiving independent living services any time after his 18 birthday. The local board of social services or licensed child-placing agency must restore independent living services at the request of that person provided that the person has not yet reached 21 years of age and the person has entered into a written agreement, less than 60 days

[5] See Fiscal Impact Statement, Department of Planning and Budget, March 13, 2008, at 03/08/08 Senate: Reenrolled bill text (SB249ER2) (impact statement).

after independent living services were discontinued. This bill incorporated HB 813 (Delegate J.A. Ward).

Mental Health Bill Summaries

HB 499 & SB 246 The Omnibus Mental Health Bill
Delegate Phillip A. Hamilton & Senator Janet D. Howell

HB 499 & SB 246 amend §§16.1-337, 19.2-169.6, 19.2-176, 19.2-177.1, 32.1-127.1:03, 37.2-800, 37.2-808, 37.2-809, 37.2-813 through 37.2-818, 37.2-821, and 53.1-40.2 of the Code of Virginia and adds sections numbered 37.2-817.1 through 37.2-817.4 and by adds in Article 1 of Chapter 8 of Title 37.2 a section numbered 37.2-804.2, relating to involuntary commitment.

1.00 HB 499 & SB 246 Consumed Many other Bills

HB 499 & SB 246 are identical. HB 499 incorporated HB 816, HB 1322, and HB 1491. SB 246 incorporated the following bills: SB 75, SB 78, SB 79, SB 80, SB 96, SB 97, SB 101, SB 103, SB 104, SB 129, SB 139, SB 140, SB 144, SB 217, SB 220, SB 273, SB 341, and SB 769.

2.00 Summary of Substantive Changes

HB 499 & SB 246 made comprehensive changes in the mental health system. Below is a summary of those changes.

Commitment Criteria: Imminent Harm Standard now "Substantial Likelihood." The imminent harm standard was changed to *"a substantial likelihood that, as a result of mental illness, the defendant will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any."* For adults, the unable-to-care-for-self standard is changed to *"suffer serious harm due to his lack of capacity to protect himself from harm or provide for his basic human needs."*

Disclosures of Mental Health Information Between Parties. HB 499 & SB 246 require health care providers to share information with a magistrate, intake officer, court, attorney, any guardian ad litem (GAL), evaluator, prescreener, or assigned monitor, or law-enforcement officer as necessary to act under the statute and require the court entering the order to provide for record disclosure.

Definition of "Responsible Person" who may Initiate the Involuntary Treatment Process. HB 499 & SB 246 include family members, employee of a community services board, any treating physician, or a law-enforcement officer as a "responsible person" who may initiate the involuntary treatment process.

Evidence that can be Considered in Issuing Orders. For emergency custody orders (ECOs) and temporary detention orders (TDOs), evidence includes the recommendations of any treating or examining physician; any past actions of the person; any past mental health treatment of the person; any relevant hearsay evidence; any medical records available and any affidavits submitted, if the

witness is unavailable; any other information available that the magistrate deems relevant. Hearsay is not admissible in the commitment hearing.

ECO Extension: Two-Hours for Good Cause. Section 37.2-808 of the Code of Virginia allows a magistrate to issue an ECO when there "*exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs*, is in need of hospitalization or treatment, and is unwilling to volunteer or incapable of volunteering for hospitalization or treatment." An ECO is valid for a period not to exceed four hours from the time of execution. HB 499 & SB 246 amend §37.2-808 of the Code of Virginia so that upon a finding by a magistrate that good cause exists to grant an extension, an ECO can be extended for two hours.

Feedback from Community Service Boards (CSBs). CSBs must give feedback to the petitioner or physician if a TDO will not be recommended.

Pre-Hearing Independent Examination & CSB Preadmission Screening. The examiner must have completed a certification program. For an ECO, the examination must be in person. For a TDO and the commitment hearing, the examination may be in person or via a two-way communication system. The examiner and CSB must attend and participate in hearings (either in person or via a two-way communication system).

Required Elements of Independent Exam. The assessment under §37.2-815 of the Code of Virginia must include a clinical assessment, medication review, risk assessment, substance abuse screening, competency assessment, record review, review of treatment preferences and alternatives, and recommendations.

Venue. HB 499 & SB 246 provide for the transfer of cases between courts, when necessary (to where the defendant resides).

New Mandatory Outpatient Treatment (MOT). HB 499 & SB 246 detail requirements and procedures (require a plan, monitoring, reporting, and court review).

Other Mental Health Legislation Pertaining to Juveniles

- **HB 400 & SB 67 Inpatient Treatment & Parental Admission of Minors Incapable of Giving Consent (Delegate Phillip A. Hamilton & Senator Janet D. Howell).** *HB 400 & SB 67 amend §§16.1-336 and 16.1-339 of the Code of Virginia relating to parental admission of minors for inpatient treatment when minor is incapable of giving consent.* HB 400 & SB 67 add the definition of a *"minor incapable of making an informed decision"* and provide that minors 14 years of age or older who are incapable of making an informed decision may be admitted to inpatient treatment upon the application of a parent pursuant to §16.1-339 (parental admission of an objecting minor 14 years of age or older) of the Code of Virginia.
- **HB 402 & SB 68 Involuntary Commitment Petition - Dismissal or Withdrawal (Delegate Phillip A. Hamilton & Senator Janet D. Howell).** *HB 402 & SB 68 amend §16.1-341 of the Code of Virginia.* HB 402 & SB 68 provide that a petition for the involuntary commitment of a

minor shall be served upon the minor and the minor's parents unless the petition has been withdrawn or dismissed (previously only provided if dismissed).

- **HB 582 & SB 276 Psychiatric Inpatient Treatment of Minors - Timing of Petition & Hearing Extended from 72 Hours to 96 (Delegate Dave W. Marsden & Senator Ken T. Cuccinelli, II)**. *HB 582 & SB 276 amend §§16.1-338 through 16.1-341 of the Code of Virginia relating to the timing of the petition and hearing in psychiatric inpatient treatment of minors proceeding.* HB 582 & SB 276 increase from 72 to 96 hours the length of time to hold a hearing for the involuntary commitment of a minor or the emergency admission of a minor for inpatient treatment, a juvenile court may continue a commitment hearing, and that a minor may be admitted by his parents to a facility over his objections.
- **SB 247 Involuntary Commitment of Minors - Appointment of Counsel & Guardians Ad Litem (GAL) (Senator Janet D. Howell).** *SB 247 amends §§16.1-339, 16.1-341 and 16.1-343 of the Code of Virginia relating to the appointment of counsel and the GAL in involuntary commitment of minor proceedings.* SB 247 provides that a court shall appoint a GAL and counsel for a minor for involuntary commitment hearings and proceedings for the judicial approval of the admission for inpatient treatment of a minor 14 years of age or older over his objections.

