2019

Virginia Department of Juvenile Justice

2019 General Assembly

Legislative update

July 1, 2019

CONTENTS

DJJ LEGISLATION

HB 2438 (Mullin): Juvenile correctional officers; training standards.

Passed House 98-0 / Passed Senate 38-2.

- **Existing Law:** *Code of Virginia* § 9.1-102(9) requires the Department of Criminal Justice Services (DCJS) to establish compulsory minimum entry-level, in-service, and advanced training standards, as well as the time required for completion of such training, for deputy sheriffs and jail officers employed by local criminal justice agencies, correctional officers employed by the Department of Corrections (DOC), and "juvenile correctional officers" employed at a juvenile correctional facility.

- **Summary of Legislation:** This bill sought to transfer/return the power and duty to establish compulsory minimum entry-level, in-service, and advanced training standards for juvenile correctional officers, as well as the time required for completion of such training, from DCJS to the State Board of Juvenile Justice (the Board).

- **Reason for Legislation:**

    - Prior to 2012, training standards for DJJ's juvenile correctional officers were governed by the Board. In 2012, DJJ's juvenile correctional officers were added to § 9.1-102, alongside jail officers and DOC correctional officers, thus requiring DCJS to establish training standards for them. At that time, their role was more similar to that of jail officers and DOC correctional officers; therefore, the training standards were necessarily similar.

    - In 2014, however, DJJ began the implementation of its Transformation Plan, which included the incorporation of the Community Treatment Model (CTM) at the juvenile correctional centers.

    - As part of the incorporation of the CTM, DJJ's juvenile correctional officers were given new working titles: resident specialist and security specialist. Under the CTM, DJJ's juvenile correctional officers (as they are still referred to in the *Code*) now have expanded responsibilities related to the CTM and the therapeutic nature of the juvenile correctional center. For instance, while the DOC correctional officers' main role is to maintain discipline and security, the responsibilities of DJJ's juvenile correctional officers also include establishing appropriate relationships with residents to assist with their positive social

adjustment, serving as a resident's personal advocate, demonstrating effective listening and empathetic responses, providing guidance to residents on individualized treatment goals, and providing supportive care.

- The training standards established by DCJS's Committee on Training (COT) for DJJ's juvenile correctional officers have not been updated to conform to the new roles of what are now DJJ's resident and security specialists.

- Members of the Board are appointed by the Governor and subject to confirmation by the General Assembly. Section 66-4 requires the Governor, in making the appointments, "to select appointees of such qualifications and experience that the membership of the Board shall include persons suitably qualified to consider and act upon the various problems that may come before the Board." Consequently, members of the Board are uniquely equipped with the knowledge of the particular requirements of the CTM. Historically, the DCJS COT's familiarity is with law enforcement and adult corrections. The Board, however, already has the responsibility of setting training standards through regulations, and its members possess knowledge of the juvenile justice system and the CTM. Thus, transferring the responsibility for the establishment of the training standards for DJJ's juvenile correctional officers back to the Board returns that responsibility to the body with the needed, relevant expertise.

- **Impact of Legislation:** This legislation amends § 9.1-102(9) by striking from the powers and duties of DCJS the establishment of compulsory minimum entry-level, in-service, and advanced training standards for juvenile correctional officers, as well as the time required for completion of such training, and inserts the same language into a new paragraph 9 in § 66-10, which enumerates the powers and duties of the Board. The amendment also removes the Director of DJJ from among the membership on DCJS's COT, as specified in § 9.1-112, as the sole purpose of the Director's membership on the COT was attributable to the COT's role in the juvenile correctional officer training standards.

HB 2616 (Guzman): Juveniles; increases minimum age at which a juvenile must be tried as an adult.

SB 1659 (Marsden): Juveniles; preliminary hearing, trial as an adult.

HB 2616: Failed (Passed by Indefinitely) in House Courts of Justice, Criminal Law Subcommittee 8-0.

SB 1659: Passed Senate 40-0. Failed (Passed by Indefinitely) in House Courts of Justice, Criminal Law Subcommittee 6-1.

- **Existing Law:** *Code of Virginia* § 16.1-269.1 sets the eligibility age for transfer to circuit court at 14 years or older at the time of the offense. The statute provides three avenues for transfer to circuit court:

    - Under subsection A, the juvenile court shall, on motion of the Commonwealth relating to a juvenile charged with a felony, hold a transfer hearing for the juvenile court to determine whether to retain jurisdiction or transfer the case to circuit court. Any decision to transfer the case to circuit court, however, is subject to enumerated conditions, including a decision that the juvenile is not a proper person to remain before the juvenile court which, in turn, is based upon 10 enumerated conditions including, but not limited to, age; education; seriousness and number of alleged offenses; intellectual disability; mental illness; and physical, mental, and emotional maturity.

    - Under subsection B, the juvenile court must conduct a preliminary hearing in the case of a juvenile charged with murder or aggravated malicious wounding. The juvenile court's role is limited to making a determination of probable cause. Upon a finding of probable cause, the juvenile court shall certify the charge and all ancillary charges to the grand jury, and the juvenile court is divested of jurisdiction.

    - Under subsection C, the juvenile court must conduct a preliminary hearing when the attorney for the Commonwealth provides written notice of intent to proceed with transfer for a juvenile charged with certain specifically enumerated offenses. As with the preliminary hearing under subsection B, the juvenile court's role is limited to making a determination of probable cause. Upon a finding of probable cause, the juvenile court shall certify the charge and all ancillary charges to the grand jury, and the juvenile court is divested of jurisdiction. Consequently, so long as probable cause exists, the decision to transfer under subsection C is within the discretion of the Commonwealth. Regardless, the Commonwealth is not required to consider the same information as that required to be considered by the juvenile court upon a transfer hearing under subsection A.

- **Summary of Legislation**

    - Sought to retain the current age for transfer eligibility at 14 years or older under subsection A, due to the fact that there is a transfer hearing at which the juvenile court is required to consider specifically enumerated information before making a decision.

    - Sought to increase the age for certification eligibility from 14 to 16 for matters falling under subsection B (preliminary hearing in the case of a juvenile charged with murder or aggravated malicious wounding).

    - Sought to increase the age for certification eligibility from 14 to 16 for matters falling under Subsection C (prosecutorial discretion).

    - Sought to require that a report be considered by the Commonwealth prior to providing written notice of intent to seek certification pursuant to subsection C. The report would be completed by the CSU and include the same factors that the juvenile court must take into consideration at a subsection A transfer hearing in determining whether the juvenile is a proper person to remain within the jurisdiction of the juvenile court. After reviewing the report, if the Commonwealth still intended to seek certification, it must affirm that the report had been reviewed in the written notice of such intent.

    - Sought to create an exception to the time requirements of § 16.1-277.1 within which an adjudicatory or transfer hearing must be conducted to provide that the limitations shall be tolled to allow for the completion of the report to be required when proceeding pursuant to Subsection C.

- **SB 1659 Substitute**

    - Removed the increase in the eligibility age from 14 to 16 years of age or older from subsections B and C of § 16.1-269.1.

    - Sought to amend §§ 16.1-269(C) and 16.1-277.1 to require the report to be considered by the Commonwealth prior to providing written notice of intent to seek certification pursuant to subsection C and to toll the time limitations to allow for the completion of the report.

- **Reason for Legislation**

    - When the juvenile court holds a transfer hearing pursuant to subsection A, the court must consider 10 enumerated factors in determining whether the juvenile is a proper person to remain within the jurisdiction of the juvenile court.

- Under subsection B and C certifications, however, the court's authority is limited to determining the existence of probable cause. It is for transfers pursuant to these subsections that an increase in the eligibility age was thought appropriate.

- Under subsection C, the Commonwealth must make a quick decision on the intent to proceed with transfer without the advantage of having the information considered by the court when a transfer hearing is held pursuant to subsection A. Providing the Commonwealth with a report containing the same factors as that provided to the court for a subsection A transfer hearing would have equipped the Commonwealth with the ability to render a more informed decision prior to filing a notice of intent.

