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Virginia Department of Juvenile Justice

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Legislative update

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HB 1324 (Delegate Jennifer Carroll Foy): Diversion at Intake.
Passed House 99-0 / Passed Senate 40-0.

- **Existing Law (through June 30):**
  - (1) Under § 16.1-260(B) (4th paragraph), when a juvenile is alleged to be truant, the intake officer may defer the filing of the "complaint" (the language should state "petition") for 90 days and proceed informally by developing a truancy plan.
  - (2) Under § 16.1-260(B) (5th paragraph), whenever informal action is taken, the intake officer shall advise the juvenile; the juvenile's parent, guardian, or other person standing in loco parentis; and the complainant that any subsequent complaint alleging that the child is in need of supervision or delinquent based upon facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241 "will" result in the filing of a petition with the court.
  - (3) Under § 16.1-260(H)(3), a petition shall not be necessary in the case of misdemeanor violations for possession of marijuana, certain DUI offenses, and any other alcohol related offense, provided the juvenile is released to the custody of a parent or legal guardian pending the initial court date. In such case, the officer releasing the juvenile shall issue a summons to the juvenile and also to the parent or legal guardian requiring them to appear. The paragraph further provides that when a violation for possession of marijuana is charged by summons, the juvenile shall be entitled to have the charge referred to intake for consideration of informal proceedings, provided such right is exercised by written notification to the clerk not later than 10 days prior to trial.

- **Reason for Legislation:**
  - (1) Pursuant to DJJ's regulation set out in 6VAC35-150-335, the maximum permissible diversion period for other offenses is 120 days. Only truancy has a statutory time limit imposed on diversion. This disparity means that juveniles participating in a truancy diversion program have less time to complete the requirements of the program, especially after the development of a truancy plan, than juveniles participating in diversion programs for other offenses. Intake personnel have reported that 90 days is an insufficient amount of time to develop a truancy plan and to measure the progress of the juvenile in accordance with the plan. Striking the 90-day limitation will allow for an additional 30 days to monitor the juvenile's progress.
    - Between FY17 and FY19, there were 23,932 intake complaints with a diversion plan. Of these, 2,872 were for truancy.
    - Two-thirds (66.7%) of diverted truancy complaints were completed successfully while 84.7% of all other diverted complaints were completed successfully.
  - (2) The use of the word "will" in § 16.1-260(B) (5th paragraph) is not accurate because a juvenile may be eligible for diversion, and a petition need not be filed, subject to the intake officer's broad authority under this statute, even if the juvenile has previously been proceeded against informally for a misdemeanor. Treating juveniles who were previously proceeded against informally for a misdemeanor as eligible for another diversion is the current practice in the field. The use of diversion as an alternative to a

delinquency adjudication can be beneficial to many juveniles who the intake officer feels, upon a review of all the facts and circumstances, would benefit from diversion. To correct the statute and to conform to the current effective practice relating to misdemeanor violations, the word "will" in § 16.1-260(B) (5th paragraph) should be replaced with "may" to ensure that the advisement given is accurate.
    - (3) Under § 16.1-260(H)(3), the same ability to have the charge referred to intake for possible informal proceedings should extend to possession of alcohol as it does for marijuana. Intake personnel have reported that substance abuse assessments and treatment are more likely to be provided if the juvenile goes through intake.

- **Impact of Legislation:**
    - (1) Strikes the 90-day diversion limitation for truancy so that the intake officer may defer the filing of a petition for truancy for 120 days.
    - (2) Replaces the word "will" with the word "may" in the language pertaining to the required advisement that must be given whenever informal action is taken so that the advisement states that any subsequent complaint alleging that the juvenile is in need of supervision or delinquent "may" result in the filing of a petition.
    - (3) Adds possession of alcohol alongside the existing offense of possession of marijuana for which, if charged by summons, the juvenile is entitled to have the charge referred to intake for consideration of informal proceedings.

HB 1437 (Delegate Jay Jones): Confinement for Violations of Valid Court Orders for Status Offenses.

Passed House 99-0 / Passed Senate 40-0.

- **Existing Law (through June 30):**
    - Virginia Code § 16.1-292 permits a juvenile court to punish for contempt for violating an order after notice and an opportunity for a hearing. A limitation provides that confinement in the case of a juvenile shall be in a secure facility for juveniles rather than a jail and shall not exceed a period of 10 days for each offense.

- **Reason for Legislation:**
    - The Federal Juvenile Justice and Delinquency Prevention Act of 1974 (JJDPA) was reauthorized and amended by the Juvenile Justice Reform Act of 2018.
    - Federal funds are tied to state compliance with the JJDPA. Virginia receives formula grants funds of approximately $800,000 annually. The Department of Criminal Justice Services (DCJS) is the state administrator of the "state plan" for the purposes of compliance with the Act. DCJS is charged with annually demonstrating compliance with the JJDPA to the Office of Juvenile Justice and Delinquency Prevention (OJJDP).
        - DCJS prioritizes how the grant funds will be administered. The current priority is reducing racial and ethnic disparities.
        - Some of the funds have gone to DJJ for training but most goes to units of local government, such as schools and court programs, for delinquency prevention and systems improvements. Consequently, many of the youth served by DJJ are also the recipients of services funded by the grants.

        - If Virginia is out of compliance with the JJDPA, 20% of the funds are withheld and 50% of the remaining funds must go to gaining compliance.
    - The 2018 amendments to the JJDPA necessitate amendments to § 16.1-292, pertaining to confinement for violation of a juvenile court order, to remain in compliance with the JJDPA.
    - To comply with the JJDPA, § 16.1-292 will need to be amended to: 1) limit the period of confinement to 7 days, and 2) require the court, when ordering such confinement, to issue a written order that: (i) identifies the valid court order that has been violated, (ii) specifies the factual basis for determining that there is reasonable cause to believe that the juvenile has violated such order, (iii) includes findings of fact to support a determination that there is no appropriate less restrictive alternative available to placing the juvenile in such a facility, with due consideration to the best interest of the juvenile, and (iv) specifies the length of time, not to exceed 7 days, that the juvenile may remain in a secure detention facility or correctional facility, and (v) includes a plan for the status juvenile's release from such facility, and may not be renewed or extended.

- **Impact of Legislation**
    - Imposes restrictions on confinement for violations of valid court orders for status offenses to bring § 16.1-292 into compliance with the 2018 reauthorization of the Federal Juvenile Justice and Delinquency Prevention Act of 1974.
    - Specifically, § 16.1-292 is amended to: 1) limit the period of confinement to 7 days, and 2) require the court, when ordering such confinement, to issue a written order that: (i) identifies the valid court order that has been violated, (ii) specifies the factual basis for determining that there is reasonable cause to believe that the juvenile has violated such order, (iii) includes findings of fact to support a determination that there is no appropriate less restrictive alternative available to placing the juvenile in such a facility, with due consideration to the best interest of the juvenile, and (iv) specifies the length of time, not to exceed 7 days, that the juvenile may remain in a secure detention facility or correctional facility, and (v) includes a plan for the status juvenile's release from such facility, and may not be renewed or extended.

HB 477 (Delegate Elizabeth Guzman) / SB 546 (Senator John Edwards): Transfer.
Incorporated HB 1440 (Delegate Jay Jones).
Passed House 71-28 / Passed Senate 31-9.

- **Existing Law (through June 30):**
    - Section 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. Under this subsection, the decision to transfer lies with the juvenile court, and the judge must consider 10 enumerated factors including 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 at a transfer hearing under Subsection A.

- **Reason for Legislation:**
  - The number of juveniles convicted of felonies in circuit court has been steadily declining. In FY 2008 to FY 2009, there were 1,051 cases. By FY 2016 to FY 2017, this number had been reduced to 443 cases. The number of juveniles convicted in circuit court has also declined by age. In FY 2008 to FY 2009, 56 juveniles 14 years of age were convicted in circuit court, but this number declined to 20 in FY 2016 to FY 2017. In FY 2008 to FY 2009, 160 juveniles 15 years of age were convicted in circuit court, but this number declined to 52 in FY 2016 to FY 2017. In FY 2008 to FY 2009, 291 juveniles of 16 years of age were convicted in circuit court but this number declined to 133 in FY 2016 to 2017. A significantly larger number of juveniles are convicted in circuit court at the age of 17; 544 in FY 2008 to FY 2009 and 238 in FY 2016 to FY 2017.
  - Data from FY 2010 to FY 2017 reveals that 43% of the juveniles convicted of felonies in circuit court were sentenced to the Department of Corrections (DOC), 28% were sentenced to adult jail or probation, and 7% received blended DJJ/DOC time. The fact that only 43% of juveniles convicted of felonies in circuit court were sentenced to DOC begs 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 coming to light belatedly that, if considered before filing the written notice of intent to transfer, would aid the prosecutor in making a more informed decision on transfer when proceeding under § 16.1-269.1(C). This may reduce the number of juveniles subjected to discretionary transfer pursuant to § 16.1-269.1(C).
  - Thirty-one states have established a minimum age for transfer (other states base transfer on the offense or other factors). Like Virginia, 16 other states have set the age at 14. Two states (Connecticut and Georgia) have set the age at 15. One state (California) has set the age at 16. Federal law sets the age at 15.
  - Under § 16.1-269.1(B) and (C), no consideration is given to the enumerated factors that a judge must consider at a transfer hearing when proceeding under Subsection A.

Under Subsection C, specifically, the attorney for the Commonwealth must make a quick decision on the intent to proceed with discretionary transfer without the advantage of having the information considered by the juvenile court when a transfer hearing is held under Subsection A. Providing the attorney for the Commonwealth with a report containing the same factors provided to the court for a Subsection A transfer hearing will equip the attorney for the Commonwealth with the ability to render a more informed decision prior to filing a notice of intent to transfer.

- This bill is a product of 1) the data cited above indicating that many juveniles are transferred to adult court only to receive DJJ dispositions, and 2) discussions with DJJ's Commonwealth's Attorneys Liaison Committee, the members of which have shared that they often feel rushed into making the decision to file the written notice of intent to transfer under § 16.1-269.1(C).