Mental Health Legislation Pertaining to Court Procedures

- **HB 708 Temporary Detention Orders & Admission as Evidence. (Delegate William R. Janis).** *HB 708 amends §8.01-389 of the Code of Virginia.* HB 708 clarifies that TDOs and the records pertaining to them are admissible as evidence because they are considered judicial records.
- **HB 1323 Temporary Detention Orders - Magistrates to Issue Based on Recommendation of Treating Physicians (Delegate David J. Toscano).** *HB 1323 amends §37.2-809 of the Code of Virginia.* HB 1323 requires a magistrate to issue TDOs upon the recommendation of any responsible person, including any treating physician or upon his own motion (Prior law did not previously allow treating physician to file petition).
- **SB 142 Involuntary Commitment Hearings & Recordings (Senator John S. Edwards).** *SB 142 amends §37.2-818 of the Code of Virginia relating to the recording of involuntary commitment hearings.* SB 142 requires that each involuntary commitment hearing be recorded separately, so that no more than one hearing is recorded per tape or other recording.

Mental Health Legislation Pertaining to Disclosure/Sharing of Information

- **HB 576 Mental Health Records & Health Provider Shall Disclose Information as Necessary to Provide Care & Treatment of Minor (Delegate Vivian E. Watts).**[6] *HB 576 amends §§16.1-337, 19.2-169.6, 32.1-127.1:03, 37.2-808, 37.2-809, and 37.2-817 of the Code of Virginia and adds in Article 1 of Chapter 8 of Title 37.2 a section numbered 37.2-804.2 relating to the sharing of mental health records.* HB 576 provides that, upon request, any health care provider or other provider rendering services to persons subject to ECOs, TDOs, or involuntary commitment proceedings shall disclose to certain entities and individuals all information necessary and appropriate for the entities or individuals to perform their duties in relation to such orders or proceedings. The bill also provides that any health care provider shall be immune for any harm resulting from the disclosure of health records unless he intended the harm or acted in bad faith. This bill incorporates HB 1324.

[6] This bill summary is taken from Legislative Services.

- **SB 336 Temporary Detention Order - Encryption of Medical Records not Required (Senator Ken T. Cuccinelli, II).** *SB 336 amends §37.2-809 of the Code of Virginia.* SB 336 relates to temporary detention orders and the encryption of medical records. SB 336 provides that a health care provider or designee of a local community services board or behavioral health authority shall not be required to encrypt email containing information or medical records provided to a magistrate unless there is reason to believe that a third party will attempt to intercept the email.

Mental Health Legislation Pertaining to Custody/Transfer of Custody/Transportation

- **HB 401 & SB 81 Emergency Custody & Who may Accept Custody (Delegate Phillip A. Hamilton & Senator Ken T. Cuccinelli, II).** *HB 401 & SB 81 amend §37.2-808 of the Code of Virginia relating to who may take custody as relating to emergency custody.* HB 401 & SB 81 allow the law-enforcement agency providing transportation to a person pursuant to an ECO to transfer custody of the person to the facility or location to which the person is transported for evaluation (if the facility has appropriate security and has entered into a Memorandum of Understanding with law enforcement relating to the transfer of custody). This bill provides that the facility or location that accepts custody of a person may not require the law-enforcement agency to pay any fees or costs for the transfer of custody.
- **HB 583 Emergency Custody Orders & Extension of Time (Delegate Dave W. Marsden).** *HB 583 amends §37.2-808 of the Code of Virginia relating to extension of time of emergency custody orders.* HB 583 allows the magistrate to extend the time of ECOs for two hours if good cause exists to grant the extension.
- **HB 707 Involuntary Commitment Hearings - Person Shall be Held in Custody until Released to Secure Facility (Delegate William R. Janis).** *HB 707 amends §37.2-809 of the Code of Virginia relating to the custody of a person being evaluated for involuntary commitment*. HB 707 requires that a person who is subject to a TDO remain in the custody of a law-enforcement officer until the person is either detained within a secure facility or custody has been accepted by the appropriate personnel designated by the facility identified in the TDO.

Mental Health Legislation: Independent Examiner/Community Services Boards Reports & Participation

- **SB 141 State Hospitals & Discharge Plans Upon Release (Senator John S. Edwards).** *SB 141 amends §37.2-837 of the Code of Virginia.* SB 141 clarifies that a discharge plan prepared by the CSB for persons discharged from a state hospital or training facility shall identify the services that the person discharged will require upon release and which public or private entities will provide the services.

Other Mental Health-Related Legislation

- Access to Firearms
  HB 709 & SB 226 Firearms & Person Legally Incompetent Prohibited from Purchasing, Possessing or Transporting (Delegate William R. Janis & Senator Ryan T. McDougle). *HB 709 & SB 226 amend §§18.2-308.1:1 and 18.2-308.2:2 of the Code of Virginia.* HB 709 & SB 226 require that a person seeking to purchase a firearm from a firearms dealer answer questions on the state background check consent form concerning whether the applicant has ever been acquitted by reason of insanity, been adjudicated legally incompetent or mentally incapacitated, or been involuntarily admitted to a facility or involuntarily ordered to out-patient mental health treatment.

HB 815 Mental Health Treatment; Report to CCRE; Restoration of Rights to Possess Firearms (Delegate David B. Albo).[7] *HB 815 amends §§18.2-308.1:1, 18.2-308.1:3, 19.2-169.2, 37.2-814, and 37.2-819 of the Code of Virginia relating to temporary detention orders.* HB 815 codifies Executive Order 50 requiring information regarding involuntary admission to a facility or for mandatory outpatient treatment be forwarded to the CCRE for purposes of determining an individual's eligibility to possess, purchase, or transfer a firearm.

The bill also makes substantive changes to who may possess, purchase, or transfer a firearm. In addition to those ordered to involuntary treatment pursuant to Title 37.2, the bill makes it illegal for a person found incompetent to stand trial and ordered to mental health treatment to possess or purchase a firearm. The bill also makes it illegal for a person who was the subject of a TDO, and subsequently agreed to voluntary admission for mental health treatment, to possess or purchase a firearm. Such person would be advised that agreeing to voluntary treatment would affect the person's right to possess or purchase a firearm.

Finally, the bill revises the procedures for a person prohibited from possessing or purchasing a firearm because of an acquittal by reason of insanity, involuntary mental health treatment, or voluntary mental health treatment after a TDO to restore his rights to purchase or possess a firearm. This bill incorporated HB 535, HB 657, HB 741, HB 835, HB 1054, HB 1168, HB 1475, and HB 1517.