- Data from FY10 to FY17, reveals that only 43% of the juveniles convicted of felonies in circuit court were sentenced to DOC; 28% were sentenced to adult jail or probation, and 7% received blended DJJ/DOC time.

- So only half of the youth sentenced as adults received active DOC time as part of their sentence. This raises the question of why, if they were deemed appropriate for transfer to adult court, many still received DJJ dispositions (11% determinate, 5% indeterminate, and 7% DJJ probation or other). This indicates that information is belatedly coming to light that, if considered before filing the intent to transfer, would aid the Commonwealth in making this decision.

- Requiring the prosecutor to request a report, to be completed by the CSU and containing the same information as the report described in subsection B of § 16.1-269.2, prior to filing a written notice to proceed with a discretionary transfer, would enable the prosecutor to make more informed decisions on certification. This may reduce the number of youth subjected to discretionary transfer pursuant to Subsection C.

HB 2383 (Carroll Foy): Juvenile and domestic relations district court; social history report, consideration and waiver.

Failed (Passed by Indefinitely) in House Courts of Justice, Criminal Law Subcommittee 5-3.

- **Existing Law:** *Code of Virginia* § 16.1-273 provides that, with the exception of traffic violations, violation of game and fishing laws, or violation of any city ordinance regulating surfing or establishing curfew violations, the court, before final disposition, **may** require an investigation which may, and for the purposes of subdivision A(14) (commitment to DJJ) or A(17) (penalty authorized under § 16.1-285.1; serious offender) of § 16.1-278.8 shall, include a social history of the physical,

mental, and social conditions, including an assessment of any affiliation with a criminal street gang, and personality of the child and the facts and circumstances surrounding the violation of law. Section 16.1-278.8 allows for the consideration of the results of an investigation completed under § 16.1-273, to be waived by an agreement between the Commonwealth and the juvenile and his attorney or other legal representative.

- **Summary of Legislation**

    - Sought to amend § 16.1-273 to add that in the case of a juvenile adjudicated delinquent of a violent juvenile felony offense as defined in § 17.1-805, the court, before final disposition, **shall** direct that such investigation and social history report be completed and shall consider the results of such report prior to entering a disposition.

        - "Violent felony offense," as set forth in § 17.1-805, includes a wide array of serious offenses including murder, gang recruitment, malicious wounding, arson, burglary, etc.

    - Sought to amend § 16.1-278.8(A)(14) and (17) to limit the ability of the attorney for the Commonwealth and the juvenile and his attorney or other legal representative to waive the social history report in cases where the applicable offense is a misdemeanor or a felony not specified as a violent offense in § 17.1-805.

- **Reason for Legislation**

    - The investigation is not mandatory, even for the most serious offenses. Additionally, even when the court does require an investigation, and that investigation must include a social history based upon the court seeking to commit the juvenile to DJJ or classify the juvenile as a serious offender, the prosecutor and the juvenile and his attorney or other legal representative may agree to waive consideration of the results of the investigation.

    - Particularly in cases in which there is a plea agreement, the parties often agree to waive the investigation.

    - Although some judges may still insist upon seeing the social history, others do not, and important information about the juvenile is not being considered in determining the most appropriate treatment of the juvenile.

- DJJ has broadened its placement and treatment options to provide an array of secure and non-secure treatment options to best meet the risk and needs of youth before the court. The social history and other assessments provide the basis for matching youth with the most appropriate services.

- To resolve the problem that courts are not always informed of this important information about the juvenile's social history in rendering a disposition, especially in cases in which there is a plea agreement, this bill would have ensured that the courts were provided with information to aid them in making the most appropriate disposition in cases involving violent felony offenses under § 17.1-805(C).

- Although it is understood that plea agreements can speed up the process, DJJ procedure requires that the report be completed within 30 days for detained youth and within 45 days for those not detained. This is not a particularly significant time if it aids in determining the most appropriate disposition to prevent further delinquency.

- In CY18, the CSUs produced 3,109 social history reports, in CY17, the CSUs produced 3,159 reports, and in CY 16, the CSUs produced 3,722 reports. Therefore, the number of reports is declining, thereby reducing the increase in any workload that may result from this bill.

CRIME

HB 1874 (Ransone) / SB 1604 (DeSteph): Cruelty to animals; increases penalty.

- **Existing Law:** *Code of Virginia* § 3.2-6570, pertaining to cruelty to animals, provides in subsection F that it is a Class 6 felony for any person (i) to torture, willfully inflict inhumane injury or pain not connected with bona fide scientific or medical experimentation, or cruelly and unnecessarily beat, maim, or mutilate any dog or cat that is a companion animal whether belonging to him or another, and (ii) as a direct result cause the death of such dog or cat that is a companion animal or the euthanasia of such animal on the recommendation of a licensed veterinarian upon determination that such euthanasia was necessary due to the condition of the animal.

- **Impact of Legislation:** Removes the requirement that the dog or cat that is a companion animal die as a result and adds that the crime includes such actions that cause serious bodily injury to such dog or cat. For the purposes of the subsection, "serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

HB 2056 (Yancey) / SB 1031 (Chase): Law-Enforcement Officials; to knowingly, with intent to mislead an official, giving false reports.

- **Existing Law:** *Code of Virginia* § 18.2-461 makes it a Class 1 misdemeanor (i) to knowingly give a false report as to the commission of any crime to any law-enforcement official with the intent to mislead, or (ii) to, without just cause and with the intent to interfere with the operations of any law-enforcement official, call or summon any law-enforcement official by telephone or other means, including engagement or activation of an automatic emergency alarm.

- **Impact of Legislation:** Expands § 18.2-461 to add that it is a Class 1 misdemeanor to knowingly, with the intent to mislead a law-enforcement agency, cause another to give a false report to any law-enforcement official by publicly simulating a violation of § 18.2-30 et seq. (crimes against the person) or § 18.2-77 et seq. (crimes against property).

HB 2678 (Simmon) / SB 1736 (Ebbin): Unlawful dissemination or sale of images of another; penalty.

- **Existing Law:** *Code of Virginia* § 18.2-386.2 makes it a Class 1 misdemeanor for any person, with the intent to coerce, harass, or intimidate, to maliciously disseminate or sell any videographic or still image created by any means that depicts another person who is totally nude, or in a state of undress so as to expose the genitals, pubic area,

buttocks, or female breast, where such person knows or has reason to know that he is not licensed or authorized to disseminate or sell such videographic or still image.

- **Impact of Legislation:** Expands the application of § 18.2-386.2 by providing that "another person" includes a person whose image was used in creating, adapting, or modifying a videographic or still image with the intent to depict an actual person and who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic.

HB 2748 (Stolle) / SB 1727 (Norment): Tobacco products, nicotine vapor products, etc.; purchase, possession, and sale.

- **Existing Law:**

  - *Code of Virginia* § 18.2-246.8 prohibits the delivery of cigarettes in connection with a delivery sale without first obtaining a certification that includes (i) a reliable confirmation that the consumer is at least the minimum purchase age, and (ii) a statement signed by the prospective consumer in writing that certifies the prospective consumer's address and that the consumer is at least 18 years of age.

  - Section 18.2-246.10 requires that any person who delivers cigarettes as part of a delivery sale shall include as part of the shipping documents a clear and conspicuous statement providing, "Cigarettes: Virginia Law Prohibits Shipping to Individuals Under 18." A method of delivery shall be used that requires (i) the consumer placing the order, or an adult of minimum purchase age, to sign and accept delivery of the shipping container, and (ii) proof, in the form of a valid, government-issued identification bearing a photograph of the individual who signs to accept delivery, demonstrating that he is either the addressee who is of legal minimum purchase age or another adult of legal minimum purchase age.