- **Impact of Legislation:**
  - Amends § 16.1-269.1(B) and (C) to increase the age at which a juvenile is eligible for transfer to circuit court from 14 to 16 for the purposes of these two subsections.
  - Amends § 16.1-269.1(C) to require the attorney for the Commonwealth to request and review a report, to be completed by the court service unit within 21 days of the request, prior to making a decision to provide written notice of intent to transfer. The report will include the same enumerated factors that the juvenile court must take into consideration at a transfer hearing held pursuant to § 16.1-269.1(A) in determining whether transfer is appropriate.
  - To allow time for the report to be completed, the legislative proposal amends § 16.1-277.1(D) to toll the time requirement within which an adjudicatory or transfer hearing must be conducted during the period in which the requested report is being prepared.
  - A conforming amendment is made to § 16.1-269.2.

COURTS / INTAKE

HB 34 (Delegate Joseph Lindsey): Refusal of Tests; Restricted License.

- **Existing Law (through June 30):**
  - Section 18.2-268.3 pertains to the penalties and procedures related to the refusal of breath or chemical tests to determine the alcohol content of blood upon the occurrence of a DUI. For a first violation, the court shall suspend the defendant's privilege to drive for one year. A second violation within 10 years of another violation of this statute or of a DUI is a Class 1 misdemeanor and triggers a suspension of the privilege to drive for 3 years.

- **Impact of Legislation:**
  - Amends §18.2-268.3 to allow a person convicted of a first offense of unreasonable refusal to have samples of his breath or blood taken for chemical tests to determine the alcohol content of his blood to petition the court 30 days after conviction for a restricted driver's license. The court may, for good cause shown, grant a restricted license for the same purposes as allowed for restricted licenses granted after conviction of driving

under the influence if the person installs an ignition interlock system on each motor vehicle owned by or registered to the person and enters into and successfully completes an alcohol safety action program. The restricted license shall not permit anyone to operate a commercial motor vehicle.

HB 61 (Delegate Christopher Collins) / SB 307 (Senator William Stanley): Adults Sentenced for Juvenile Offenses; Good Conduct Credit.

- **Existing Law (through June 30):**
  - Section 16.1-284, pertaining to the sentencing of adults who committed, before the age of 18, an offense that would be a crime if committed by an adult, provides that persons sentenced pursuant to this section shall be entitled to good time credit as authorized by § 53.1-116.
  - Section 53.1-116 requires that a person "sentenced" to twelve months or less for a misdemeanor or any combination of misdemeanors, unless serving a mandatory minimum sentence, shall earn good conduct credit at the rate of one day for each day served, including all days served "while confined in jail" prior to conviction and sentencing, in which the prisoner has not violated the written rules and regulations of the jail. Section 53.1-116 also provides that any prisoner committed to jail upon a felony offense shall not earn credit in excess of § 53.1-202.2, which limits the eligibility of a person sentenced to serve "a term of incarceration in a state or local correctional facility" to earn credit upon the person's incarceration following a "final order of conviction."
  - Under § 53.1-202.2, credit is earned through adherence to rules, through program participation, and by meeting other requirements as may be established by law or regulation. Section 53.1-202.2(B) adds that a juvenile convicted as an adult and sentenced as a serious juvenile offender under § 16.1-272(A)(1) shall be eligible to earn sentence credits for the portion of the sentence served with the Department of Juvenile Justice but consideration for earned sentence credits shall require adherence to the facility's rules and the juvenile's progress toward treatment goals and objectives while sentenced as a serious juvenile offender under § 16.1-285.1.

- **Impact of Legislation:**
  - Amends § 16.1-284(B) to provide that a person sentenced pursuant to the section shall earn good time credit at the rate of one day for each day served, including all days served while confined in jail or secured detention prior to conviction and sentencing, in which the person has not violated the written rules and regulations of the jail.
  - A reading of the various sections could support the position that a person may only earn good time credit for time served in jail as it does not appear to include time served in a secure detention facility. HB 61 remedies this deficiency by mandating that such adults earn the same good time credit rate as under § 53.1-116, but expressly including time served while confined in secured detention prior to conviction and sentencing, in addition to days served while confined in jail.

HB 137 (Delegate Christopher Collins): Guardian ad litem for Children; Certification of Compliance with Certain Standards.

- **Existing Law (through June 30):**
  - Section 16.1-274 provides for court ordered investigations, evaluations, and reports with regard to matters involving juveniles.

- **Impact of Legislation:**
  - Amends § 16.1-274 by adding a new subsection D to require a guardian ad litem (GAL), in any case for which he or she is appointed to represent a child, to conduct an investigation in accordance with the Standards to Govern the Performance of Guardians Ad Litem for Children established by the Judicial Council of Virginia. The bill provides that for any such case, prior to the commencement of the dispositional hearing of the matter, the GAL shall certify to the court compliance with the mandated standards, and shall note specifically in the certification compliance with the requirements regarding face-to-face contact with the child and document the hours spent satisfying the face-to-face contact requirements. The bill also directs the GAL to provide a copy of the certification to each attorney representing parties in the matter and to all pro se parties. Finally, the bill mandates that the guardian ad litem be compensated for the hours devoted to face-to-face contact with the child at the same rate as for in-court service hours.

HB 262 (Delegate Alfonso Lopez): Immigration Status; Prohibiting Inquiry Into Status of Certain Victims or Witnesses of Crimes.

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:**
  - Creates a new section, § 19.2-11.02, which provides that no law-enforcement officer shall, in connection with the report, investigation, or prosecution of a criminal violation of a state or local law, inquire into the immigration status of any person who (i) reports that he is the victim of a crime or is the parent or guardian of a minor victim of the crime, or (ii) is a witness in the investigation of the crime or the parent or guardian of a minor witness to the crime.
  - The new section specifies that a law-enforcement officer is not prohibited from inquiring into the immigration status of the parent or guardian of a minor victim if such parent or guardian has been arrested for, has been charged with, or is being investigated for a crime against the minor victim.

HB 277 (Delegate Marcia Price) / SB 736 (Senator Mark Obenshain): Court Fines and Costs; Community Work in Lieu of Payment During Imprisonment.

- **Existing Law (through June 30):**
  - Section 19.2-354, pertaining to the payment of fines and costs and community work in lieu of payment, requires courts to establish a program and may provide an option to any person upon whom a fine and costs have been imposed to discharge all or part of

the fine or costs by earning credits for the performance of community service work before or after imprisonment.

- **Impact of Legislation:**
  - Amends § 19.2-354(C) to allow for the performance of community service work in lieu of payment of fines and costs during imprisonment, in addition to before and after imprisonment.

HB 278 (Delegate Patrick Hope): Home/Electronic Incarceration Program; Payment to Defray Costs.

- **Existing Law (through June 30):**
  - Section 53.1-131.2, pertaining to home/electronic incarceration programs, requires the director or administrator of such a program to charge the offender or accused a fee for participating in the program to pay for the cost of home/electronic incarceration equipment.

- **Impact of Legislation:**
  - Amends § 53.1-131.2(G) to change charging the offender or accused from mandatory to optional.

HB 366 (Delegate Jennifer Carroll Foy) / SB 72 (Senator Scott Surovell): Public Defender Offices; Cities of Manassas and Manassas Park and County of Prince William.

- **Existing Law (through June 30):**
  - Section 19.2-163.04 sets forth the jurisdictions for public defender offices.

- **Impact of Legislation:**
  - Amends § 19.2-163.04 to establish a public defender office for the Cities of Manassas and Manassas Park and the County of Prince William.

HB 744 (Delegate Vivian Watts): Juvenile; Sentencing When Tried as an Adult.

- **Existing Law (through June 30):**
  - Section 16.1-272 pertains to juveniles tried in circuit court.

- **Impact of Legislation:**
  - Amends § 16.1-272 to provide that the court, in the case of a juvenile tried as an adult and convicted of a felony, may depart from any mandatory minimum sentence required by law and suspend any portion of an otherwise applicable sentence.
  - Amends § 16.1-272 to require the court, when sentencing a juvenile as an adult, to consider the juvenile's exposure to adverse childhood experiences, early childhood trauma, or any child welfare agency, and the differences between juvenile and adult offenders.

HB 746 (Delegate Vivian Watts): Custodial Interrogation of a Child; Parental Notification and Contact.

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:**
  - Creates a new section, § 16.1-247.1, to require that, prior to any custodial interrogation of a child, the child's parent, guardian, or legal custodian be notified of his arrest and the child have contact with his parent, guardian, or legal custodian. The notification and contact required may be in person, electronically, by telephone, or by video conference.
  - Notwithstanding the above, a custodial interrogation may be conducted if (i) the child's parent, guardian, or legal custodian is a codefendant in the alleged offense, (ii) the child's parent, guardian, or legal custodian has been arrested for, or has been charged with, or is being investigated for a crime against the child, (iii) if, after every reasonable effort has been made to comply with the above, the child's parent, guardian, or legal custodian cannot be located or refuses contact with the child, or (iv) if the law-enforcement officer conducting the custodial interrogation reasonably believes the information sought is necessary to protect life, limb, or property from imminent danger and the law-enforcement officer's questions are limited to those that are reasonably necessary to obtain such information.

HB 787 (Delegate Lamont Bagby): Multi-Jurisdiction Grand Jury; Hate Crimes.

- **Existing Law (through June 30):**
  - Section 19.2-215, pertaining to multi-jurisdiction grand juries, does not list hate crimes among the offenses that a multi-jurisdiction grand jury can investigate.

- **Impact of Legislation:**
  - Amends § 19.2-215.1 to add the following to the list of crimes that a multi-jurisdiction grand jury may investigate: (i) simple assault or assault and battery where the victim was intentionally selected because of his race, religious conviction, gender, disability, gender identity, sexual orientation, color, or national origin; (ii) entering the property of another for purposes of damaging such property or its contents or interfering with the rights of the owner, user, or occupant where such property was intentionally selected because of the race, religious conviction, gender, disability, gender identity, sexual orientation, color, or national origin of the owner, user, or occupant; and (iii) offenses listed under Title 18.2, Chapter 9, Article 5 (activities tending to cause violence, such as burning crosses on property, placing swastika on property, etc.

