2010 General Assembly Session
Juvenile Justice Legislative
Training Manual

This overview of legislation, as enacted by the 2010 General Assembly, relates to juvenile justice.

This handbook is intended only for use as a summary of those bills enacted during the 2010 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.

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CONFINEMENT OF JUVENILES

SB 259 Detaining Transferred Juveniles in Detention.
Senator Louise Lucas

SB 259 amends §§ 16.1-249, 16.1-269.5, and 16.1-269.6 of the Code of Virginia relating to places of confinement for juveniles who have been transferred to circuit court to be tried as adults. Effective July 1, 2010.

1.00 Synopsis of the Changes: Detaining Transferred Juveniles in Detention. SB 259 creates a new standard for judges to use when making the pre-trial detention determination for juveniles awaiting trial in circuit court as adults. SB 259 amends §§ 16.1-249, 16.1-269.5, and 16.1-269.6 of the Code of Virginia relating to places of confinement for juveniles who have been transferred to circuit court to be tried as adults. SB 259 creates a presumption that when a juvenile is transferred or certified to stand trial as an adult, then that juvenile will be detained in a juvenile secure facility "unless the court determines that the juvenile is a threat to the security or safety of the other juveniles detained or the staff of the facility, in which case the court may transfer the juvenile to a jail or other facility for the detention of adults." This bill was submitted on behalf of JustChildren, a legal advocacy group promoting public education, juvenile justice, and foster care systems, and endorsed by the Virginia Bar Association. Prior to this legislation, the court had unguided discretion on whether to place a juvenile in a juvenile detention center or an adult jail pending trial in circuit court.

2.00 Statutory Background – Criteria for Detaining a Child Prior to Trial (§ 16.1-248.1) & Places of Confinement for Juveniles Prior to Trial (§ 16.1-249). Section 16.1-248.1 of the Code of Virginia provides the statutory criteria for placing a juvenile in shelter care, in a secure facility, or in a jail prior to trial when that juvenile has been taken into custody. A "secure facility" or "detention home" means a local, regional, or state public or private locked residential facility that has construction fixtures designed to prevent escape and to restrict the movement and activities of children held in lawful custody. "Shelter care" means the temporary care of children in physically unrestricting facilities.

If it is ordered that a juvenile remain in detention or shelter care pursuant to § 16.1-248.1 of the Code of Virginia prior to trial, then § 16.1-249 of the Code of Virginia provides the places where such juvenile may be detained. Such places may include an approved foster home or a facility operated by a licensed child welfare agency. If a juvenile is alleged to be delinquent, then § 16.1-249 provides that such juvenile may be detained in a detention home or group home.

3.00 New! Presumption that Transferred Juveniles Remain in Detention! New! Prior to SB 259, the juvenile court had the option of placing a juvenile either in a juvenile detention facility or an adult facility pending trial as an adult. SB 259 amends subsection D of § 16.1-249 to create a presumption that when a juvenile is transferred or certified to stand trial as an adult, then that juvenile shall be detained in a juvenile secure facility "*unless the court determines that the juvenile is a threat to the security or safety of the other juveniles detained or the staff of the facility, in which case the court may transfer the juvenile to a jail or other facility for the detention of adults.*"

3.10 Presumption Applies to All Juveniles Transferred, Certified, or Waived to Circuit Court. The new presumption applies to a juvenile transferred to the circuit court in accordance

with subsection A of § 16.1-269.1, certified to stand trial in circuit court pursuant to subsection B or C of § 16.1-269.1, or waives the jurisdiction of the juvenile court pursuant to § 16.1-270.

3.11 Not New! Adult "Juveniles" Go to Jail. Not New! Please note: Section 16.1-249 of the Code of Virginia requires a judge, intake officer, or magistrate to order the predispositional detention of persons 18 years of age or older in an adult facility. It appears that if a person is transferred for an offense committed when he was 17, but turned 18 at the time of the transfer, that person would be required to be placed in jail.

4.00 Placement in Approved Local Adult Facility (§ 16.1-269.5). **New – Appears Technical in Nature**. Section 16.1-269.5 of the Code of Virginia allows the juvenile court to place a transferred juvenile in a local adult correctional facility approved by the Department of Corrections (DOC) or in a juvenile detention facility. Prior to SB 259, placement in an adult facility was subject only to the limitations of subsection E of § 16.1-249. Subsection E of § 16.1-249 allows a "custodian" (e.g., detention home superintendent) to request the juvenile court to transfer a juvenile who is a threat to safety to another juvenile facility or to a jail. SB 259 adds that placement in a local adult facility is subject to the limitations in subsection D of § 16.1-249.

5.00 Placing a Juvenile in an Adult Facility Following Appeal of Transfer Decision (§ 16.1-269.6). Subsection A of § 16.1-269.6 of the Code of Virginia provides the authority for a juvenile or the attorney for the Commonwealth to appeal to circuit court the transfer decision made by the juvenile pursuant to subsection A of § 16.1-269.1. Subsection B requires, "when practicable," the circuit court to hear the appeal on its merits within 45 days. This is not new. SB 259 removes language stating that, should the circuit court transfer the juvenile to stand trial in circuit court, then circuit court can transfer the juvenile to a local adult facility where the juvenile will no longer be entirely separate and removed from adults, unless, upon motion of counsel, good cause is shown for placement of the juvenile pursuant to the limitations of subdivision E of § 16.1-249.

SB 591 Detaining Juvenile in Detention Prior to Trial for Possession of Firearm.
Senator David W. Marsden

SB 591 amends § 16.1-248.1 of the Code of Virginia relating to who can be detained in detention prior to trial. Effective July 1, 2010.

1.00 Synopsis of the Changes: Detaining Juvenile in Detention Prior to Trial for Possession of Firearm. SB 591 amends § 16.1-248.1 of the Code of Virginia to allow a juvenile alleged to have violated § 18.2-308.7 (possession of certain firearms by juveniles) to be detained in detention prior to trial in accordance with § 16.1-248.1.

2.00 Statutory Background – Criteria for Detaining a Child Prior to Trial (§ 16.1-248.1) (Not New). Section 16.1-248.1 of the Code of Virginia provides the statutory criteria for placing a juvenile in shelter care, in a secure facility, or in a jail prior to trial when that juvenile has been taken into custody. A juvenile can be detained under subsection (A)(1) of § 16.1-248.1 if there is probable cause to believe that he committed "an act that would be a felony or a Class 1 misdemeanor *if committed by an adult*" (emphasis added) and the remaining requirements of § 16.1-248.1(A)(1) are satisfied by clear and convincing evidence.

2.10 Possession of a Firearm is a Class 1 Misdemeanor (§ 18.2-308.7) (Not New). Section 18.2-308.7 of the Code of Virginia makes it a Class 1 misdemeanor for "any person under 18 years of age to knowingly and intentionally possess or transport a handgun or assault firearm anywhere in the Commonwealth." There are exceptions. Those exceptions are:

- Any person (i) while in his home or on his property; (ii) while in the home or on the property of his parent, grandparent, or legal guardian; or (iii) while on the property of another who has provided prior permission, and with the prior permission of his parent or legal guardian if the person has the landowner's written permission on his person while on such property;
- Any person who, while accompanied by an adult, is at, or going to and from, a lawful shooting range or firearms educational class, provided that the weapons are unloaded while being transported;
- Any person actually engaged in lawful hunting or going to and from a hunting area or preserve, provided that the weapons are unloaded while being transported; and
- Any person while carrying out his duties in the Armed Forces of the United States or the National Guard of this Commonwealth or any other state.

2.20 Old Law: Possession of a Firearm by a Juvenile Was Not a Detainable Offense for Detention Prior to Trial. As stated in § 16.1-248.1 of the Code of Virginia, to be detained in detention prior to trial, the act must be a crime if committed by an adult. Although the possession of a gun by a juvenile is a Class 1 misdemeanor, the juvenile cannot be detained in detention pending trial because the offense applies only to juveniles and not adults.

2.21 The phrase "if committed by an adult . . ." The phrase "if committed by an adult" is used throughout the juvenile code. Not only is the language used for pre-dispositional detention, but also is found in the commitments statutes under § 16.1-278.8 of the Code of Virginia. A quick search of the Code of Virginia finds the phrase used at least 24 times in Chapter 11 of Title 16 ("the juvenile code").

3.00 New! The Legislative Fix: Cite § 18.2-308.7 in § 16.1-248.1. SB 259 amends subsection (A)(1) of § 16.1-248.1 specifically to include citing § 18.2-308.7 of the Code of Virginia so that a juvenile can be detained prior to trial in a local detention facility for illegally possessing a firearm.

3.10 The New Language. With the new language in italics, subsection (A)(1) of § 16.1-248.1 is amended to read that, "at any time prior to an order of final disposition, a juvenile may be detained in a secure facility, pursuant to a detention order or warrant, only upon a finding by the judge, intake officer, or magistrate, that there is probable cause to believe that the juvenile committed the act alleged, and that at least one of the following conditions is met:

1. The juvenile is alleged to have (a) violated the terms of his probation or parole when the charge for which he was placed on probation or parole would have been a felony or Class 1 misdemeanor if committed by an adult; (b) committed an act that would be a felony or Class 1 misdemeanor if committed by an adult; or *(c) violated any of the provisions of § 18.2-308.7* . . .

The remaining criteria in subsection (A)(1) must be satisfied. Briefly, there must be clear and convincing evidence that the juvenile presents a "clear and substantial threat of serious harm" to

himself, to other persons or to the property of others; or he will abscond or has a record of willful failure to appear at a court hearing within the immediately preceding 12 months.

SHARING CONFIDENTIAL JUVENILE INFORMATION

HB 1121 & SB 486 Sharing Confidential Gang Information.
Delegate C. Todd Gilbert & Senator Robert Hurt

HB 1121 and SB 486 amend §§ 16.1-300, 16.1-309.1, and 52-8.6 of the Code of Virginia relating to the sharing of confidential juvenile record information with law enforcement on alleged criminal street gang activity and involvement. Effective July 1, 2010.

1.00 Synopsis of the Changes: Sharing Confidential Gang Information. HB 1121 and SB 486 make changes to three sections of the Code. HB 1121 and SB 4856 amend §§ 16.1-300 and 16.1-309.1 of the Code of Virginia to require DJJ to provide criminal street gang information to law-enforcement personnel or a law-enforcement task force without any request for the information. Specifically, the bills mandate DJJ and locally operated court service units (CSUs) to release information relating to the criminal street gang, as defined in § 18.2-46.1, involvement of a juvenile and the related activity and membership of others obtained from an investigation or supervision of a juvenile. HB 1121 and SB 486 are identical. HB 1121 and SB 486 incorporated Delegate Miller's HB 254 and HB 255.

2.00 Background – 2006 General Assembly Legislation Allowing Confidential Gang-Related Information to be Released. During the 2005 General Assembly session, HJ 573 was passed. HJ 573 stated that the prosecution of criminal gang activity is sometimes needlessly burdened by the necessity of proof of gang affiliation and gang conduct when the gang and its activities are easily determined on the basis of formerly identified characteristics of affiliation and conduct. Therefore, HJ 573 directed the Virginia State Crime Commission to study criminal street gang conduct and characteristics for the purpose of reducing the burden on prosecutors by producing a formal listing of gang names coupled with conduct and characteristics unique to those gangs. As a result, HB 847and SB 561 were introduced as a result of the Crime Commission's work on that resolution. In addition, two other pieces of legislation, HB 692 and SB 129, also addressed releasing confidential juvenile gang-related records but took a different approach by amending another section of the Code. The 2006 legislation is briefly summarized below.

2.10 Old Law Under § 16.1-300(A)(10)! In 2006 the General Assembly enacted HB 847 and SB 561 that created subdivision (A)(10) of § 16.1-300 of the Code of Virginia thereby allowing confidential juvenile information contained in the social history to be released to law enforcement for the purpose of an investigation into criminal street gang activity. Only criminal street gang-related information contained in the juvenile's social history could be released. The General Assembly specifically exempted "*medical, psychiatric, and psychological records and reports.*" Releasing the information must be for the purpose of "*a criminal investigation into alleged criminal gang activity involving a predicate criminal act as defined in § 18.2-46.1 or information that a person is a member of a criminal street gang as defined in § 18.2-46.1*."

2.20 Old Law Under § 16.1-309.1! Also in 2006 the General Assembly enacted HB 692 and SB 129 that amended § 16.1-309.1 of the Code of Virginia relating to exceptions to confidentiality

when a juvenile is identified as affiliated with a criminal street gang. Where consideration of public safety requires, DJJ or a locally operated CSU "may" release information about a juvenile who has been identified as affiliated with a criminal street gang as defined in § 18.2-46.1 to the State Police or a local law-enforcement officer. The exchange of information must be for the purpose of an investigation into criminal street gang activity. Please note the discretionary nature of the language; i.e., "may."

2.30 Law Enforcement Not Satisfied With Discretionary Release of Gang Information: Even after the enactment of the 2006 legislation, the law-enforcement community raised issues concerning DJJ's ability to share confidential records with officers during an investigation into alleged criminal street gang activity. As a result, legislation submitted in 2008 (HB 1254 – Delegate Marsden) and 2009 (HB 1781 – Delegate Albo) attempted to remove the discretionary nature of the 2006 legislation and mandate the release of confidential gang information. Neither bill passed. Apparently, three times is a charm for legislation to mandate the sharing of juvenile gang information with law-enforcement personnel. This year, with the Governor's backing, two bills expanding DJJ's ability to release confidential records for the purpose of criminal street gang investigations passed both chambers unanimously. The 2010 legislation is summarized below.

3.00 New! The 2010 Changes to Releasing Gang Information Under § 16.1-300(A)(10) of the Code of Virginia. HB 1121 and SB 486 amend § 16.1-300(A)(10) of the Code of Virginia to give law-enforcement officers "entitle[ment] to any information related to a criminal street gang including that a person is a member of a criminal street gang as defined in § 18.2-46.1."

3.01 Scope of the Legislation: Who Does § 16.1-300 Cover? The title of § 16.1-300 (Confidentiality of Department records) is misleading. The headlines of the sections of the Code printed in black-face type are "mere catchwords to indicate the contents of the sections and do not constitute part of the act of the General Assembly." (See, § 1-217 of the Code of Virginia.) Section 16.1-300 covers any person in custody of the "social, medical, psychiatric and psychological reports and records of children who are or have been (i) before the court, (ii) under supervision, or (iii) receiving services from a court service unit or who are committed to the Department of Juvenile Justice." Therefore, § 16.1-300 not only applies to the Department, but also covers locally operated CSUs and detention facilities.

3.10 New! Requires Release of Information to Law Enforcement on Department's Own Initiative: SB 486 and HB 1121 amend § 16.1-300 of the Code of Virginia so that the criminal street gang information must be provided by DJJ to law enforcement without their request to aid in initiating an investigation or assist in an ongoing investigation of a criminal street gang as defined in § 18.2-46.1.

3.20 New! No Identifying Information of the Juvenile Unless Involved in Criminal Act: The Department shall not release the identifying information of a juvenile not affiliated with or involved in a criminal street gang unless that information relates to a specific criminal act.

3.30 Not New! No Medical, Psychiatric, and Psychological Records and Reports. The General Assembly's 2006 exemption of "medical, psychiatric, and psychological records and

reports" remains. No medical, psychiatric, and psychological records and reports are to be released.

3.40 Not New! Who is Law Enforcement? Gang-related confidential information can be released to the "Department of State Police or of a police department or sheriff's office that is a part of or administrated by the Commonwealth or any political subdivision thereof, and who is responsible for the enforcement of the penal, traffic, or motor vehicle laws of the Commonwealth." The quoted language is standard boiler plate language used to ensure coverage of all state and local law enforcement.

3.50 Not New! Limitation on Law Enforcement's Use and Dissemination of Gang Information. No person who obtains information pursuant to subdivision (A)(10) of § 16.1-300 "shall divulge such information except in connection with a criminal investigation regarding a criminal street gang as defined in § 18.2-46.1 that is authorized by the Attorney General or by the attorney for the Commonwealth or in connection with a prosecution or proceeding in court."

4.00 New! The 2010 Changes to Releasing Gang Information Under § 16.1-309.1(G) of the Code of Virginia: HB 1121 and SB 486 change the discretionary "may" to a "shall" in § 16.1-309.1. Therefore, HB 1121 and SB 486 require DJJ and locally operated CSUs to release information relating to a juvenile's criminal street gang involvement and the criminal street gang-related activity and membership of others, as criminal street gang is defined in § 18.2-46.1, obtained from an investigation or supervision of a juvenile.

4.10 New! No Identifying Information of the Juvenile Unless in Criminal Act. The information shall include the identity or identifying information of the juvenile. However, the Department and local CSU shall not release the identifying information of a juvenile not affiliated with or involved in a criminal street gang unless that information relates to a specific criminal act.

4.20 New! Law-Enforcement Task Force Means Law Enforcement Only. The information is to be released to law enforcement, including language specific to a law-enforcement task force. This language was added by the General Assembly to specifically limit disclosure to law-enforcement task forces and to exclude a gang task force that includes school personnel, social services, or other non-law-enforcement persons.

4.30 Not New: Release of Information & Consideration of Public Safety. Section § 16.1-309.1 retains the language stating that "where consideration of public safety requires. . ." then DJJ or a locally operated CSU shall release the gang information.

4.40 Not New: Purpose of Releasing Information – Criminal Investigation. The exchange of information must be for the purpose of an investigation into criminal street gang activity.

5.00 Virginia Criminal Information Network (VCIN) Criminal Street Gang Reporting Requirements Under § 52-8.6. HB 1121 and SB 486 amend § 52-8.6 of the Code of Virginia to require DJJ to enter the person's name and other appropriate gang-related information required by the Department of State Police into the information system known as the Organized Criminal Gang File of VCIN when DJJ determines that the person is a member of a gang. Section 52-8.6 of the Code of Virginia defines a person to be a member of a criminal street gang as defined in § 18.2-46.1 of the Code of Virginia by:

(i) self-admission;
(ii) observation or association with a gang, including style of dress, tattoos, hand signals, or symbols; or
(iii) arrested on more than one occasion with known gang members for offenses consistent with gang activities.

Prior to HB 1121 and SB 486, such information was entered by state or local law enforcement, regional jail, DOC, or a regional multijurisdictional law-enforcement task force. DJJ is added to this list. The entry into VCIN must occur as soon as the person is determined to be a member of an organized criminal gang.

5.10 Similar Duty Already - Submitting Gang Information to the Commonwealth's Attorney's Services Council (CASC). Under current law, § 66-3.2 of the Code of Virginia requires DJJ to submit information on juveniles identified as affiliated with a criminal street gang to the Commonwealth's Attorney's Services Council on a monthly basis.

5.11 A Monthly List of Committed Juvenile Gang Members – 14 Years and Older. On a monthly basis, the Director of DJJ must forward a list of juveniles, 14 years of age or older, who meet the below criteria:

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

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

5.20 List to CASC Will Serve as List to VCIN. At this time, it is the Department's intent to use the list generated for the Commonwealth's Attorney's Services Council on a monthly basis for the submission to VCIN.

HB 107 Adult Students & Notifying Schools at Intake.
Delegate Mark Cole

HB 107 amends §§ 16.1-260 and 16.1-293 of the Code of Virginia relating to student offenses reportable by intake officers to schools. Effective July 1, 2010.