  - Section 18.2-371.2 provides that no person shall sell to, distribute to, purchase for, or knowingly permit the purchase by any person less than 18 years of age, knowing or having reason to believe that such person is less than 18, any tobacco product, nicotine vapor product, or alternative nicotine product. This section permits the sale of tobacco products from a vending machine only if the machine is (i) posted with a notice, posted in a conspicuous manner and place, that the sale of tobacco to minors is unlawful, and (ii) the machine is located in a place that is not open to the general public and not in a location generally accessible to minors. This section also prohibits the sale to or possession by anyone under 18 of tobacco, nicotine vapor products, or alternative nicotine products. The punishments for violations of this statute are civil penalties.

- **Impact of Legislation:**

    - Raises the age references in all three of these sections from 18 to 21.

    - Amends § 18.2-371.2 to expand the requirements for vending machines selling tobacco products to also such machines selling nicotine vapor products and alternative nicotine products.

    - Creates an exemption in § 18.2-371.2 to provide for the purchase or possession by, or sale to, a tobacco product, nicotine vapor product, or any alternative nicotine product to any active duty military personnel 18 years of age or older. An identification card issued by the Armed Forces shall be accepted as proof of age for this purpose.

COURTS

HB 2679 (Simon) / SB 1758 (Surovell): Juvenile and domestic relations district courts; jurisdiction, specific findings of fact.

- **Existing Law:** *Code of Virginia* § 16.1-241 enumerates the matters over which juvenile and domestic relations district courts have jurisdiction.

- **Impact of Legislation:** Amends § 16.2-241 to expand the jurisdiction of juvenile and domestic relations district courts to grant them the jurisdiction to make specific findings of fact required by state or federal law to enable a child to apply for or receive a state or federal benefit.

    - This amendment is in response to the Virginia Court of Appeals' decision in Canales v. Rorres-Orellana, (Record No. 1073-16-4), which ruled that juvenile and domestic relations district courts, as well as circuit courts, are not authorized to make Special Immigrant Juvenile Status (SIJS) findings as an independent matter and that a Virginia court has no authority to answer the specific question of whether "it would not be in the alien's best interest to be returned" to his country of origin, where such a finding would add to or alter "the responsibilities of Virginia courts in adjudicating custody or other matters." Consequently, this amendment can be used to secure predicate findings for SIJS applications.

HB 2414 (Adams) / SB 1201 (Stuart): Transfer of venue; delinquency, adjudication.

- **Existing Law:** *Code of Virginia* § 16.1-243(B), pertaining to transfer of venue, provides that, except in custody, visitation, and support cases, if the child resides in a city or county of the Commonwealth and the proceeding is commenced in a court of another city or county, that court may, at any time, on its own motion or on a motion of a party for good cause shown, transfer the proceeding to the city or county of the child's residence for such further action or proceedings as the court receiving the transfer may deem proper. In delinquency proceedings, however, such a transfer may occur only after adjudication.

- **Impact of Legislation:** Specifies that although such a transfer may occur in delinquency proceedings only after adjudication, the term "adjudication" shall include, for the purposes of this section, a finding of facts sufficient to justify a finding of delinquency.

HB 1622 (Collins): Child abuse or neglect; out of court and recorded statements of child.

- **Existing Law:** *Code of Virginia* § 63.2-1522, relating to admission of evidence of sexual acts with children, provides that an out-of-court statement by a child 12 years

of age or younger at the time the statement is offered into evidence describing any act of a sexual nature performed with or on the child by another may be admissible in evidence provided enumerated requirements set forth in the statute are met. Section 63.2-1523 provides that the use of a recording of a statement of the alleged victim of the offense, made prior to the proceeding, may be admissible as evidence if the alleged victim is 12 years of age or younger and other specifically enumerated conditions are met.

- **Impact of Legislation:** Amends §§ 63.2-1522 and 63.2-1523 to allow for such admissibility if the child is 14 years of age or younger.

HB 2464 (Collins): Child victims and witnesses; testimony, using two-way closed-circuit television.

- **Existing Law:** *Code of Virginia* § 18.2-67.9 allows, upon application to the court by the Commonwealth or the defendant, for an order allowing the testimony of an alleged child victim or child witness be taken outside the courtroom and be televised by two-way closed-circuit television if the court finds that the child is unavailable to testify in front of the defendant, the jury, the judge, and the public for any of the following reasons: (i) the child's persistent refusal to testify despite judicial requests to do so, (ii) the child's substantial inability to communicate about the offense, or (iii) the substantial likelihood, based upon expert opinion testimony, that the child will suffer severe emotional trauma from so testifying. This section applies to (i) an alleged victim of specified crimes who was 14 years of age or younger at the time of the offense and is 16 years of age or younger at the time of the trial and, (ii) a witness to such crimes who is 14 years of age or younger at the time of trial. The specified crimes to which this allowance applies are (i) kidnapping and related offenses under § 18.2-47 et seq., (ii) criminal sexual assault crimes under § 18.2-61 et. seq., (iii) family offenses and crimes against children under § 18.2-362 et. seq., and (iv) murder of a person of any age.

- **Impact of legislation:** Expands the list of crimes for which this allowance applies to include commercial sex trafficking or prostitution offenses included under § 18.2-344 et seq.

- Recommendation of the Virginia State Crime Commission.

HB 1673 (Mullin): Protective orders, preliminary; full hearing date if an act of God causes closure of a court, etc.

- **Existing Law:** *Code of Virginia* § 16.1-253.1 (preliminary protective orders in cases of family abuse) and § 19.2-152.9 (preliminary protective orders) require that a hearing be held within 15 days of the issuance of the preliminary order.

- **Impact of Legislation:** Amends §§ 16.1-253.1 and 19.2-152.9 so that if the court is closed pursuant to § 16.1-69.35 or § 17.1-207 (threat to the health or safety of the clerk's office personnel or the general public) and such closure prevents the hearing from being held within such time period, the hearing shall be held on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. When the court is closed pursuant to § 16.1-69.35 or § 17.1-207, the preliminary protective order shall remain in full force and effect until it is dissolved by such court, until another preliminary protective order is entered, or until a protective order is entered.

HB 2452 (Adams): Contempt of court; willful failure to appear.

- **Existing Law:**
    - *Code of Virginia* § 16.1-69.24 provides the judge of a district court with the same powers and jurisdiction as a judge of a circuit court to punish summarily for contempt, but in no case shall the fine exceed $250 or imprisonment exceed 10 days for the same contempt.
    - Section 18.2-456 provides that courts and judges may issue attachments for contempt and punish them summarily only in the following cases:
        - Misbehavior in the presence of the court, or so near thereto so as to obstruct the administration of justice;
        - Violence, or threats of violence, to a judge or officer of the court, or to a juror, witness, or party going to, attending, or returning from the court, for or in respect of any act or proceeding had, or to be had, in such court;
        - Vile, contemptuous, or insulting language addressed to or published of a judge for or in respect of any act or proceeding had, or to be had, in such court, or like language used in his presence and intended for his hearing for or in respect of such act or proceeding;
        - Misbehavior of an officer of the court in his official character.
        - Disobedience or resistance of an officer of the court, juror, witness, or other person to any lawful process, judgment, decree, or other order of the court.
- **Impact of legislation:**
    - Expands the list of instances in § 18.2-456 for which the circuit court may issue attachments for contempt and punish summarily, to include (A)(6), which states, "willful failure to appear before any court or judicial officer as required after having been charged with a felony offense or misdemeanor offense or released on a summons pursuant to § 19.2-73 or § 19.2-74" (issuance of a

summons instead of a warrant in misdemeanor and other specified cases). Requires that the judge indicate, in writing, for which of the six listed reasons the person is being charged and punished for contempt. Emphasizes that the new language in (A)(6) does not prohibit a prosecution under § 19.2-128 (penalties for failure to appear: Class 1 misdemeanor if underlying crime a misdemeanor / Class 6 felony if underlying crime a felony).

- Amends § 16.1-69.24 by stating that a person charged with a felony offense, misdemeanor offense, or released on a summons pursuant to § 19.2-73 or § 19.2-74 who fails to appear before any court or judicial officer as required shall not be punished for contempt under § 16.1-69.24 but may be punished for such contempt under the new language in § 18.2-456(A)(6). Consequently, the punishment that may be imposed would not be limited to that stated in § 16.1-69.24 ($250 and 10 days).