HB 821 (Delegate Clinton Jenkins): Arrest for a Violent Felony; Saliva or Tissue Sample Required for DNA Analysis.

- **Existing Law (through June 30):**
  - Section 19.2-310.2:1 requires that when a person is arrested for a violent felony as defined in § 19.2-297.1 or § 18.2-31 (capital murder), § 18.2-89 (burglary), § 18.2-90

(entering dwelling with intent to commit murder, rape, robbery or arson), § 18.2-91 (entering dwelling with intent to commit larceny, assault, battery, or other felony), or § 18.2-92 (breaking into dwelling with intent to commit other misdemeanor), a sample of his saliva or tissue shall be taken for DNA analysis to be stored and maintained in the DNA data bank. The court clerk shall notify the Department of Forensic Science of the final disposition of the criminal proceedings. If the charge for which the sample was taken is dismissed or the defendant is acquitted, the Department shall destroy the sample provided there is no other pending qualifying warrant or capias for an arrest or felony conviction that would otherwise require that the sample remain in the data bank.

- **Impact of Legislation:**
  - Amends § 19.2-310.2:1 to remove the word "felony" to clarify that the Department of Forensic Science may retain a DNA sample from a person who was arrested for a violent felony if such person was convicted of a misdemeanor offense that would otherwise require the sample to remain in the DNA data bank.

HB 824 (Delegate Patrick Hope): Criminal Cases; Ex Parte Requests for Expert Assistance.

- **Existing Law (through June 30):**
  - Section 19.2-264.3:1.3, pertaining to expert assistance for indigent defendants in criminal cases, allows for the defendant to move for the court to designate another judge in the same circuit to hear an ex parte request for the appointment of a qualified expert to assist in the preparation of the defendant's defense. No ex parte proceeding, communication, or request may be considered unless a proper showing is made in an adversarial proceeding before the trial judge demonstrating a particularized need for confidentiality. Upon hearing the ex parte request, the designated judge shall find, by clear and convincing evidence, a particularized need for confidentiality has been demonstrated before considering the request for ex parte services. The court may order the appointment of a qualified expert upon a showing that the expert services would materially assist the defendant in preparing his defense and the lack of such confidential assistance would result in an unfair trial. The designated judge shall direct requests for scientific investigations to the Department of Forensic Science or the Division of Consolidated Laboratory Services where practicable. The ex parte hearings shall be on the record and be kept under seal as part of the record of the case. On motion and upon good cause shown, the court may unseal the record after the trial is concluded. Following final judgment and after all appeals have been exhausted, the court shall unseal all records and other material sealed under this section. No ex parte ruling by a designated judge pursuant to this section in a proceeding where the Commonwealth is excluded shall be the subject of a claim of error on appeal, or form the basis for relief in any post-conviction litigation on behalf of the defendant. This section does not apply to the appointment of a mental health expert.

- **Impact of Legislation:**

  - Repeals § 19.2-264.3:1.3 and creates a new § 19.2-266.4, which allows any indigent defendant charged with any felony or Class 1 misdemeanor to move the court to

designate another judge in the same circuit to hear an ex parte request for the appointment of a qualified expert to assist in the defense. No ex parte proceeding, communication, or request may be considered unless the defendant or his attorney states under oath or in a sworn declaration that a need for confidentiality exists. A risk that trial strategy may be disclosed unless the hearing is ex parte is sufficient grounds to establish a need for confidentiality. Upon receipt of the declaration for the need for confidentiality, the designated ex parte judge shall conduct an ex parte hearing. Upon a showing that the expert services would materially assist the defendant in his defense and the denial of such services would result in an unfair trial, the court shall order the appointment of a qualified expert. The judge shall direct requests for scientific investigations to the Department of Forensic Science or the Division of Consolidated Laboratory Services where practicable. All ex parte hearings shall be initiated by written motion and be on the record. Except for the initial declaration for the need for confidentiality, the record and all papers, all payment requests by experts, and the identity of all experts appointed shall be kept under seal as part of the record of the case. Following a decision on the motion, the motion, orders, and all other papers or information relating to the proceedings or expert assistance sought shall remain under seal. On motion of any party, and for good cause shown, the court may unseal the records after the trial is concluded. All ex parte proceedings, communications, or requests shall be transcribed and made part of the record available for appellate review or any other post-conviction review.

HB 873 (Delegate Jeffrey Bourne): Discovery in Criminal Cases; Penalties.

- **Existing Law (through June 30):**
  - Section 19.2-265.4, pertaining to failure to provide discovery, does not specify that the court can declare a mistrial or dismiss the charge, with or without prejudice.

- **Impact of Legislation:**
  - Repeals §19.2-265.4 and adds in Chapter 15 of Title 19.2 an article numbered 4.2, consisting of §§ 19.2-264.6 through 19.2-264.14, that establishes requirements and procedures for discovery by an accused and by the Commonwealth in a criminal case. The bill requires a party requesting discovery to request that the other party voluntarily comply with such request prior to filing any motion before a judge. Upon receiving a negative or unsatisfactory response, or upon the passage of seven days following the receipt of the request without response, the party requesting discovery may file a motion for discovery with the court. The bill details information that is subject to discovery and provides that discovery shall be provided at a reasonable time before trial on a felony or multiple felony counts punishable by confinement in a state correctional facility for an aggregate of 30 years or less, or 90 days before trial on a felony or multiple felony counts punishable by confinement in a state correctional facility for an aggregate of more than 30 years. The bill also provides a mechanism for redaction of certain personally identifiable information and creates a procedure for either party to move the court to enter a protection order with regard to discovery. Finally, the bill grants the court the ability to impose various remedies it deems just if a party fails to comply with any of the requirements.

HB 974 (Delegate Charniele Herring) / SB 511 (Senator John Edwards): Writ of Actual Innocence; Petition by Convicted Person.

- **Existing Law (through June 30):**
  - Currently, persons convicted of a felony or who were adjudicated delinquent by a circuit court of an offense that would be a felony if committed by an adult may petition for a writ based on biological evidence if he entered a plea of not guilty, and any person, regardless of the type of plea he entered at trial, may petition for such writ if he is sentenced to death or convicted or adjudicated delinquent of murder or a felony for which the maximum punishment is imprisonment for life. Currently the petitioner must prove allegations supporting either type of writ of actual innocence by clear and convincing evidence.

- **Impact of Legislation:**
  - Amends §§ 19.2-327.2, 19.2-327.2:1, 19.2-327.3, 19.2-327.5, 19.2-327.10, 19.2-327.10:1, 19.2-327.11, and 19.2-327.13 to provide that a person who was convicted of a felony or who was adjudicated delinquent by a circuit court of an offense that would be a felony if committed by an adult may petition for a writ of actual innocence based on biological evidence or non-biological evidence regardless of the type of plea he entered at trial. The bill also (i) allows a writ of actual innocence based on non-biological evidence to be granted if scientific testing of previously untested evidence, regardless of whether such evidence was available or known at the time of conviction, proves that no trier of fact would have found proof of guilt of the person petitioning for the writ, provided that the testing procedure was not available at the time of conviction, and (ii) eliminates the provision that limits a petitioner to only one writ of actual innocence based on non-biological evidence for any conviction. The bill provides that the petitioner must prove the allegations supporting either type of writ of actual innocence by a preponderance of the evidence. Finally, the bill clarifies that the Attorney General may join a petition for a writ of actual innocence filed in connection with an adjudication of delinquency.

HB 1023 (Delegate Les Adams): Custodial Interrogations; Audiovisual Recordings.

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:**
  - Creates a new § 19.2-390.04 to require that a law-enforcement officer conducting a custodial interrogation of any person at a place of detention to cause an audiovisual recording of the entirety of the interrogation to be made. If unable to cause an audiovisual recording of the interrogation to be made, the law-enforcement officer shall cause an audio recording of the interrogation to be made. This requirement does not apply if the law-enforcement officer has good cause not to record the custodial interrogation. Good cause includes circumstances where the recording equipment fails, the recording equipment is unavailable, or exigent circumstances relating to public safety exist that prevent the recording of such custodial interrogation. The new section provides that the failure of a law-enforcement officer to cause an audiovisual or audio recording to be made shall not affect the admissibility of the statements made, but such

failure may be considered in determining the weight given to such evidence. Any audiovisual or audio recording shall be preserved until such time as (i) the person is acquitted or the charges are otherwise dismissed, or (ii) if convicted or adjudicated delinquent, the person has completed his sentence and any modification of his sentence. The new statute defines "custodial interrogation" as any interview conducted by a law-enforcement officer in such circumstances that would lead a reasonable person to consider himself to be in custody associated with arrest and during which the law-enforcement officer takes actions or asks questions that are reasonably likely to elicit responses from the person that could incriminate him. "Place of detention" is defined as a police station, sheriff's office, jail, detention center, or other similar facility in which suspects may be detained.

HB 1047 (Delegate Paul Krizek) / SB 926 (Senator Mark Peake): Fingerprints and Photographs by Police Authorities; Reports to Central Criminal Records Exchange.

- **Existing Law (through June 30)**
  - Section 19.2-390 governs reports to be made by local law-enforcement, etc., to State Police.
  - Section 19.2-392 governs fingerprints and photographs by police authorities.

- **Impact of Legislation:**
  - Amends §§ 19.2-390 and 19.2-392 to provide that all police authorities having the power to arrest may take the fingerprints and photographs of persons who plead guilty or are found guilty for driving while intoxicated when charged by summons and that such summons information may be entered into the Virginia Criminal Information Network.

HB 1081 (Delegate Elizabeth Guzman) / SB 237 (Senator George Barker): School Attendance Officers; Petitions for Violation of a School Attendance Order.