SB 216 Voluntary Admission; Report to Central Criminal Records Exchange (Senator John S. Edwards).[8] *SB 216 amends §§18.2-308.1:3, 19.2-169.2, 37.2-814, and 37.2-819 of the Code of Virginia, relating to temporary detention orders.* SB 216 clarifies that orders for both involuntary inpatient and outpatient mental health treatment must be forwarded by the clerk of court to the CCRE, and that persons ordered to either involuntary inpatient or outpatient treatment are prohibited from purchasing, possessing, or transporting a firearm. This portion of the bill codifies Executive Order 50 (2007). The bill also provides that persons found incompetent to stand trial are prohibited from purchasing, possessing, or transporting a firearm. A person who is prohibited from possessing a firearm because he was (i) acquitted by reason of insanity, (ii) found incompetent to stand trial, or (iii) involuntarily committed to inpatient or outpatient mental health treatment may petition the general district court to have his right to possess a firearm restored. Such petition shall be granted if the court finds that the person's disabilities and his criminal history, treatment record, and reputation are such that the person will not be likely to act in a manner dangerous to public safety and that granting the petition will not be contrary to the public interest. The bill also provides that clerks of court shall forward to the CCRE any orders affecting an individual's right to possess a firearm, such as if a person is acquitted by reason of insanity, is found incompetent to stand trial, or has the right to possess a firearm restored by a court order.

[7] This bill summary is taken from Legislative Services.
[8] This bill summary is taken from Legislative Services.

- Schools/Higher Education

HB 1005 Higher Educational Institutions & Notification to Parent of Mental Health Treatment for Student (Delegate Rob B. Bell, III).[9] *HB 1005 amends §23-9.2:3 of the Code of Virginia relating to providing notice to parents of dependent student's receipt of mental health treatment on the campus of a public institution of higher education.* HB 1005 requires the board of visitors or other governing board of any public institution of higher education to establish policies and procedures requiring the notification of a parent of a dependent student when the student receives mental health treatment at the institution's student health or counseling center and meets the new commitment criteria.

HB 1058 Higher Educational Institutions & Release of Educational Records (Delegate Kristen J. Amundson).[10] *HB 1058 amends §23-9.2:3 of the Code of Virginia relating to release of educational records.* HB 1058 requires the board of visitors or other governing board of any public institution of higher education to establish policies and procedures requiring the release of a student's educational record if the parent requesting the record claims the student as a dependent.

SB 538 Higher Educational Institutions & First-Warning & Emergency Notification System Required (Senator Mark D. Obenshain). *SB 538 amends the Code of Virginia by adding in Chapter 1 of Title 23 a section numbered 23-9.2:9 relating to the establishment of a first-warning notification and emergency broadcast system at every public institution of higher education.* SB 538 mandates that, by January 1, 2009, each public institution of higher education shall establish a comprehensive, prompt, and reliable first-warning and emergency notification system for students and staff. The systems may utilize website announcements, email notices, phones and cellular phones, text messages, and public address systems; and other means of communication. Each institution must designate individuals authorized to activate the warning system and provide such individuals with appropriate training for its use.

SB 539 Higher Educational Institutions to Establish Violence Prevention Committees (Senator Mark D. Obenshain). *SB 539 amends the Code of Virginia by adding in Chapter 1 of Title 23 a section numbered 23-9.2:9 relating to violence prevention and threat assessment at each public institution of higher education in the Commonwealth.* SB 539 requires that the board of visitors or other governing body of every public institution of higher education establish a threat assessment team. Each threat assessment team must coordinate with local and state law-enforcement agencies as well as mental health agencies to expedite assessment and intervention with individuals whose behavior may present a threat to safety. Each public college or university must also establish policies and procedures for the prevention of violence on campus, including assessment and intervention with individuals whose behavior poses a threat to the safety of the campus community. The bill also requires the team to adopt a campus-wide committee charged with education and prevention of violence on campus.

SB 636 Higher Educational Institutions & Requesting Complete Student Record from High School (Senator Ken T. Cuccinelli, II). *SB 636 amends the Code of Virginia by adding a section numbered 23-2.1:3 relating to students' high school records.* SB 636 allows each public and private institution of higher education to request from its students complete student records, including any mental health records held by the originating school. The records must be kept confidential as required by state and federal law, including the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g.

[9] This bill summary is taken from Legislative Services.
[10] This bill summary is taken from Legislative Services.

HB 1449 & SB 256 Higher Educational Institutions & Crisis & Emergency Management Plans (Delegate Anne Crockett-Stark & Senator Robert C. Deeds).[11] *HB 1449 & SB 256 amend§44-146.18 of the Code of Virginia and add in Chapter 1 of Title 23 sections numbered 23-9.2:9, 23-9.2:10, and 23-9.2:11 relating to crisis and emergency management for public institutions of higher education.* HB 1449 & SB 256 require the board of visitors or other governing body of each public institution of higher education to develop, adopt, and keep current a written crisis and emergency management plan. Such plan must be reviewed and revised every four years. The Department of Emergency Management must assist institutions, as needed, in their development of the plan. The bill also requires each board of visitors to establish a threat assessment team to develop a campus-wide threat assessment policy and to establish a first-warning notification and emergency broadcast system. HB 1449 incorporates HB 489, HB 1268, and HB 1316. HB 1449 & SB 256 are identical to SB 538 (Senator Obenshain), and SB 539 (Senator Obenshain), combined.

- Incompetent Defendants

  HB 1186 & SB 315 Incompetent Defendants & Dismissal of Charges when Charged with Non-violent Misdemeanor (Delegate Kenneth R. Melvin & Senator Stephen H. Martin). *HB 1186 and SB 315 amend §19.2-169.3 of the Code of Virginia relating to incompetent defendants who committed only misdemeanors.* HB 1186 & SB 315 pertain to incompetent defendants charged with misdemeanor violations of Article 3 (larceny & receiving stolen goods, §18.2-95 et seq.) of Chapter 5 of Title 18.2 or Article 5 (trespass to realty, §18.2-119 et seq.) of Chapter 5 of Title 18.2, other than a misdemeanor charge pursuant to §18.2-130 (peeping or spying into dwelling) or Article 2 (disorderly conduct, §18.2-415 et seq.) of Chapter 9 of Title 18.2, and are being treated pursuant to subsection A of §19.2-169.2 of the Code of Virginia. If, after 45 days of treatment, the defendant has not been restored to competency, the director of the CSB, behavioral health authority, or the director of the treating inpatient facility, or any of their designees, will send a report indicating the defendant's status to the court. The report shall also indicate whether the defendant should be released or committed pursuant to § 37.2-817 of the Code of Virginia or certified pursuant to § 37.2-806 of the Code of Virginia. Upon receipt of the report, if the court determines that the defendant is still incompetent, the court shall order that the defendant be released, committed, or certified, and may dismiss the charges against the defendant.

Health Records, Subpoenas, HIPAA & Court Proceedings

- **HB 1040 Health Records & Providing Information after Search Warrant, Etc. (Delegate H. Morgan Griffith).** *HB 1040 amends §32.1-127.1:03 of the Code of Virginia relating to health records and providing information after execution of search warrant*. HB 1040 provides that regardless of the manner by which health records relating to an individual are compelled to be disclosed pursuant to a subpoena, search warrant, or court order, nothing prohibits any staff or employee of a health care entity from providing information about such individual to a law-enforcement officer in connection with such subpoena, search warrant, or court order. It is the intent of this bill to be only a clarification and not a substantive change to the law.