- Recommendation of the Virginia State Crime Commission.

SB 1429 (Obenshain): Medical evidence admissible in juvenile and domestic relations district court; hearings.

- **Existing Law:** *Code of Virginia* § 16.1-245.1 allows for the admission of a medical report regarding the extent, nature, and treatment of physical conditions or injuries suffered as evidence in a civil case alleging child abuse or neglect or family abuse. A party intending to present such medical evidence must provide the opposing party with a copy of the evidence and written notice of the intent to present it at least 10 days before the trial or hearing. The law allows for an exception in the case of preliminary removal hearings under § 16.1-252, in which case such evidence may be presented to opposing counsel no later than 24 hours before the trial or hearing and a sworn statement is attached to such evidence from the treating or examining health care provider or laboratory analyst who made the report that (i) the information contained therein is true, accurate, and fully describes the nature and extent of the physical condition or injury, and (ii) the patient named therein was the person treated or examined by such health care provider, or, in the case of a laboratory analysis, that the information contained therein is true and accurate.

- **Impact of Legislation:** Expands the exception for the presentation of such evidence no later than 24 hours before the trial or hearing, which is currently limited to preliminary removal hearings, to include preliminary protective order hearings under §§ 16.1-253 (preliminary protective orders) or 16.1-253.1 (preliminary protective orders in cases of family abuse).

Governor's Budget Amendment: Driver's License Reinstatement for Court Fines and Costs.

- **Existing Law:** Persons who failed to pay court fines and costs were subject to have their driver's license suspended.

- **Impact of Budget Amendment:**

    - Courts are prohibited from suspending a person's driving privilege solely for failure to pay court fines and costs. This change does not address non-payment of tolls.

    - Anyone whose driving privilege has been suspended solely for failure to pay court fines and costs will have his or her driving privilege reinstated. These individuals will not owe a reinstatement fee.

    - This only impacts a person's ability to get their driver's license back. It does not eliminate the requirement to pay the underlying court costs and fines.

HB 1720 (Hurst) / SB 1632 (Sturtevant): Cannabidiol oil and THC-A oil; possession or distribution at public school.

- **Existing Law:** Not applicable. New statute.

- **Impact of Legislation:**

  - Creates § 18.2-251.1:1, relating to possession or distribution of cannabidiol oil or THC-A oil, to provide that no school nurse employed by a local school board, person employed by a local health department and who is assigned to the public school pursuant to an agreement between the local health department and the school board, or other person employed by or contracted with a local school board to deliver health-related services shall be prosecuted for the possession or distribution of cannabidiol oil or THC-A oil for storing, dispensing, or administering cannabidiol or THC-A oil, in accordance with a policy adopted by the local school board, to a student who has been issued a valid written certification for the use of cannabidiol for the use of canabidiol oil or THC-A oil in accordance with § 54.1-3408.3(B) (certification for use of cannabidiol oil or THC-A oil for treatment).

  - Conforms existing § 22.1-277, relating to suspensions, to this amendment through the creation of a new subsection E to provide that no school board shall be required to suspend or expel any student who holds a valid written certification for the use of cannabidiol oil or THC-A oil issued by a practitioner in accordance with § 54.1-3408.3(B) for the possession or use of such oil in accordance with the student's individualized health plan and in compliance with a policy adopted by the school board.

  - The legislation also contains non-statutory language requiring the Department of Health Professions, in accordance with the Department of Education, to develop and provide to school boards a standardized form that is to be completed by a practitioner in accordance with § 54.1-3408.3(B) for the possession or use of cannabidiol oil or TCH-A oil issued by a practitioner in accordance with a student's individualized health plan and in compliance with a policy adopted by the school board.

HB 2384 (Hope) / SB 1295 (Spruill): Public schools; tobacco products and nicotine vapor products.

- **Existing Law:**
  - *Code of Virginia* § 22.1-79.5 requires each school board to develop and implement a policy to prohibit electronic cigarettes on a school bus, on school property, or at a school-sponsored activity.
  - Section 22.1-279.6(H) requires that each school board include in its code of student conduct a prohibition on possessing electronic cigarettes on a school bus, on school property, or at a school-sponsored activity.
- **Impact of Legislation:**
  - Expands § 22.1-79.5 to provide that the policy shall prohibit, at any time, the use and distribution of any tobacco product or nicotine vapor product, as those terms are defined in § 18.2-371.2, on a school bus, on school property, or at an on-site or off-site school-sponsored activity. It strikes the words "electronic cigarettes, but that term is included in the definition of "nicotine vapor product" as defined in § 18.2-371.2.
  - Amends § 22.1-79.5 to provide that such policy shall include (i) provisions for its enforcement among students, employees, and visitors, including the enumeration of possible sanctions or disciplinary action consistent with state or federal law, and (ii) referrals to resources to help staff and students overcome tobacco addiction. Each school board shall provide adequate notice of this policy.
  - Section § 22.1-279.6(H) is amended to require each school board to expand its code of student conduct to prohibit any tobacco product or nicotine vapor product, as those terms are defined in § 18.2-371.2, on a school bus, on school property, or at an on-site or off-site school sponsored activity.

HB 1787 (Ransone) / SB 1381 (McDougle): Students; offenses reportable by juvenile intake officers to school division superintendents.

- **Existing Law:** *Code of Virginia* § 16.1-260(G) requires the intake officer to file a report with the division superintendent of the filing of a petition alleging a student has committed a crime, wherever committed. If the crime is among a list of specifically enumerated offenses (e.g., homicide, sexual assault, controlled substances, distribution of marijuana, arson, burglary, robbery, criminal street gang activity, abduction), the report shall also notify the superintendent of the nature of the offense alleged in the petition.

- **Impact of Legislation:** Expands the list of specified offenses for which the intake officer must not only report the filing of a petition to the division superintendent but must also report on the nature of the offense to include alleged violations of § 18.2-60, which includes:

    - Communicating, in writing, a threat to kill or do bodily injury to a person, regarding that person or any member of his family;

    - Communicating, in writing, a threat to kill or do bodily harm, (i) on the grounds or premises of any elementary, middle or secondary school property, (ii) at an elementary, middle or secondary school-sponsored event, or (iii) on a school bus; or

    - Communicating an oral threat to any employee of any elementary, middle or secondary school, while on a school bus, on school property or at a school-sponsored activity, to kill or do bodily injury to such person.

    - Note: Abduction in violation of §§ 18.2-47 or 18.2-48 was added by the 2018 Session of the General Assembly.

HB 1997 (Price): Public elementary and secondary school students; protective orders, notification.

- **Existing law:** Not applicable. New Statute.

- **Impact of Legislation:** Creates a new statute, *Code of Virginia* § 22.1-279.3:2, which requires any school principal who receives notice that a court has issued a protective order pursuant to §§ 16.1-253 (preliminary protective order), 16.1-253.1 (preliminary protective orders in cases of family abuse), 16.1-253.4 (emergency protective orders), or 16.1-279.1 (protective order in cases of family abuse), subsection D of § 18.2-60.3 (stalking), or Chapter 9.1 (§ 19.2-152.7:1 et. seq. – protective orders) of Title 19.2 for the protection of any child who is enrolled at a public elementary or secondary school where such principal is employed, or any other order prohibiting contact with such a child, including an order issued as a condition of pre-trial or post-trial supervision, shall subsequently notify licensed instructional personnel and other school personnel who (i) provide direct educational or support services to the protected child or the child subject to the order, (ii) have a legitimate educational interest in such information, and (iii) are responsible for the direct supervision of the protected child or the child subject to the order. The Board of Education must establish guidelines and develop policies to aid local school boards in the implementation of this new statute.

HB 1985 (Richard Bell)/ SB 1298 (Barker): Alternative education programs; Department of Education to annually collect data on programs.

- **Existing law:** Not applicable. New Statute.