- **Existing Law (through June 30):**
  - Section 22.1-258 sets forth the process for the notification, plan, conferences, and court proceedings related to a child who fails to report to school.

- **Impact of Legislation:**
  - Amends § 22.1-258 to provide that an attendance officer or a division superintendent or his designee when acting as an attendance officer may complete, sign, and file with the intake officer, on forms approved by the Supreme Court, a petition for a violation of a school attendance order entered by the juvenile and domestic relations district court in response to the filing of a petition alleging the pupil is a child in need of supervision.
  - Amends § 54.1-3900, pertaining to the practice of law, to allow an attendance officer or a local school division superintendent or his designee when acting as an attendance officer, to complete, sign, and file with the intake officer on forms approved by the Supreme Court, a petition for a violation of a school attendance order entered by the juvenile and domestic relations district court in response to the filing of a petition alleging the pupil is a child in need of supervision.

HB 1150 (Delegate Alfonso Lopez) / SB 491 (Senator Scott Surovell): Inquiry and Report of Immigration Status; Persons Charged with or Convicted of Certain Crimes.

- **Existing Law (through June 30):**
  - Section 16.1-309.1(H) requires the intake officer to report to the Bureau of Immigration and Customs Enforcement (I.C.E.) a juvenile who has been detained in a secure facility based on an allegation that the juvenile committed a violent juvenile felony and who the intake officer has probable cause to believe is in the U.S. illegally.
  - Section 19.2-83.2 requires the sheriff in charge of a jail to make an immigration alien query to the Law-enforcement Support Center of I.C.E. for any person taken into custody at the jail who was born in another country and is a citizen of another country. The results of the query must be communicated to the Local Inmate Data System of the State Compensation Board which, in turn, shall communicate, on a monthly basis, the results of any query that results in a confirmation that the person is illegally present in the U.S. to the Central Criminal Records Exchange of the Department of State Police and the information concerning the person's immigration status shall be recorded in the person's criminal history record.
  - Section 53.1-218 requires the director, sheriff, or other officer in charge of a correctional facility to make an immigration alien query to the Law-enforcement Support Center of I.C.E. for any person committed to the facility who was born in another country and who is a citizen of another country. In the case of a jail, the sheriff or other officer in charge shall communicate the results of a query that confirm that the person is illegally present in the U.S. to the Local Inmate Data System of the State Compensation Board, which, in turn, shall communicate, on a monthly basis, the results to the Central Criminal Records Exchange of the Department of State Police. In the case of a correctional facility of the Department of Corrections, the director or other officer in charge shall communicate the results of a query that confirm that the person is illegally present in the U.S. to the Central Criminal Records Exchange of the Department of State Police.
  - Section 53.1-219 requires the clerk of court, upon the official request of a U.S. immigration officer in charge of the territory or district in which is located any court committing any alien to any correctional facility, to furnish a certified copy of the complaint, information or indictment and the judgement and sentence and any other records pertaining to the case of a convicted alien.

- **Impact of Legislation**
  - Amends § 16.1-309.1(H) to require the clerk of court to report to I.C.E. a juvenile who has been detained in a secure facility but only upon an adjudication of delinquency or finding of guilt for a violent juvenile felony when there is evidence that the juvenile is in the U.S. illegally.
  - Amends § 19.2-83.2 to require the sheriff or other officer in charge of a jail to make the query and communicate the results only for a person taken into custody at a jail for a felony offense.

- Amends § 53.1-218 to require the director, sheriff, or other officer in charge of a correctional facility to make the query and communicate the results only for a person committed to the facility for the commission of a felony.
- Amends § 53.1-219 to require the clerk of court to furnish copies of the complaint, information, or indictment and the judgment and sentence and other records pertaining to the case of a convicted alien committed to a correctional facility only for the commission of a felony.

HB 1181 (Delegate Vivian Watts) / Protective Order; Violation of Provisions, Venue.

- **Existing Law (through June 30):**
  - Sections 16.1-253.2 and 18.2-60.4 pertain to the violations of protective orders and the penalty therefor.

- **Impact of Legislation:**
  - Amends § 16.1-253.2 and 18.2-60.4 to add that a violation of a protective order may be prosecuted in the jurisdiction where the protective order was issued or in any county or city where any act constituting the violation of the protective order occurred.

HB 1196 (Delegate Alfonso Lopez) / SB 1 (Senator William Stanley): Driver's License; Suspension for Nonpayment of Fines or Costs.

- **Existing Law (through June 30):**
  - Section 46.2-395 governs the suspension of one's license to operate a motor vehicle for failure or refusal to pay fines or costs associated with a violation of law.
  - Section 19.2-354.1(D) provides that the court, in determining the length of time to pay fines and costs under a deferred, modified deferred, or installment payment agreement and the amount of the payments, may require the defendant to present a summary prepared by the Department of Motor Vehicles of the other courts in which the defendant also owes fines and costs.

- **Impact of Legislation:**
  - Repeals § 46.2-395 to remove the requirement that the driver's license of a person convicted of any violation of law who fails or refuses to provide for the payment of fines and costs be suspended. Conforming amendments are made to statutes referencing its provisions.
  - Amends § 19.2-354.1(D) to remove the language providing that the court may require the defendant to present a summary prepared by the Department of Motor Vehicles of the other courts in which the defendant also owes fines and costs.
  - Creates a new § 46.2-808.2 which provides that the fine for any moving violation while operating a vehicle in a designated highway safety corridor shall be no more than $500 for any violation that is a traffic infraction and not less than $200 for any violation that is a criminal offense.
  - Requires the Commission of the Department of Motor Vehicles to reinstate a person's privilege to drive a motor vehicle that was suspended prior to July 1, 2019, solely

pursuant to § 46.2-395 and shall waive all fees relating to reinstating such person's driving privilege.

HB 1462 (Delegate Don Scott): Admission to Bail; Rebuttable Presumptions Against Bail.

- **Existing Law (through June 30):**
  - Section 19.2-120 prohibits a judicial officer who is a magistrate, clerk, or deputy clerk of a district court or circuit court from admitting to bail that is not set by a judge, any person who is charged with an offense giving rise to a rebuttable presumption against bail without the concurrence of an attorney for the Commonwealth. It further requires that notice be provided to the attorney for the Commonwealth before such judicial officer may set or admit a person to bail.

- **Impact of Legislation:**
  - Amends § 19.2-120 to strike the provision prohibiting a judicial officer who is a magistrate, clerk, or deputy clerk of a district court or circuit court from admitting to bail that is not set by a judge, any person who is charged with an offense giving rise to a rebuttable presumption against bail without the concurrence of an attorney for the Commonwealth. The bill also eliminates the requirement that notice be provided to the attorney for the Commonwealth before such judicial officer may set or admit a person to bail.

SB 133 (Senator Richard Stuart): Criminal Cases; Deferred Disposition.

- **Existing Law (through June 30):**
  - Not applicable.

- **Impact of Legislation:**
  - Creates a new § 19.2-303.6 which provides that in any criminal case, except for a violation of § 18.2-31, an act of violence as defined in § 19.2-297.1, or any crime for which a deferred disposition is provided for by statute, upon a plea of guilty, or after a plea of not guilty, and the facts by the court would justify a finding of guilt, the court may, if the defendant has been diagnosed by a psychiatrist or clinical psychologist with autism or an intellectual disability and the court finds by clear and convincing evidence that the criminal conduct was caused by or had a direct and substantial relationship to the person's disorder or disability, without entering a judgment of guilt and with the consent of the accused, after giving due consideration to the position of the attorney for the Commonwealth and the views of the victim, defer further proceedings and place the accused on probation subject to terms and conditions.

SB 144 (Senator Richard Stuart): Protective Orders; Issuance Upon Convictions for Certain Felonies, Penalty.

- **Existing Law (through June 30):**
  - Section 19.2-152.10 governs the issuance, scope and time limitations of protective orders.

- **Impact of Legislation:**
  - Amends § 19.2-152.10 to provide that, upon a conviction for an act of violence as defined in § 19.2-297.1 and upon the request of the victim or the attorney for the Commonwealth on behalf of the victim, the court may issue a protective order to protect the health and safety of the victim. The protective order may be issued for a reasonable period of time that the court deems necessary to protect the health and safety of the victim, including up to the lifetime of the defendant. Upon a conviction for violation of such protective order, the court that issued the original protective order may extend the protective order as the court deems necessary. There is no limit to the number of extensions that may be issued.

SB 149 (Senator Janet Howell): Courthouse and Courtroom Security; Assessment

- **Existing Law (through June 30):**
  - Section 53.1-120 permits a local governing body to assess a sum of not more than $10 as part of the costs in each criminal or traffic case in its district or circuit court in which the defendant is convicted of any statute or ordinance for courthouse and courtroom security.

- **Impact of Legislation:**
  - Amends § 53.1-120 to increase the allowable assessment to $20.

SB 1018 (Senator William Stanley): Sentence Reductions; Substantial Assistance in Furtherance of Investigation, etc.

- **Existing Law (through June 30):**
  - Section 19.2-303.01 provides that, upon motion by the attorney for the Commonwealth, the sentencing court may reduce the defendant's sentence for substantial assistance in investigating or prosecuting another person for an act of violence or for enumerated drug offenses.

- **Impact of Legislation:**
  - Amends § 19.2-303.01 to add larceny of a firearm in violation of § 18.2-95 to the offenses for which substantial assistance may result in sentence reduction.

CRIME

HB 256 (Delegate Michael Mullin) / SB 3 (Senator Jennifer McClellan): Disorderly Conduct; Students.

- **Existing Law (through June 30):**
  - Section 18.2-415 criminalizes disorderly conduct as a Class 1 misdemeanor. Subsection A criminalizes engaging in conduct, in a public place, having a direct tendency to cause acts of violence by the person or persons at whom, individually, such

conduct is directed. Subsection B criminalizes disrupting any funeral, memorial service, or meeting of the governing body of any political subdivision of this Commonwealth or a division or agency thereof, or of any school, literary society or place of religious worship, if the disruption (i) prevents or interferes with the orderly conduct of the funeral, memorial service, or meeting or (ii) has a direct tendency to cause acts of violence by the person or persons at whom, individually, the disruption is directed. Subsection C criminalizes disrupting the operation of any school or any activity conducted or sponsored by any school, if the disruption (i) prevents or interferes with the orderly conduct of the operation or activity or (ii) has a direct tendency to cause acts of violence by the person or persons at whom, individually, the disruption is directed.