[11] This bill summary is taken from Legislative Services.

Further Study of Mental Health Reform

SJ 42 Joint Commission on Health Care to Review Mental Health System Recommendations & Legislation (Senator L. Louise Lucas). The General Assembly has acknowledged the value in continuing to study the issue of Mental Health Reform. SJ 42 requests the Joint Commission on Health Care to study mental health reform and evaluate the impact of certain recommendations and legislation on the mental health system. The Commission will assess the recommendations of the Chief Justice's Commission on Mental Health Law Reform, the Virginia Tech Review Panel, and the Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services relating to the involuntary commitment process and the system of mental health services in Virginia. It will be a two-year study.

Comprehensive Services Act (CSA) Bill Summaries

SB 483 CSA, Executive Council to Oversee Development of Performance Measures & Data Collection Standards (Senator Emmett W. Hanger, Jr.). *SB 483 amends §§2.2-2648, 2.2-2649, 2.2-5206, 2.2-5210, 37.2-308, and 63.2-226 of the Code of Virginia relating to the CSA, data collection, and performance measures.* SB 483 requires the State Executive Council to (i) oversee the development and implementation of uniform data collection standards, utilizing a secure electronic client-specific database for CSA-funded services; (ii) oversee the development and implementation of a uniform set of performance measures for evaluating the CSA program; and (iii) oversee the development and distribution of management reports that provide information to the public and community policy and management teams (CPMT) to help evaluate child and family outcomes and public and private provider performance. The bill requires the Director of the Office of Comprehensive Services for At-Risk Youth and Families to implement the provisions of this bill. This bill incorporated SB 481, SB 482, SB 484, SB 485, and SB 486 (Senator Hanger).

HB 503 & SB 487 CSA, Executive Council Oversee Development of Case Management Services for At-Risk Children (Delegate Phillip A. Hamilton & Senator Emmett W. Hanger, Jr.). *HB 503 & SB 487 amend §§2.2-2648, 2.2-5206, and 2.2-5208 of the Code of Virginia relating to CSA and intensive care coordination and service planning.* HB 503 & SB 487 require the State Executive Council to develop, and localities to implement, a program of case management for residential care to include a provision for residential care plans. HB 503 & SB 487 require family assessment and planning teams to develop, and CPMTs to review, residential care plans that include goals for residential care treatment, a provision for monitoring and review of plans, evaluation of progress toward identified goals, and a plan for returning the youth to his home or community at the earliest appropriate time.

SB 479 CSA - Annual Workshop & Best Practices & Evidence-Based Practices (Senator Emmett W. Hanger, Jr.). *SB 479 amends §2.2-2649 of the Code of Virginia relating to CSA training best practices.* Section 2.2-2649 of the Code of Virginia creates the Office of Comprehensive Services for At-Risk Youth and Families. SB 479 requires the Director of the Office of Comprehensive Services for At-Risk Youth and Families to identify, disseminate, and provide annual training for CSA staff and other interested parties on best practices and evidence-based practices related to the Comprehensive Services Program.

Other Legislation Tracked by DJJ

HB 1131 & SB 315 Creation of Office of Children's Ombudsman
Delegate William Fralin & Senator John Edwards

HB 1131 & SB 315 add §§2.2-214.2, 2.2-214.3, and 2.2-214.4 in Article 6 of Chapter 2 of Title 2.2 of the Code of Virginia to create the Office of the Children's Ombudsman to provide ombudsman services to any child served by any child-serving agency of the Commonwealth. Not effective until appropriations have been allocated.

1.00 Summary: Creation of a New State Agency - Office of Children's Ombudsman

HB 1131 & SB 315 create the Office of the Children's Ombudsman to provide ombudsman services to any child served by any child-serving agency of the Commonwealth. The ombudsman will serve as a source of information and referrals for children, parents, caregivers, providers, and citizens involved with child-serving agencies. The ombudsman will be appointed by the Governor for a four-year term. Due to funding concerns, the bills contain a fourth enactment clause that provides that the bills would not become effective unless funded in the General Appropriations Act. Thus far, appropriations have not been allocated for this legislation.

2.00 Commission on Youth Bill

This is a Commission on Youth bill, and Delegate Fralin, the chief patron of HB 1131, is the incoming Chair for the Commission. During the 2006 session, SB 208 was introduced to create within the legislative branch the Office of Children's Ombudsman. The Senate Committee on General Laws and Technology voted to table SB 208 and to request the Commission on Youth to study the issue. The Commission on Youth spent two years evaluating the need for creating a separate, and possibly independent, state agency with the mission of protecting the rights of children and parents involved with other state agencies while promoting the effective administration of child protection and child welfare laws. DJJ staff participated on the work group that studied the issue. At its December 5, 2007, meeting, the Commission on Youth voted to introduce legislation establishing an Office of the Children's Ombudsman as a separate and independent state agency even though the Commission appeared pessimistic about its chances for being funded.

3.00 No Office of the Children's Ombudsman Until Funds are Appropriated

A fourth enactment clause in the bill stated that *"the provisions of this act shall not become effective unless general funds effectuating the purposes of this act are included in the general appropriation act passed by the 2008 General Assembly that becomes law."* No such appropriation was included and so the provisions of the legislation will not take effect.

3.10 If Ever Funded, Three-Year Phased-in Implementation

If ever funded, the legislation does phase-in the responsibilities of the ombudsman over the following three years. Initially the office is required only to accept and investigate complaints from DSS and DJJ. The following year that requirement expands to include DMHMRSAS, DOE,

and the Department of Correctional Education (DCE). In the third year, the Office of Children's Ombudsman will accept and investigate complaints related to any child-serving agency or any program, service, or facility licensed, funded, or operated by a child-serving agency.

3.20 Staffing Needs & Fiscal Implications

In the first year of implementation, the Department of Planning and Budget estimates that the Office will require the services of four full-time positions, including a director, office assistant, as well as two human services analysts.[12] According to the fiscal impact statement, this staffing level should ensure that the Office is able to be established, provide preliminary outreach, and respond to any initial investigations. As the scope of the Office expands, it is anticipated that additional staff will also be needed. In the second year, the Department of Planning and Budget estimates the need for three additional human services analysts and another office assistant. In the third year, it is estimated that it would require the services of two additional human services analysts. The estimated fiscal impact for the first year of implementation is $229, 492. The second year fiscal impact is estimated at $581,940 and $730,740 in the third year. The fiscal impact also includes separate estimates for rent and office furniture.

4.00 If it is Ever Funded, What Would the Office of the Children's Ombudsman Do?

Section 2.2-214.2 of the Code of Virginia creates the Office of the Children's Ombudsman to provide ombudsman services to any child served by any child-serving agency of the Commonwealth. The ombudsman will be appointed by the Governor subject to confirmation by the General Assembly. The Governor may remove the ombudsman for cause in accordance with § 2.2-108 of the Code of Virginia. The ombudsman will be appointed for a four-year term.