1.00 Synopsis of the Changes: Adult Students & Notifying Schools at Intake. HB 107 amends §§ 16.1-260 and 16.1-293 of the Code of Virginia relating to student offenses reportable by intake officers to schools. HB 107 requires a report by the intake officer to the school superintendent when a petition is filed alleging that an adult has committed a reportable offense and is alleged to be within the jurisdiction of the juvenile court. HB 107 also amends § 16.1-293 of the Code of Virginia relating to the notification of the school division superintendent when a juvenile is committed to DJJ and placed in a juvenile correctional center (JCC).

2.00 Statutory Background - Intake Notifications to Schools (§ 16.1-260)(Not New): Section 16.1-260 of the Code of Virginia requires the intake officer to notify the school superintendent when a petition has been filed in juvenile court for an offense listed in subsection G of § 16.1-260. The offenses include those involving firearms, homicides, felonious assault and bodily woundings, sexual assaults, controlled substances, marijuana distribution, arson, burglary, robbery, criminal street gang activity, and mob violence.

2.01 Intake Information May be Disseminated to Principal & School Personnel (Not New). The information provided to a school division superintendent may be disclosed to the school principal as provided in § 16.1-305.2 of the Code of Virginia. The school principal then may disclose the information to those students and school personnel having direct contact with the juvenile and having need of the information to ensure physical safety or the appropriate educational placement or other educational services.

2.02 Why Would A School Receive Notice for an Adult Offender? It is possible for the juvenile court to have jurisdiction over an adult for an offense committed when that person was a juvenile. (See definition of delinquent act and delinquent child in § 16.1-228 of the Code of Virginia; see § 16.1-241 for the subject matter jurisdiction of the juvenile court.) The juvenile court retains jurisdiction over a person for a delinquent act until age 21. (See § 16.1-242 of the Code of Virginia regarding retention of jurisdiction.) If a person reaches the age of 21 and a prosecution has not been commenced against him, then he shall be proceeded against as an adult, even if he was a juvenile when the offense was committed. (Pruitt v. Guerry, 210 Va. 268, 270-71, 170 S.E.2d 1, 3 (1969).[1]) As an example, a juvenile 17 years of age who commits a burglary, but is not apprehended until he turns 18, would remain under the jurisdiction of the juvenile court and would be prosecuted in the juvenile court.

2.10 New! Intake Notice to School When Adult is Alleged to Have Committed Reportable Offense. HB 107 amends subsection G to clarify that a school will receive notice when an adult who, as a juvenile, committed a delinquent act that is reportable. The amendments appear technical in nature and make no substantive change to current DJJ practice.

2.11 Subsection G with the Amended Language. Here's the first sentence of subsection G with the new language:

> "Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter, the intake officer shall file a report with the division superintendent of the school division in which any student who is the subject of a petition alleging that such student who is a juvenile has committed an act, wherever committed, which would be a crime if committed by an adult, *or that such student who is an adult has committed a crime and is alleged to be within the jurisdiction of the court."*

[1] ("[A] defendant who is charged with the commission of a crime when a juvenile, [but not] tried therefore before he reaches [age twenty-one], is no longer within the jurisdiction of the juvenile court but may be proceeded against as an adult." Pruitt v. Guerry, 210 Va. 268, 270-71, 170 S.E.2d 1, 3 (1969) (interpreting § 16.1-159, repealed, but substantially similar to § 16.1-242).

The next sentence states that the "report shall notify the division superintendent of the filing of the petition and the nature of the offense, if the violation involves" the listed offenses.

2.12 Notifying About Adult Students is Current Intake Practice.
DJJ currently complies with this requirement, and there is no substantive change to practice. DJJ averaged 453 intakes that required school notification for persons over the age of 18 over a three-year period (FY2007 to 2009).

3.00 New! Notification to School Division Upon Release from a JJC: HB 107 also amends § 16.1-293 of the Code of Virginia relating to the notification of the school division superintendent when a juvenile is committed to the Department and placed in a JCC.

3.10 What is § 16.1-293? Supervision & Placement of Juvenile Released on Parole. Not New. If a person is placed on parole supervision following release from commitment to the Department, § 16.1-293 requires the CSU providing parole supervision to furnish the parolee with a written statement of the conditions of his parole and instruct him regarding the same. The conditions of the reenrollment plan may be included in the conditions of parole. Violations of parole shall be heard by the court pursuant to § 16.1-291. If the parole supervision is for an indeterminate period of time, the director of the supervising CSU may approve termination of parole supervision. Section 16.1-293 requires DJJ, the Department of Correctional Education (DCE), and the local school division to develop a reenrollment plan if the juvenile is of compulsory school attendance age or is eligible for special education services pursuant to § 22.1-213 of the Code of Virginia.

3.20 New! School Must Receive Notice of Adult Parolee Return to Enrollment. HB 107 substitutes "person" for "juvenile" throughout § 16.1-293 of the Code of Virginia. Therefore, if an "adult" person is released from a JCC and will be returning to school, then the amendments ensure that the Department must inform the school of the person's return to enrollment.

3.21 Compulsory School Attendance Law, Reenrollment Regulations and Special Education: Section 22.1-254 of the Code of Virginia is the compulsory school attendance law. All children under the age of 18 are required to attend school unless excused from attendance as statutorily prescribed under § 22.1-254. The compulsory school attendance law applies to "any child in the custody" of DJJ or DOC and "who has not passed his eighteenth birthday." HB 107 does clarify that a child with a disability as defined in § 22.1-213 of the Code of Virginia would need a reenrollment plan if over the age of 18 and under 21. In those cases, notification would be made to the school, but this would not constitute a change in current practice as the reenrollment plan is coordinated with the local school.

HB 918 Releasing Confidential Information When Juvenile is a Fugitive or Escapee.
Delegate Robert Bell

HB 918 amends § 16.1-309.1 of the Code of Virginia relating to the release of confidential information when a juvenile is a fugitive from justice or an escapee from a secure facility. Effective July 1, 2010.

1.00 Synopsis of the Changes: HB 918 Releasing Confidential Information When Juvenile is a Fugitive or Escapee. HB 918 amends § 16.1-309.1 of the Code of Virginia relating to the release of confidential information when a juvenile is a fugitive from justice or an escapee from a secure facility. Section 16.1-309.1 allows for the public release of confidential information about a juvenile when consideration of public interest requires it because the juvenile has become a fugitive after being charged with or adjudicated delinquent of a specified offense. The information that may be released includes the juvenile's name, age, physical description and photograph, the charge for which he is sought or for which he was adjudicated, and any other information that may expedite his apprehension.

2.00 Statutory Background/Overview – Purpose of § 16.1-309.1 – Exceptions for Releasing Confidential Information (Not New). Section 16.1-309.1 of the Code of Virginia provides exceptions for the release of confidential information about a juvenile when consideration of public interest requires it or for other public safety purposes. For reference only, those exceptions include:

- Open Court Records - "[W]here consideration of public interest requires," a judge must make available the name and address of a juvenile when that juvenile has been adjudicated delinquent for an act that would be a Class 1, 2, or 3 felony, forcible rape, robbery or burglary or a related burglary offense, and when a juvenile has been sentenced as an adult. This requirement is mandatory and not discretionary (see § 16.1-309.1(A)).
- Public Notice for Violent Offenses - A court may make public a juvenile's name and address if that juvenile is 14 years old or older and charged with a mob-related offense (§ 18.2-38 et seq.), a felony involving a weapon, a felony violation of crimes involving controlled substances (§ 18.2-247 et seq.), or an "act of violence" as defined in § 19.2-297.1(A) (see § 16.1-309.1(C)).
- Victim Notification - The victim of a felony offense committed by a juvenile may request the court to order that the victim be informed of the charge or charges brought, the findings of the court, and the disposition of the case (see § 16.1-309.1(D)).
- Emancipation - The judge or clerk may disclose if an order of emancipation of a juvenile pursuant to § 16.1-333 has been entered (see § 16.1-309.1(E)).
- Curfews - The court may share with local law-enforcement officials the court order imposing a curfew on a juvenile (see § 16.1-309.1(F)).
- Gang Information - The Department or locally operated CSU must release any information relating to gang involvement or the gang-related activity of the juvenile or others (see § 16.1-309.1(G)).
- Notice to ICE - The intake officer shall report to the Bureau of Immigration and Customs Enforcement (ICE) a juvenile who has been detained in detention for a violent juvenile felony and who the intake officer has probable cause to believe is in the United States illegally (see § 16.1-309.1(F)).

3.00 Releasing Information When a Juvenile is a Fugitive (§ 16.1-309.1(B) of the Code of Virginia). The court, the Commonwealth's attorney, the Department, and locally operated CSUs have the

authority to make public all or part of the juvenile's record in specified circumstances when a juvenile is a fugitive. Prior to HB 918, only juveniles charged with or convicted of certain serious offenses (forcible rape, robbery, burglary or a related offense under § 18.2-89 et seq. of the Code of Virginia, or any Class 1, 2, or 3 felony) could have identifying information released once they become a fugitive or escapee. HB 918 broadens the scope of § 16.1-309.1 to cover all fugitives as explained below.

3.10 New – Releasing Confidential Information on Any Alleged Felonies Prior to Adjudication: HB 918 creates a new subdivision (a) in section (B)(1) of § 16.1-309.1 allowing the public release of confidential information of a juvenile alleged to have committed any felony who becomes a fugitive and the court is in session, thereby removing the more serious felony limitation. Also new is the required notice to the juvenile's attorney when a petition is filed by DJJ or a local CSU.

3.11 Releasing Information When a Juvenile is an Alleged Felon and the Court IS Open – Petition the Court: Prior to disposition, if a juvenile alleged to be a felon becomes a fugitive from law enforcement or a secure facility, then the attorney for the Commonwealth, *"with notice to the juvenile's attorney of record,"* may petition the court for the public release of identifying information to expedite the apprehension of the juvenile. The Department or a locally operated CSU, may, with notice to the Commonwealth's attorney and *"to the juvenile's attorney of record,"* petition the court to authorize the public release identifying information.

3.12 Releasing Information When a Juvenile is an Alleged Felon and the Court is NOT Open: Prior to disposition, if a juvenile alleged to be a felon becomes a fugitive from law enforcement or a secure facility and the court is closed, then the attorney for the Commonwealth can authorize the public release of identifying information to expedite the apprehension of the juvenile. The Department or a locally operated CSU, with notice to the Commonwealth's attorney and *"to the juvenile's attorney of record,"* may release publicly the identifying information.

3.20 Completely New! Releasing Confidential Information on Alleged Misdemeanant Prior to Adjudication: HB 918 creates a new subdivision (b) in section (B)(1) of § 16.1-309.1 of the Code of Virginia allowing for the public release of information when a juvenile who is alleged to have committed *any* misdemeanor becomes a fugitive.

3.21 Releasing Information When a Fugitive Juvenile is an Alleged Misdemeanant: Prior to disposition, if a juvenile charged with any misdemeanor becomes a fugitive from law enforcement or a secure facility, then the attorney for the Commonwealth may petition the court for the public release of identifying information to expedite the apprehension of the juvenile. If the court is not in session, then the attorney for the Commonwealth may release the information on his own accord. In either case, the attorney for the Commonwealth must provide notice to the *"juvenile's attorney of record."*

3.22 The New Section on Misdemeanant Fugitives Only Applies to Commonwealth's Attorney. Please note: The change only applies to the attorney for the Commonwealth and not DJJ or a locally operated CSU. If the court is open, then the attorney for the Commonwealth must petition the court having jurisdiction of the offense.

If the court is not open, then the attorney for the Commonwealth may "*authorize the public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought, and any other information which may expedite his apprehension.*"

3.23 The New Section Covers All Misdemeanors. The change applies to any juvenile charged with a delinquent act that would constitute a misdemeanor if committed by an adult, or held in custody by a law-enforcement officer, or held in a secure facility.

3.30 New! Releasing Confidential Information on *All* Alleged Felons After Disposition: After final disposition, if a juvenile found to be delinquent for any offense becomes a "fugitive from justice," then DJJ may release to the public any identifying information, including the underlying charge and any other information that may expedite his apprehension.

3.31 New! This Section Now Covers All Delinquent Offenses. Prior to HB 918, this section of the Code only applied to fugitive juveniles adjudicated delinquent for forcible rape, robbery, burglary or a related offense under § 18.2-89 et seq. of the Code of Virginia, or any Class 1, 2, or 3 felony, and juveniles committed to the Department. This section of the Code now applies to any fugitive delinquent.

3.32 Not New. DJJ Operated Facilities & Contracted Facilities Covered. This section of the Code covers any fugitive juvenile who escapes from a facility operated by or under contract with the Department, including from the custody of any employee of such facility.

3.33 Not New. What Kind of Information can be Released to the Public? When a juvenile is a fugitive, the juvenile's name, age, physical description and photograph, the offense for which he was adjudicated, and any other information that may expedite his apprehension can be released to the public.

3.34 Not New. Notice to the Attorney for the Commonwealth. Whenever such information is released, the Department must "promptly notify the attorney for the Commonwealth of the jurisdiction in which the juvenile was tried."

3.35 Not New. Escapee from Local Detention Facility – Local C.A. Releases Information. If the juvenile was held in a locally operated secure facility, then the attorney of the Commonwealth may release the information.

HB 907 Reports of Certain Acts to School Authorities by Local Law-Enforcement.
Delegate Robert Bell

HB 907 amends § 22.1-279.3:1 of the Code of Virginia relating to reports to school authorities by law enforcement of certain acts committed by juveniles. Effective July 1, 2010.

1.00 Synopsis of Changes: Reports of Certain Acts to School Authorities by Local Law-Enforcement. HB 907 amends § 22.1-279.3:1 of the Code of Virginia relating to reports to school authorities by law enforcement of certain acts committed by juveniles. The bill allows attorneys for the Commonwealth or law-enforcement officials, upon the request of the school superintendent, to share

certain information with the school superintendent concerning a student's delinquency case involving a misdemeanor offense listed in the statute, if such disclosure does not jeopardize the investigation or prosecution of the case. The information that may be released includes details of (i) the terms of release from detention, (ii) the court dates, and (iii) the terms of any dispositional orders. Under current law, law enforcement must report the incident, including the charge for felony and misdemeanor offenses, whether the student was released to the custody of his parents or on bond.

2.00 Current Law – Not New! Mandatory Law Enforcement Notification to Principals. Section 22.1-279.3:1 of the Code of Virginia requires law enforcement to report to the school principal and superintendent any felony offense committed by a student no matter where the offense occurred. Section 22.1-279.3:1 also requires law enforcement to make reports to school officials when the violation would be a violation of the Drug Control Act (§ 54.1-3400 et seq.) and occurred on a school bus or on school property. Law enforcement is also required to report any "adult" misdemeanor offenses listed in clauses (i) through (viii) of subsection A of § 22.1-279.3:1.

2.10 Not New! Misdemeanor Reports Requiring Law Enforcement Notification to Schools. Law enforcement is required to report any "adult" misdemeanor offenses listed in clauses (i) through (viii) of subsection A of § 22.1-279.3:1 committed by an enrolled student on a school bus, on school property, or at a school-sponsored activity. Those misdemeanor offenses are:

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

2.20 Not New! Additional Information & Dissemination: The law-enforcement agency making the report to the school principal must also state if the student was released to the custody of his parent or, if over the age of 18, released on bond. The school superintendent who receives notification that a juvenile has committed an act that would be a crime if committed by an adult pursuant to subsection G of § 16.1-260 must forward the information to the principal of the school in which the juvenile is enrolled.

3.00 New! More Information on the Misdemeanor Arrests Listed Above: For any misdemeanor offense listed in clauses (i) through (viii) of subsection A above, the superintendent may request law enforcement and the Commonwealth's attorney to release to the superintendent the terms of release from

detention, court dates, and terms of any disposition orders entered by the court, if such disclosure would not jeopardize the investigation or prosecution of the case.

3.10 Strange Caveat. HB 907 states that "No disclosures shall be in violation of the confidentiality provisions of subsection A of § 16.1-300 or the record retention and redisclosure provisions of § 22.1-288.2." Section 16.1-300 covers confidential DJJ juvenile records. Section 22.1-288.2 covers dissemination of the notice or information regarding an adjudication of delinquency or conviction for an offense listed in subsection G of § 16.1-260 sent by the juvenile court clerk pursuant to § 16.1-305.1.

DRUG COURTS

During the 2004 session, the General Assembly enacted HB 1430 establishing the Drug Treatment Court Act to allow the establishment of drug treatment courts as specialized court dockets within the existing structure of Virginia's court system. (See § 18.2-254.1 of the Code of Virginia.) HB 1430 provided the Supreme Court with the administrative oversight for implementing drug treatment courts in circuit and juvenile courts. HB 1430 established a state Drug Treatment Court Advisory Committee chaired by the Chief Justice of the Supreme Court. The state Drug Treatment Court Advisory Committee established the criteria for implementing a drug treatment court. HB 1430 also provided that no drug treatment court shall be established subsequent to March 1, 2004, unless the jurisdiction or jurisdictions intending or proposing to establish such courts have been specifically granted permission under the Code of Virginia to establish such courts. In 2005 the General Assembly enacted legislation that allowed the City of Chesapeake to establish a drug court subject to the requirements and conditions established by the state Drug Treatment Court Advisory Committee. In 2006 the General Assembly enacted legislation that allowed the City of Newport News to establish a drug court. In 2009 the General Assembly enacted legislation allowing the counties of Franklin and Tazewell to establish drug treatment courts. However, language in the legislation in 2009 prohibited the use of any state funding and that each of the drug courts must be "*funded solely through local resources*."

- **SB 422 (Senator William Wampler) Drug Treatment Court Established in City of Bristol**. SB 422 amends § 18.2-254.1 of the Code of Virginia relating to the Drug Treatment Court Act. SB 422 provides the authority to establish a drug treatment court in the City of Bristol provided that the court is funded within existing state and local appropriations.

MENTAL HEALTH

HB 248 & SB 65 Psychiatric Treatment of Minors Act.
Delegate Terry Kilgore & Senator Louise Lucas

HB 248 and SB 65 amend sections of Titles 8.01, 15.2, 16.1, 19.2, 32.1, 37.2, and 54.1; add sections to Title 16.1; and repeal § 37.2-812 of the Code of Virginia relating to the psychiatric treatment of minors. Effective July 1, 2010.

1.00 Synopsis: The New & Complete Psychiatric Treatment of Minors Act. HB 248 and SB 65 amend sections of Titles 8.01, 15.2, 16.1, 19.2, 32.1, 37.2, and 54.1; add sections to Title 16.1; and repeal § 37.2-812 of the Code of Virginia relating to the psychiatric treatment of minors. HB 248 and SB 65 revise the Psychiatric Inpatient Treatment of Minors Act in order to create a stand-alone juvenile

commitment act that will be titled the Psychiatric Treatment of Minors Act and to eliminate various cross-references to the adult commitment statutes in Title 37.2. The bills incorporate various provisions from the adult commitment statutes, including provisions regarding the transportation of persons in the commitment process, the preparation of preadmission screening reports, and the process for emergency custody and temporary detention orders into the Act. The bills also revise the appeals process by reducing the time to note an appeal from 30 to 10 days, which is consistent with other appeals from the J&DR district courts.