- **Reason for Legislation:**
  - Due to vague language of Virginia's disorderly conduct statute (§ 18.2-415), decisions to initiate a complaint in accordance with § 18.2-260 are highly susceptible to being affected by subjective decisions of school resource officers and law-enforcement. DJJ data show that a disproportionate number of minority students are charged with disorderly conduct. In FY 2019, while just 17% of all intake complaints came from a school resource officer (SRO) or school official, 43% of all disorderly conduct complaints came from an SRO or school official (this is up from 37% in 2018). From FY 2014 to FY 2019, over 62% of intake cases with a disorderly conduct complaint were filed with disorderly conduct as the only offense. From FY 2014 to FY 2019, black youth, who represent approximately 20% of the youth population in Virginia, comprised no less than 43% of all intake complaints and no less than 62% of disorderly conduct complaints. This reveals that while black youth are overrepresented among total intake complaints, this disparity is especially pronounced for disorderly conduct. From FY 2016 to FY 2019, black youth represented no less than 59% of disorderly conduct complaints filed by an SRO or school official. Subsection C of 18.2-415 specifically criminalizes disrupting the operations of any school or school activity if it i) interferes with the orderly conduct of the operation or activity, or ii) has a tendency to cause acts of violence.

- **Impact of Legislation:**
  - Amends § 18.2-415 by adding a new subsection D which provides, “The provisions of this section shall not apply to any student at any elementary or secondary school if the disorderly conduct occurred on school property or a school bus, or at any activity conducted or sponsored by any school.” Consequently, the bill decriminalizes any type of disorderly conduct, as described in § 18.2-415(A), (B) and C), by any student at any elementary or secondary school while on school property, on a school bus, or at a school activity. Students can still be charged with other criminal offenses committed at schools if such conduct rises to such a level.

HB 276 (Delegate Richard Sullivan, Jr.): Hate Crimes; Reporting to State Police.

- **Existing Law (through June 30):**
  - Section 52-8.5, pertaining to the reporting of hate crimes, which provides that the Superintendent of State Police shall establish and maintain within the Department of State Police a central repository for the collection and analysis of information regarding hate crimes and groups and individuals carrying out such acts. Law-enforcement agencies shall report to the Department all hate crimes occurring in their jurisdiction. The section defines the term "hate crime."

- **Impact of Legislation:**
  - Amends § 52-8.5 to include in the definition of "hate crime" criminal acts committed against a person or his property because of gender, disability, gender identity, sexual orientation, or national origin. The definition already included race, religion, and ethnic origin.
  - Adds a definition for "disability" to mean a physical or mental impairment that substantially limits one or more of a person's major life activities.

HB 557 (Delegate Emily Brewer): Carnal Knowledge of Pretrial or Posttrial Offender; Bail Bondsmen, Increases Penalty.

- **Existing Law (through June 30):**
  - Section 18.2-64.2 makes it a Class 1 misdemeanor for an owner or employee of a bail bonding company that posted a pretrial or posttrial offender's bond and who has the authority to revoke such bond to carnally know, without use of force, threat, or intimidation, the pretrial or posttrial offender.

- **Impact of Legislation:**
  - Amends § 18.2-64.2 to increase the penalty from a Class 1 misdemeanor to a Class 6 felony.

HB 618 (Delegate Kenneth Plum): Hate Crimes; Gender, Disability, Gender Identity, or Sexual Orientation, Penalty.

- **Existing Law (through June 30):**
  - Section 18.2-57(A) makes it a Class 1 misdemeanor for any person to commit a simple assault and battery, and if the victim is intentionally selected because of his race, religious conviction, color, or national origin, the penalty shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement.
  - Section 18.2-57(B) makes it a Class 6 felony for any person to commit an assault and battery resulting in bodily injury against a victim because of his race, religious conviction, color, or national origin, and the penalty shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement.

- Section 18.2-121 makes it a Class 1 misdemeanor for any person to enter the land, dwelling, outhouse, or any other building of another for the purpose of damaging the property or the contents thereof or in any manner to interfere with the rights of the owner, user, or occupant thereof to use the property free from interference. If the victim is selected because of race, religious conviction, color, or national origin, the crime is a Class 6 felony and the penalty shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement.
- Section 52-8.5 requires the Superintendent of State Police to establish within the Department of State Police a central repository for the collection and analysis of information regarding hate crimes and groups and individuals carrying out such acts. Law-enforcement agencies shall report to the Department all hate crimes occurring in their jurisdiction.

- **Impact of Legislation:**
  - Amends both § 18.2-57(A) and (B) to include gender, disability, gender identity, and sexual orientation and to eliminate the 30 day mandatory minimum term of confinement.
  - Amends § 18.2-57 to include a definition for "disability," defined as a physical or mental impairment that substantially limits one or more of a person's major life activities.
  - Amends § 18.2-121 to include gender, disability, gender identity, and sexual orientation in the classes of victims that trigger the Class 6 felony and to eliminate the 30 day mandatory minimum term of confinement.
  - Amends § 52-8.5 to include among the classes of persons in the definition of "hate crime" to include gender, disability, gender identity, sexual orientation, and national origin. The current definition only includes race, religion, and ethnic origin.
  - The bill also includes an amendment to § 8.01-49.1, pertaining to liability for defamatory material on the internet to provide that no provider or user of an interactive computer service on the internet shall be liable for any action voluntarily taken by it to restrict access to material that the provider or users consider to incite hatred on the basis of gender, disability, gender identity, or sexual orientation. (Race, religion and ethnicity are listed already.)

HB 660 (Delegate Michael Mullin) / SB 286 (Senator Creigh Deeds): Deferred Dispositions; Property Crimes, Larceny and Receiving Stolen Goods.

- **Existing Law (through June 30):**
  - Section 19.2-303.2 provides that whenever any person who has not previously been convicted of any felony pleads guilty to or enters a plea of not guilty to any crime against property constituting a misdemeanor under Title 18.2, Chapter 5, Article 3 (larceny and receiving stolen goods), Article 5 (trespass to property), Article 6 (damage to real and personal property), Article 7 (damage to property – animals), or Article 8 (offenses relating to railroads and other utilities), the court, upon such plea if the facts found by the court would justify a finding of guilt, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on

probation subject to terms and conditions, which may include restitution for losses incurred.

- **Impact of Legislation:**
  - Amends § 19.2-303.2 to provide for such deferment for the listed offenses for a first offense misdemeanor provided such person has not previously been convicted of any felony OR had a prior deferred disposition for the same offense. The bill also provides that the deferred disposition will no longer be permitted for § 18.2-130 (peeping into dwelling) and § 18.2-130.1 (peeping into dwelling by electronic device).

HB 874 (Delegate Jeffrey Bourne) / SB 160 (Senator Scott Surovell): Handheld Personal Communications Devices; Holding Devices While Driving a Motor Vehicle.

- **Existing Law (through June 30):**
  - Section 46.1-1078.1 makes it unlawful for any person to operate a moving motor vehicle on the highways in the Commonwealth while "using" any handheld personal communications device to 1) manually enter multiple letters or text in the device as a means of communicating with another person, 2) read any email or text message transmitted to the device or stored in the device. A first offense is a traffic infraction punishable by a fine of $125, and a second or subsequent offense is punishable by a fine of $250. It also makes it unlawful to "hold in his hand" a handheld personal communications device while driving in a highway work zone, punishable by a mandatory fine of $250. The section does not apply to the operator of an emergency vehicle while engaged in the performance of official duties, an operator who is lawfully parked or stopped, the use of a factory-installed or aftermarket GPS, or wireless communications devices used to transmit or receive data as part of a digital dispatch system, or any person using a handheld personal communications device to report an emergency. The section defines "emergency vehicle" and "highway work zone."
  - Section 46.2-868, pertaining to reckless driving, provides that the punishment for reckless driving by a person who, when committing reckless driving, was in violation of § 46.1-1078.1, shall include a mandatory minimum fine of $250.

- **Impact of Legislation:**
  - Repeals § 46.2-1078.1 and creates a new § 46.2-818.2, which makes it unlawful for any person, while driving a motor vehicle on the highways of the Commonwealth, to "hold" a handheld personal communications device. The section does not apply to 1) the operator of an emergency vehicle while engaged in the performance of official duties, 2) any person using the device to report an emergency, 3) an operator who is lawfully parked or stopped, 4) the use of an amateur or citizens band radio, or 5) the operator of any Department of Transportation (DOT) vehicle or vehicle operated pursuant to the DOT safety service patrol program or pursuant to a contract with the DOT for, or that includes, traffic incident management services during the performance of traffic incident management services.
  - A first offense is punishable by a fine of $125, and a second offense is punishable by a fine of $250. An offense occurring in a highway work zone is punishable by a mandatory fine of $250.

- The section defines "emergency vehicle" and "highway work zone" as in the repealed § 46.2-1078.1.
- A conforming amendment is made to § 46.2-868, pertaining to reckless driving, to provide that the punishment for reckless driving by a person who, when committing reckless driving, was in violation of the new § 46.2-818.2, shall include a mandatory minimum fine of $250.

HB 885 (Delegate Mark Sickles) / SB 63 (Senator David Suetterlein): Reckless Driving; Raises Threshold for Speeding.

- **Existing Law (through June 30):**
  - Section 46.2-862 provides that a person is guilty of reckless driving who drives a motor vehicle either (i) at a speed of 20 miles per hour in excess of the speed limit, or (ii) in excess of 80 miles per hour regardless of the maximum speed limit.
  - Section 46.2-878.3 provides that the Traffic Infractions and Uniform Fine Schedule adopted by the Supreme Court for prepayment of fines shall, in all instances where prepayment of a fine is permitted, include a fine of $6 per mile per hour in excess of the speed limit.