- **Impact of Legislation:** Creates a new statute, *Code of Virginia* § 22.1-277.2:2, which requires the Board of Education to collect data from each school board and publish on its website enrollment and achievement data on alternative education programs for students who have been suspended, expelled, or otherwise precluded from attendance at school. The data shall be published in a manner that protects the identities of students and must be disaggregated by local school division and by student race, ethnicity, gender, and disability. Such data must include:

  - The number of students enrolled in alternative education programs pursuant to each of the five clauses in § 22.1-277.2:1(A);

    - Charged with an offense under Virginia law; with a violation of school board policies on weapons, alcohol, or drugs or an intentional injury to another person; or with an offense that is required to be disclosed to the superintendent of the school division pursuant to § 16.1-260(G);

    - Found guilty or not innocent of an offense relating to weapons, alcohol, or drugs or of a crime that resulted in or could have resulted in injury to others, or of an offense that is required to be disclosed to the superintendent of the school division pursuant to § 16.1-260(G);

    - Found to have committed a serious offense or repeated offenses in violation of school board policies;

    - Suspended pursuant to § 22.1-277.05 (long term suspension);

    - Expelled pursuant to §§ 22.1-277.06 (expulsion), 22.1-277.07 (expulsion for bringing a firearm on school property), 22.1-277.08 (expulsion for brining controlled substances or marijuana on school property), 22.1-277(C) (student for whom report is received of an adjudication of delinquency or a conviction for an offense listed in § 16.1-260(G).

  - The number of students enrolled in alternative education programs who have received (i) a short-term suspension, (ii) a long-term suspension, or (iii) an expulsion;

  - The current availability of various categories of alternative education programs available to all students and not solely special education students, including full-day programs with on-site, in-school teacher instruction; full-day programs with off-site, out-of-school teacher instruction; primarily virtual instruction; home-based or

home-bound instruction; partial-day instruction; and any other category that the Department of Education may identify;

- The average length of enrollment in an alternative education program per student during each school year;

- The number of students who transition within the same school year from an alternative education program back into the school at which they were enrolled immediately preceding enrollment in the alternative education programs; and

- Relevant student achievement data, as determined by the Department of Education.

HB 2599 (John Bell): Public schools; prohibits use of seclusion and restraint.

- **Existing Law:** *Code of Virginia* § 22.1-279.1:1 requires the Board of Education to establish regulations on the use of seclusion and restraint in public elementary and secondary schools that (i) are consistent with its Guidelines for the Development of Policies and Procedures for Managing Student Behavior in Emergency Situations and the Fifteen Principles contained in the U.S. Department of Education's Restraint and Seclusion: Resource Document; (ii) include definitions, criteria for use, restrictions for use, training requirements, notification requirements, reporting requirements, and follow-up requirements; and (iii) address distinctions, including distinctions in emotional and physical development, between (a) the general student population and the special education student population and (b) elementary school students and secondary school students.

- **Impact of legislation:** Requires that the Board of Education shall specifically (1) identify and prohibit the use of any method of restraint or seclusion that it determines poses a significant danger to the student and (2) establish safeguards for seclusion.

HB 1729 (Landes): Guidance counselors; change name to school counselors, staff time.

- **Existing Law:** Not applicable. New Statute.

- **Impact of Legislation:**

  - Creates § 22.1-291.1:1, which requires each school counselor employed by a school board in a public elementary or secondary school to spend at least 80 percent of his staff time during normal school hours in the direct counseling of individual students or groups of students. The legislation also changes the term "guidance counselors" to "school counselors" in existing statutes using such term.

  - As with SB 1406, it also changes the term "guidance counselors" to "school counselors" in existing statutes using such term.

- Combines well with SB 1406, which creates smaller counselor-to-student ratios, thus making the new requirement to spend at least 80% of staff time during normal school hours in the direct counseling of students more practical.

SB 1406 (Dance): Guidance counselors; staffing rations, changes name to school counselors, etc.

- **Existing Law:** *Code of Virginia* § 22.1-253.13:12(H)(4), sets forth the counselor-to-student staffing ratios as follows:
  - Elementary schools: One hour per day per 100 students, one full-time at 500 students, one hour per day additional time per 100 students or major fraction thereof.
  - Middle schools: One period per 80 students, one full-time at 400 students, one additional period per 80 students or major fraction thereof.
  - High schools: One period per 70 students, one full-time at 350 students, one additional period per 70 students or major fraction thereof.
- **Impact of Legislation:**
  - Amends the ratios set forth in § 22.1-253.13:12(H)(4) as follows:
    - Elementary schools: One hour per day per 75 students, one full-time at 375 students, one hour per day additional time per 75 students or major fraction thereof.
    - Middle schools: One period per 65 students, one full-time at 325 students, one additional period per 65 students or major fraction thereof.
    - High schools: One period per 60 students, one full-time at 300 students, one additional period per 60 students or major fraction thereof.
  - As with HB 1729, it also changes the term "guidance counselors" to "school counselors" in existing statutes using such term.
  - Combines well with HB 1729, which creates § 22.1-291.1:1, requiring each school counselor employed by a school board in a public elementary or secondary school to spend at least 80 percent of his staff time during normal school hours in the direct counseling of individual students or groups of students. These new ratios should make devoting such time to counseling more feasible.

HB 1656 (Cole): School security officers; employment by private or religious schools, carrying a firearm.

- **Existing Law:** *Code of Virginia* § 22.1-280.1:1 permits local school boards to employ "school security officers," as defined in § 9.1-101. The statute permits school security officers to carry a firearm in the performance of their duties provided specifically enumerated requirements are met (former active law-enforcement officer in the Commonwealth within the previous 10 years, meeting specified training and qualification requirements set forth in § 18.2-308.016).

- **Impact of Legislation:** Amends § 22.1-280.1:1 to permit private or religious schools, in addition to local school boards, to employ school security officers and adds individuals employed by private or religious schools to the definition of "school security officer" in § 9.1-101.

HB 1733 (Gilbert) / SB 1214 (Newman): School boards; local law-enforcement agencies, memorandums of understanding.

- **Existing Law:** *Code of Virginia* § 9.1-184 creates the Virginia Center for School and Campus Safety and specifies its duties.

- **Impact of Legislation:**

    - Amends *Code of Virginia* § 9.1-184 to expand the duties of the Virginia Center for School and Campus Safety to require that it develop a model memorandum of understanding setting forth the respective roles and responsibilities of school boards and local law-enforcement agencies regarding the use of school resource officers. Such model memorandum of understanding may be used by local school boards and local law-enforcement agencies to satisfy the requirements of the newly established § 22.1-280.2:3 (below).

    - Creates § 22.1-280.2:3, pertaining to school boards, local law-enforcement agencies, and memoranda of understanding. The new statute requires that the school board in each school division in which the local law-enforcement agency employs school resource officers shall enter into a memorandum of understanding with such local law-enforcement agency that sets forth the powers and duties of such school resource officers. The provisions of such memorandum of understanding shall be based on the model memorandum of understanding developed by the Virginia Center for School and Campus Safety pursuant to § 9.1-184(11), which may be modified by the parties in accordance with their particular needs. Each school board and local law-enforcement agency shall review and amend or affirm such memorandum at least once every five years or at any time upon the request of either party.

HB 2609 (Jay Jones) / SB 1130 (Locke): School resource officers; compulsory minimum training standards.

- **Existing Law:** *Code of Virginia* § 9.1-102 enumerates the powers and duties of the Department of Criminal Justice Services and the Criminal Justice Services Board, which includes the licensure, registration, regulations, and standards for several professions.

- **Impact of Legislation:**

  - Amends *Code of Virginia* § 9.1-102 to expand the powers and duties of the Department and the Board under § 9.1-102, by adding, in a new paragraph 54, the establishment of compulsory minimum training standards for certification and recertification of law-enforcement officers serving as school resource officers. Such training shall be specific to the role and responsibility of a law-enforcement officer working with students in a school environment.

  - Creates a new § 9.1-114.1, which provides that every full-time or part-time law-enforcement officer employed as a school resource officer after July 1, 2020, shall comply with the compulsory minimum training standards for school resource officers established by the Board within a period of time fixed by the Board. The Department shall ensure that such required training is available throughout the Commonwealth.