2.00 Amended, Created, & Repealed Sections of the Code of Virginia. HB 248 and SB 65 amend §§ 8.01-389, 15.2-1704, 15.2-1724, 16.1-280, 16.1-335, 16.1-336, 16.1-337, 16.1-338, 16.1-339, 16.1-340, 16.1-341 through 16.1-345.5, 16.1-346, 16.1-346.1, 16.1-347, 19.2-13, 32.1-127.1:03, 37.2-808, 37.2-809, 37.2-813, and 54.1-2400.1 of the Code of Virginia. HB 248 and SB 65 create sections numbered 16.1-336.1, 16.1-340.1 through 16.1-340.4, and 16.1-345.6. HB 248 and SB 65 repeal § 37.2-812.

3.00 The New Psychiatric Treatment of Minors Act. Below is a summary of the amendments to existing Code sections and of the newly created Code sections. Changes that appear technical in nature are not included below, such as HB 248 and SB 65 drops "Inpatient" from the title of "The Psychiatric ~~Inpatient~~ Treatment of Minors Act." Other technical amendments include:

- adding language throughout the Act that the minor, when released from commitment, will be returned to "shelter care, or other facility approved by the DJJ within 24 hours by the sheriff serving the jurisdiction where the minor was detained."
- adding language throughout the Act that, if a specified time period (such as 24-, 72-, or 96-hour time period) expires on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, then the stated time frame will be extended to the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.
- correcting the name of the Department of Behavioral Health and Developmental Services.
- making numerous technical amendments to other Titles of the Code of Virginia to eliminate various cross-references to the adult commitment statutes in Title 37.2.

Highlights

- **Amendments to § 16.1-280 (Commitment of Juveniles with Mental Illness & Outpatient Treatment.)** Section 16.1-280 of the Code of Virginia provides the juvenile court with the authority to commit a juvenile with mental illness or "mental retardation" to an appropriate hospital. HB 248 and SB 65 amend § 16.1-280 to clarify that the juvenile court can order mandatory outpatient treatment for a juvenile in accordance with the Psychiatric Treatment of Minors Act.

- **New Definitions in § 16.1-336!** HB 248 and SB 65 add definitions for "*Designee of the local community services board*," "*Employee"* and "*Investment interest."* HB 248 and SB 65 amend the definition for "qualified evaluator."

- **Newly Created § 16.1-336.1 (Admission Forms & Screening Forms.)** HB 248 and SB 65 add § 16.1-336.1 to clarify that the Office of the Executive Secretary of the Supreme Court of Virginia shall prepare the petitions, orders, and such other legal forms as required by the "The Psychiatric Treatment of Minors Act." The Department of Behavioral Health and Developmental Services will prepare the preadmission screening report, evaluation, and other clinical forms.

- **Amendments to § 16.1-337 (Inpatient Treatment of Minors**.) HB 248 and SB 65 clarify that a minor may be admitted to a mental health facility for inpatient treatment only pursuant to §§ 16.1-338, 16.1-339, or newly created § 16.1-340.1 (Involuntary Temporary Detention of Minor). HB 248 and SB 65 clarify that the "qualified" evaluator or the community services board rendering services to a minor shall disclose to the magistrate, the juvenile intake officer, the court, the minor's attorney or guardian ad litem any information that is necessary and appropriate to enable each of them to perform their duties. HB 248 and SB 65 provide that a health care provider providing services to a minor may notify the minor's parent of information about the minor's health care, unless the provider has actual knowledge that the parent is currently prohibited by court order from contacting the minor.

- **Amendments to § 16.1-338 (Parental Admission of Minors Younger than 14 and Nonobjecting Minors 14 years of Age or Older.)** Section 16.1-338 provides the statutory authority for a minor younger than 14 years of age to be voluntarily admitted for inpatient treatment by a parent. Section 16.1-338 provides that a minor 14 years of age or older may be admitted upon the joint application and consent of the minor and the minor's parent. HB 248 and SB 65 add that "a preadmission screening report" shall be completed before approving the admission.

- **Amendments to § 16.1-339 (Parental Admission of an Objecting Minor 14 years of Age or Older)**. Section 16.1-339 provides the authority for a parental admission of an objecting minor 14 years of age or older. If involuntary admission is sought to a state hospital, then HB 248 and SB 65 require the community services board to provide a "preadmission screening report" required by subsection B of § 16.1-338. Section 16.1-339 also requires that a minor be examined within 24 hours of his admission by a qualified evaluator.

- **Amendments to § 16.1-340 (Emergency Custody Orders.)** HB 248 and SB 65 amend § 16.1-340 to allow the magistrate to issue an emergency custody order including the criteria for issuing such an order. Section 16.1-340 addresses transportation and law enforcement jurisdictional issues. Section 16.1-340 allows a law-enforcement officer to take emergency custody of a minor for up to four hours when that officer has probable cause to believe that a minor meets the criteria for emergency custody; including when a minor retracts his consent to be voluntarily committed. The four hours can be extended by two hours by the magistrate.

- **Completely New - § 16.1-340.1 (Involuntary Temporary Detention Orders.)** HB 248 and SB 65 create § 16.1-340.1 to allow a magistrate to issue a temporary detention order for up to 96 hours when a minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment, including the criteria for issuing such an order.

- **Completely New - § 16.1-340.2 (Transportation of Minor in the Temporary Detention Process.)** HB 248 and SB 65 create § 16.1-340.2 specifying law enforcement's responsibility and jurisdiction for transporting a minor upon issuance of a temporary detention order, including the criteria for "an alternative transportation provider, including a parent, family member, or friend of the minor who is the subject of the temporary detention order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner."

- **Completely New - § 16.1-340.3 (Release of Minor Prior to Commitment Hearing for Involuntary Admission.)** HB 248 and SB 65 create § 16.1-340.3 to allow the judge to release the minor to his parent if it appears that the minor no longer meets the commitment criteria specified in § 16.1-345.

Section 16.1-340.3 provides the criteria for a director of a mental health facility to release a minor if that minor no longer meets the commitment criteria.

- **Completely New - § 16.1-340.4 (Involuntary Commitment & Preadmission Screening Report.)** HB 248 and SB 65 create § 16.1-340.4 to require the juvenile court to order a preadmission screening report from the community services board prior to the hearing.

- **Amendments to § 16.1-341 (Involuntary Commitment - Petition; Hearing Scheduled; Notice and Appointment of Counsel.)** Section 16.1-341 provides the criteria for filing a petition for the involuntary commitment of a minor with the juvenile court. A hearing must be held "no sooner than 24 hours and no later than 96 hours from the time the petition was filed."

- **Amendments to § 16.1-342 (Involuntary Commitment & Clinical Evaluation.)** Section 16.1-342 requires the court to order the community services board to arrange for an evaluation "by a qualified evaluator" prior to issuing a commitment order. HB 248 and SB 65 add the criteria and contents for the evaluation.

- **Amendments to § 16.1-344 (Involuntary Commitment Hearing.)** Section 16.1-344 provides the criteria for the court to conduct the involuntary commitment hearing, including summoning material witnesses. HB 248 and SB 65 add subsection B that requires the court to instruct a minor, 14 years of age or older, of his right to be voluntarily admitted for inpatient treatment.

- **Amendments to § 16.1-345 (Involuntary Commitment Criteria.)** Section 16.1-345 provides the court with the authority to order the involuntary commitment of the minor to a mental health facility for treatment for up to 90 days if it finds the minor meets, by clear and convincing evidence, the statutory criteria. HB 248 and SB 65 add additional "observations" and considerations the court must make before ordering the involuntary commitment. HB 248 and SB 65 add criteria for petitioning and ordering an additional 90 days of inpatient treatment or mandatory outpatient treatment pursuant to § 16.1-345.2.

- **Amendments to § 16.1-345.2 (Mandatory Outpatient Treatment Criteria & Orders.)** Section 16.1-345.2 provides the court with the authority to order the mandatory outpatient treatment for a minor for up to 90 days. HB 248 and SB 65 add additional "observations" and considerations the court must make before entering the order.

- **Amendments to § 16.1-345.4 (Court Review of Mandatory Outpatient Treatment Plan.)**. Section 16.1-345.4 requires the court to conduct a review hearing within 15 days after receiving a motion for review of the mandatory outpatient treatment plan from the community service board concerning the minor's compliance with the mandatory outpatient treatment plan.

- **Amendments to § 16.1-345.5 (Continuation of Mandatory Outpatient Treatment Order.)**. Section 16.1-345.5 allows the community services board, at any time within 30 days prior to the expiration of a mandatory outpatient treatment order, to request the juvenile court to order an additional 90 days of mandatory outpatient treatment. HB 248 and SB 65 add language requiring the community service board to provide a preadmission screening report as required in § 16.1-340.4.

- **Newly Created § 16.1-345.6 (Appeal of Final Order.).** Newly created § 16.1-345.6 gives the minor the right to appeal any mandatory inpatient treatment order or a mandatory outpatient treatment order within 10 days. The appeal goes to the circuit court in the jurisdiction where the minor was committed or ordered to mandatory outpatient treatment.

- **Amendment to § 16.1-346 (Treatment Plans & Periodic Reviews)**. Section 16.1-346 requires the facility where the minor is committed to complete an individualized treatment plan within 10 days. HB 248 and SB 65 add language allowing the minor's attorney and his guardian ad litem to request a copy of the treatment plan.

- **Amendments to § 16.1-346.1 (Discharge Plan.).** Section 16.1-346.1 requires a discharge plan to be completed and copies provided before a minor is released from commitment. HB 248 and SB 65 add language that a copy of the plan shall also be provided, upon request, to the minor's attorney and guardian ad litem.

Other Mental Health-Related Legislation

HB 247 (Delegate Terry Kilgore) & SB 63 (Senator Louise Lucas) Appeals of Involuntary Commitment. HB 247 and SB 63 amend § 37.2-821 of the Code of Virginia relating to appeal of involuntary admission, certification, or mandatory outpatient treatment orders. HB 247 and SB 63 reduce from 30 to 10 days the length of time for a person to appeal to circuit court an order for involuntary commitment, mandatory outpatient treatment, or certification for admission to a training center. HB 247 and SB 63 also provide that an appeal does not operate to suspend any such order unless so ordered by a judge or special justice. HB 247 and SB 63 further provide that an order of the circuit court shall not extend the duration of involuntary admission or mandatory outpatient treatment set forth in the order appealed. The bills clarify that the appeal shall be heard in accordance with the same provisions applicable to the original order, except that the court in its discretion may rely upon the evaluation report in the commitment hearing from which the appeal is taken instead of requiring a new evaluation. According to the Supreme Court of Virginia, this legislation does not have a fiscal impact on the financial resources of the court system. Please note: This legislation only impacts adults.

HB 729 (Delegate David Albo) & SB 360 (Senator George L. Barker) Mandatory Outpatient Treatment Following Court-Ordered Involuntary Inpatient Treatment. HB 729 and SB 360 amend §§ 37.2-815 and 37.2-817 through 37.2-817.4 of the Code of Virginia relating to mandatory outpatient treatment following involuntary admission. HB 729 and SB 360 allow the court or special justice in an involuntary inpatient treatment order to authorize the treating physician to discharge the person to mandatory outpatient treatment not to exceed the length of the involuntary inpatient treatment. For the judge or special justice to order mandatory inpatient treatment following the mandatory outpatient treatment, there must be clear and convincing evidence that (i) the person has a history of lack of compliance with treatment for mental illness including being the subject of two involuntary admissions within the last 36 months; (ii) mandatory outpatient treatment is needed to prevent a relapse or deterioration that would be likely to result in the person meeting the criteria for involuntary inpatient treatment; (iii) the person is unlikely to obtain outpatient treatment unless the court orders it; and (iv) the person is likely to benefit from mandatory outpatient treatment. The discharge to mandatory outpatient treatment by the physician must be made in accordance with the provisions of (C)(2) of § 37.2-817 of the Code of Virginia. The discharge plan must be submitted to the court for approval and, upon approval by the court, incorporated into the original involuntary inpatient treatment order. Additionally, services actually must be available in the community, and providers of services actually must have agreed to

deliver the services. The bills also set forth how orders for mandatory outpatient treatment following inpatient treatment will be enforced, reviewed, continued, and rescinded. Please note: This legislation only impacts adults.

HB 371 (Delegate James M. Shuler) Certificate of Public Need & Establishment of Psychiatric Services. HB 371 requires the Commissioner of Health to accept applications and to authorize the Commissioner to issue certificates of public need to establish a psychiatric service. HB 371 requires the Commissioner of Health to accept applications in any certificate of public need in Batch Group G review cycle and issue certificates of public need for the establishment of a psychiatric service as the result of a relocation of psychiatric beds from one hospital in Planning District 5 to another hospital in Planning District 5. No psychiatric beds relocated from one hospital to another hospital in Planning District 5 to establish a new psychiatric service shall be converted to any use other than inpatient psychiatric care. This act is in force "[n]otwithstanding (i) the provisions of §§ 32.1-102.3 and 32.1-102.3:2 of the Code of Virginia, (ii) any regulations of the Board of Health establishing standards for the approval and issuance of Requests for Applications, and (iii) any current Requests for Applications issued pursuant to § 32.1-102.3:2 of the Code of Virginia." HB 371 contains a second enactment clause stating "that an emergency exists and this act is in force from its passage (April 11, 2010)." Please note: HB 371 is a "Section 1" bill or act, meaning the act has the full force of law but will not appear as a section in the Code of Virginia.

ALCOHOL & JUVENILE COURT DISPOSITIONS

Possession & Consumption of Alcohol & Driver's License Suspension.
HB 862 (Delegate Benjamin L. Cline), HB 863 (Delegate Benjamin L. Cline), & HB 908 (Delegate Robert B. Bell)

HB 862, HB 863, and HB 908 amend § 16.1-278.9 of the Code of Virginia relating to the punishment of juveniles for possession of alcohol and public intoxication. Effective July 1, 2010.

1.00 Synopsis of the Changes: Possession & Consumption of Alcohol & Driver's License Suspension. Section 16.1-278.9 of the Code of Virginia requires the denial of a driver's license for a child at least 13 years of age at the time of the offense who is found delinquent for certain enumerated offenses and truancy. HB 862, HB 863, and HB 908 amend § 16.1-278.9 of the Code of Virginia relating to the punishment of juveniles for possession of alcohol and public intoxication. Effective July 1, 2010, these bills toughen the punishments for underage drinking and further complicate an already dense section of the Code.

Part I - Brief Synopsis Concerning the Impact of the Combined Bills:

- ***"The Court Now Has Discretion to Defer Disposition for First-Time Alcohol Possession & Consumption."*** HB 862 and HB 908 work together to change the court's requirement, to an option, to defer adjudication and disposition of cases involving (i) purchase, possession, or consumption of alcohol; (ii) unlawful drinking or possession of alcohol at school; and (iii) public intoxication after imposition of a license sanction. It allows the judge to (1) enter a judgment of guilt making the deferred adjudication and disposition an option, or (2) not enter a judgment of guilt and defer disposition while the license sanction is imposed.

- "***You Must Take the Bus.***" HB 863 amends § 16.1-278.9 of the Code of Virginia relating to a juvenile's loss of driving privileges for certain alcohol, drug and firearm offenses, and truancy. Under current law, the juvenile court judge may issue a restricted driver's license allowing a juvenile to drive to and from school. HB 863 prohibits the juvenile court judge from issuing a restricted license for travel to and from school "when school-provided transportation is available."
- ***"No Defer and Dismiss Under § 16.1-278.9(F) for Second Alcohol or Gun Offense."*** HB 862 and HB 908 work together to prohibit the court from dismissing a second offense for alcohol (§§ 4.1-305 and 4.1-309), public intoxication (§ 18.2-388), or the use or possession of a handgun or streetsweeper. Those offenses must be disposed of under § 16.1-278.8. Under current law, if the juvenile complies with the terms and conditions prescribed by the court, the judge must dismiss the proceedings against that juvenile (unless the violation resulted in the injury or death of any person).

Part II - Outline of How § 16.1-278.9 Works with the Changes Made by HB 862, HB 863, and HB 908 (More Information Than You Want or Need . . . So, Turn Back!).

1.00 Denying Driver's License for Certain Offenses: § 16.1-278.9 A (No Change). First, subsection A of § 16.1-278.9 requires the denial of a driver's license for a child at least 13 years of age at the time of the offense who is found delinquent for the following offenses:

(i) § 18.2-266 (driving motor vehicle, engine, etc., while intoxicated; includes similar ordinances of any county, city, or town)[2];
(ii) § 18.2-268.2 (refusal to take a blood or breath test);
(iii) a felony violation of § 18.2-248 (manufacturing, selling, distributing, or with intent a controlled substance), § 18.2-248.1 (sale, distribution, or possession with intent to sell marijuana), or § 18.2-250 (possession of controlled substances);
(iv) a misdemeanor violation of § 18.2-248 (manufacturing, selling, distributing, or with intent a controlled substance), § 18.2-248.1 (sale, distribution, or possession with intent to sell marijuana), § 18.2-250 (possession of controlled substances), or § 18.2-250.1 (possession of marijuana);
(v) § 4.1-305 (the unlawful purchase, possession, or consumption of alcohol) or § 4.1-309 (drinking or possessing alcoholic beverages in or on public school grounds);
(vi) § 18.2-388 (public intoxication or a similar ordinance of a county, city, or town);
(vii) the unlawful use or possession of a handgun or possession of a "streetsweeper"; or
(viii) a violation of § 18.2-83 (bomb threats).

1.10 This Does Not Exclude Other Penalties. In addition to denying the driver's license, the court may impose any other penalty provided by law for the offense.

2.00 A Violation of § 18.2-266 (DUI) While Transporting a Child Requires Community Service (Not New). If the offense involves a violation in clause (i) (§ 18.2-266 DUI) and the child was transporting a person 17 years of age or younger, then the court shall impose the additional fine and order community service as provided in § 18.2-270 (penalties and fines for driving while intoxicated and subsequent offenses). This is in addition to any other penalties.

[2] This is not "baby DUI" pursuant to § 18.2-266.1 of the Code of Virginia.

3.00 One Year+ Driver's License Suspension for Clauses (i), (ii), (iii), or (viii) (Not New)
There will be at least a one year suspension for a first-time offense under clauses (i), (ii), (iii), or (viii); could be longer for a second offense. The offenses under those clauses are:

- (i) § 18.2-266 (DUI)[3];
- (ii) § 18.2-268.2 (refusal to take a blood or breath test);
- (iii) a felony violation of § 18.2-248 (manufacturing, selling, distributing a controlled substance), § 18.2-248.1 (sale and distribution of marijuana), or § 18.2-250 (possession of controlled substances);
- (viii) a violation of § 18.2-83 (bomb threats).

For a first offense, the driver's license suspension shall be for one year or until the juvenile reaches the age of 17, whichever is longer. For a second offense for one of those clauses, the suspension will last one year or until the juvenile reaches the age of 18, whichever is longer.

4.00 Six-Month Driver's License Suspension for Clause (iv), (v), or (vi) (No Change)
There will be a six-month driver's license suspension for a violation under clause (iv), (v), or (vi). The age for which a child can obtain a driver's license is 16 years and three months. If the child is under the age for a driver's license, then the child's ability to apply for a driver's license shall be delayed for a period of six months following the date he reaches the age of 16 years and three months.