4.10 Scope of Legislation – "Child-Serving Agency": §2.2-214.2 of the Code of Virginia

"Child-serving agency" means any state agency that provides services to children, including DSS, DJJ, DOE, DCE, DMHMRSAS, Office of the Comprehensive Services for At-Risk Youth and Families, and Department of Health. "Child-serving agency" will also include local entities that receive funding from a state child-serving agency.

4.20 Powers of the Ombudsman: §2.2-214.3 of the Code of Virginia

Section 2.2-214.3 of the Code of Virginia specifies the powers and duties of the ombudsman.

4.21 Power to Investigate & Resolve Complaints

The ombudsman will have the power to receive, investigate, and resolve complaints regarding the child-serving agencies. The ombudsman will have the power to decline to further investigate any complaint if he determines that the complaint is frivolous or not made in good faith.

---

[12] Department of Planning and Budget, 2008 Fiscal Impact Statement, February 28, 2008, at http://leg1.state.va.us/cgi-bin/legp504.exe?081+oth+HB1131FER122+PDF.

4.22 Power to Conduct Unannounced Facility Inspections

The ombudsman will have the power to conduct inspections, in connection with a complaint received of any public or private facility, institution, or residence where a child has been placed by a court or a child-serving agency. Inspections may be unannounced.

4.23 Power to Access Confidential Information

The ombudsman will have the power, notwithstanding any provisions to the contrary, to access all information, including confidential information, necessary for the full and complete investigation of the complaint. All information will be maintained by the ombudsman as confidential in the same manner as is required by the agency from which it was obtained. The ombudsman will be subject to the same penalties for disclosure of confidential information as the entity or person from whom the information was obtained.

4.24 Power to Enter into Agreements for the Protection of Children

The ombudsman will have the power to enter into an agreement with any state *"agency providing advocacy, client assistance or ombudsman services to the agency's clients, to ensure the protection of children, provided that such agreements do not restrict the authority of the ombudsman to pursue legal or administrative remedies on behalf of children."*

4.25 Power to Notify Law-Enforcement & the Commonwealth's Attorney

The ombudsman will have the power to notify the law-enforcement agency and the attorney for the Commonwealth in the jurisdiction that the secure facility, shelter care facility, or residential public charter school is located when he has reason to believe that there has been a violation of state criminal law. The ombudsman must also give notice to the director or commissioner of the department responsible for licensing or regulating the facility.

4.26 Power to Make Reports to Agency Head

The ombudsman will have the power to report to the head of any agency any serious problem, abuse, or deficiency related to that agency, or any programs or facilities operated by that agency.

4.27 Power to Promote Regulations & Legislation

The ombudsman will have the power to make recommendations concerning improvement in the administration of children's services, including best practices and recommending policy, regulatory, and legislative changes for the purpose of ensuring the well-being of children.

4.30 Annual Reports to the Governor & the General Assembly: §2.2-214.4 of the Code of Virginia

The ombudsman must submit an annual report by November 30 of each year summarizing the activities of the Office of the Children's Ombudsman to the Governor, the General Assembly, and the Commission on Youth. Such report shall include:

- The number of complaints received and the types of investigations completed by the Office during the reporting period;
- The response of any child-serving agency investigated pursuant to a complaint received by the Office;
- A summary of any matters referred to any attorney for the Commonwealth or law-enforcement agency;
- A description of significant problems, abuses, and deficiencies related to each investigation;
- A description of any recommendations for corrective actions made by the Office during an investigation;
- Each significant corrective recommendation and which corrective actions have not been completed; and
- Recommendations for system-wide changes, including any legislative or regulatory changes.

HB 242 Standards of Learning (SOLs) - Physical Education Requirements
Delegate John M. O'Bannon, III

HB 242 amends §22.1-253.13:1 of the Code of Virginia pertaining to physical education requirements. Effective July 1, 2008.

1.00 Synopsis: SOLs Physical Education Requirements, Really Just a Goal

HB 242 amends §22.1-253.13:1 of the Code of Virginia pertaining to physical education requirements. HB 242 requires local school boards to (1) make available to all students a physical fitness program with a goal of at least 150 minutes of physical activity per week for all students during the school year and (2) incorporate into its local wellness program a goal for implementing the physical fitness program. The bill states that the physical activity may be offered through physical education classes, extracurricular athletics, or *"other programs and physical activities deemed appropriate by the local school board."*

2.00 What Were the Requirements Before HB 242?

Under current law, the SOLs only require incorporation of physical education as a part of the instructional program at the elementary, middle, and secondary school levels. There is no minimum time requirement under the SOLs. Regulations covering juvenile correctional centers and local detention facilities require that residents be given the opportunity for recreation, but do not establish minimum timeframes. The residential regulations (6VAC35-140-530) only require an opportunity for large muscle exercise be provided daily. The CORE regulations (22VAC42-11-940) essentially only require a plan for recreation

that is appropriate for residents and the opportunity to recreate. Neither regulation sets minimum timeframes.

3.00 What Does HB 242 Do? Just a Goal

As originally introduced, HB 242 would have required local school boards to implement a minimum of 150 minutes of physical education per week for all students in grades kindergarten through 12 by the 2013-2014 school year. As amended, the bill neither mandates nor requires monitoring or reporting of student participation; however, it does require schools to provide opportunities for all students to participate in a minimum of 150 minutes of physical activity per week. The bill is flexible regarding the means by which the physical fitness program shall be implemented. Educational programs in juvenile correctional centers and detention homes will be required to implement such physical fitness programs. Depending on components of the program and implementation strategies, normal daily operations of the facilities could be affected. While the scheduling of some programs may be affected, the overall impact of the bill, as enrolled, on DJJ is anticipated to be minimal.