  - Amends § 22.1-279.8 by adding a subsection E, which requires that each school board ensure that every public school it supervises employs at least one school administrator who has completed, either in-person or online, school safety training for public school personnel conducted by the Virginia Center for School and Campus Safety. This requirement, however, shall not apply if such required training is not available online.

HB 1734 (Marshall) / SB 1213 (Newman): Virginia Center for School and Campus Safety; threat assessment, case management tool.

- **Existing Law:** *Code of Virginia* § 9.1-184 creates the Virginia Center for School and Campus Safety and specifies its duties. Section 22.1-79.4(E) requires each school board to adopt policies for the establishment of threat assessment teams. Each division superintendent shall establish, for each school, a threat assessment team that shall include persons with expertise in counseling, instruction, school administration, and law enforcement. The teams can serve one or more schools as determined by the division superintendent. Threat assessment teams shall provide guidance to students, faculty, and staff regarding recognition of behavior that may represent a threat, identify members of the school community to whom threatening behavior should be reported, and implement policies adopted by the local school board. Upon

a determination that a student poses a threat of violence or physical harm, the threat assessment team shall immediately report its determination to the division superintendent or designee. The statute requires each threat assessment team to report quantitative data on its activities according to guidance developed by the Department of Criminal Justice Services.

- **Impact of Legislation:**

    - Amends § 9.1-184 to expand the duties of the Virginia Center for School and Campus Safety to require that it develop a case management tool for the collection and reporting of data by threat assessment teams developed under § 22.1-79.4.

    - Amends § 22.1-79.4(E) to require each threat assessment team to collect and report to the Virginia Center for School and Campus Safety quantitative data on its activities using the case management tool developed by the Center.

SB 1591 (Dunnavant): School and Campus Safety, Virginia Center for; guidelines on information sharing.

- **Existing Law:** Not applicable. New § 1 provision.

- **Impact of Legislation:** Requires the Virginia Center for School and Campus Safety to convene a work group to develop guidelines and best practices for the sharing of information between a local school board or public institution of higher education and law enforcement regarding a student whose behavior may pose a threat to the safety of a school or institution or the community, including information regarding such student's disciplinary history, medical conditions, or other relevant characteristics. Such guidelines and best practices shall seek to balance the interests of safety and student privacy and shall be consistent with federal law. The work group shall include representatives from the Department of Education, the State Council of Higher Education for Virginia, the Department of Behavioral Health and Developmental Services, the Office of the Attorney General, the Virginia School Boards Association, the Virginia Association of Chiefs of Police, the Virginia Sheriff's Association, the Virginia Association of Campus Law Enforcement Administrators, and other interested stakeholders. The Center shall develop such guidelines and best practices, report to the Chairmen of the House Committee on Education and the Senate Committee on Education and Health, and make such guidelines available to local school boards, public institutions of higher education, law enforcement, and the public by October 1, 2019.

HB 1652 (Robinson)/ SB 1005 (Chase): School calendar; opening day of the school year.

- **Existing Law:** *Code of Virginia* § 22.1-79.1 requires local school boards to set the school calendar so that the first day of school shall be after Labor Day. The Board of Education may waive this requirement if the local school board certifies that it meets one of the good cause exceptions set forth in the statute.

- **Impact of Legislation:** Amends § 22.1-79.1 to provide that:

    - Each school board shall set the calendar so that the first day students are to attend school shall be no earlier than 14 days before Labor Day;

    - In each school division in which the school board sets the school calendar so that the first day students are required to attend schools is before Labor Day, such school board shall close each school in the school division from the Friday immediately preceding Labor Day through Labor Day; and

    - Eliminates the good cause requirements for a waiver of such requirements with the exception of a school division which is providing its students, in the year in which the waiver is sought, instructional programs that are offered on a year-round basis by the school division in one or more of its elementary, middle, or high schools. In such a case, the waiver shall only apply to the opening date for those schools where such year-round instructional programs are offered.

HB 2018 (Peace) / SB 1434 (McClellan): Career and Technical Education Work-Based Learning Guide; Board of Education shall review and revise.

- **Existing Law:** Not applicable. This is a §1 and §2 Act.

- **Impact of Legislation:** Requires the Board of Education to review and revise its Career and Technical Education Work-Based Learning Guide by December 1, 2019, to expand the opportunities available for students to earn credit for graduation through high-quality work-based learning experiences such as job shadowing, mentorships, internships, and externships. In performing such review, the Board shall consult with stakeholders representing a variety of industries and organizations representing the business community and shall consider (i) the diversity of school divisions across the Commonwealth, (ii) the need for local flexibility to establish credit-bearing work-based learning experiences through a variety of methods, and (iii) the needs of industries across the Commonwealth. The Board shall complete its work to revise the Guide no later than December 1, 2019.

HB 1771 (Mullin): Virginia Juvenile Community Crime Control Act; prevention of juvenile crime prior to intake.

- **Existing Law:** The Virginia Juvenile Community Crime Control Act (VJCCCA), set forth in *Code of Virginia* § 16.1-309.2, et, seq., was enacted in 1995 as part of an effort to address the need for localities to efficiently and effectively respond to juvenile crime. The VJCCCA provides funding for localities to establish a community-based system of services and sanctions in a model that balances local flexibility and autonomy with appropriate state oversight and accountability mechanisms through the Board and DJJ. Base funding for the VJCCCA came from block grants, primarily to support group home placements. The General Assembly appropriated additional funding so that all localities could implement an array of programs and services for juveniles involved in the juvenile justice system. All participating localities are required to spend an amount equal to the sum of their FY 1995 expenditures for pre-dispositional and post-dispositional block grant alternatives to secure detention. The level of commitment from communities prior to the VJCCCA would not be replaced by the VJCCCA. DJJ encourages localities to seek and leverage additional funds to supplement VJCCCA programs and services to meet the full range of service needs in their community.

  Participation in the VJCCCA is voluntary, but all 133 localities in Virginia participate. **Under the current VJCCCA, all funding must be spent serving only juveniles and their families before intake, delinquent adjudication, or determination that the child is in need of services or supervision through non-secure programs and services.** Localities must develop a biennial plan for the use of funds, which must be approved by the Board of Juvenile Justice, but they are given flexibility to address their local issues. In developing their plan, localities must consult with local judges, CSU directors, and the local Community Policy and Management Team. The Board of Juvenile Justice establishes guidelines for determining the types of programs for which funds may be used. These programs fall into three broad categories: 1) accountability, 2) competency development, and 3) public safety. More specifically, these categories include such services as community service, restitution, substance abuse counseling, sex offender counseling, skill development programs, employability skills, law-related education, and alternatives to secure detention, such as electronic monitoring and group homes. Approximately 49% of VJCCCA placements in FY 2018 were for pre-dispositional detention alternatives, an increase from 37% of VJCCCA placements in FY 2009. During this same timeframe, detainments in juvenile detention centers declined by about 45%. The vast majority of VJCCCA placements have satisfactory completion statuses (82% in FY 2018),

indicating successful services that may be a factor in the declining numbers of intakes, petitions filed, and placements in juvenile detention centers in the past decade.

- **Impact of Legislation:** Amends the VJCCCA to **expand its purpose from the utilization of resources for juveniles involved in the juvenile justice system to also provide community diversion and community-based resources for juveniles who are not involved in the juvenile justice system but "who have been screened for needing community diversion or community-based services using an evidence-based assessment protocol."** The "evidence-based protocol" to be used for screening such non-court-involved youth is not defined or specified. As part of this expansion, the bill will factor in the total number of children who have been screened for needing community diversion or community-based services through the use of the "evidence-based assessment protocol" into the determination of payment of financial assistance provided by the Commonwealth. This bill will make diversion and community-based services available to eligible juveniles, as determined by an "evidence-based assessment protocol," other than just those court-involved youth who are currently eligible for correctional resources because they are alleged to be delinquent, a child in need of services, or a child in need of supervision. Due to the lack of detail with regard to what "evidence-based protocol" will be used, there is no way of predicting how many additional youth will now become eligible for the services. Further, the language will allow for different jurisdictions to utilize different protocols, resulting in geographic disparities and inequalities. This could result in services being diverted away from the court-involved youth who are currently eligible. This bill will also impact localities, court service units, local community policy and management teams, DJJ, and the Board of Juvenile Justice, which will need to amend its guidelines, processes, and regulations for determining the types of programs for which VJCCCA funds may be used. It should be noted that General Assembly funding for the VJCCCA has been reduced dramatically since 2002, when funding was at $29.5 million. In FY 2003, funding was cut in half to $14.5 million, and it was further reduced in FY 2011 to its current level of $10.3 million. Because the expansion of the program under the bill is not accompanied by additional funding, the bill will also potentially deprive localities of needed funds to continue successful diversion and intervention programs for those youth who are currently eligible for these important services under the existing law.