The offenses triggering the six-month suspension under clause (iv), (v), or (vi) are:

- (iv) a misdemeanor violation of § 18.2-248 (manufacturing, selling, distributing a controlled substance), § 18.2-248.1 (sale and distribution of marijuana), § 18.2-250 (possession of controlled substances), or § 18.2-250.1 (possession of marijuana);
- (v) § 4.1-305 (the unlawful purchase, possession, or consumption of alcohol) or § 4.1-309 (drinking or possessing alcoholic beverages in or on public school grounds); and
- (vi) § 18.2-388 (public intoxication).

5.00 May Defer Disposition for First-Time Alcohol Possession & Consumption (NEW). If the offense involves a *first* violation designated under clause (v) or (vi), the court shall impose the license sanction "*and may enter a judgment of guilt or,"* without entering a judgment of guilt "~~and shall~~, *may"* defer disposition of the delinquency charge until such time as the court disposes of the case pursuant to subsection F of § 16.1-278.9.

5.10 The Offenses. The offenses in which judgment and disposition may be deferred only one time are :

- (v) § 4.1-305 (purchase, possession, or consumption of alcohol) or § 4.1-309 (drinking or possessing alcoholic beverages in or on public school grounds); and
- (vi) § 18.2-388 (public intoxication).

[3] This is not "baby DUI" pursuant to § 18.2-266.1 of the Code of Virginia.

5.20 Impact of Legislative Changes (HB 908 & HB 862). Prior to HB 908 and HB 862, the judge was required to suspend the driver's license for an alcohol offense or public intoxication, but was required to defer adjudication and disposition pending successful completion of such terms and conditions as prescribed by the court for a first-time offender.

- Under HB 908 and HB 862, deferring adjudication and disposition is at the discretion of the judge.
- Under HB 908 and HB 862, the judge can defer adjudication and disposition for a first offense only.

6.00 Felony & Misdemeanor Drug Offenses (No Change)

If the offense involves a violation designated under clause (iii) or (iv), the court shall impose the license sanction and shall dispose of the delinquency charge pursuant to the provisions of Chapter 11 or § 18.2-251 of the Code of Virginia. Section 18.2-251 is the first-time drug offender "defer and dismiss" statute for adults.

6.10 Here are the offenses:

- (iii) a felony violation of § 18.2-248 (manufacturing, selling, distributing a controlled substance), § 18.2-248.1 (sale and distribution marijuana), or § 18.2-250 (possession of controlled substances);
- (iv) a misdemeanor violation of § 18.2-248 (manufacturing, selling, distributing a controlled substance), § 18.2-248.1 (sale and distribution of marijuana), § 18.2-250 (possession of controlled substances), or § 18.2-250.1 (possession of marijuana).

7.00 30+ Day Driver's License Suspension for Handgun or Streetsweeper (No Change)

If the offense involves a violation designated under clause vii (possession of a handgun), the denial of driving privileges shall be for a period of not less than 30 days.

7.10 Two-Year Suspension for Concealed Weapon or Streetsweeper (No Change)

However, it is a two-year suspension if the offense involves possession of a concealed handgun or a striker 12, commonly called a "streetsweeper," or any semi-automatic folding stock shotgun of that type with a spring tension drum magazine capable of holding 12 shotgun shells. If the child is under 16 years and three months, then the child's ability to apply for a driver's license will be delayed for two years after the age of 16 years and three months.

8.00 Driver's License Suspension for Truancy (Subsection A1 of § 16.1-278.9) (No Change)

If a child at least 13 years of age fails to comply with school attendance and meeting requirements as provided in § 22.1-258, then the court shall suspend the child's driver's license for no less than 30 days. If the child is under 16 years and three months, then that child's ability to apply for a driver's license will be delayed until after the age of 16 years and three months.

8.10 Second Truancy Offense – One-Year Suspension (No Change)

For a second or subsequent truancy offense, the court "may" suspend the driver's license for one year or until the juvenile reaches the age of 18, whichever is longer. The court may delay the child's ability to apply for a driver's license for a period of one year following the date he reaches the age of 16 years and three months, as appropriate.

9.00 Actual Confiscation of Driver's License (Subsection B of § 16.1-278.9) (No Change)
Subsection B requires the court to take physical custody of the child's driver's license for the duration of the suspension.

10.00 Reports to DMV (Subsection C of § 16.1-278.9) (No Change)
The court shall report to the Department of Motor Vehicles (DMV) any order suspending a driver's license under § 16.1-278.9. The report and the record shall include a statement as to whether the child was represented by or waived counsel or whether the order was issued pursuant to a finding of truancy. This record will be available only to law-enforcement officers, attorneys for the Commonwealth, and courts. No other record of the proceeding shall be forwarded to DMV unless the proceeding results in an adjudication of guilt pursuant to subsection F of § 16.1-278.9.

10.10 DMV to Refuse to Issue Driver's License (No Change)
For a child under the age of 16 years and three months who does not have a license at the time of the court's order, DMV shall refuse to issue a driver's license to any child denied a driver's license until such time as is stipulated in the court order or until notification by the court of withdrawal of the order of denial.

11.00 VASAP for Alcohol and Drug Offenders (Subsection D of § 16.1-278.9) (No Change)
If the finding as to the child involves a violation designated under clause (i), (ii), (iii), or (vi) of subsection A, the child may be referred to a certified alcohol safety action program in accordance with § 18.2-271.1 of the Code of Virginia upon such terms and conditions as the court may set forth. Section 18.2-271.1 is the first-time offender stature for DUI. Section 18.2-271.1 allows the Commission on the Virginia Alcohol Safety Action Program (VASAP) to certify alcohol and drug programs.

11.10 Those clauses are the offenses of:
- § 18.2-266 (DUI);
- § 18.2-268.2 (refusal to take a blood or breath test);
- a felony violation of § 18.2-248 (manufacturing, selling, distributing a controlled substance), § 18.2-248.1 (sale and distribution of marijuana), or § 18.2-250 (possession of controlled substances);
- a misdemeanor violation of § 18.2-248 (manufacturing, selling, distributing a controlled substance), § 18.2-248.1 (sale and distribution of marijuana), § 18.2-250 (possession of controlled substances), or § 18.2-250.1 (possession of marijuana).

12.00 Rehabilitative & Education Services for Alcohol, Drug, Weapons, and Bomb Threats (Subsection D of § 16.1-278.9) (No Change)
If the court finds the child violated clause (iii), (iv), (v), (vii), or (viii), then the child may be ordered into any appropriate rehabilitative or educational services by the court.

12.10 Those clauses are the offenses of:
- (iii) a felony violation of § 18.2-248 (manufacturing, selling, distributing a controlled substance), § 18.2-248.1 (sale and distribution of marijuana), or § 18.2-250 (possession of controlled substances);
- (iv) a misdemeanor violation of § 18.2-248 (manufacturing, selling, distributing a controlled substance), § 18.2-248.1 (sale and distribution of marijuana), § 18.2-250 (possession of controlled substances), or § 18.2-250.1 (possession of marijuana);

- (v) § 4.1-305 (purchase, possession, or consumption of alcohol) or § 4.1-309 (drinking or possessing alcoholic beverages in or on public school grounds);
- (vii) possession of a handgun or a "streetsweeper;" and
- (viii) § 18.2-83 (bomb threats).

13.00 Limitations Upon Restricted Driver's License (Subsection D of § 16.1-278.9) (Changes by HB863!) The second paragraph of subsection D allows the court, in its discretion and upon a demonstration of hardship, to authorize the use of a restricted permit to operate a motor vehicle by any child who has a driver's license at the time of the offense or finding of truancy.

13.10 Criteria for Issuing a Restricted Driver's License (New as of HB 863). A restricted license can be issued pursuant to the criteria in subsection E of § 18.2-271.1 or for travel to and from school.

- **This is a Change - No Restricted License if School Bus is Available**: HB 863 added language stating that "*no restricted license shall be issued for travel to and from home and school when school-provided transportation is available . . .*"

13.20 No Restricted Licenses for Drug and Marijuana Violations (No Change). A restricted license cannot be issued for a violation under clause (iii) or (iv). Those drug and marijuana offenses are:

- (iii) a felony drug or marijuana violation (§§ 18.2-248, 18.2-248.1, or 18.2-250);
- (iv) a misdemeanor drug or marijuana violation (§§ 18.2-248, 18.2-248.1, 18.2-250, or 18.2-250.1).

13.30 No Restricted Licenses for Second and Subsequent Offenses (No Change)
No restricted license shall be issued for second or subsequent violation of any offense or a second finding of truancy.

13.40 Terms of the Restricted License Will be in Court Order (No Change)
The issuance of the restricted permit shall be set forth within the court order, a copy of which shall be provided to the child, and shall specifically enumerate the restrictions imposed and contain such information regarding the child as is reasonably necessary to identify him. A violation of the restricted driver's license will fall under § 46.2-301 (driving while license, permit, or privilege to drive suspended or revoked).

14.00 Court Review – 90 Days for First Offense; One Year for Second Offense (Subsection E of § 16.1-278.9) (No Change). Upon petition made at least 90 days after issuance of the order, the court may review and withdraw any order of denial of a driver's license if for a first such offense or finding as provided in subsection A1. For a second or subsequent such offense or finding, the order may not be reviewed and withdrawn until one year after its issuance.

15.00 Defer & Dismiss Proceedings (Subsection F of § 16.1-278.9) (Changes by HB862 & HB908!)
If the finding involves a *first* violation (clause vii – possession of a handgun or streetsweeper) and the child has fulfilled the terms and conditions prescribed by the court and the child's driver's license has been restored, then the court may discharge the child and dismiss the proceedings against him.

In the event the violation resulted in the injury or death of any person or if the finding involves a violation designated under clause "(i) ~~or~~, (ii), *(v), or (vi)"* of subsection A, the court may discharge the child and dismiss the proceedings against him.

Changes to First Sentence of Subsection F:

- The amendments limit discharge and dismissal to first offenders for (vii) possession of a handgun or a "streetsweeper."
- The second amendment removes (v) § 4.1-305 (the unlawful purchase, possession, or consumption of alcohol) or § 4.1-309 (drinking or possessing alcoholic beverages in or on public school grounds), and (vi) § 18.2-388 (public intoxication) from the "required" dismiss and discharge language and makes it discretionary.

Effect of the changes to the first sentence of subsection F:

- **No Change**: For a weapons or streetsweeper offense, the court must discharge and dismiss if the child successfully regains his license and satisfies the court's terms and conditions.
- **No Change**: For a weapons or streetsweeper offense that results in an injury or death of a person, then the court may discharge and dismiss if the child successfully regains his license and satisfies the court's terms and conditions.
- **No Change**: For a DUI or a refusal to take a breath test, the court *may* discharge and dismiss if the child successfully regains his license and satisfies the court's terms and conditions.
- **This is a Change!** For alcohol and public intoxication offenses, the court *may* discharge and dismiss if the child successfully regains his license and satisfies the court's terms and conditions. <u>The discretion is new.</u> Under prior law, the court was required to dismiss.

15.10 Dismissal Means No Adjudication, But Record Kept to Note the Offense (No Change). A discharge and dismissal will mean no adjudication or finding of guilt. However, a record of the proceeding will be kept for the purpose of counting towards any subsequent offenses.

15.20 Failure to Fulfill Terms and Conditions Will Mean Adjudication of Guilt (No Change). Failure of the child to fulfill such terms and conditions shall result in an adjudication of guilt.

15.30 Dismissal of Drug Offenses (No Change). If the finding as to such child involves a violation designated under clause (iii) or (iv) of subsection A, the charge shall not be dismissed pursuant to this subsection but shall be disposed of pursuant to the provisions of this chapter or § 18.2-251. Section 18.2-251 is the "first time drug offender defer and dismiss" statute for adults.

Here are the Drug Offenses:

- (iii) a felony violation of § 18.2-248 (manufacturing, selling, distributing a controlled substance), 1§ 8.2-248.1 (sale and distribution of marijuana), or § 18.2-250 (possession of controlled substances);
- (iv) a misdemeanor violation of § 18.2-248 (manufacturing, selling, distributing a controlled substance), § 18.2-248.1 (sale and distribution of marijuana), § 18.2-250 (possession of controlled substances), or § 18.2-250.1 (possession of marijuana);

15.40 Last Sentence Added by HB903 (This is a Change). *"If the finding as to such child involves a second violation under clause (v), (vi) or (vii) of subsection A, the charge shall not be*

dismissed pursuant to this subsection but shall be disposed of under § 16.1-278.8." The offenses are:

- (v) § 4.1-305 (purchase, possession, or consumption of alcohol) or § 4.1-309 (drinking or possessing alcoholic beverages in or on public school grounds);
- (vi) § 18.2-388 (public intoxication);
- (vii) the unlawful use or possession of a handgun or streetsweeper.

New – No Defer and Dismiss Under 16.1-278.9(F) for Second Alcohol and Gun Offense:
The court cannot dismiss a second offense for alcohol (§ 4.1-305 and § 4.1-309), public intoxication (§ 18.2-388), or the use or possession of a handgun or streetsweeper.

***Not New – The Court can Dismiss a Second or Subsequent Offense for*:**

- (i) § 18.2-266 (DUI);
- (ii) § 18.2-268.2 (refusal to take a blood or breath test);
- (viii) § 18.2-83 (bomb threats); and
- Truancy under subsection A1.

Not New - Drug Offenses Are Captured Under § 18.2-251 (First-Time Drug Offender Defer and Dismiss Statute for Adults). Those offenses are:

(iii) a felony drug or marijuana violation (§§ 18.2-248, 18.2-248.1, or 18.2-250);
(iv) a misdemeanor drug or marijuana violation (§§ 18.2-248, 18.2-248.1, 18.2-250, or 18.2-250.1).

"Baby DUI" Is No Longer a Class 1 Misdemeanor – Sunset Clause Takes Effect. Effective July 1, 2010.

1.00 What is "Baby-DUI?" Section 18.2-266.1 of the Code of Virginia, commonly referred to as the "Baby-DUI" statute, provides a "zero tolerance" level (0.02% -0.08% BAC) for underage drinking and driving and makes it a Class 1 misdemeanor. However, due to a drafting error in legislation during the 2008 General Assembly, the penalty for Baby-DUI was limited to forfeiture of the person's driver's license for one year and either a mandatory minimum fine of $500 or performance of a minimum of 50 hours of community service. The drafting error appeared to have prohibited the use of incarceration in a detention facility as a dispositional option.

2.00 FYI – Conflict in Punishment for "Baby-DUI" and Underage Possession (2008 General Assembly). In 2008 it became known that there was a conflict in the punishment for the possession of alcohol by an underaged person compared to underage drinking and driving. The possession of alcohol by a person under the age of 21 was a Class 1 misdemeanor[4] but that underage drinking and driving (Baby-DUI) was not a Class 1 misdemeanor. The punishment for "Baby-DUI" was a mandatory minimum fine of $250 and a period of license suspension for six months. The punishment did not include a period of incarceration. Therefore, the penalty for a juvenile possessing alcohol was greater than the penalty for a juvenile drinking and driving; not to mention the contrast between the punishment for "Baby-DUI" compared with the punishment for an adult conviction for DUI. An adult convicted of driving while intoxicated with a blood alcohol count of 0.08% or more is guilty of a Class 1 misdemeanor, and punishment includes a mandatory minimum fine of $250 (see § 18.2-270). During the 2008 General

[4] See § 4.1-305 of the Code of Virginia.

Assembly Session, legislation was introduced that made "Baby-DUI" punishable as Class 1 misdemeanor.[5]

2.10 Concerns with Violating OJJDP. The Department of Criminal Justice Services (DCJS) raised concerns that the federal government considered "Baby-DUI" a status offense and that making "Baby-DUI" a Class 1 misdemeanor could result in the state losing federal grant funding under the Juvenile Justice and Delinquency Prevention (JJDP) Act of 2002 (Public Law 107–273, 42 U.S.C. § 5601 et seq.). 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, under the federal interpretation, it appears that "Baby-DUI" and possession of alcohol would be included in the federal definition of a "status offense."

3.00 Sunset Clause Remained and Took Effect July 1, 2010. Sunset Clause and DCJS Report. Legislation in 2009 (HB 1868) attempted to remove the enactment clause with the sunset provision that removed the Class 1 misdemeanor offense language in § 18.2-266.1 on July 1, 2010. Whereas the 2009 bill passed, the sunset provision remained; therefore, the language making "Baby-DUI" a Class 1 misdemeanor is gone.

4.00 The New Punishments for "Baby-DUI."

A violation of § 18.2-266.1 no longer constitutes a Class 1 misdemeanor. The penalty for a person under the age of 21 to operate a motor vehicle after illegally consuming alcohol is forfeiture of the person's license for six months from the date of conviction and a fine of not more than $500. The suspension is in addition to the suspension period provided under § 46.2-391.2. The penalties and license forfeiture provisions set forth in §§ 16.1-278.9, 18.2-270, and 18.2-271 do not apply to a violation of § 18.2-266.1.

- Subsection C of § 18.2-266.1 requires the juvenile court to dispose of the case in accordance with § 18.2-266.1 of the Code of Virginia.

Other Alcohol-Related Legislation

HB 1293 (Delegate William H. Cleaveland) ABC Laws & Consumption by Underage Persons with Parent or Guardian. HB 1293 amends § 4.1-200 of the Code of Virginia relating to alcoholic exemptions for consumption by underage persons. Section 4.1-200 provides the exemptions from the requirements for ABC licensure. Subdivision 7 of § 4.1-200 allows a person to keep and possess lawfully acquired alcoholic beverages in his residence for his personal use or that of his family.

- **Not New - Family & Spouses May Consume**: In 2006 HB 1208 and SB 396 amended § 4.1-200 of the Code of Virginia to allow a person under the age of 21 to consume an alcoholic beverage served in his home or the home of another if accompanied by his parent, guardian, or spouse and that person is 21 years of age or older. The consumption of alcohol by an underage person can not be for the purpose of evading the ABC laws.

[5] See 04/14/08 Governor: Acts of Assembly Chapter text (CHAP0729).

- **Not New - Affirmative Defense to Underage Possession**: In 2009 HB 2627 amended § 4.1-305 to make subdivision 7 of § 4.1-200 an affirmative defense to the underage possession of alcohol.

- **New! Underage Consumption Only in Residence Where Consumption is Allowed**. The 2010 General Assembly enacted HB 1293 to clarify that "the consumption or possession of such alcoholic beverages by family members or such guests occurs only in such residence where the alcoholic beverages are allowed to be served or given pursuant to [subdivision 7 of § 4.1-200]." The laws prohibiting underage possession and consumption of alcohol can be found in § 4.1-305 of the Code of Virginia.

SEX CRIMES

HB 227 Sex Offenders & Petitioning Circuit Court for Entry onto School Property.
Delegate Vivian Watts

HB 227 amends §§ 16.1-241 and 18.2-370.5 of the Code of Virginia relating to prohibiting the entry of convicted sex offenders onto school property. Effective July 1, 2010.