- **Impact of Legislation:**
  - Amends § 46.2-862 to increase the threshold for reckless driving regardless of the maximum speed limit from 80 to 85 miles per hour. The bill retains the provision in the statute pertaining to reckless driving when driving at a speed of 20 miles per hour or more in excess of the maximum speed limit.
  - Amends § 46.2-878.3 to create an exception to the Traffic Infractions and Uniform Fine Schedule for prepayment of fines to provide that any person who drives a motor vehicle at a speed in excess of 80 miles per hour but below 86 miles per hour on any highway having a maximum speed limit of 65 miles per hour shall be subject to an additional fine of $100.

HB 909 (Delegate Cliff Hayes) / SB 513 (Senator John Edwards): Driver's License; Suspensions for Certain Non-Driving Related Offenses.

- **Existing Law (through June 30):**
  - Section 18.2-251 allows for the suspension or revocation of a person's driver's license upon conviction or deferred disposition for drug offenses.
  - Section 46.2-819.2 allows for the suspension of a person's driver's license for driving a motor vehicle off of the premises where motor fuel is offered for sale was dispensed into the fuel tank without payment for such fuel having been made.
  - Section 53.1-127.3 provides for the suspension of a person's driver's license for failure or refusal to pay fees owed to a local correctional facility or regional jail in accordance with a deferred or installment payment agreement.

- **Impact of Legislation:**
  - Amends §§ 18.2-251, 46.2-819.2, and 53.1-127.3 to remove the existing provisions that allow or call for a person's driver's license to be suspended (i) when he is convicted of

or placed on deferred disposition for a drug offense, (ii) for non-payment of certain fees owed to a local correctional facility or regional jail, and (iii) for shoplifting motor fuel.

HB 972 (Delegate Charniele Herring) / SB 2 (Senator Adam Ebbin): Marijuana; Definitions, Possession and Consumption, Civil Penalties, Report.

- **Existing Law (through June 30):**
  - Section 18.2-250.1 makes it unlawful for a person to knowingly and intentionally possess marijuana unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as authorized by the Drug Control Act. A violation of this section is a misdemeanor and may be punished by confinement in jail for not more than 30 days and a fine of not more than $500. A second or subsequent conviction is punishable as a Class 1 misdemeanor.

- **Impact of Legislation:**
  - Amends § 18.2-250.1 to make the unlawful possession of marijuana a civil offense punishable by a civil penalty of no more than $25. Civil penalties collected shall be deposited into the Drug Offender Assessment and Treatment Fund. A violation for possession shall be charged by summons that may be executed by a law-enforcement officer when the violation is observed by such officer. The summons shall be in form the same as the uniform summons for motor vehicle law violations. No costs may be assessed for a violation. A person's criminal history record information shall not include records of any charges or judgments for a violation of this section and records of such charges or judgments shall not be reported to the Central Criminal Records Exchange. However, if a violation of this section occurs while an individual is operating a commercial motor vehicle, such violation shall be reported to the Department of Motor Vehicles and shall be included on the person's driving record. The procedure for trial and appeal shall be the same as provided for misdemeanors.
  - Creates a new § 19.2-389.1 which imposes restrictions on the dissemination of criminal history record information pertaining to violations of § 18.2-250.1. Except for enumerated, criminal justice-related exceptions, such records shall not be open for inspection. This new section also provides that an employer or educational institution shall not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest, criminal charge, or conviction when the record relating to such is not open for public inspection pursuant to this section. Further, an applicant need not include a reference to an arrest, charge, or conviction when the record is not open for public inspection. Further, this new section provides that agencies, officials, and employees of state and local governments shall not, in any application, interview, or otherwise, require an applicant for a license, permit, registration, or governmental service to disclose information concerning any arrest, criminal charge, or conviction against him when the record relating to such is not open for public inspection. Further, the applicant need not answer any question concerning such an arrest, charge, or conviction when the record is not open for public inspection. Such an application may not be denied solely because of

the applicant's refusal to disclose any such information. A violation related to the inquiry into such information is punishable as a Class 1 misdemeanor.

- The suspended sentence/substance abuse screening provisions and driver's license suspension provisions only apply to criminal violations or to civil violations by a juvenile. The definition of "delinquent" set forth in § 16.1-288 is amended to add that, for the purposes of §§ 16.2-241, 16.1-273, 16.1-278.8, 16.1-278.8:01, and 16.1-278.9, "delinquent act" includes a violation of § 18.2-250.1. Consequently, juveniles possessing marijuana can still be found "delinquent" despite the fact that it is a civil violation.
- Defines "marijuana" to include hashish oil and creates a rebuttable presumption that a person who possesses no more than one ounce of marijuana possesses it for personal use.
- Allows a person charged with a civil offense who is acquitted, a nolle prosequi is taken, or the charge is otherwise dismissed to file a petition requesting expungement of the police records and court records related to the charge.
- Additional conforming amendments are made.
- Requires the convening of a work group to study the impact on the Commonwealth of legalizing the sale and personal use of marijuana. The work group shall review the legal and regulatory frameworks that have been established in states that have legalized the sale and personal use of marijuana and shall examine the feasibility of legalizing the sale and personal use of marijuana, the potential revenue impact of legalization on the Commonwealth, the legal and regulatory framework necessary to successfully implement legalization in the Commonwealth, and the health effects of marijuana use. The work group shall complete its work and report its recommendations to the General Assembly and the Governor by November 30, 2020.

HB 995 (Delegate Joseph Lindsey) / SB 788 (Senator Jennifer McClellan): Grand Larceny; Increases Threshold Amount.

- **Existing Law (through June 30):**
  - Section 18.2-95 establishes the threshold amount from which petit larceny increases to grand larceny at $500 or more. This threshold amount is reflected in other property offense statutes for triggering the penalty increase from a misdemeanor to a felony.

- **Impact of Legislation:**
  - Amends § 18.2-95 to increase the grand larceny threshold from $500 to $1,000 and reflects this increase in other property offense statutes for which the threshold amount giving rise to a more severe punishment was set at $500.

HB 1044 (Delegate Paul Krizek): Electronic Tracking Device; Unauthorized Use, Increases Penalty.

- **Existing Law (through June 30):**
  - Section 18.2-60.5 makes it a Class 3 misdemeanor for a person to install or place an electronic tracking device through intentionally deceptive means and without consent, or cause an electronic tracking device to be installed or placed through intentionally deceptive means and without consent, and use such device to track the location of any

person. This prohibition does not apply to 1) a law-enforcement officer, judicial officer, probation or parole officer, or employee of the Department of Corrections when any such person is engaged in the lawful performance of official duties and in accordance with other state or federal law, 2) the parent or guardian of a minor when tracking the minor or any person authorized by the parent or legal guardian as a caretaker of the minor at any time when the minor is under the person's sole care, 3) a legally authorized representative of an incapacitated adult, 4) the owner of fleet vehicles, when tracking such vehicles, 5) an electronic communications provider to the extent that such installation, placement, or use is disclosed in the provider's terms of use, privacy policy, or similar document made available to the customer, or 6) a registered private investigator acting in the course of his business and with consent of the owner of the property upon which the electronic tracking device is installed and placed.

- **Impact of Legislation:**
  - Amends § 18.2-60.5 to increase the penalty for a violation of this section from a Class 3 misdemeanor to a Class 1 misdemeanor.

HB 1071 (Delegate Dawn Adams): Profane Swearing in Public; Removes the Crime from the Code.

- **Existing Law (through June 30):**
  - Section 18.2-388 makes it a Class 4 misdemeanor for a person to "profanely curse or swear" or to be intoxicated in public.

- **Impact of Legislation:**
  - Amends § 18.2-388 to remove "profanely curse of swear" in public as a Class 4 misdemeanor, thereby decriminalizing such behavior.

HB 1083 (Delegate Cliff Hayes): Minors; Allowing Access to Firearms, Class 1 Misdemeanor.

- **Existing Law (through June 30):**
  - Section 18.2-56.2(A) makes it a Class 3 misdemeanor to recklessly leave a loaded, unsecured firearm in such a manner as to endanger the life or limb of any child under the age of 14. .

- **Impact of Legislation:**
  - Amends § 18.2-56.2(A) to increase the penalty from a Class 3 misdemeanor to a Class 1 misdemeanor.

HB 1096 (Delegate Jason Miyares): Dead Animals; Makes it a Class 1 Misdemeanor for any Person to Place Within or on any Church.

- **Existing Law (through June 30):**
  - Section 18.2-127 makes it a Class 1 misdemeanor for a person to maliciously 1) destroy, remove, cut, break, or injure any tree, shrub, or plant on any church property or within any cemetery or lot of any memorial or monumental association, 2) destroy,

mutilate, injure, or remove and carry away any flowers, wreaths, vases, or other ornaments placed within any church or on church property, or placed upon or around any grave, tomb, monument, or lot in any cemetery, graveyard, or other place of burial, or 3) obstruct proper ingress to and egress from any church or any cemetery or lot belonging to any memorial or monumental association.

- **Impact of Legislation:**
  - Amends § 18.2-127 to add that it is a Class 1 misdemeanor to maliciously place any dead animal within any church or on church property.

SB 179 (Senator Barbara Favola): Hate Crimes; Adds Gender, Disability, Gender Identity, or Sexual Orientation, Penalty

- **Existing Law (through June 30):**
  - Sections 18.2-57 (assault and battery) and 18.2-121 (trespass for the purpose of damaging another's property) only include race, religious conviction, color, or national origin among the categories of victims the intentional selection of whom triggers the more severe penalty.