Other Child-Related Legislation

- **SB 44 At-Risk Students & Local School Boards May Establish After-School Programs (Senator Yvonne B. Miller)**. *SB 44 amends the Code of Virginia by adding a section numbered 22.1-199.5 relating to after-school programs for at-risk students.* A local school board may establish after-school programs designed to prevent at-risk youth from engaging in illegal or gang-related activities for school aged children.
- **SB 228 Child Abuse & Neglect - Emergency Medical Services Personnel Added to List of Mandatory Reporters (Senator Ryan T. McDougle)**. *SB 228 amends §63.2-1509 of the Code of Virginia relating to mandatory reporters of child abuse and neglect.* Section 63.2-1509 of the Code of Virginia lists those persons and professions who are mandated reporters of child abuse and neglect. SB 228 adds to that list emergency medical services personnel certified by the Board of Health pursuant to §32.1-111.5 of the Code of Virginia, unless such personnel immediately report the matter directly to the attending physician at the hospital to which the child is transported.
- **HB 1242 No Hiring School Employees with Founded Cases of Child Abuse or Neglect (Delegate Rob B. Bell, III)**. *HB 1242 amends §§22.1-296.1, 22.1-296.4, 22.1-307, and 63.2-1505 of the Code of Virginia.* Any person applying for a school position who makes a materially false statement regarding a finding of child abuse and neglect will be guilty of a Class 1 misdemeanor. The conviction will be grounds for the board of education to revoke such person's license to teach. A teacher shall be dismissed if such teacher is or becomes the subject of a founded complaint of child abuse and neglect pursuant to §63.2-1505 of the Code of Virginia.
- **HB 1160 Juveniles Cannot be School Bus Drivers (Delegate Chris B. Saxman).** *HB 1160 amends §40.1-100 of the Code of Virginia prohibiting persons under the age of 18 from employment as school bus drivers.*
- **HB 1260 Blood Donations & Minors Age 16 or Older may Donate (Delegate John M. O'Bannon, III).** *HB 1260 amends §54.1-2969 of the Code of Virginia relating to blood donation by minors*. Section 54.1-2969 of the Code of Virginia provides the statutory authority for juveniles and certain other persons to consent to surgical and medical care under certain circumstances. Section 54.1-2969 provides the Director of DJJ authority commensurate with that of a parent for the purpose of giving consent to such surgical or medical treatment for a juvenile

committed to DJJ. Section 54.1-2969 also allows a juvenile to consent to medical treatment under certain circumstances, such as donating blood at age 17. HB 1260 amends §54.1-2969 of the Code of Virginia to allow a minor aged 16 or older to donate blood where such minor meets the donation requirements and has the consent of a parent or legal guardian. A minor 17 years of age or older does not need consent.

Juvenile Justice-Related Studies

HJ 113 The Virginia State Crime Commission's Study of the Juvenile Justice System (Delegate Brian Moran). House Joint Resolution No. 136 (2006) directed the Virginia State Crime Commission to conduct a two-year study of Virginia's juvenile justice system. In the first and second years of the study, the Commission was specifically directed to study recidivism, disproportionate minority contact with the justice system, improving the quality of and access to legal counsel based on the American Bar Association's recommendations, accountability in the courts, and diversion. The information gathered from the Commission's focus groups and preliminary results of the judicial survey also revealed a need to review specific mental health and truancy issues. The study will include determining training availability and proven practices for key contributors within the juvenile justice system and ascertaining successful reentry programs. The study will review the severity of offenses committed by juveniles in the Commonwealth and evaluate the effects on the learning environment and educational process, particularly for other students, when juvenile offenders are returned to the public school classroom. The study will also identify and examine more effective methods of rehabilitating juveniles, particular juveniles who commit serious offenses.

The Commission's staff formed a J&DR District Court Judge workgroup to assist in the development of a statewide juvenile and domestic relations judicial survey, which sought to obtain information concerning diversion, court-appointed counsel, and disproportionate minority contact, among other issues; and the survey received a very high response rate. In the second year of the study, staff met with focus groups across the state in conjunction with juvenile court observations, and valuable information was obtained. A need to further review the issues became apparent.

The Commission found a need to further analyze Title 16.1 of the Code of Virginia and the General Assembly passed HJ 113. HJ 113 directs the Commission to continue its study of the juvenile justice system. The Commission must complete its meetings by November 30, 2008, and submit to the Chairman and to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the 2009 Regular Session of the General Assembly. The executive summary shall state whether the Commission intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a House or Senate document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

SJ 75 Comprehensive Services Program for At-Risk Youth & Families, Joint Subcommittee to Study (Senator Emmett W. Hanger, Jr.). In 2006 the General Assembly passed Senate Joint Resolution No. 96 that established the Joint Subcommittee to Study the Comprehensive Services Program for At-Risk Youth and Families. The Joint Commission was to study the cost effectiveness of the

Comprehensive Services for At-Risk Youth and Families program and to collaborate with the Joint Legislative Audit and Review Commission regarding its evaluation of the administration of the CSA.

The Joint Subcommittee consists of 11 members including six legislative members, three nonlegislative citizen members, and two ex officio members. The Commissioner of Social Services, the Director of the Department of Planning and Budget serve ex officio with voting privileges. The Joint Subcommittee met three times during the 2006 interim and four times during 2007. The Joint Subcommittee received the report, including recommendations, of the Joint Legislative Audit and Review Commission at the end of the 2006 interim. The Joint Subcommittee recommended several pieces of legislation for action during the 2008 Session of the General Assembly.

As a result of the Joint Subcommittee's recommendations, the General Assembly passed SJ 75 that continues the work of the Joint Subcommittee. In continuing its study, the Joint Subcommittee will:

- study the structure of the Comprehensive Services program, including the role of local government, state government, community-based service providers, residential service providers, and other stakeholders;
- identify alternate methods of providing services to at-risk youth and families;
- review the cost of the CSA program;
- identify ways to limit costs and increase the efficiency and effectiveness of service delivery to at-risk youth and families; and
- develop recommendations for the 2009 General Assembly Session.

Administrative staff support will be provided by the Office of the Clerk of the Senate. Legal, research, policy analysis, and other services will be provided by the Division of Legislative Services. The following agencies are required to provided technical assistance: the Joint Legislative Audit and Review Commission; Office of Comprehensive Services; and the Departments of Social Services, Education, Juvenile Justice, and Mental Health, Mental Retardation and Substance Abuse Services.

The Joint Subcommittee will meet four times for the 2008 interim. The Joint Subcommittee must complete its meetings by November 30, 2008. The chair of the Joint Subcommittee must submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the 2009 Regular Session of the General Assembly. The executive summary shall state whether the Joint Subcommittee intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a House or Senate document.

HJ 179 Chronic Truancy & Dropout Preventions: Now Commission on Youth Study (Delegate Franklin P. Hall). The Committee on House Rules did not pass HJ 179. Instead, the Committee recommended that the resolution be sent to the Commission on Youth for study. At its April 23, 2008, meeting, the Commission agreed to take on the study. In conducting the study, the Commission will:

- review state laws and policies relating to the enforcement of compulsory school attendance, truancy, and dropout prevention;
- determine the impact of suspensions, expulsions, and other disciplinary actions on school dropout rates including the number of students who fail to return to school after suspension and expulsion, and the number who enter the court system during this period;

- evaluate the need for and duties of school attendance officers;
- assess factors related to the causes of academic underachievement, chronic truancy, and school dropout and determine whether, and under what conditions, such students should also be considered "children in need of services" for compulsory school attendance purposes; and
- consider redefining "truancy" and "chronic truancy" in the Code of Virginia.