  It should be noted that Virginia law already includes the Delinquency Prevention and Youth Development Act, which authorizes DJJ to establish guidelines for, and issue grants to support, delinquency prevention and youth development programs. Through this Act, Virginia committed funding to delinquency prevention by creating a statewide network of Offices on Youth with a focus on fostering positive youth development, empowering families to solve their own problems effectively, and identifying and coordinating local resources to support delinquency prevention

efforts. DJJ sustained approximately 43 Offices on Youth over the years and provided grant application reviews, grant awards, oversight, and certification. The General Assembly has not provided funding for the Act, however, since 2001, but the Act remains in the *Code of Virginia,* and DJJ has maintained the regulations governing the Act to remain compliant with the Code and to ensure that, should the General Assembly reinitiate funding, grant applicants will have a detailed process in place for obtaining grant funding.

HB 1918 (Stolle) / SB 1598 (Dunnavant): Corrections, Board of; minimum standards for health care services in local correctional facilities.

- **Existing Law:** *Code of Virginia* § 53-1.5 establishes the powers and duties of the Board of Corrections.

- **Impact of Legislation:** Amends § 53.1-5 to expand the power and duties of the Board to establish minimum standards for health care services, including medical, dental, pharmaceutical, and behavioral health services in local, regional, and community correctional facilities, and procedures for enforcing such minimum standards, with the advice of and guidance from the Commissioner of Behavioral Health and Developmental Services and State Health Commissioner or their designees. Such minimum standards shall require that each local, regional, and community correctional facility submit a standardized quarterly continuous quality improvement report documenting the delivery of health care services, along with any improvements made to those services, to the Board. The Board shall make such reports available to the public on its website. The Board may determine that any local, regional, or community correctional facility that is accredited by the American Correctional Association or National Commission on Correctional Health Care meets such minimum standards solely on the basis of such facility's accreditation status; however, without exception, the requirement that each local, regional, and community correctional facility submit a standardized quarterly continuous quality improvement report to the Board shall be a mandatory minimum standard.

HB 1933 (Hope): Prisoners; medical and mental health treatment of those incapable of giving consent.

- **Existing Law:** Not applicable. New statutes.

- **Impact of Legislation:** Creates §§ 53.1-133.04 and 53.1-133.05 to establish a process for the sheriff or administrator in charge of a local or regional correctional facility to petition a court to authorize medical or mental health treatment for a prisoner in such facility who is incapable of giving informed consent for such treatment. The process parallels the existing process for the Director of the Department of Corrections to seek authorization to provide involuntary treatment to prisoners in state correctional facilities. It requires the court to authorize such treatment in a facility designated by the sheriff or administrator upon finding that the prisoner is incapable, either mentally or physically, of giving informed consent; that the prisoner does not have a relevant advanced directive, guardian, or other substitute decision maker; that the proposed treatment is in the best interests of the prisoner; and that the jail has sufficient medical and nursing resources available to safely administer the treatment and respond to any adverse side effects that might arise from the treatment. The bill

provides that the treatment ordered may be provided within a local or regional correctional facility if such facility is licensed to provide such treatment.

HB 1942 (Robert Bell): Behavioral health services; exchange of medical and mental health information and records.

- **Existing Law:**
  - *Code of Virginia* §§ 53.1-40.10 (state facilities) and 53.1-133.03 (local or regional correctional facilities) denotes who can exchange the medical and mental health information and records of a person committed to a local or regional correctional facility.
  - Section 53.1-68 requires the Board of Corrections to establish minimum standards for local correctional facilities and lock-ups, health inspections, behavioral health service inspections, and personnel.
- **Impact of Legislation:**
  - Amends §§ 53.1-40-10 and 53.1-133.03 to provide that the director of a state, regional, or local correctional facility, or his designee, does not need the consent of a person committed to such a correctional facility to receive their medical and mental health information and records when such information and records are necessary (i) for the provision of health care to the person committed, (ii) to protect the health and safety of the person committed or other residents or staff of the facility, or (iii) to maintain the security and safety of the facility. Such information and records may be exchanged among administrative personnel for the facility in which the person is imprisoned as necessary to maintain the security and safety of the facility, its employees, or other prisoners. The information exchanged shall continue to be confidential, and disclosure shall be limited to what is necessary to ensure the security and safety of the facility.
  - Amends § 53.1-68 to require that the State Board of Corrections establish minimum standards for behavioral health services in local correctional facilities and procedures for enforcing such minimum standards, with the advice of and guidance from the Commissioner of Behavioral Health and Developmental Services and the State Inspector General. Such standards shall include (involves the convening of a work group and to be effective July 1, 2020):
    - Requirements for behavioral health services provided in jails, including requirements for behavioral health screening and assessment of individuals committed to local correctional facilities and the provision of behavioral health services in local correctional facilities, as well as

regulations directing the sharing of medical and mental health information and records in accordance with § 53.1-133.03;

- Requirements for discharge planning for individuals with serious mental illness assessed as requiring behavioral health services upon release from the local correctional facility, which shall include (i) creation of a discharge plan, as soon as practicable after completion of the assessment required pursuant to subdivision 1, and (ii) coordination of services and care with community providers, community supervision agencies, and, as appropriate, the individual's family in accordance with the discharge plan until such time as the individual has begun to receive services in accordance with the discharge plan or for a period of 30 days following release from the local correctional facility, whichever occurs sooner. Discharge plans shall ensure access to the full continuum of care for the individual upon release from the local correctional facility and shall include provisions for (a) linking the individual for whom the discharge plan has been prepared to the community services board in the jurisdiction in which he will reside following release and to other supports and services necessary to meet his service needs and (b) communication of information regarding the individual's treatment needs and exchange of treatment records among service providers;

- A requirement for at least one unannounced annual inspection of each local correctional facility by the Board or its agents to determine compliance with the standards for behavioral health services established pursuant to this subsection and such other announced or unannounced inspections as the Board may deem necessary to ensure compliance with the standards for behavioral health services established pursuant to this subsection; and

- Provisions for the billing of the sheriff in charge of a local correctional facility or superintendent of a regional correctional facility by and payment by such sheriff or superintendent to a community services board that provides behavioral health services in the local correctional facility, in accordance with § 53.1-126.

HB 2693 (Price) / SB 1694 (Barker): Qualified Mental Health Professionals; regulations for registration.

- **Existing Law:** *Code of Virginia* § 54.1-2400.1 provides that a mental health service provider has a duty to take precautions to protect third parties from violent behavior or other serious harm only when the client has orally, in writing, or via sign language, communicated to the provider a specific and immediate threat to cause serious bodily injury or death to an identified or readily identifiable person or persons, if the

provider reasonably believes, or should believe according to the standards of his profession, that the client has the intent and ability to carry out that threat immediately or imminently. If the third party is a child, in addition to taking precautions to protect the child from the behaviors in the above types of threats, the provider also has a duty to take precautions to protect the child if the client threatens to engage in behaviors that would constitute physical abuse or sexual abuse as defined in § 18.2-67.10. The duty to protect does not attach unless the threat has been communicated to the provider by the threatening client while the provider is engaged in his professional duties. The current section also defines a "qualified mental health professional" as a person who by education and experience is professionally qualified and registered by the Board of Counseling to provide collaborative mental health services for adults or children. A qualified mental health professional shall provide such services as an employee or independent contractor of the Department of Behavioral Health and Developmental Services, the Department of Corrections, or a provider licensed by the Department of Behavioral Health and Developmental Services.