1.00 Synopsis: No Petitioning Juvenile Court By Sex Offenders for Entry onto School Property. HB 227 amends §§ 16.1-241 and 18.2-370.5 of the Code of Virginia relating to prohibiting the entry of convicted sex offenders onto school property. Current law provides that an adult who is prohibited from entering upon school or child day center property by reason of his status as a violent sex offender may petition the circuit or juvenile and domestic relations (J&DR) courts for entry onto school property. The bill limits any such petition to the circuit court. HB 227 also requires the petitioner, after any such order allowing entrance is issued, (1) to obtain the permission of the school board or the owner of the private school or child day care center or their designee for entry within all or part of the scope of the lifted ban and (2) to comply with the school's and court's terms allowing entrance. A violation of § 18.2-370.5 of the Code of Virginia is punishable as a Class 6 felony.

2.00 Legislative Background – Sex Offenders, School Property, and Class 6 Felony. In 2007 the General Assembly enacted HB 2344 and SB 927 (sexual offenses and prohibiting entry of those convicted onto school property). HB 2344 and SB 927 created § 18.2-370.5 of the Code of Virginia making it a Class 6 felony for a person convicted of a sexually violent offense to go onto school property or child day center property, unless he (i) is lawfully voting; (ii) is a student enrolled at the school; or (iii) has received a court order allowing him to enter upon such property. This is a lifetime ban.

- *FYI* - Section 9.1-902 of the Code of Virginia defines sexually violent offenses.

2.10 Petitioning Circuit Court or Juvenile Court for Permission: HB 2344 and SB 927 amended § 16.1-241 of the Code of Virginia to give the juvenile court jurisdiction over a petition filed by an adult seeking permission to enter and be present on school or child day center property. Jurisdiction over such cases was concurrent with and not exclusive of circuit courts. 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.

3.00 New! The Bill Amendments. HB 227 makes amendments in two sections of the Code (§§ 16.1-241 and 18.2-370.5) relating to prohibiting the entry of convicted sex offenders onto school property.

3.10 New For DJJ – No More Petitions in Juvenile Court. Section 16.1-241 of the Code of Virginia establishes the subject matter jurisdiction for the juvenile court. HB 227 strikes in its entirety subsection X of § 16.1-241 thereby removing the court's authority to hear petitions filed by violent sex offenders requesting permission to go onto school or child day care property. Similar language is removed from § 18.2-370.5 of the Code of Virginia.

3.20 New for Violent Sex Offender – Must Obtain School's and Child Day Care Center's Permission. In addition to obtaining a court order, HB 227 requires the offender to obtain the permission of the school board or the owner of the private school or child day center and be in compliance with the terms and conditions placed upon the offender by the court, school board, or the owner of the private school or child day care center. However, these offenders will still be able to enter schools or day care centers to vote or to attend classes as a student.

Other Sex Crimes-Related Legislation

SB 620 (Senator R. Creigh Deeds) Internet Crimes Against Children Task Force. SB 620 adds § 17.1-275.12 to the Code of Virginia relating to an additional fee for Internet Crimes Against Children Fund. SB 620 creates the Internet Crimes Against Children Fund in the state treasury. SB 620 implements a $10 court fee on each felony or misdemeanor conviction to support the Internet Crimes Against Children Fund. The language speaks to convictions but is in addition to the fees provided for by §§ 16.1-69.48:1, 16.1-69.48:1.01, 17.1-275.1, 17.1-275.2, 17.1-275.3, 17.1-275.4, 17.1-275.5, 17.1-275.7, 17.1-275.8, 17.1-275.9, 17.1-275.10, and 17.1-275.11 of the Code of Virginia. Moneys in the Fund will be disbursed to designated entities to support the investigation and prosecution of Internet crimes against children.

- Moneys in the Fund will be disbursed to the Virginia State Police, the Northern Virginia Internet Crimes Against Children program; the Southern Virginia Internet Crimes Against Children program; to the Department of Criminal Justice Services to support grants, training, and equipment for local law-enforcement agencies' use in investigating and prosecuting Internet crimes against children; and to the Department of Social Services to support the Virginia Child Protection Accountability System established under § 63.2-1530 of the Code of Virginia.
- According to the Virginia Criminal Sentencing Commission, there were 49,912 known felony convictions and 400,547 known misdemeanor convictions in Virginia's courts in FY2009. This figure does not take into account the convictions in some Northern Virginia localities such as Prince William, Alexandria, and Fairfax who do not participate in the Supreme Court's circuit court data system. Assuming the conviction rate remains constant going forward, this legislation could result in more than $4.5 million in revenue for the Internet Crimes Against Children Fund.

HJ 97 (Delegate David L. Bulova) Crime Commission to Study Penalties for Taking Indecent Liberties Involving Minors. HJ 97 directs the Virginia State Crime Commission to study the penalties for taking indecent liberties with children and prostitution-related offenses involving children. The Commission will study the disparity in penalties attached to statutes prohibiting taking indecent liberties with children and the actual penalties as applied to persons convicted of these offenses; how many actions have been brought for withholding wages, pandering/pimping, and soliciting for prostitution; and the need to address the process a child goes through if arrested for violating prostitution-related offenses. Technical assistance will be provided to the Commission by the Virginia Criminal Sentencing Commission, DOC, and DJJ. An executive summary of its findings and recommendations by the Crime Commission are due no later than the first day of the 2011 Regular Session of the General Assembly.

THE SEX OFFENDER REGISTRY

HB 1198 Sex Offender and Crimes Against Minors Registry, Notice to Committed Respondent
Delegate Sal R. Iaquinto

HB 1198 amends §§ 9.1-902, 9.1-907, 9.1-908, 53.1-116.1, and 53.1-160.1 of the Code of Virginia and creates § 37.2-921 of the Code of Virginia relating to registration with the Sex Offender and Crimes Against Minors Registry and to the Civil Commitment of Sexually Violent Predators. Effective July 1, 2010.

1.00 Synopsis: Sex Offender & Crimes Against Minors Registry and Department to Give Notice to Committed Respondent. HB 1198 amends §§ 9.1-902, 9.1-907, 9.1-908, 53.1-116.1, and 53.1-160.1 of the Code of Virginia and creates § 37.2-921 of the Code of Virginia relating to registration with the Sex Offender and Crimes Against Minors Registry and to the Civil Commitment of Sexually Violent Predators.[6] Briefly, the bill addresses two issues. First, the bill requires the court to make a finding as to whether the victim of the offense for which registration as a sex offender is required was a minor, physically helpless, or mentally incapacitated. Second, if a person who is required to register as a sex offender is civilly committed as a sexually violent predator with the Department of Behavioral Services, then that person will not be required to register until he is released. Additional duties are placed upon the Department of Behavioral Services when that person is set to be released.

2.00 New! Determination of Victim's Status: Section § 9.1-902 lists the offenses requiring a person to register with Sex Offender and Crimes Against Minors Registry. Section § 9.1-902 also provides the juvenile court with its authority to order a juvenile over the age of 13 to register if adjudicated for an offense which registration is required. HB 1198 adds subsection H that requires, prior to entering judgment of conviction of an offense for which registration is required, the court to determine if the victim of the offense was a minor, physically helpless, or mentally incapacitated by agreement of the parties or by a preponderance of the evidence. Upon such a determination the court shall advise the defendant of its determination and of the defendant's right to withdraw a plea of guilty or nolo contendre. If the defendant chooses to withdraw his plea of guilty or of nolo contendre, his case shall be heard by another judge, unless the parties agree otherwise.

- Please note: The new language specifically states "conviction," so it does not appear that the new requirement applies to juvenile courts.

3.00 New! Tolling the Sex Offender Registry Requirements. Section 9.1-908 of the Code of Virginia provides the duration of registration requirements for persons required to register as sex offenders. Section 9.1-908 tolls the registration requirements while a person is confined in a federal, state, or local correctional facility, hospital, or any other institution or facility. HB 1198 tolls the sex offender registry requirements for persons who are civilly committed as violent sexual offenders pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37 until released from custody.

4.00 Notice for Registration Requirements for Civilly Committed Sexually Violent Predators: Prior to the release of a sexually violent predator, HB 1198 requires the Department of Behavioral Health and Developmental Services (DBHDS) to give notice to the committed respondent of his duty to register

[6] The requirements for the Sex Offender and Crimes Against Minors Registry can be found in Chapter 9 (§ 9.1-900 et seq.) of Title 9.1. The requirements for the Civil Commitment of Sexually Violent Predators can be found in Chapter 9 (§§ 37.2-900 thru 37.2-920) of Title 37.2.

with the Department of State Police. DBHDS will obtain all necessary information for registration, including fingerprints and photographs and will forward the registration information to the State Police on the date of the committed respondent's release or discharge. If the person fails to register, DBHDS must investigate or request the State Police to investigate. These provisions are similar to the requirements for DOC and DJJ when a sex offender is released. DBHDS must notify the State Police immediately upon discovering the escape of any committed respondent for whom registration with the Sex Offender and Crimes Against Minors Registry is required.

5.00 DOC Physical Verification Following Release from DBHDS Civil Commitment: Section 9.1-907 of the Code of Virginia requires the State Police to investigate where a person has failed to comply with the duty to register or reregister. HB 1198 adds the requirement that DOC or community supervision to physically verify the registration information within 30 days of original registration (and semiannually each year thereafter) and within 30 days of a change of address of all sex offenders committed to DBHDS who are under community supervision.

6.00 DOC Notification for Escapees: Section 53.1-160.1 of the Code of Virginia requires DOC to give notice and explain to a prisoner of his duty to register as a sex offender when he is released from DOC. HB 1198 now requires DOC to notify the State Police immediately upon discovering the escape of any prisoner for whom registration with the Sex Offender and Crimes Against Minors Registry is required.

7.00 Sheriff & Jailers Notification for Escapees: Section 53.1-116.1 of the Code of Virginia requires a sheriff, jail superintendent, or other jail administrator to give notice and explain to a prisoner of his duty to register as a sex offender when he is released from jail. HB 1198 also requires the sheriff or the jail superintendent to notify the State Police immediately upon discovering the escape of any prisoner for whom registration with the Sex Offender and Crimes Against Minors Registry is required.

Other Sex Offender Registry and Violent Sex Offender Civil Commitment Legislation

HB 912 (Delegate Robert B. Bell) Definition of Residence for the Sex Offender Registry. HB 912 amends § 9.1-903 of the Code of Virginia relating to the definition of residence for purposes of the Sex Offender Registry. The bill provides that "residence" includes, for the purposes of the Sex Offender and Crimes Against Minor's Registry, the place identified by homeless individuals where they habitually locate themselves. If a person required to register does not have a legal residence, such person shall designate an address that can be located with reasonable specificity where he resides or habitually locates himself. For the purposes of this section, "residence" shall include such designated location. If the person wishes to change such designated location, he shall do in accordance with the sex offender registration requirements.

SB 528 (Senator Linda T. Puller) Licensed Psychiatrist or Clinical Psychologist to Oversee Sex Offender Treatment Program. SB 528 amends § 53.1-32 of the Code of Virginia relating to treatment and control of prisoners. Section 53.1-32 of the Code of Virginia requires DOC to have a treatment program for sex offenders and for the program to be operated under the direction of a psychiatrist or licensed clinical psychologist who is experienced in the diagnosis, treatment, and risk assessment of sex offenders. SB 528 amends § 53.1-32 to require DOC to use a licensed psychiatrist or licensed clinical psychologist who is experienced in the diagnosis, treatment, and risk assessment of sex offenders to oversee the program, but that the program will be administered by a licensed psychiatrist, licensed clinical

psychologist, or a licensed mental health professional who is a certified sex offender treatment provider as defined in § 54.1-3600 of the Code of Virginia.

SB 529 (Senator Linda T. Puller) Sexually Violent Predators & Evaluation Determining Whether a Prisoner Meets Definition. SB 529 amends § 37.2-903 of the Code of Virginia relating to the evaluation and civil commitment of sexually violent predators. Section 37.2-903 of the Code of Virginia requires DOC to establish a database containing information for each prisoner who is incarcerated for a sexually violent offense or serving time for another offense in addition to time for a sexually violent offense. Each month the database is reviewed to screen those prisoners about to be released and who may be eligible for civil commitment with the Department of Behavioral Health and Developmental Services as a sexually violent predator. Generally, the Static-99 is the scientifically validated instrument used to screen the prisoners. SB 529 provides that a licensed mental health professional certified by the Board of Psychology as a sex offender treatment provider may perform a screening for an initial determination of whether a prisoner meets the definition of a sexually violent predator when there is no specific scientifically validated instrument to measure the risk assessment of a prisoner.

GANG CRIMES

HB 682 Expansion of Gang-Free Zones & Enhanced Penalties.
Delegate J. Miller

HB 682 amends § 18.2-46.3:3 of the Code of Virginia relating to the enhanced punishment for gang activity taking place in gang-free zones. Effective July 1, 2010.

1.00 Synopsis: Expansion of Gang-Free Zones & Enhanced Penalties. HB 682 amends § 18.2-46.3:3 of the Code of Virginia relating to the enhanced punishment for gang activity taking place in gang-free zones. It expands current "gang-free school zones" to include the buildings and grounds of any publicly owned or operated community center or any publicly owned or operated recreation center. Engaging in criminal street gang activity in a gang-free zone is a Class 5 or 6 felony and may include a two-year mandatory minimum sentence, depending upon other aggravators.

> **1.10 What is a Gang-Free Zone?** Section 18.2-46.3:3 of the Code of Virginia defines a gang-free zone as the buildings and grounds of any public or private elementary, secondary, or postsecondary school, or any public or private two-year or four-year institution of higher education; any public property or any property open to public use within 1,000 feet of school property; any school bus as defined in § 46.2-100; and, now, "the property, including buildings and grounds, of any publicly owned or operated community center or any publicly owned or operated recreation center."

2.00 Statutory Background - Gang Conviction under §§ 18.2-46.2 and 18.2-46.3: Sections 18.2-46.2 and 18.2-46.3 of the Code of Virginia make participating in gang activity and recruiting persons into a gang a crime. Section § 18.2-46.1 of the Code of Virginia provides the definition of a "criminal street gang" to mean any ongoing organization, association, or group of three or more persons, whether formal or informal, with identifiable gang signs and emblems, and whose primary purpose is engaging in criminal conduct. An essential element of the definition of a criminal street gang requires that one of the gang's primary functions is the commission of one or more predicate criminal acts. Under current law, predicate crimes include: Shooting with Intent to Maim, Malicious Bodily Injury, Shooting in

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

2.10 Need Gang Conviction under §§ 18.2-46.2 and 18.2-46.3 for Enhanced Penalty: For the person to receive the enhanced penalty, the person would be convicted for the underlying offenses, convicted under one of the gang statutes mentioned above, and then proven that the offense occurred "upon the property, including buildings and grounds, of any publicly owned or operated community center or any publicly owned or operated recreation center." According to the Virginia Sentencing Commission, in FY2007 and 2008, 39 adult offenders were convicted under § 18.2-46.2 for participation in a criminal act to benefit a gang as the primary (most serious) offense. Six offenders were convicted under § 18.2-46.2 for participation in a criminal act to benefit a gang that included a juvenile. One offender was convicted under the school zone penalty enhancement, defined in § 18.2-46.3:3, for participation in a criminal act to benefit a gang (§ 18.2-46.2). There were three convictions for recruiting another as a gang member, a Class 1 misdemeanor under § 18.2-46.3(A).

DOMESTIC RELATIONS – PROTECTIVE ORDERS

HB 930 & SB 468 Two-Year Extension of Protective Orders.
Delegate Robert B. Bell & Senator Janet D. Howell

HB 930 and SB 468 amend §§ 16.1-279.1 and 19.2-152.10 of the Code of Virginia relating to the extension of protective orders. Effective July 1, 2010.

1.00 Synopsis: Two-Year Extension of Final Protective Orders. HB 930 and SB 468 amend §§ 16.1-279.1 and 19.2-152.10 of the Code of Virginia relating to the extension of protective orders. The bills allow a petitioner, who has obtained a protective order against a member of the petitioner's family or household at the time of the initial order, to obtain an extension of such order for a period of no more than two years if the respondent continues to pose a threat to the health or safety of the petitioner and the petitioner's family and household members. There is no limit on the number of extensions. Such petitions are to be given precedence on the docket.

2.00 Statutory Background: Child & Family Protective Orders. There are four types of protective orders to protect children and family members. Brief summaries are provided below on each type of protective order.

- **Emergency Protective Orders** (§ 16.1-253.4 of the Code of Virginia - An emergency protective order on the third day following issuance.)
- **Preliminary Protective Orders for Children** (§ 16.1-253 of the Code of Virginia - A hearing on the issuance of the preliminary protective order must be held within 15 days. A continuance may be granted for an additional 15 days.)

- **Preliminary Protective Orders for Family Abuse** (§ 16.1-253.1 of the Code of Virginia - A hearing on the issuance of the preliminary protective order must be held within 15 days. A continuance may be granted for an additional 15 days.)
- **Final Protective Orders** (§ 16.1-279.1 of the Code of Virginia - The protective order may be issued for a specified period not longer than two years. The protective order expires at "11:59 p.m." on the last day specified or at the end of the two-year period.)

3.00 Statutory Background: Stalking Orders. A stalking order can be issued when there is probable cause to believe that the person is subject to being stalked 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. Similar to protective orders, there are three types of stalking orders (emergency, preliminary, and final stalking order). The time frames for issuing the stalking orders and their validity are similar, too. The types of stalking protective orders are:

- **Emergency Protective Orders in Cases of Stalking** (§ 19.2-152.8 of the Code of Virginia.)
- **Preliminary Protective Orders in Cases of Stalking** (§ 19.2-152.9 of the Code of Virginia.)
- **Final or Permanent Protective Orders in Cases of Stalking** (§ 19.2-152.10 of the Code of Virginia.)

4.00 New! Two-Year Extensions for Protective Orders (§ 16.1-279.1) & Stalking Orders (§ 19.2-152.10): SB 468 and HB 930 amend §§ 16.1-279.1 and 19.2-152.10 so that, prior to the expiration of the protective order issued pursuant to §§ 16.1-279.1 or 19.2-152.10, a petitioner may file a written motion requesting a hearing to extend the order for another two years. There is no limit on the number of extensions that may be requested or issued. Given that the changes to the issuance of a stalking order substantially mirror the changes to the issuance of a protective order in cases of family abuse, the summary will cover only protective orders issued in cases of family abuse pursuant to § 16.1-279.1 of the Code of Virginia.

4.10 Not New! Conditions Imposed by Protective Order, Good for Two Years. Section 16.1-279.1 provides the conditions upon which the court can issue a protective order in cases of family abuse. A protective order can be issued for a specified period of time not to exceed two years. The protective order expires at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is specified.

4.20 NEW! Requesting an Extension for up to Two Years of the Protective Order.
Prior to the expiration of the protective order, a petitioner may file a written motion requesting a hearing to extend the order for an additional two years.

4.21 Petitioner Must be Family or Household Member When First Protective Order was Issued. Petitioner must be a member of respondent's (abuser's) family or household at the time the initial protective order was issued.

4.22 Purpose of Extension – Health & Safety of Family and Household Members. The purpose of extending the protective order must be to "protect the health and safety of the petitioner or persons who are family or household members of the petitioner at the time the request for an extension is made."

4.23 Extension Can Be Up To Two Years. The court may extend the protective order for a period not longer than two years. The extension of the protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is specified.