- **Impact of Legislation:**
  - Amends §§ 18.2-57 and 18.2-121 to add gender, disability, gender identity, and sexual orientation to the categories of victims the intentional selection of whom triggers the more severe penalty. The bill also eliminates the mandatory minimum terms of confinement for such hate crimes.
  - Also amends § 52-8.5 to add gender, disability, gender identity, and sexual orientation to the categories of hate crimes that are to be reported to the central repository of information regarding hate crimes maintained by the Virginia State Police.
  - Further, the bill provides that a person who is subjected to acts of intimidation or harassment, violence directed against his person, or vandalism to his real or personal property, where such acts are motivated by gender, disability, gender identity, or sexual orientation, may bring a civil action to recover his damages. The bill also provides that no provider or user of an interactive computer service on the Internet shall be liable for any action voluntarily taken by it in good faith to restrict access to material that the provider or user considers to be intended to incite hatred on the basis of gender, disability, gender identity, or sexual orientation.

SB 378 (Senator John Bell): Computer Trespass; Expands the Crime.

- **Existing Law (through June 30):**
  - Section 18.2-152.4 provides that a person is guilty of computer trespass, a Class 1 misdemeanor, if, with malicious intent, they: 1) remove or disable any computer data, computer programs, or computer software from a computer or computer network, 2) cause a computer to malfunction, 3) alter, disable, or erase any computer data, computer programs, or computer software, 4) effect the creation or alteration of a financial instrument or of an electronic transfer of funds, 5) use a computer to cause physical injury to the property of another, 6) use a computer to make or cause to be made an unauthorized copy, in any form, including any printed or electronic form of computer

data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network, 7) install or collect information through computer software that records keystrokes made on the computer of another, or 8) install on the computer of another computer software for the purpose of taking control of that computer so that it can cause damage to that computer or disabling or disrupting the ability of the computer to share or transmit instructions or data to other computers or to any relayed computer equipment or devices such as printers.

- **Impact of Legislation:**
  - Expands § 18.2-152.4 by adding that computer trespass includes committing any of the above-noted violations through intentionally deceptive means and without authority (currently, it must be committed with malicious intent).
  - Adds to § 18.2-152.4 that nothing in the section shall be construed to require notice to a computer user of the activities of a computer hardware or software provider, an interactive computer service, or a telecommunications or cable operator that a reasonable computer user should expect may occur in the context of a computer user's transaction or relationship with that entity.
  - Adds that nothing in the section shall be construed to prohibit the monitoring of the location of a minor or a person with a disability or mental impairment.

SB 437 (Senator Scott Surovell): Bicyclists and Other Vulnerable Road Users; Penalty.

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:**
  - Creates § 46.2-816.1, which makes it a Class 1 misdemeanor to operate a motor vehicle in a careless or distracted manner such that the careless or distracted operation is the proximate cause of serious bodily injury to a vulnerable road user who is lawfully present on the highway at the time of injury. A "vulnerable road user" is defined as a pedestrian; the operator of or passenger on a bicycle, electronic personal assistive mobility device, electric power-assisted bicycle, wheel chair or wheel chair conveyance, skateboard, roller skates, motorized skateboard or scooter, or animal-drawn vehicle or any attached device; or any person riding an animal.

SB 711 (Senator Jennifer McClellan): Driving While License, Permit, or Privilege to Drive Suspended or Revoked; Mandatory Minimum Term

- **Existing Law (through June 30):**
  - Section 46.2-301 requires a mandatory minimum sentence of 10 days in jail for a third or subsequent offense within a 10-year period for driving on a suspended license.

- **Impact of Legislation:**
  - Amends § 46.2-301 to eliminate the mandatory minimum term of confinement in jail of 10 days for a third or subsequent conviction of driving on a suspended license.

SB 798 (Senator Joseph Morrissey): Driving After Forfeiture of License; Guilty of Certain Offenses.

- **Existing Law (through June 30):**
  - Section 18.2-272 pertains to driving after forfeiture of license but does not specify that the driving or operating of any motor vehicle need be on a highway as defined in § 46.2-100.

- **Impact of Legislation:**
  - Amends § 18.2-272 to specify that a person is guilty of an offense of driving or operating a motor vehicle, during the time for which he was deprived of the right to do so, (i) after his driver's license has been revoked for certain offenses, (ii) in violation of the terms of a restricted license; (iii) without an ignition interlock system if one is required; or (iv) if the person's license had been restricted, suspended, or revoked for certain driving under the influence offenses, with a blood alcohol content of 0.02 percent or more, only if such person was driving or operating the motor vehicle on a highway.

SB 1003 (Senator A. Benton Chaffin): Computer Crimes; Penalty.

- **Existing Law (through June 30)** Not applicable.

- **Impact of Legislation:**
  - Creates a new statute, § 18.2-152.7:2, which makes it a Class 1 misdemeanor to, without intent to receive any direct or indirect benefit, maliciously send an electronic transmitted communication containing a false representation intended to cause another person to spend money, if such false representation causes such person to spend money.

SB 1015 (David Marsden): Marijuana; Possession of Cannabidiol Oil or THC-A Oil.

- **Existing Law (through June 30):**
  - Section 18.2-250.1, which makes the possession of marijuana unlawful, provides that in any prosecution involving marijuana in the form of cannabidiol oil or THC-A oil, it shall be an affirmative defense that the person possessed such oil pursuant to a valid written certification issued by a practitioner in the course of his professional practice.
  - Section 54.1-3442.8 provides that in any prosecution of an agent or employee of a pharmaceutical processor for possession or manufacture of marijuana or for possession, manufacture, or distribution of cannabidiol oil or THC-A oil, it shall be an affirmative defense that such employee (i) possessed or manufactured such marijuana for the purposes of producing cannabidiol oil or THC-A oil in accordance with regulations, or (ii) possessed, manufactured, or distributed such cannabidiol oil or THC-A oil in accordance with regulations.

- **Impact of Legislation:**
  - Amends § 18.2-250.1 to provide that, rather than an affirmative defense, the provisions of the section shall not apply to a person who possesses such oil pursuant to a valid written certification issued by a practitioner in the course of his professional practice.
  - Amends § 54.1-3442.8 to provide that, rather than an affirmative defense, no agent or employee shall be prosecuted for possession or manufacture of marijuana or for possession, manufacture, or distribution of cannabidiol oil or THC-A oil if such person possessed, manufactured or distributed in accordance with the section and adds that such person shall neither be subjected to a civil penalty, denied any right or privilege, or be subjected to any disciplinary action by a professional licensing board.

DETENTION

HB 33 (Delegate Joseph Lindsey) SB 793 (Senator Jennifer McClellan): Parole; Exception to Limitation on the Application of Parole Statutes.

- **Existing Law (effective immediately due to emergency clause):**
  - Section 53.1-165.1 provides that the parole statutes shall not apply to any sentence imposed or to any prisoner incarcerated upon a conviction for a felony offense committed on or after January 1, 1995. Any person sentenced to a term of incarceration for a felony offense committed on or after January 1, 1995 shall not be eligible for parole for that offense.

- **Impact of Legislation:**
  - Amends § 53.1-165.1 to provide that the parole statutes shall apply to any person who was sentenced by a jury prior to June 9, 2000, for any felony offense committed on or after January 1, 1995, and who remained incarcerated for an offense on July 1, 2020, other than (i) a Class 1 felony, (ii) any of the following felony offenses where the victim was a minor: (a) rape, (b) forcible sodomy, (c) object sexual penetration, (d) aggravated sexual battery, (e) an attempt to commit any of the above, or (f) carnal knowledge. The Parole Board shall establish procedures for consideration of parole of persons entitled under this new provision. Any person who meets the eligibility criteria for parole under this new provision as of July 1, 2020, shall be scheduled for a parole interview no later than July 1, 2021, allowing for extension of time for reasonable cause.
  - In short, this amendment provides that the specified persons are eligible to be considered for parole if such persons were sentenced by a jury prior to the date of the Supreme Court of Virginia decision in Fishback v. Commonwealth, in which the Court held that a jury should be instructed of the fact that parole was abolished.

HB 35 (Delegate Joseph Lindsey) / SB 103 (Senator David Marsden): Juvenile Offenders; Eligibility for Parole.

- **Existing Law (through June 30):**
  - Section 53.1-136 currently sets out the powers and duties of the Parole Board. Section 53.1-165.1 currently provides that persons sentenced for offenses committed after July 1, 1995 are not eligible for parole.

- **Impact of Legislation:**
  - Amends § 53.1-136 to require the Parole Board to adopt rules providing for the granting of parole to persons eligible pursuant to § 53.1-165.1 on the basis of demonstrated maturity and rehabilitation and the lesser culpability of juvenile offenders.
  - Amends § 53.1-165.1 to provide that a person sentenced to a term of life imprisonment for a single felony or multiple felonies committed while the person was a juvenile and who has served at least 20 years of such sentence will be eligible for parole. Additionally, any person who has active sentences that total more than 20 years for a single felony or multiple felonies committed while the person was a juvenile and who has served at least 20 years of such sentences will be eligible for parole. The Parole Board must review and decide the case of each prisoner who is eligible for parole in accordance with § 53.1-154 and new rules adopted pursuant to subdivision 2 of § 53.1-136.

HB 659 (Delegate Patrick Hope): People With Developmental Disabilities; DOC to Create Workgroup to Review Guidelines to Assist.

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:**
  - This is a Section 1 bill that requires the Director of the Department of Corrections to create a workgroup to review current guidelines and develop recommendations that recognize and make accommodations for people with developmental disabilities, including intellectual disabilities and autism spectrum disorders.

HB 1284 (Delegate Patrick Hope): Correctional Facilities; Use of Isolated Confinement.

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:**
  - HB 1284 is a § 1 bill that requires the Board of Corrections, in consultation with a stakeholder workgroup, to conduct a review of the standards and requirements governing, and the application and use of, isolated confinement in local correctional facilities. The stakeholder work group will be comprised of interested parties including at least one representative from each of the following groups: sheriffs, regional superintendents, public defenders, formerly incarcerated people, mental health experts, disability rights advocates, and civil liberties advocates. The Board shall report its findings and recommendations to the Secretary of Public Safety and Homeland Security and the Chairs of the House Committee for Courts of Justice, the House

Committee on Public Safety, the Senate Committee on the Judiciary, and the Senate Committee on Rehabilitation and Social Services by December 1, 2020. The Board may thereafter promulgate standards consistent with the findings of the report on the use of isolated confinement in local correctional facilities. For purposes of the act, "isolated confinement" means confinement of a prisoner to a cell, alone or with another prisoner, for more than 20 hours per day.