- **Impact of Legislation:**

    - Amends the definition of "qualified metal health professional" to provide that it has the same meaning as that in § 54.1-3500, which is amended to define a "qualified mental health professional" as a "qualified mental health professional –adult" and "qualified mental health professional – child." The amendment defines a "qualified mental health professional – adult" as a qualified mental health professional who provides collaborative mental health services for adults and a "qualified mental health professional – child" as a person who by education and experience is professionally qualified and registered by the Board of Counseling to provide collaborative mental health services for children and adolescents up to 22 years of age.

    - Amends § 54.1-3505 to require the Board of Counseling to promulgate regulations for the registration of individuals receiving supervised training in order to qualify as a qualified mental health professional.

HB 2089 (Watts)/ SB 1418 (Mason): Sex offender and crimes against minors registry; registration schedule.

- **Existing Law:** *Code of Virginia* 9.1-904 provides the registration schedule for individuals required to register on the Sex Offender and Crimes Against Minors Registry. This section requires individuals who are required to register, excluding individuals convicted of a sexually violent offense or murder, to register every 180 days from the date of their conviction. Individuals convicted of a sexually violent offense or murder are currently required to register every 90 days from the date of such individual's initial registration. A person convicted of providing false information or failing to provide registration information, but not convicted of a sexually violent offense or murder, must currently register every 180 days from the date of such an individual's conviction. An individual convicted of providing false information or failing to provide registration information, when such an individual was included in the Registry for a sexually violent offense or murder, must currently register every 30 days from the date of such an individual's conviction.

- **Impact of Legislation:** Amends § 9.1-904 to change the registration schedule to time periods corresponding to an individual's birth month and the first letter of such an individual's last name for the following four categories: (i) persons who are required to register, but have not been convicted of a sexually violent offense or murder must register annually during such person's birth month, (ii) persons convicted of a sexually violent offense or murder shall register with the State Police every three months, beginning in such person's birth month, (iii) persons convicted of providing false information or failing to provide registration information, but not convicted of a sexually violent offense or murder, shall register every six months beginning with such person's birth month, and (iv) persons convicted of providing false information or failing to provide registration information, when such person was included in the Registry for a sexually violent offense or murder, shall register every month. Persons who are required to register with last names beginning with A through L shall register annually from the first to the fifteenth of such person's birth month, and persons with last names beginning with M through Z shall register annually from the sixteenth to the last day of the month during such person's birth month.

HB 2576 (Krizek) / SB1669 (Vogel): Sex Trafficking Response Coordinator; establishes position, duties, report.

- **Existing Law:** Not applicable. New statute.

- **Impact of Legislation:** Creates a new § 9.1-116.4, which creates, within the Department of Criminal Justice Services, a Sex Trafficking Response Coordinator (the Coordinator) who shall:

- Create a statewide plan for local and state agencies to identify and respond to victims of sex trafficking;

- Coordinate the development of standards and guidelines for treatment programs for victims of sex trafficking;

- Maintain a list of programs that provide treatment or specialized services to victims of sex trafficking and make such list available to law-enforcement agencies, attorneys for the Commonwealth, crime victim and witness assistance programs, the Department of Juvenile Justice, the Department of Social Services, the Department of Education, and school divisions;

- Oversee the development of a curriculum to be completed by persons convicted of solicitation of prostitution; and

- Promote strategies for the awareness of sex trafficking, for education and training related to sex trafficking and for the reduction of demand for commercial sex.

- The bill requires the Coordinator to report annually to the Governor and the General Assembly and include a summary of activities for the year and any recommendations to address sex trafficking within the Commonwealth.

- The bill was a recommendation of the Virginia State Crime Commission.

HB 2597 (Herring) / SB 1661 (Peake): Child abuse and neglect; victims of sex trafficking, etc.

- **Existing Law:** Not applicable. Based on new statute.

- **Impact of Legislation:**

  - Creates a new § 63.2-1506.1, which requires a local department of social services to conduct a sex trafficking assessment upon receiving a complaint of suspected child abuse that is based upon information and allegations that a child is a victim of sex trafficking, provided that the local department has not determined that a separate investigation or family assessment is required.

  - Amends § 63.2-1517 to allow a child-protective services worker of a local department responding to a complaint or report of abuse and neglect for purposes of sex trafficking or severe forms of trafficking may take a child into custody, and the local department may maintain custody of the child for up to 72 hours without prior approval of a parent or guardian, provided that the alleged victim child or children have been identified as a victim or victims of

sex trafficking or a victim or victims of severe forms of trafficking as defined in the federal Trafficking Victims Protection Act of 2000 and in the federal Justice for Victims of Trafficking Act of 2015. After taking the child into custody, the local department shall notify the parent or guardian of such child as soon as practicable. The local department shall also notify the Child Protective Services Unit within the Department whenever a child is taken into custody. The child shall be returned to his parent or guardian as soon as practicable. However, the local department shall not be required to return the child if the circumstances are such that continuing in his place of residence or in the care of his parent or guardian presents an imminent danger to the child's life or health to the extent that severe or irremediable injury would be likely to result or if the evidence of the abuse is perishable or subject to deterioration before a hearing can be held. If the local department cannot return the child to the custody of his parents or guardians within 72 hours, the local department shall obtain an emergency removal order pursuant to § 16.1-251.

- This bill was a recommendation of the Virginia State Crime Commission.

SOCIAL SERVICES

HB 1671 (Mullin): Child abuse and neglect; investigation of an individual by local board of social services.

- **Existing Law:** Section 63.2-1505 of the *Code of Virginia* establishes the procedures involved in child abuse and neglect investigations by local social services boards. Currently, local social services boards only have to obtain statewide criminal history record information from the Central Criminal Records Exchange when there is evidence of child abuse or neglect and the local social services board is evaluating the safety of the home and whether removal will protect a child from harm.

- **Impact of legislation:** Requires a local social services board to investigate whether an individual who is the subject of a child abuse or neglect investigation has resided in another state within the preceding five years. If such an individual has resided in another state in the preceding five years, or the local social services board has knowledge that the individual has resided in another state in the preceding five years, the local social services board shall request a search of the child abuse and neglect registry or equivalent maintained by such state.

STATE & LOCAL ADMINISTRATION OF GOVERNMENT

HB 1884 (Keam): State correctional facilities; visitors wearing tampons or menstrual cups

- Existing Law: Not applicable

- **Impact of Legislation:** Requires the Director of the Department of Corrections to review the Department's visitation policies concerning visitors' wearing of tampons or menstrual cups at state correctional facilities. Additionally, this bill requires the Director to revise such policies as necessary to permit visitors to wear tampons or menstrual cups.

HB 2746 (Head): Central Criminal Records Exchange; background checks through Live Scan device.

- **Existing Law:** Not applicable.

- **Impact of Legislation:** Adds § 19.2-388.1 to the *Code of Virginia*, which requires the Department of State Police to accept requests for background checks through the use of a Live Scan Device certified by the Federal Bureau of Investigation by any agency or organization that (i) is authorized to receive criminal history record information pursuant to § 19.2-392.02 of the *Code of Virginia* and (ii) utilizes a fingerprint background check as a condition of licensure, certification, employment, or volunteer service. Any such agency or organization transmitting requests for background checks to the Department pursuant to this section shall be responsible for all costs associated with capturing, formatting, encrypting, and transmitting all required information in a manner prescribed by the Department. The Department shall only provide the criminal history record information to the extent authorized by state or federal law, rules, and regulations. The Department may deny any such agency or organization access to criminal history record information if the Department finds that such agency or organization has failed to comply with state or federal law, rules, or regulations. Participating agencies or organizations shall be required to enter into an agreement with the Department for the purposes of carrying out this section and may be required to submit other information or forms as prescribed by the Department.