HB30 State Budget Required DJJ Studies

Item 410 (B) Department of Juvenile Justice Gang Study. DJJ must analyze the extent of juvenile gang activity as it affects the operation of court services units, local and regional detention facilities, and state juvenile correctional facilities. The analysis shall describe the programs that DJJ has developed to address gang activity along with recommendations for further actions. The study must be completed by September 1, 2008, and sent to the Secretary of Public Safety and to the Chairmen of the Senate Finance and House Appropriations Committees.

Item 410 (C) Department of Juvenile Justice Study on Funding for Juvenile Delinquency Prevention Programs. DJJ shall analyze the level of federal, state, local, and other funding for juvenile delinquency prevention programs in Virginia, and assess the current state of evaluation research in juvenile delinquency prevention in Virginia. The report shall include a review of the current utilization of funds provided through the Virginia Juvenile Community Crime Control Act (VJCCCA). Copies of the analysis shall be provided by September 1, 2008, to the Secretary of Public Safety and to the Chairmen of the Senate Finance and House Appropriations Committees.

Item 381 (A) Secretary of Public Safety State & Local Juvenile & Adult Offender Population Forecasts. The Secretary shall present revised state and local juvenile and state and local responsibility adult offender population forecasts to the Governor, the Chairmen of the House Appropriations and Senate Finance Committees, and the Chairmen of the House and Senate Courts of Justice Committees by October 15, 2008, for each fiscal year through FY 2014 and by October 15, 2009, for each fiscal year through FY 2015. The Secretary shall ensure that the revised forecast for state-responsible adult offenders shall include an estimate of the number of probation violators included each year within the overall population forecast who may be appropriate for alternative sanctions.

Item 381 (C) Secretary of Public Safety Traumatic Brain Injury Study on Juvenile & Adult Offenders. The Secretary shall analyze the incidence of traumatic brain injury in the adult and juvenile state-responsible and local-responsible offender populations. Copies of the analysis shall be provided to the Chairmen of the House Appropriations and Senate Finance Committees by November 1, 2008.

Item 381 (B) Secretary of Public Safety Offender Transition Study. The Secretary shall provide a status report on actions taken to improve offender transitional and reentry services as provided in §2.2-221.1 of the Code of Virginia, including improvements to the preparation and provision for employment, treatment, and housing opportunities for those being released from incarceration. The report shall be provided to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees no later than November 15 of each year. Section 2.2-221.1 of the Code of Virginia does not specify adult or juvenile offenders although preparing *"inmates for successful transition into their communities upon release from incarceration"* is referenced.

Miscellaneous Crime Bills

HB 159 Receiving Stolen Property Used in Police Investigation (Delegate David B. Albo). *HB 159 amends §18.2-108 of the Code of Virginia relating to receiving stolen goods.* HB 159 amends the Code of Virginia so that if a person buys or receives stolen property used in the course of a criminal investigation by law enforcement and that person believes the property was stolen, then he will be deemed guilty of larceny thereof.

HB 113 & SB 368 Killing a Law-Enforcement Officer While Eluding Police – Penalty (Delegate R. Lee Ware, Jr. & Senator John C. Watkins). *SB 368 amends §46.2-817 of the Code of Virginia relating to disregarding signals by a law-enforcement officer to stop and eluding police.* Under current law, willfully and wantonly disregarding a signal from a law-enforcement officer to bring a vehicle to a stop or attempting to escape or elude the law-enforcement officer is a Class 3 misdemeanor. The proposed legislation would increase the penalty for this offense to a Class 2 misdemeanor. If the person disregarding the signal to stop instead drives his vehicle in such a way to interfere with or endanger the operation of the law-enforcement vehicle or endanger a person, the offense is a Class 6 felony. HB 113 & SB 368 increase the penalty for this offense to a Class 4 felony if a law-enforcement officer is killed while in pursuit of the person disregarding the signal to stop. If a law-enforcement officer pursues a person who is eluding police and the law-enforcement officer is "*killed as a direct and proximate result of the pursuit*" then that person is guilty of a Class 4 felony.

HB 656 & SB 592 Animal Protection & Fighting (Delegate H. Morgan Griffith & Senator Thomas K. Norment). *HB 656 & SB 592 amend §§3.1-796.113, 3.1-796.122, 3.1-796.124, and 18.2-403.2 and repeal §3.1-796.125 of the Code of Virginia relating to animal protection.* HB 656 & SB 592 expand and modify existing provisions relating to dogfighting to include the fighting of any other kind of animal. Under the legislation, promoting, engaging in, or attending an animal fighting exhibition, or authorizing another person to undertake any of these acts, would be a Class 1 misdemeanor or, under certain circumstances, a Class 6 felony. The intent of the legislation is to increase the penalties for dogfighting to a felony and ensure that cockfighting is a Class 1 misdemeanor.

SB 26 Racketeer Influenced & Corrupt Organization (RICO) Act & Organized Dogfighting (Senator W. Roscoe Reynolds). *SB 26 amends §18.2-513 of the Code of Virginia by adding dogfighting to the list of offenses qualifying under the RICO statutes.* In 2004, the General Assembly passed HB 1123 and SB 320 that created a RICO Act for Virginia under which various violations of the criminal law become racketeering. Under RICO, the Attorney General is authorized to conduct criminal prosecutions into racketeering activity. Racketeering activity is defined as committing, attempting or conspiring to commit, soliciting, coercing, or intimidating another person to commit two or more specified offenses. Such offenses include gang crimes, terrorism, kidnapping, certain woundings, robbery, arson, burglary, grand larceny, embezzlement, forgery, money laundering, drug offenses, certain firearm offenses, illegal gambling, prostitution, child pornography, or possession of unstamped cigarettes. SB 26 adds dogfighting to the list of offenses qualifying under the RICO statutes. Any person or enterprise convicted of racketeering is guilty of a felony that is punishable by imprisonment for not less than five years nor more than 40 years and a fine of not more than $1 million. A second or subsequent offense is punishable as a Class 2 felony (20 years to life in prison) and a fine of not more than $2 million. The transmission of money derived from, or traceable to, racketeering activity is punishable as a Class 6 felony (one to five

years). According to the Virginia Criminal Sentencing Commission, there were no convictions for violations of the Virginia Racketeer Influenced and Corrupt Organization Act for FY2006 and 2007.[13]

HB 995 Unlawful Filming of Another - Class 6 Felony (Delegate Rob B. Bell, III). *HB 995 amends §18.2-386.1 of the Code of Virginia relating to penalty for unlawful filming of another*. HB 995 provides that the third conviction for unlawful filming of another is a Class 6 felony. Under the prior law, unlawful filming is a felony only if it involves a nonconsenting person under the age of 18.

SB 776 Concealed Weapons & Attorneys for Commonwealth (Senator Robert Hurt). *SB 776 amends §18.2-308 of the Code of Virginia.* An attorney for the Commonwealth or an assistant attorney for the Commonwealth may carry a concealed handgun without obtaining a permit wherever such attorney may travel in the Commonwealth. Current law only authorizes an attorney for the Commonwealth to carry a concealed handgun without a permit while in the discharge of his official duties or while in transit to and from such duties.