4.24 No Limitation on Extensions. There are no limitations on the number of extensions that may be requested or issued.

4.25 Docket Precedence. Proceedings to extend a protective order shall be given precedence on the docket of the court.

Other Domestic Relations – Protective Order-Related Legislation

HB 931 (Delegate Robert B. Bell) & SB 467 (Senator Janet D. Howell) Protective Orders & Coordination with Other States. HB 931 and SB 467 require the Executive Secretary of the Supreme Court, on an annual basis, to consult with the appropriate judicial authorities of any other state concerning the forms used in connection with the issuance of protective orders under the laws of the Commonwealth and the other states. The Executive Secretary shall, to the extent feasible under the laws of the Commonwealth, coordinate the contents of such protective order forms with other states in order to facilitate the enforcement of foreign protective orders in the Commonwealth and the enforcement of Virginia protective orders in other states. HB 931 and SB 467 are "Section 1" bills, meaning that the acts have the full force of law, but the language will not appear as a section in the Code of Virginia.

HB 458 (Delegate Charniele L. Herring) & SB 721 (Senator David W. Marsden) Protective Orders & Attorney-Issued Summons. HB 458 and SB 721 amend § 8.01-407 of the Code of Virginia relating to attorney-issued summons in cases involving protective orders. Section 8.01-407 of the Code of Virginia provides the process for issuing a summons commanding a witness to attend a proceeding before certain officials and judges. Section 8.01-407 allows a summons for a civil proceeding before a court and certain other cases to be issued by an attorney-at-law who is an active member of the Virginia State Bar at the time of issuance, as an officer of the court. However, prior to HB 458 and SB 721, an attorney could not issue a summons in a case involving the issuance of a protective order pursuant to Article 4 (§ 16.1-246 et seq.) or Article 9 (§ 16.1-278 et seq.) of Chapter 11 of Title 16.1 or a stalking protective order pursuant to Chapter 9.1 (§ 19.2-152.8 et seq.) of Title 19.2. HB 458 and SB 721 eliminate the prohibition on attorney-issued summonses in cases involving the issuance of protective orders.

- *Please note*: Section 8.01-407 still prohibits an attorney from issuing a summons in a proceeding involving habeas corpus (§ 8.01-654 et seq.); delinquency, or abuse and neglect (§ 16.1-241 et seq.); civil forfeiture proceedings, a habitual offender (§ 46.2-351 et seq.); an administrative license suspension (§ 46.2-391.2); or a writ of mandamus.

Other Domestic Relations – Custody, Visitation, and Support

HB 40 (Delegate Robert D. Orrock, Sr.) Criminal Nonsupport When Child is Disabled. HB 40 amends § 20-61 of the Code of Virginia relating to the penalty for criminal nonsupport. Section 20-61 provides criminal sanctions for any spouse who fails to provide for the support and maintenance of his or her spouse and child. This section does not apply to a parent who fails to pay support for a child who is receiving aid under a federal or state program for aid to the permanently and totally disabled. However, HB 40 clarifies that a parent may not be subject to prosecution for criminal nonsupport of a child who qualifies for and receives aid due to a permanent and total disability but may be subject to such prosecution for the desertion or nonsupport of a spouse or *any other* child who is not receiving such aid.

HB 66 (Delegate David J. Toscano) Child & Spousal Support and Appointment of Vocational Expert. HB 66 amends § 20-108.1 of the Code of Virginia relating to child and spousal support and the appointment of vocational experts. Section 20-108.1 provides the provisions for the court to determine the amount of child support. HB 66 allows a court to appoint a vocational expert to conduct an evaluation of a party in cases involving child support, spousal support, and separate maintenance where the earning capacity, unemployment, or underemployment of a party is in controversy. In any proceeding on the issue of determining child or spousal support or an action for separate maintenance under Title 20, Title 16.1, or Title 63.2, when the earning capacity, voluntary unemployment, or voluntary under-employment of a party is in controversy, then the court may order a party to submit to a vocational evaluation by a vocational expert employed by the moving party. The order may permit the attendance of the vocational expert at the deposition of the person to be evaluated.

Other Domestic Relations – Adoptions

HB 443 (Delegate David J. Toscano) Adoption - Eligibility & Application Process Requirements for Assistance. HB 443 amends §§ 63.2-1300 through 63.2-1303 of the Code of Virginia relating to adoption assistance. Chapter 13 of Title 63.2 (§§ 63.2-1300 through 63.2-1303) is the Adoption Assistance for Children with Special Needs covering the following sections:

- § 63.2-1300 (purpose and intent of adoption assistance and eligibility),
- § 63.2-1301 (types of adoption assistance payments),
- § 63.2-1302 (adoption assistant payments), and
- § 63.2-1303 (qualification for adoption assistance payments).

HB 443 amends eligibility and application process requirements for adoption assistance; provides for separate maintenance, nonrecurring expense, and state special services payments; sets forth the requirements of each; and amends provisions governing changes in the amount of maintenance payments.

HB 747 (Delegate David J. Toscano) Close Relative Adoption & GAL. HB 747 amends §§ 63.2-1241, 63.2-1242.2, and 63.2-1242.3 of the Code of Virginia relating to stepparent or close relative adoption and the requirement for the appointment of a guardian ad litem (GAL). Section 63.2-1241 pertains to the adoption of a child by new spouse of birth or adoptive parent. Section § 63.2-1242.2 pertains to the adoption of a child by a close relative when the child has been in the home less than three years. Section 63.2-1242.3 covers an adoption by a close relative when the child has been in the home longer than three years. HB 747 amends each of those sections to allow a court to waive appointment of a GAL for a child in cases of stepparent or close relative adoptions.

HB 749 (Delegate David J. Toscano) Adoption & Birth Parent Waiver of Consent for Out-of-State Placement. HB 749 amends§ 63.2-1232 of the Code of Virginia relating to consent to parental placement adoption when the adoptive parents are out-of-state. HB 749 allows the birth parent who resides in the Commonwealth to place his child for adoption with adoptive parents in another state to waive the execution of consent under Virginia law and instead execute consent to the adoption pursuant to the laws of the receiving state. The waiver of consent must be made under oath and in writing and expressly state the birth parent has received independent legal counsel from an attorney licensed in the Commonwealth of Virginia advising him of the laws of the Commonwealth, the laws of the receiving state pursuant to which he elects to consent to the adoption, and the effects of his waiver of consent and the laws of the receiving state.

HB 750 (Delegate David J. Toscano) Adoption & Post-Adoption Contact and Communication Agreements. HB 750 amends §§ 16.1-277.01, 16.1-277.02, 16.1-278.3, and 16.1-283.1 of the Code of Virginia and adds §§ 63.2-1220.2, 63.2-1220.3, and 63.2-1220.4 relating to post-adoption contact and communication agreements. HB 750 repeals §§ 63.2-1228.1 and 63.2-1228.2 of the Code of Virginia. HB 750 creates Article 1.1, "Post-Adoption Contact and Communication Agreements" (§§ 63.2-1228.1 and 63.2-1228.2). The amendments made by HB 750 provide that in any case of adoption, adoptive parents may enter into post-adoption contact and communication agreements and that the court may consider the appropriateness of any post-adoption contact and communication agreement at a permanency hearing for any child in foster care.

Other Domestic Relations - Foster Care

HB 718 (Delegate Christopher K. Peace) Governor & DSS to Develop and Implement Plan to Reduce Number in Foster Care. HB 718 is a "Section 1" act of the General Assembly, meaning that it has the force of law but will not appear in the Code of Virginia. HB 718 requires the Governor and the Department of Social Services (DSS) to develop a plan to increase the safe and permanent placement of children with families to reduce the number of children in foster care by 25% by 2020. The plan must provide for the placement of children currently in foster care or children entering foster care in safe, appropriate, and permanent living arrangements.

SB 415 (Senator Jill Holtzman Vogel) Foster Care & Independent Living Services to Person Between Ages of 18 to 21. SB 415 amends § 63.2-905.1 of the Code of Virginia relating to foster care and independent living services. Section 63.2-905.1 of the Code of Virginia allows local departments of social services and licensed child-placing agencies to provide independent living services to any person between 18 and 21 years of age in the process of transitioning from foster care to self-sufficiency.

- *Independent Living Services for 18 to 21 Years Olds (Current Law)*: 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. An adult person who was committed or entrusted to a local board of social services or licensed child-placing agency may discontinue receiving independent living services any time after his 18th birthday. However, 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 after independent living services were discontinued.
- *New Law! Notification of Right to Restoration of Services*: SB 415 amends § 63.2-905.1 of the Code of Virginia to require the local departments of social services to provide written notice to the adult person who chooses to leave foster care or terminate independent living services before his 21st birthday of his right to request restoration of those independent living services. The written notice shall be included in the person's transition, which must be completed at least 90 days prior to the person's discharge from foster care.

DEPARTMENT OF SOCIAL SERVICES

HB 736 (Delegate David B. Albo) & SB 284 (Senator Frederick M. Quayle) Child Protection Accountability System, State Police and Circuit Courts to Report Additional Information. HB 736 and SB 284 amend § 63.2-1530 of the Code of Virginia relating to the Virginia Child Protection Accountability System. Chapter 15 of Title 63.2 is the Child Abuse and Neglect statute. Section 63.2-1530 is the Virginia Child Protection Accountability System, which collects and makes information

available to the public on the response to reported cases of child abuse and neglect in the Commonwealth. DSS maintains the system.

- *New Information Required from the State Police*: HB 736 and SB 284 add a new subdivision (B)(2) to § 63.2-1530 to require the State Police to report annually to DSS arrest and disposition statistics for specific criminal violations for inclusion in the Child Protection Accountability System.[7] The offenses generally include sex offenses, crimes against children, and child pornography.
- *New Information Required from the Circuit Courts:* HB 736 and SB 284 add a new subdivision (B)(3) to § 63.2-1530 to require each circuit court, via the statewide Case Management System, to annually report to DSS:
  - (i) the total number of (a) misdemeanor convictions appealed from the district court to the circuit court, (b) felony charges certified from the district court to the circuit court, and (c) charges brought by direct indictment in the circuit court that involve a violation of any code section set forth in subdivision B2;
  - (ii) the total number of cases appealed, certified, or transferred to the court or brought by direct indictment in the circuit court involving a violation of any code section set forth in subdivision B2 that result in a trial, including the number of bench trials and the number of jury trials; and
  - (iii) the total number of trials involving a violation of any code section set forth in subdivision B2 resulting in (a) a plea agreement, (b) transfer to another court, (c) a finding of not guilty, (d) conviction on a lesser included offense, or (e) conviction on all charges by type of trial.

HB 921 (Delegate Robert B. Bell) DSS to Keep CPS Records on Founded Sex Abuse Cases for at Least 25 Years. HB 921 amends § 63.2-1514 of the Code of Virginia relating to child sexual abuse and retention of records. Section 63.2-1514 requires local departments of social services to retain the records of all reports or complaints made pursuant to Chapter 15 of Title 63.2 (Child Abuse and Neglect Statutes) in accordance with regulations adopted by the Board. HB 921 amends § 63.2-1514 to require records of founded cases of child sexual abuse involving injuries or conditions, real or threatened, that result in or were likely to have resulted in serious harm to a child to be kept by the local department for a period of 25 years from the date of the complaint.

COMPREHENSIVE SERVICES ACT

SB 286 (Senator R. Creigh Deeds) State Executive Council for Comprehensive Services for At-Risk Youth & Families - Membership. SB 286 amends § 2.2-2648 of the Code of Virginia relating to the membership of the State Executive Council for Comprehensive Services for At-Risk Youth and Families. Section 2.2-2648 establishes the State Executive Council (SEC) for Comprehensive Services for At-Risk Youth and Families in the executive branch of state government. The Council is chaired by the Secretary of Health and Human Resources and meets, at a minimum, quarterly to oversee the administration of the Comprehensive Services Act.

- **Not New: Old SEC Membership Prior to SB 286.** Membership on the Council consists of one member each from the House and the Senate; the Commissioners of Health, Behavioral Health and Developmental Services, and Social Services; the Superintendent of Public Instruction; the

[7] The crimes for which the State Police must annually report are: §§ 18.2-48, 18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, 18.2-355, 18.2-361, 18.2-366, 18.2-370 through 18.2-370.2, 18.2-371, 18.2-371.1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, 18.2-387, and 40.1-103 of the Code of Virginia.

Executive Secretary of the Virginia Supreme Court; the Directors of the Departments of Juvenile Justice and Medical Assistance Services; and the chairman of the state and local advisory team established pursuant to § 2.2-5202 (State and Local Advisory Teams: Powers & Duties). A parent, who is not an employee of any public or private program that serves children and families, must also be appointed by the Governor for one term not to exceed three years.

- **New: Add Another Parent to Membership**. SB 286 adds a second parent representative to the State Executive Council for Comprehensive Services for At-Risk Youth and Families.

SCHOOLS, STUDENTS, AND EDUCATION

SB 46 (Senator Richard H. Stuart) Special Education Programs for Children and Recovery of Attorney Fees. SB 46 amends § 22.1-214 of the Code of Virginia relating to special education programs for children with disabilities and the recovery of attorney fees. Section § 22.1-214 requires the State Board of Education to prepare special education programs for children with disabilities. Section § 22.1-214 requires the Board of Education to prescribe procedures to afford due process to children with disabilities and their parents or guardians and to school divisions in resolving disputes as to program placements, individualized education programs, tuition eligibility, and other matters as defined in state or federal statutes or regulations.

- **New: Recovery of Attorney Fees.** SB 46 authorizes a court to award reasonable attorney fees and costs to a prevailing party, who is (1) the parent of a child with a disability, or (2) the Board of Education if the action was frivolous, unreasonable, or without foundation or subsequent action presented for an improper purpose, in a civil action regarding a dispute as to program placements, individualized education programs (IEPs), tuition eligibility, and other matters of a disabled student. It excludes the recovery of attorney fees relating to IEP meetings except in delineated circumstances.

SB 196 (Senator Harry B. Blevins) School Absence & Notice to Parents. SB 196 amends §§ 22.1-258 and 22.1-261 of the Code of Virginia relating to parental notification of student nonattendance. Section 22.1-258 allows each local school board to appoint one or more attendance officers, who shall be charged with the enforcement of the compulsory school attendance laws. Where no attendance officer is appointed by the school board, the division superintendent or his designee shall act as attendance officer. Section § 22.1-261 requires the attendance officer or the superintendent to make a report of children not properly enrolled.

- ***New* – Superintendent's Designee**: SB 196 clarifies that, in addition to the attendance officer, school personnel, and volunteers, the school principal or his designee is responsible for notifying parents concerning a student's nonattendance at school. This bill also provides that the school principal or his designee is also responsible for arranging the conference with parents and in developing the student's attendance plan.

SB 361 (Senator George L. Barker) Religious Holidays & Student's Absence Excused Because of Observance. SB 361 amends §§ 22.1-254, 22.1-254.2, and 22.1-271.4 of the Code of Virginia relating to the effect of a pupil's absence for a religious holiday on attendance records. SB 361 requires each local school board to develop policies for excusing students who are absent by reason of observance of a religious holiday. The policies must ensure that a student will not be deprived of any award or of eligibility for any award, or of the right to take an alternate test or examination, for which he missed by reason of such absence, if the absence is verified in a manner acceptable to the school board.

HB 557 (Delegate Robert Tata) & SB 253 (Senator W. Roscoe Reynolds) School Calendar & School Begins after Labor Day may be Waived by State Board of Education. HB 557 and SB 253 amend § 22.1-79.1 of the Code of Virginia relating to the opening of the school year. Section 22.1-79.1 requires each local school board to set the school calendar so that the first day students are required to attend school is after Labor Day. The State Board of Education may waive this requirement for good cause. Subsection B of § 22.1-79.1 provides "good cause." HB 557 and SB 253 provide that the requirement that the school calendar begin after Labor Day may be waived by the Board of Education, provided the school board "certifies" that it meets one of the good cause requirements in current law.

HB 669 (Delegate Joe T. May) & SB 413 (Senator Jill Holtzman Vogel) Eliminates Three-Year Requirement for the Triennial Census. HB 669 and SB 413 amend §§ 15.2-3207, 15.2-3525, 15.2-3806, 15.2-3906, 15.2-4105, 22.1-261, 37.2-713, 58.1-605, and 58.1-638 of the Code of Virginia and repeal Article 4 (§§ 22.1-281 through 22.1-286) of Chapter 14 of Title 22.1 of the Code of Virginia relating to the triennial census of school population. HB 669 and SB 413 eliminate the requirement that every three years a census of all school-age persons residing within each school division take place. HB 669 and SB 413 also eliminate all related requirements regarding appointment and compensation of persons taking census, agents, and census results. HB 669 and SB 413 amend the procedure regarding sales and use tax distribution to localities so that distribution is based on an annual estimate of the school-age population of a school division done by the Weldon Cooper Center for Public Service at UVA. HB 669 and SB 413 allow for up to $115,000 to be given to the Weldon Cooper Center for Public Service to cover the cost of producing the estimate.

HB 1199 (Delegate Sal R. Iaquinto) Waiver of Certain Graduation Requirements by State Board of Education for Good Cause. HB 1199 amends § 22.1-253.13:4 of the Code of Virginia relating to the authority of a local division superintendent or local school board to waive mandatory requirements for graduation under certain circumstances. HB 1199 allows the State Board of Education to provide for the waiver of certain graduation requirements upon the Board's initiative or at the request of a local school board. Waivers can be granted only for good cause and on a case-by-case basis.

HB 196 (Delegate R. Lee Ware, Jr.) Delayed Implementation of Graduation Requirements for Economics Education & Financial Literacy. HB 196 amends § 1 of Chapter 463 of the Acts of Assembly of 2009. HB 196 postpones implementation of any additional graduation requirements, including the economics education and financial literacy requirement, until July 1, 2011. This is a "Section 1" act meaning that the actual bill language will not appear in the Code of Virginia.

SB 354 (Senator Mark D. Obenshain) No Child Left Behind Act & Administer Limited English Proficiency Assessment. SB 354 is a "Section 1" act to provide local school divisions flexibility with regard to the assessment used to evaluate limited English-proficient students. SB 354 provides that a local school division may administer a limited English proficiency assessment mandated for students pursuant to the federal No Child Left Behind Act that is locally developed or selected and has been approved by the Board of Education in accordance with federal requirements.

SJ 31 (Senator John C. Miller) Public Schools & JLARC to Study Reading Proficiency Among Third Graders. SJ 31 directs the Joint Legislative Audit and Review Commission (JLARC) to study ways to promote and ensure early reading proficiency and comprehension among third graders in the public schools. In conducting its study, JLARC shall (i) determine the number of third graders who read at grade level; (ii) rank the school divisions according to the number of third graders who passed the most

recent third grade reading test; (iii) identify best practices utilized by school divisions with the highest percentage of third graders who read at grade level; (iv) examine the findings and recommendations of state and national studies pertaining to the efficacy of early reading proficiency and comprehension and its relationship to academic success, and identify those recommendations appropriate for implementation in Virginia; and (v) determine strategies to increase the number of third graders who pass the third grade reading test and ways to improve and sustain the early reading proficiency of third grade students. JLARC must submit an executive summary of its findings and recommendations to the Governor and to the 2011 and 2012 Sessions of the General Assembly.