Drug Crimes

HB 21 Schedule I Hallucinogenic Drugs – Adding Salvia Divinorum & Salvinorin A Thereas (Delegate John M. O'Bannon, III). *HB 21 amends §54.1-3446 of the Code of Virginia relating to inclusion of salvia divinorum and salvinorin A as Schedule I hallucinogenic drugs. Schedule I hallucinogenic drugs include opiates and opiate derivatives (heroin, morphine).* According to the Drug Enforcement Agency (DEA), there has been a recent emergence in the use of ethnobotanical plants, such as *Salvia divinorum*, by young adults and adolescents in the U.S. (www.usdoj.gov/dea/pubs/states/newsrel/newark_intel_bulletin_salvia.html). These substances can induce changes in perception or hallucinations. Since *Salvia divinorum* and its active ingredients are not specifically listed in the Controlled Substances Act, some on-line botanical companies and drug promotional sites have advertised *Salvia* as a legal alternative to other plant hallucinogens like mescaline. The plant material is smoked for the induction of "mystical" or hallucinogenic experiences. Salvinorin A is the active component of *Salvia divinorum*.[14]

HB 823 Schedule II Drugs – Adding Oripavine & Lisdexamfetamine (Delegate Harvey B. Morgan). *HB 823 amends §54.1-3448 of the Code of Virginia to add oripavine and lisdexamfetamine to the list of Schedule II drugs*. Schedule II narcotics include opium, hydrocodone, codeine, and methadone. Oripavine is an opiate that is chemically similar to the Schedule II controlled substance thebaine. It has analgesic properties and a potential for dependence, which is significantly greater than that of thebaine but slightly less than that of morphine. On September 24, 2007, the DEA formally added oripavine as a Schedule II controlled substance under the Federal Controlled Substances Act. Although lisdexamfetamine is actually a stimulant with the potential for abuse, certain formulations of it are being used for the treatment of attention deficit hyperactivity disorder (ADHD) in children. Lisdexamfetamine dimesylate (trade name Vyvanse, marketed by Shire Pharmaceuticals) is a prescription medication used for the treatment of ADHD in children aged 6 to 12 years old. On June 4, 2007, the DEA formally added

[13] See Virginia Criminal Sentencing Commission, Fiscal Impact Statement for Senate Bill No. 26, November 30, 2007.
[14] This summary is taken from the Virginia Criminal Sentencing Commission. See Virginia Criminal Sentencing Commission, Fiscal Impact Statement for Proposed Legislation, ID#: 08-3106664, 2/19/2008.

lisdexamfetamine, its salts, isomers, and salts of its isomers, as a Schedule II controlled substance under the Federal Controlled Substances Act.[15]

HB 931 & SB 562 Methamphetamine - Manufacturing, Selling, Distributing, Penalty. (Delegate C. Todd Gilbert & Senator Mark D. Obenshain). *HB 931 & SB 562 amend the Code of Virginia by adding a section numbered 18.2-248.03 relating to manufacturing, selling, and distributing of methamphetamine*. Current law provides several mandatory minimum penalties for offenses involving Schedule I or II drugs, including methamphetamine. HB 931 & SB 562 would provide an additional sentencing framework for the manufacture or distribution of methamphetamine. Manufacturing, selling, and distributing 28 grams or more would mean five to 40 years, with a mandatory minimum sentence of three years to be served consecutively with any other sentence. Manufacturing, selling, and distributing 227 grams or more would mean five years to life imprisonment, with a mandatory minimum sentence of five years to be served consecutively with any other sentence.

SB 618 Petit Larceny: Person who is Convicted for Second Time Must Undergo Substance Abuse Screening (Senator Kenneth W. Stolle). *SB 618 amends §19.2-299.2 of the Code of Virginia relating to alcohol and substance abuse screening and assessment when a person is convicted of petit larceny for a second time*. Section 19.2-299.2 of the Code of Virginia requires an alcohol and substance abuse screening and assessment for a person when that person is convicted of a Class 1 misdemeanor drug offense 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. SB 618 adds a second conviction for petit larceny to the list of offenses requiring an alcohol and substance abuse screening and assessment. Section 18.2-96 of the Code of Virginia defines petit larceny as taking from a person money or other thing of value of less than $5, or taking something of value of less than $200. Petit larceny is a Class 1 misdemeanor. SB 618 only applies to convictions in circuit court.

HB 1147 & SB 405 Controlled Substances: Nonresident Pharmacies Reporting & Approval Requirements (Delegate Clarence E. Phillips & Senator Phillip P. Puckett). *HB 1147 & SB 405 amend §§18.2-248, 54.1-3434.1, 54.1-3434.2, and 54.1-3434.4 of the Code of Virginia relating to Schedule VI drugs.* Section 54.1-3455 of the Code of Virginia defines Schedule VI drugs. HB 1147 & SB 405 make it a Class 1 misdemeanor for any person to manufacture, sell, give, distribute, or possess with intent to manufacture, sell, give, or distribute a Schedule VI controlled substance or imitation controlled substance in violation of the Drug Control Act. The bill requires a nonresident pharmacy to designate a Virginia-licensed pharmacist to be responsible for compliance with all provisions of the Drug Control Act. A nonresident pharmacy that dispenses more than 50% of its total prescription volume pursuant to an original prescription order received as a result of solicitation on the Internet, must disclose to the Pharmacy Board that it has received certain certifications. The bill also allows controlled substances that are illegally shipped to be seized by law enforcement or by an agent of the Board of Pharmacy.

[15] This summary is taken from the Virginia Criminal Sentencing Commission. See, Virginia Criminal Sentencing Commission, Fiscal Impact Statement for Proposed Legislation, ID#: 08-4004802, 2/19/2008.

Immigration

HB 820 Adult Inmates: Officer of Correctional Facility to Inquire about Citizenship (Delegate David B. Albo). *HB 820 amends §§19.2-294.2 and 53.1-218 of the Code of Virginia and adds in Chapter 7 of Title 19.2 a section numbered 19.2-83.2 relating to reports on alien status of jail and correctional facility inmates.* HB 820 requires local and state correctional officers in jails and state prisons to inquire of each person committed to that facility the person's legal status. For each person committed to a facility, staff must ask if the person *"(i) was born in a country other than the United States, and (ii) is a citizen of a country other than the United States."* Staff in adult facilities must also *"make an immigration alien query to the Law Enforcement Support Center of the United States Immigration and Customs Enforcement for any person who (i) was born in a country other than the United States, and (ii) is a citizen of a country other than the United States, or for whom the answer to (i) or (ii) is unknown."* The results of the immigration alien query must be submitted to the Local Inmate Data System of the State Compensation Board. The State Compensation Board will then communicate, on a monthly basis, the results of any immigration alien query that results in a confirmation that the person is illegally present in the United States to the CCRE of the State Police in a format approved by the CCRE.