SJ 85 (Senator J. Chapman Petersen) Childhood Obesity & Encouraging Physical Activity in Public Schools. SJ 85 encourages the local school divisions to promote daily physical activity and reduce childhood obesity. The Clerk of the Senate must transmit a copy of the resolution to the Virginia School Boards Association, requesting that the Executive Director further disseminate copies of this resolution to its respective constituents so that they may be apprised of the sense of the General Assembly of Virginia in this matter.

HB 903 (Delegate Robert B. Bell) & SB 207 (Senator John S. Edwards) Threat Assessment Teams & Certain Records Established at Higher Educational Institutions. HB 903 and SB 207 amend §§ 2.2-3705.4, 19.2-389, 19.2-389.1, 23-9.2:10, and 32.1-127.1:03 of the Code of Virginia relating to records of threat assessment teams for educational institutions. Each public college and university must establish a threat assessment team that will 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. HB 903 and SB 207 authorize threat assessment teams to receive health and criminal history records of students for the purposes of assessment and intervention and exempts records of threat assessment teams from the Freedom of Information Act. However, if an individual who had been under assessment commits certain violent acts, any records created by the team shall be made publicly available.

CRIMES - DUIS

HB 1353 (Delegate Benjamin L. Cline) Consuming Alcohol While Operating a School Bus. HB 1353 creates § 4.1-309.1 of the Code of Virginia relating to possession or consumption of an alcoholic beverage while operating a school bus. HB 1353 creates § 4.1-309.1 so that a person who possesses or consumes an alcoholic beverage while operating a school bus and transporting children is guilty of a Class 1 misdemeanor.

HB 742 (Delegate William H. Cleaveland) Driving While License Suspended for DUI & Impoundment of Vehicle. HB 742 amends §§ 46.2-301 and 46.2-301.1 of the Code of Virginia relating to a 90-day forfeiture of a vehicle for driving on a license suspended for a DUI violation. HB 742 allows vehicle impoundment for a violation of § 18.2-272 (driving on a suspended license when suspended for driving for DUI or a DUI-related crime) and provides that a motor vehicle impounded or immobilized by the police following an arrest for driving on a suspended license, when suspended for DUI or a DUI-related crime, may be impounded or immobilized for an additional 90 days by the court upon conviction of that offense.

HB 770 (Delegate William H. Cleaveland) DUI Arrests & Officer at a Medical Facility may issue Summons. HB 770 amends §§ 19.2-73, 19.2-74, and 19.2-81 of the Code of Virginia relating to arrest

without warrant for misdemeanor DUI offenses. HB 770 allows an arrest to be made for misdemeanor offenses of DUI, boating while intoxicated or violation of an order prohibiting the operation of a watercraft, whether or not the offense occurred in the officer's presence. The bill also provides that the issuance of a summons to a person accused of a DUI while at a medical facility may be done without having to detain the person and that the issuance of the summons will be considered an arrest for purposes of DUI provisions; i.e., implied consent.

HB 144 (Delegate John M. O'Bannon, III) DUIs & Last Place of Consumption - DCJS to Establish Model Policy for Law-Enforcement Personnel for Questioning those Suspected. HB 144 amends § 9.1-102 of the Code of Virginia relating to the Department of Criminal Justice Services' (DCJS) establishing a policy for inquiry by law enforcement of the location of the last drink consumed by an individual accused of driving while intoxicated. DCJS, under the direction of its State Board, shall establish a model policy or guideline for law-enforcement personnel for questioning individuals suspected of driving while intoxicated concerning the physical location of that individual's last consumption of an alcoholic beverage and for communicating that information to the Alcoholic Beverage Control Board.

HB 505 (Delegate C. Todd Gilbert) & SB 334 (Senator Emmett W. Hanger, Jr.) Concealed Handguns & Class 2 Misdemeanor for Carrying into Restaurant & Consuming Alcoholic Beverage. HB 505 and SB 334 amend § 18.2-308 of the Code of Virginia relating to concealed handguns in restaurants. HB 505 and SB 334 allow a person with a concealed handgun permit to carry a concealed handgun onto the premises of a restaurant or club and prohibit such person from consuming alcoholic beverages while on the premises. A person who carries a concealed handgun onto the premises of such a restaurant or club and consumes alcoholic beverages is guilty of a Class 2 misdemeanor.

SB 501 (Senator L. Louise Lucas) Concealed Handgun Permit & DUI from Another State Disqualifies Individual from Obtaining. SB 501 amends § 18.2-308 of the Code of Virginia relating to disqualifying convictions for obtaining a concealed handgun permit. An individual who has been convicted of a violation of § 18.2-266 (driving motor vehicle while intoxicated) or a substantially similar local ordinance, or of public drunkenness, or of a substantially similar offense under the laws of any other state, the District of Columbia, the United States, or its territories within the three-year period immediately preceding the application, or who is a habitual drunkard as determined pursuant to § 4.1-333, is prohibited from obtaining a concealed weapons permit.

SB 408 (Senator Jill Holtzman Vogel) Concealed Weapons & Carry a Handgun in Motor Vehicle if Secured in Compartment. SB 408 amends § 18.2-308 of the Code of Virginia relating to possession of concealed weapons in vehicles. SB 408 allows a person who lawfully may possess a firearm to carry a handgun while in a personal or private motor vehicle in a locked container or compartment in the vehicle or vessel.

HB 871 (Delegate Benjamin L. Cline) & SB 533 (Senator Ryan McDougle) Concealed Handgun Permit Applications & Notice of Right to Hearing if Denied. HB 871 and SB 533 amend § 18.2-308 of the Code of Virginia relating to concealed handgun permit applications and the right to an ore tenus hearing. HB 871 and SB 533 clarify that anyone who is denied a concealed handgun permit has the same right to an ore tenus hearing as a person who has previously held a concealed handgun permit. According to the Supreme Court of Virginia, this legislation is not expected to have a material fiscal impact on the financial resources of the court system.

HB 741 (Delegate William H. Cleaveland) Telephone Email or Texting & the Use of Indecent or Threatening Language. HB 741 amends § 18.2-427 of the Code of Virginia relating to use of profane, threatening, or indecent language using email or by texting. Section 18.2-427 makes it a Class 1 misdemeanor to use profane, threatening, or indecent language over any telephone or citizens band radio. HB 741 clarifies that "[o]*ver any telephone . . . any electronically transmitted message that is received or transmitted by telephone"* thereby capturing texting and emails.

HB 210 (Delegate David L. Bulova) Extortion Via Stolen Identifying Information. HB 210 amends § 18.2-59 of the Code of Virginia relating to extortion by threat of injury to personal identity or financial security. Section 18.2-59 makes it a Class 5 felony to be convicted of extortion. HB 210 expands the definition of "injury to property" to include the sale, distribution, or release of identifying information.

SB 96 (Senator Frederick M. Quayle) Eluding Police & Person is Guilty of a Class 2 Misdemeanor. SB 96 amends § 46.2-817 of the Code of Virginia relating to disregarding signal by law enforcement to stop. SB 96 adds "by foot" to attempting to escape or elude law enforcement.

HB 1166 (Delegate Clarence E. Phillips) Unlawfully Obtaining Controlled Substances & Allowing Report to Law Enforcement. HB 1166 amends § 32.1-127.1:03 of the Code of Virginia and adds § 54.1-3408.2 relating to unlawfully obtaining or attempting to obtain controlled substances and a required report. Section 32.1-127.1:03 is the "Health Records Privacy Act" and recognizes an individual**'**s right of privacy in the content of his health records. HB 1166 carves out a privacy exemption in § 32.1-127.1:03 and creates § 54.1-3408.2 to allow a person authorized to prescribe, dispense, or administer controlled substances pursuant to § 54.1-3408 who has reason to suspect that a person has obtained or attempted to obtain a controlled substance or prescription for a controlled substance by fraud or deceit to make a report to a local law-enforcement agency for investigation. Any person who, in good faith, makes a report or furnishes information or records to a law-enforcement officer or entity pursuant to this section shall not be liable for civil damages in connection with making such report or furnishing such information or records.

HB 869 (Delegate Benjamin L. Cline) & SB 532 (Senator Ryan T. McDougle) Masks - Prohibition on Wearing & Exceptions. HB 869 and SB 532 amend § 18.2-422 of the Code of Virginia relating to prohibition of wearing masks to provide a public health emergency exception. Section 18.2-422 makes it a Class 6 felony for a person over the age of 16 to wear a mask or hood whereby a substantial portion of the face is hidden or covered so as to conceal the identity of the wearer in any public place or upon any private property. There are exceptions such as traditional holiday costumes, theater productions, masquerade balls, employment purposes, and medical reasons. HB 869 and SB 532 add to the exemptions to wear a mask in public or on private property without the owner**'**s written consent when the Governor has declared a disaster or state-of-emergency in response to a public health emergency and defines the mask appropriate for the emergency.

HB 1147 (Delegate James M. Scott) Computer Trespass & Civil Damages. HB 1147 amends § 18.2-152.12 of the Code of Virginia relating to civil relief for acts of computer trespass. Section 18.2-152.12 provides civil relief and damages for a person whose property or person is injured by reason of a violation an act of computer trespass as set forth in § 18.2-152.4. Section 18.2-152.4 is expanded to include two additional types of computer trespass. HB 1147 mirrors the expansion of § 18.2-152.4 by including in § 18.2-152.12 the availability to institute a suit for civil damages resulting from computer trespass to include computer trespass by installing or causing to be installed, or collecting information through, computer software that records all or a majority of the keystrokes made on the computer of another.

CRIMINAL PROCEDURE

HB 500 (Delegate C. Todd Gilbert) Melendez-Diaz Preliminary Hearing & Admissibility of Certificates of Analysis. HB 500 amends §§ 19.2-183 and 19.2-187.1 of the Code of Virginia relating to admissibility of certificates of analysis at hearing and trial. HB 500 provides that at any preliminary hearing, certificates of analysis and reports prepared by lab analysts, etc., shall be admissible without the testimony of the person preparing such certificate or report. The bill also provides that when such an analyst appears in court on the day of trial to testify, the certificate of analysis shall be admissible. In addition the bill requires a defendant who demands the testimony of an analyst to pay $50 in court costs for expenses related to the analyst's appearance if the defendant is convicted.

HB 568 (Delegate Sal R. Iaquinto) Capital Murder & Notice to State of Expert Testimony 60 Days Before Trial. HB 568 amends § 19.2-264.3:1 of the Code of Virginia relating to notice to Commonwealth of expert testimony in the sentencing phase of a capital murder trial. HB 568 provides that in any case in which a defendant charged with capital murder intends, in the event of conviction, to present testimony of an expert witness to support a claim in mitigation relating to the defendant's history, character, or mental condition, he or his attorney shall give notice in writing to the attorney for the Commonwealth, at least 60 days (currently 21 days) before trial, of his intention to present such testimony.

SB 248 (Senator John C. Watkins) Indigent Defendants & Right to Ex Parte Hearing for Appointment of Experts in Capital Cases. SB 248 amends the Code of Virginia by adding sections 19.2-264.3:1.3 and 19.2-264.3:4 relating to appointment of experts to assist in the defense of indigent defendants in capital cases. SB 248 provides that an indigent defendant who has been charged with a capital offense may move in circuit court for the appointment of experts to assist in the preparation of his defense. The presiding judge shall designate another judge in the judicial circuit who may hold an ex parte hearing on such a motion and may order the appointment of an expert. Prior to an ex parte proceeding, communication, or request, a particularized need for confidentiality must be demonstrated in an adversarial proceeding. A motion for an ex parte hearing shall be in writing and filed under seal and any ex parte hearing conducted shall be on the record and kept under seal as part of the record of the case. The court may unseal the record after the trial is concluded for good cause shown.

- According to the Department of Planning and Budget's fiscal impact statement, in FY2009 there were 57 indigent defendants involved in capital offense cases in the Commonwealth.

HB 1033 (Delegate Kathy J. Byron) & SB 602 (Senator Stephen D. Newman) Homicide & Determining Whether an Infant Achieved an Independent & Separate Existence. HB 1033 and SB 602 add section 18.2-32.3 to the Code of Virginia relating to human infant and an independent and separate existence. The proposal adds § 18.2-32.3 to clarify that whether the umbilical cord has been cut or the placenta remains attached shall not be considered in determining whether a human infant has achieved an independent and separate existence. This language would apply only to the criminal homicide statutes (§§ 18.2-30 through 18.2-37). There is also an enactment clause declaring that an emergency exists and that the act will be in force upon passage.

HB 291 (Delegate H. Morgan Griffith) & SB 75 (Senator W. Roscoe Reynolds) Appeal of Bail Decision; Court is Determined Based on Where Initial Determination was Made. HB 291 and SB 75 amend §§ 19.2-124 and 19.2-132 of the Code of Virginia relating to appeals from bail, bond, and recognizance determinations. HB 291 and SB 75 specify the court to which a bail decision, bond amount,

or term of recognizance should be appealed. The proper court is determined based on where the initial determination was made and the court in which the charge is pending. The bills also streamline the process by which an attorney for the Commonwealth makes a motion to increase bail.

HB 1113 (Delegate Adam P. Ebbin) Abduction or Pandering - Forfeiture of Vehicle When Involving a Minor. HB 1113 amends § 19.2-386.16 of the Code of Virginia relating to forfeiture of vehicles used in abduction or pandering involving a minor. Section 19.2-386.16 provides for the forfeiture of a motor vehicle when it is used in commission of certain crimes. The current offenses relate to prostitution.[8] HB 1113 creates a new subsection B that provides for the forfeiture of a vehicle knowingly used by the owner or another with his knowledge during the commission of, or in an attempt to commit, a felony violation of Article 3, Chapter 4 of Title 18.2 (§§ 18.2-47 et seq.), or § 18.2-357 where the prostitute is a minor. The vehicle shall be seized by the arresting law-enforcement officer and delivered to the sheriff of the county or city in which the offense occurred.

HB 84 (Delegate Robert G. Marshall) Out-of-State Search Warrants, Corporations, and Electronic Communications. HB 84 amends § 19.2-70.3 of the Code of Virginia relating to foreign search warrants for electronic communications. HB 84 provides that a Virginia corporation or other entity that provides electronic communication services or remote computing services to the general public, when properly served with a warrant and affidavit in support of the warrant, issued by a judicial officer or court of another state with jurisdiction over the matter, to produce a record or other information pertaining to a subscriber to or customer of such service or the contents of electronic communications, or both, shall produce the record or other information as if that warrant had been issued by a Virginia court. This provision applies only to records relating to certain violent or sexual criminal offenses, computer fraud, and identity theft.

PUBLIC DEFENDERS

HB 1216 (Delegate Jennifer L. McClellan) Public Defenders & Supplemental Compensation. HB 1216 amends §§ 19.2-163.01 and 19.2-163.01:1 of the Code of Virginia relating to public defender compensation and supplements. HB 1216 provides that supplemental compensation for public defenders provided by a locality shall go directly to the employees rather than going to the Indigent Defense Commission for distribution.

DEPARTMENT OF CORRECTIONS

HB 585 (Delegate R. Steven Landes) Notification to VCIN When Person has Violated Provisions of His Post-Release Supervision. HB 585 amends §§ 19.2-390, 53.1-149, and 53.1-162 of the Code of Virginia relating to information entered into VCIN. HB 585 provides that within 72 hours following the receipt of a written statement issued by a parole officer authorizing the arrest of a person who has violated the provisions of his post-release supervision or probation, the person's name and other appropriate information required by the State Police shall be entered into the information systems known as the Virginia Criminal Information Network (VCIN). The information will be deemed a warrant authorizing the arrest of the person anywhere in the Commonwealth.

[8] The current offenses are: §§ 18.2-346, 18.2-347, 18.2-348, 18.2-349, 18.2-355, 18.2-356 or § 18.2-357 of the Code of Virginia.

HB 913 (Delegate Robert B. Bell) Victims of Crime may Visit Perpetrator in Prison Facility. HB 913 amends §§ 19.2-11.4 and 53.1-30 of the Code of Virginia relating to the victim of a prisoner visiting the incarcerated prisoner. HB 913 requires DOC to promulgate a policy to assist a person who was a victim of a crime committed by an offender incarcerated in any state correctional facility to visit with the offender. The policy may include provisions necessary to preserve the safety and security of those at such visit and the good order of the facility, including consideration of the offender's security level, crime committed, and institutional behavior of the offender. DOC shall make whatever arrangements are necessary to effectuate such a visit. The change in the law does not apply to juvenile victims.

HB 757 (Delegate Christopher P. Stolle) Prisoners Allowed on Private Property to Remove Graffiti in Certain Localities. HB 757 amends § 53.1-129 of the Code of Virginia relating to work by prisoners and the removal of graffiti. HB 757 allows prisoners confined to jail to work on private property to remove graffiti in those localities that have adopted an ordinance undertaking such projects under § 15.2-908 of the Code of Virginia.

HB 203 (Delegate Kenneth C. Alexander) Wrongful Incarceration & Definition & Compensation. HB 203 amends § 8.01-195.10 of the Code of Virginia relating to writ of actual innocence; available after parole or pardon. Section 8.01-195.10 provides directions and guidelines for the compensation of persons who have been wrongfully incarcerated in the Commonwealth. HB 203 adds to the definition of "wrongful incarceration" or "wrongfully incarcerated" to include a "person incarcerated has been granted an absolute pardon for the commission of a crime that he did not commit."

HB 559 (Delegate Robert Tata) Wrongful Incarceration for Felony Conviction & Individuals Granted an Absolute Pardon. HB 559 amends §§ 8.01-195.10, 8.01-195.11, and 8.01-195.12 of the Code of Virginia relating to compensation for wrongful incarceration for a felony conviction. HB 559 clarifies that individuals granted an absolute pardon by the Governor may be considered under the wrongful incarceration compensation statute. The bill also provides that the amount of compensation provided under the statute be adjusted for inflation. In addition, the bill specifies that any person awarded compensation who is subsequently incarcerated upon the revocation of parole or probation resulting from the commission of an act that constitutes a crime shall, during the period of such incarceration, forfeit any payments under an annuity purchased. Any forfeited amounts under the annuity shall become the property of the Commonwealth and shall be deposited into the general fund of the state treasury.

STATE GOVERNMENT REFORM

H.B. 485 (Delegate L. Scott Lingamfelter) Governor to Initiate an Operational & Programmatic Performance Review of State Agencies. HB 485 provides for an operational and programmatic performance review of certain public agencies. HB 485 directs the Governor to initiate on July 1, 2010, an operational and programmatic performance review of (i) the agencies under the Secretary of Health and Human Resources and the Secretary of Public Safety, (ii) the Department of Education, including primary and secondary education funded by the Commonwealth, and (iii) any other department, agency, or program of the Commonwealth in the executive branch of state government that the Governor deems necessary to effect savings in expenditures, a reduction in duplication of effort, and programmatic efficiencies in the operation of state government. The review shall be concluded by December 1, 2011. The review shall be conducted by a private management consulting firm. The goal of the review is to effect savings in expenditures, a reduction in duplication of effort, and programmatic efficiencies in the

operation of state government. The review would be conducted only pursuant to a fixed price contract. This is a "Section 1" act meaning that the language will not appear in the Code of Virginia.

LEGISLATIVE PROCESS

HJ 10 (Delegate H. Morgan Griffith) General Assembly & Establishing Prefiling Schedule for 2011 Regular Session. Requests for drafts of any bill or joint resolution to be prefiled shall be submitted to and received by the Division of Legislative Services no later than 5:00 p.m., Monday, December 6, 2010. Bills and joint resolutions offered for prefiling shall be prefiled in either house no later than 10:00 a.m., Wednesday, January 12, 2011.

HB 428 (Delegate H. Morgan Griffith) Legislative Bills - Repeals Provisions Requiring Certain Bills to be Filed on First Day of Session. HB 428 amends §§ 30-19.03, 30-19.1:7, and 36-132.1 of the Code of Virginia and repeals §§ 30-19.03:1, 30-19.03:1.1, 30-19.1, 30-19.1:1, 30-19.1:3, and 30-19.1:6 relating to legislative bills required to be filed no later than the first day of a legislative session. HB 428 repeals the provisions requiring the following types of bills to be filed no later than the first day of a legislative session: charter, claims, optional county form of government, corrections impact, local fiscal impact, sales tax exemption, and Virginia Retirement System.

HB 706 (Delegate Christopher K. Peace) General Assembly Deadlines & Computation of Time. HB 706 amends § 1-210 of the Code of Virginia relating to computation of time. HB 706 provides that, when an act of the General Assembly or local governing body, order of the court, or administrative regulation or order requires, either by specification of a date or by a prescribed period of time, that an act be performed or an action be filed on a Saturday, Sunday, or legal holiday or on any day or part of a day on which the state or local government office where the act to be performed or the action to be filed is closed, the act may be performed or the action may be filed on the next business day that is not a Saturday, Sunday, legal holiday, or day on which the state or local government office is closed.

REGULATORY PROCESS

HB 591 (Delegate R. Steven Landes) Administrative Process Act & Removing Obsolete Exemptions. HB 591 amends §§ 2.2-4002, 2.2-4006, 10.1-1308.1, 28.2-103, 28.2-1307, and 36-100 of the Code of Virginia relating to the Administrative Process Act. HB 591 removes obsolete exemptions from the Administrative Process Act for the Virginia Medicaid Prior Authorization Advisory Committee, which no longer exists, and a non-stock corporation created by the Commissioner of the Department of Agriculture and Consumer Affairs, which is not authorized to promulgate regulations. The bill also removes the exemption from the regulatory promulgation process for preliminary program permit fees of the Department of Environmental Quality. Permanent fees have been established by that Department, and the exemption is no longer necessary.

FOIA

HB 431 (Delegate H. Morgan Griffith) Freedom of Information Act & Proceedings for Enforcement. HB 431 amends § 2.2-3713 of the Code of Virginia relating to the Freedom of Information Act (FOIA) and proceedings for enforcement. HB 431 clarifies that a FOIA action may be brought in the name of a person notwithstanding that a request for public records was made by the

person's attorney in his representative capacity. The bill also clarifies that costs and reasonable fees for expert witnesses may be recovered by the petitioner in a FOIA action.

HB 518 (Delegate Thomas Davis Rust) Freedom of Information Act - Public Body Shall Remain Responsible for Retrieving Public Records. HB 518 amends §§ 2.2-3704 and 2.2-3706 of the Code of Virginia relating to the Freedom of Information Act. HB 518 provides that in the event a public body transferred possession of public records for storage, maintenance, or archiving, the public body initiating the transfer shall remain the custodian of the records for the purpose of responding to FOIA requests. The bill also adds a definition of "criminal investigative file" and clarifies what records are exempt from FOIA as so defined. The bill provides that undercover operations and protective detail records as well as records of background and internal affairs investigations held by any state or local law-enforcement agencies are exempt from the mandatory disclosure provisions of FOIA.

HB 1028 (Delegate Albert C. Pollard, Jr.) Freedom of Information Act & Recording of Public Meetings. HB 1028 amends § 2.2-3707 of the Code of Virginia relating to the Freedom of Information Act and recording of public meetings. HB 1028 prohibits any public body from conducting a meeting required to be open in any building or facility where any recording devices are prohibited. The bill also clarifies that no public body may prohibit or prevent any person from photographing, filming, recording, or otherwise reproducing any portion of a meeting required to be open.

MISCELLANEOUS

SB 689 (Senator Harry B. Blevins) Virginia Office for Protection & Advocacy and Establish Policy & Guidelines for Approval of Legal Remedies. SB 689 amends § 51.5-39.5 of the Code of Virginia relating to the Virginia Office for Protection and Advocacy. SB 689 requires the governing board of the Virginia Office for Protection and Advocacy to establish policy and internal guidelines for the approval of the pursuit of legal remedies, including the initiation of any legal proceeding on behalf of the Office, any persons with disabilities, or any organization representing persons with disabilities.

HB 883 (Delegate Clifford L. Athey, Jr.) & SB 127 (Senator Henry L. Marsh, III) Declaration of Judicial Emergency & Procedures for Supreme Court to Follow. HB 883 and SB 127 amend § 17.1-114 of the Code of Virginia and add §§ 17.1-330 and 17.1-331 in Chapter 3 of Title 17.1 article 3, relating to declaration of judicial emergency. HB 883 and SB 127 set out a procedure for the Supreme Court to follow in entering an order declaring a judicial emergency when there is a disaster as defined in the Commonwealth's Emergency Services and Disaster Law. The judicial emergency order may suspend, toll, extend, or otherwise grant relief from time limits or filing requirements in any court affected by the order and allows designation of a neighboring jurisdiction as proper venue for civil and criminal proceedings. This legislation is a recommendation of the Judicial Council.

HB 476 (Delegate Charles W. Carrico, Sr.) Polygraphs & Other Detection Devices - Director of DPOR to Approve use to Detect Deception or Truth. HB 476 amends §§ 54.1-1800 through 54.1-1805 of the Code of Virginia relating to the regulation of polygraphs and other detection devices. HB 476 authorizes the Director of the Department of Professional and Occupational Regulation (DPOR) to approve the use of mechanical devices used to detect deception or verify truthfulness other than polygraphs. The use of such devices would be regulated, and operators of such devices would be required to be licensed just as polygraph examiners are currently licensed.

CARRIED OVER LEGISLATION

Transferring & Trying Juveniles as Adults in Circuit Court

SB 205 (Senator Edwards) Juvenile's Right to Appeal Prosecutor's Discretionary Transfer to Circuit Court. **SB 205** amends § 16.1-269.6 of the Code of Virginia to provide for a juvenile's right to appeal, to the circuit court, the attorney for the Commonwealth's decision to certify that juvenile's case to the circuit court for trial as an adult under the provisions of subsection C of § 16.1-269.1. Under current law, the juvenile has no appeal, and there is no right to judicial review or oversight. Under this proposal, a juvenile would have the right to request the circuit court to review the decision of the attorney for the Commonwealth to have the juvenile certified for trial as an adult. If the juvenile appeals the decision of the attorney for the Commonwealth, then the circuit court will conduct a hearing on the merits of the decision to certify the juvenile for prosecution as an adult. The circuit court will then conduct a full review of a series of factors to determine if the juvenile should remain under the jurisdiction of the circuit court and be tried as an adult or be returned to the juvenile court.

SB 389 (Senator McDougle) Mandated Transfer of Juveniles for Violent Felonies & Certain Gang & Drug Offenses. SB 389 amends subsection B of § 16.1-269.1 of the Code of Virginia by adding violent felonies as defined in § 19.2-297.1 of the Code of Virginia to the list of offenses for which a juvenile who is 14 years of age or older will be mandated to be certified to stand trial as an adult in circuit court. SB 389 also amends subsection C of § 16.1-269.1 of the Code of Virginia to add to the list of offenses for which the Commonwealth's attorney may request that a juvenile be certified to stand trial as an adult in circuit court. The juvenile court must establish probable cause prior to certifying the charge, and all ancillary charges, to the grand jury.

Subsection C of § 16.1-269.1 of the Code of Virginia provides that the attorney for the Commonwealth may request that a juvenile, 14 years of age or older, be tried as an adult when the juvenile is accused of certain other felonies, such as felony homicide, robbery, or rape. This authority is commonly referred to as "prosecutorial discretionary" certifications or waivers. SB 389 expands the list of offenses in § 16.1-269.1(C) to include:

- Gang offenses defined in § 18.2-46.2;
- Second or subsequent violations of § 18.2-248 (selling, distributing, etc., a controlled substance);
- Second or subsequent violations of § 18.2-248.03 (selling, distributing, etc., methamphetamine);
- Second or subsequent felony violations of § 18.2-248.1 (selling, distributing, etc., marijuana); and
- Second or subsequent felony violations of § 18.2-248.5 (selling, distributing, etc., anabolic steroids).

For offenses listed in § 16.1-269.1(C) of the Code of Virginia, upon notice of the prosecutor's intent to pursue transfer, the juvenile court must conduct a preliminary hearing and, upon finding probable cause, must certify the charges to the grand jury (thus divesting the juvenile court of any jurisdiction in the case). Currently, following motion of the prosecutor, juveniles charged with gang offenses and felony drug crimes can be transferred to circuit court under § 16.1-269.1(A) of the Code of Virginia at the discretion of the juvenile court judge.

HB 483 (Delegate BaCote) Juvenile Correctional Centers & Appointment of Counsel to Assist Confined Individuals. HB 483 creates § 66-23.1 of the Code of Virginia to allow a juvenile court judge to appoint an attorney to assist the individuals confined in a JCC regarding any legal matter relating to their incarceration. Currently, prisoners in adult state correctional facilities have access to attorneys for

purposes of consultations at state expense (§ 53.1-40 of the Code of Virginia). The language in this bill is modeled upon the language for DOC. The estimated fiscal impact of the bill was $30,240 to pay attorneys appointed by juvenile court judges. The Office of the Executive Secretary of the Supreme Court estimated the fiscal impact to be nearly $100,000. The bill was carried over to 2011 by the House Committee on Courts of Justice. A substantially similar Senate bill died in House Courts by a 4-to-4 vote.

Juvenile Court Proceedings

HB 292 (Delegate Griffith) Circuit Courts & Original Jurisdiction Over Termination of Parental Rights Cases. HB 292 amends §§ 16.1-241, 16.1-276.2, 16.1-296, 16.1-309, and 17.1-513 of the Code of Virginia relating to original and appellate court jurisdiction in cases seeking the termination of parental rights. This bill makes the circuit court the sole court of original and general jurisdiction over all cases involving the termination of residual parental rights and eliminates the juvenile and domestic relations district courts' concurrent jurisdiction over such cases. In making the circuit court the exclusive court of original jurisdiction, this bill eliminates the de novo appeal from a juvenile court currently available for cases heard in juvenile court. All cases in circuit court will continue to have the right to appeal to the Virginia Court of Appeals.

HB 748 (Delegate Toscano) Termination of Parental Rights – Direct Appeal from Juvenile Court to Court of Appeals. HB 748 amends §§ 16.1-241, 16.1-296, 16.1-298, and 17.1-405 of the Code of Virginia and adds § 16.1-296.3 relating to the termination of parental rights (TPR). The bill would make the J&DR court the exclusive court of original jurisdiction for cases involving the termination of residual parent's rights. It requires the juvenile court to ensure the proceedings are recorded in such cases and cases seeking approval of a foster care permanency plan with the goal of adoption. The juvenile court would provide transcripts of the recordings without fees to indigent parents who have noted appeal of the case. If appealed, the order would be suspended. The appeal would be given precedence on the docket and heard by the Court of Appeals; thus, removing the de novo right of appeal to the circuit court currently provided for in the Code of Virginia.

SB 208 (Senator Barker) Dating Violence & Protective Orders – Definition of Family or Household Member. SB 208 amends § 16.1-228 of the Code of Virginia relating to the definition of family or household member. Section 16.1-228 is the definition section of the juvenile code. SB 208 expands the definition of "family or household member" to include those persons involved in a "substantive, intimate dating relationship." A "substantive, intimate dating relationship" is defined by (a) the length of the relationship, (b) the nature of the relationship, and (c) the frequency of interaction between the persons involved in the relationship. A casual relationship or ordinary fraternization in a business or social context does not constitute a dating relationship. Senate Courts of Justice carried over the bill to the 2011 session and referred the subject matter to the Virginia Crime Commission.

HB 822 (Delegate Surovell) One Petition for Child Support, Custody, and Visitation Cases in Juvenile Court. HB 822 amends the intake section of the juvenile code (§ 16.1-260 of the Code of Virginia) to allow a single petition to be filed in a matter involving a custody, visitation, or support dispute over one child and one petition for a single family with multiple children if the children have the same parents.

SB 177 (Senator McDougle) Expedited Juvenile Court Docket in Cases of Assault & Battery Against Family or Household Member. SB 177 amends § 16.1-241 of the Code of Virginia relating to jurisdiction of juvenile court. The juvenile court has limited jurisdiction over adult criminal cases when a

case involves family abuse pursuant to § 18.2-57.2 of the Code of Virginia. SB 177 would require the juvenile court to hear such a case "within 30 days of the date of service of the summons or arrest, or as soon thereafter as practicable." SB 177 was continued to 2011 in House Courts of Justice by voice vote.

HB 1156 (Delegate Oder) Minor may Petition for Stalking Protective Order. HB 1156 creates § 16.1-279.2 so that a minor may petition for a protective order pursuant to this Title or Chapter 9.1 (§ 19.2-152.8 et seq.) of Title 19.2 with or without the consent of a parent, legal guardian, or other person standing in loco parentis to the minor and who has care and control of the minor. The minor may participate in the court proceedings on his own behalf, and a court shall appoint a guardian ad litem for the minor. Chapter 9.1 (§ 19.2-152.8 et seq.) pertains to protective orders in cases of stalking.

Mental Health

SB 84 (Senator Howell) Voluntary Admission for a Person Admitted to Facility for Mental Health Treatment After Detention Order. SB 84 amends §§ 19.2-169.6, 19.2-176, 19.2-182.9, 37.2-805, 37.2-809, 37.2-813, 37.2-814, and 37.2-819 of the Code of Virginia. SB 84 provides that a person may be voluntarily admitted to a facility for mental health treatment after issuance of a temporary detention order but before a hearing for involuntary commitment by the person's attending or consulting physician where the physician finds that the person is willing and able to volunteer for treatment and after the person is informed that he will be required to provide 48 hours' notice prior to leaving the facility to which he was voluntarily admitted and will be prohibited from owning, possessing, or transporting a firearm. This bill also provides that a hearing for involuntary commitment shall be held no less than 24 hours but no more than 72 hours after execution of a temporary detention order. This bill was continued to 2011 in Senate Courts of Justice (14-Y 0-N).

SB 86 (Senator Howell) Voluntary Admission After Person Admitted to Facility for Mental Health Treatment After Detention Order. SB 86 amends §§ 37.2-805, 37.2-813, and 37.2-819 of the Code of Virginia relating to voluntary admission for mental health treatment prior to involuntary commitment hearing. SB 86 provides that a person may be voluntarily admitted to a facility for mental health treatment after issuance of a temporary detention order but before a hearing for involuntary commitment by the person's attending or consulting physician where the physician finds that the person is willing and able to volunteer for treatment and after the person is informed that he will be required to provide 48 hours' notice prior to leaving the facility to which he was voluntarily admitted and will be prohibited from owning, possessing, or transporting a firearm. This bill was continued to 2011 in Senate Courts of Justice (14-Y 0-N).

SB 85 (Senator Howell) Involuntary Temporary Detention Hearing Within 24 to 72 Hours. SB 85 amends §§ 19.2-169.6, 19.2-176, 19.2-182.9, 37.2-809, and 37.2-814 of the Code of Virginia requiring the involuntary commitment hearing to be held no less than 24 and no more than 72 hours after execution of a temporary detention order. Under current law, the hearing must be held within 48 hours after execution of the order. This bill was continued to 2011 in Senate Courts of Justice (13-Y 1-N).

Gang Offenses

SB 142 (Senator J. C. Miller) Definition of Criminal Street Gang Act: Adds Burglary & Shooting into a Dwelling to the List of Predicate Criminal Acts. SB 142 amends § 18.2-46.1 of the Code of Virginia to expand the definition of a "predicate criminal act" associated with gang activity beyond the crimes currently covered to include common law burglary in violation of § 18.2-89 and unlawful discharge of a firearm under § 18.2-279 of the Code of Virginia.

SB 530 (Senator McDougle) Definition of Criminal Street Gang – Solicitation by Telephone a Class 6 Felony. SB 530 amends § 18.2-46.3 of the Code of Virginia relating to recruitment of persons for a criminal street gang. A person who, by telephone or by any electronically transmitted communication producing a visual or electronic message, solicits or recruits another person to actively participate in or become a member of a criminal street gang is guilty of a Class 6 felony.

"Sexting"

HB 685 (Delegate J. H. Miller) Child Pornography – Solicitation, Possession, or Production by a Minor "Sexting." HB 685 attempted to provide that a minor who, upon the facts, could be found guilty of a first offense of possession, production, publication, or solicitation of child pornography, may have his case deferred and dismissed by the court. The offense is separate and distinct; if the acts or activities violating this law also violate another provision of law, a prosecution under this law shall not prohibit or bar any prosecution or proceeding under such other provision. The penalty for violation is a Class 3 misdemeanor. HB 685 was continued to 2011 in House Courts of Justice by voice vote.

Confidential Records

SB 711 (Senator Edwards) Freedom of Information Act & Disclosure of Criminal Investigative Records. SB 711 amends § 2.2-3706 of the Code of Virginia relating to the Freedom of Information Act and the disclosure of criminal investigative records. SB 711 limits the exemption for criminal investigative or prosecution records to those investigations or prosecutions that are ongoing. As a result, criminal investigative and prosecution records would be open to the public after the ongoing criminal investigation or prosecution has become final or has been otherwise terminated, unless there is jeopardy to any other criminal investigation or prosecution. The bill contains technical amendments and was continued to 2011 in Senate General Laws and Technology with the subject matter referred by letter to the Freedom of Information Advisory Council.

DUI

SB 300 (Senator J. C. Miller) DUI & Increased Penalties for Transporting Person Under 18. SB 300 amends §§ 16.1-278.9, 18.2-36.1, 18.2-51.4, 18.2-266.1, and 18.2-270, and creates § 18.2-270.02. SB 300 creates a new offense of driving under the influence with a passenger who is 18 years of age or younger, which is a Class 1 misdemeanor for a first offense and a Class 6 felony for a second offense with certain mandatory minimums. The bill also amends the DUI involuntary manslaughter statute to provide that the death of a person age 18 or younger is automatically aggravated manslaughter. If the conduct is already aggravated manslaughter and the victim is a person age 18 or younger, the minimum punishment is increased by one year. The bill also amends the DUI malicious wounding statute to increase the penalty from a Class 6 to a Class 5 felony if the victim is age 18 years or younger.

Miscellaneous

SB 102 (Senator McDougle) Budget Process Shall Start on July 1 of Odd-Numbered Years. SB 102 provides that the Commonwealth's biennial appropriations shall start on July 1 of odd-numbered years beginning with the biennial appropriation act for the period July 1, 2011, through June 30, 2013. Essentially, the new Governor's first budget will be the new Governor's budget and not his predecessor's.