- **Note:**
  - For several years, the Board of Juvenile Justice has been working to amend the regulations applicable to juvenile correctional centers that specifically address the use of room confinement in these facilities.
  - The regulatory amendments currently in process would prohibit the use of isolation as a disciplinary sanction in juvenile correctional centers and allow isolation only, (i) if a resident's actions threaten facility, staff, or resident safety or security, or (ii) to prevent damage to real or personal property in certain circumstances. In these limited circumstances, staff would be authorized to isolate residents in their rooms until the threat is abated. The proposed regulatory provisions do not limit the duration of isolation. Isolation periods that extend beyond 24, 48, and 72 hours will require approval by the facility administrator, Residential Program Manager, and Deputy Director of Residential Services, respectively. When room confinement is necessitated for a period that exceeds five days, the proposed regulation will require review by a facility-level review committee. If the committee believes continued confinement is necessary, the matter will be referred for a division-level case review.
  - Under the proposed regulation, when residents are isolated, a qualified medical or mental health professional will be required to visit with the resident at least once a day to assess their needs and medical and mental health status. Additionally, residents will be afforded at least one hour of large muscle activity outside of the locked room unless they display threatening behavior, present an imminent danger to themselves or others, or other circumstances justify an exception.

HB 1544 (Delegate Lee Carter): Children; Strip Searches.

- **Existing Law (through June 30):**
  - Section 19.2-59.1 provides for certain prohibitions and exceptions for strip searches and the manner in which they may be conducted.

- **Impact of Legislation:**
  - Amends § 19.2-59.1 to add a new subsection H, which provides that no child under the age of 18 shall be strip searched or subjected to a search of any body cavity by a law-enforcement officer or a jail officer except 1) for children committed to DJJ or confined or detained in a secure local facility for juveniles or a jail or other facility for the detention of adults, 2) when taken into custody by or remanded to a law-enforcement officer pursuant to a circuit or district court order, or 3) when in custodial arrest and there is reasonable cause to believe on the part of a law-enforcement officer or jail officer authorizing the search that the child is concealing a weapon.

HB 1648 (Delegate Kaye Kory): Training Standards Regarding Residents Known to be Pregnant.

- **Existing Law (through June 30):**
  - Section 66-10(9) provides that the State Board of Juvenile Justice has the power and duty to establish compulsory minimum entry-level, in-service, and advanced training standards, as well as the time required for completion of such training, for persons employed as juvenile correctional officers employed at a juvenile correctional facility.

- **Impact of Legislation:**
  - HB 1648 has limited application to DJJ. The bill, in large part, provides for rules and regulations regarding the treatment, control, and education of prisoners known to be pregnant and prisoners who are parents of minor children in state and local correctional facilities.
  - In addition, HB 1648 contains one provision applicable to DJJ with regard to the required content of training standards for juvenile correctional officers. Pertinent to DJJ, HB 1648 seeks to amend § 66-10(9) to add that such training standards include, for juvenile correctional officers who may have contact with pregnant inmates, training on the general care of pregnant women, the impact of restraints on pregnant women and fetuses, the impact of being placed in restrictive housing or solitary confinement on pregnant inmates, and the impact of body cavity searches on pregnant inmates.

SB 20 (Senator Adam Ebbin): Regulations Governing the Housing of Youth Pursuant to Contracts with the Federal Government.

- **Existing Law(through June 30) :**
  - Section 16.1-309.9 requires the State Board of Juvenile Justice to approve standards for the construction and equipment of detention homes and other facilities and for food, clothing, medical attention, and supervision of juveniles to be housed in the facilities.
  - Section 66-10(5) gives the Board the power and duty to promulgate such regulations as may be necessary to carry out the provisions of Title 66 and other laws of the Commonwealth.
  - The Regulation Governing Juvenile Secure Detention Centers is set forth in 6 VAC 35-101-10 et seq.

- **Reason for Legislation:**
  - SB 20 appears to be aimed at addressing juvenile detention centers that enter into agreements with the federal government, specifically the Office of Refugee Resettlement (ORR), to house unaccompanied children under federal custody.
  - ORR has policies in place that permit the placement of an unaccompanied alien child in a secure facility only if such child: (i) poses a danger to self or others; or (ii) has been charged with or convicted of a criminal offense, or is chargeable with such an offense.
  - In cases where a youth has been the subject of such charges, ORR also considers whether the delinquent acts were within a pattern or practice of criminal activity and

involved violence against a person, use or carrying of a weapon, or other similar offenses which are considered grounds for a stricter means of detention.

- **Impact of Legislation:**
  - SB 20 is a § 1 bill that requires the Board, in collaboration with the Department of Behavioral Health and Developmental Services, to promulgate specific regulations governing the housing of youth who are detained in a juvenile correctional facility pursuant to a contract with the federal government and not committed to such facility by a court of the Commonwealth.
  - The regulations must establish, (1) standards governing use of physical force, mechanical restraints, and spit guards, and avoiding the use of isolation, (2) training requirements regarding cognitive behavioral interventions, trauma-informed care, cultural background implications, de-escalation techniques, and the use of restraints, (3) requirements for an appropriate number of bilingual staff and culturally relevant programs, (4) methods to ensure the detained youth understand their rights and responsibilities, (5) standards to ensure the provision of necessary physical and mental health care, (6) a requirement that such contracts provide DJJ staff with the same level of access to such youth as it has for other youth committed to the facility, and (7) standards for recordkeeping, including extended requirements for records and video footage related to incident reporting.

- **Note:**
  - The Board recently approved amendments to the Regulations Governing Juvenile Secure Detention Centers for submission through the standard regulatory process as well as a fast-track amendment.
  - The existing regulations and proposed amendments contain several of the provisions required by this bill. The proposed amendments, however, do not (i) avoid the use of isolation (although additional controls and reporting requirements are placed on the use of isolation); (ii) establish specific training requirements regarding cognitive behavioral interventions, trauma-informed care, or cultural background implications; (iii) require bilingual staff or culturally relevant programs, or (iv) impose requirements to capture video documentation of all reportable incidents.

SB 215 (Senator David Suetterlein): Inmates; Review of Death in Local Correctional Facilities, report.

- **Existing Law (through June 30):**
  - Section 53.1-5 sets forth the powers and duties of the Board of Corrections.

- **Impact of Legislation:**
  - Amends § 53.1-5 to add that the Board of Corrections shall report annually to the General Assembly and the Governor on the results of the inspections and audits of local, regional, or community correctional facilities and on the reviews of the deaths of inmates that occur in any local, regional, or community correctional facility. The report shall include (i) a summary of the results of inspections, audits, and reviews, including any trends identified by such inspections, audits, and reviews and the frequency of

violations of each standard established for local, regional, or community correctional facilities, and (ii) any recommendations for changes to the standards established for local, regional, or community correctional facilities or the policies and procedures for conducting reviews of the death of inmates to improve the operations, safety, and security of local, regional, or community correctional facilities.

SB 1023 (Senator Mark Peake): Correctional Facilities, State; Visitation and Search Policies for Visitors.

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:**
  - Creates a new § 53.1-1.2 which provides for procedures regarding individuals who are physically present at a state correctional facility for the purposes of visiting a prisoner. Visitors shall be informed of the items they are and are not permitted to bring into the facility. If the equipment is available, visitors shall be scanned or wanded by an electronic scanning or detection device. If detector canines are available, visitors shall be subjected to a detector canine search. If such searches indicate the possibility of contraband, the visitor shall have the option of consenting to a search. If the visitor does not consent to a search after only a detector canine search indicates contraband, he shall be allowed a visit that does not allow personal contact. If the visitor does not consent to a search after scanning or wanding indicates contraband, the Department may deny entry into the facility. A visitor shall be allowed to leave the correctional facility and discontinue the search process prior to the discovery of contraband. A visitor shall not be barred from future visits because he stops a search prior to the discovery of contraband or refuses to consent to a search.
  - Amends § 53.1-30, which provides for the search of a person seeking to enter a state correctional facility, to prohibit the strip search or body cavity search of a child under the age of 18. The bill also adds to § 53.1-30 that the Department may not permanently ban any person from seeking entrance to a state correctional facility on the basis of such person's refusal to consent to a strip search or body cavity search when such person is seeking to enter a state correctional facility. If a person refuses to consent to a strip search of body cavity search when seeking entry to a state correctional facility, the Department may deny entry to the facility but may not deny such person any future entry on the basis on a prior refusal of consent.

SB 1089 (Senator Joseph Morrissey): Correctional Facilities, State; Strip Searches for Those Entering Facility.

- **Existing Law (through June 30):**
  - Section 53.1-30 provides for the search of persons seeking to enter a state correctional facility.

- **Impact of Legislation:**
  - Amends § 53.1-30, which provides for the search of a person seeking to enter a state correctional facility, to prohibit the strip search or body cavity search of a child under the age of 18. The bill also adds to § 53.1-30 that the Department may not permanently

ban any person from seeking entrance to a state correctional facility on the basis of such person's refusal to consent to a strip search or body cavity search when such person is seeking to enter a state correctional facility. If a person refuses to consent to a strip search or body cavity search when seeking entry to a state correctional facility, the Department may deny entry to the facility but may not deny such person any future entry on the basis of a prior refusal of consent.

EDUCATION

HB 36 (Delegate Chris Hurst): Student Journalists; Freedom of Speech and the Press.

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:** Creates a new statute, § 23.1-401.2, which provides that, except in certain limited circumstances (libel and slander, invasion of privacy, and incitement of students so as to create a clear and present danger of the commission of an unlawful act, the violation of institution policy, or the material and substantial disruption of the orderly operation of the institution), a student journalist at a public institution of higher education has the right to exercise freedom of speech and the press in institution-sponsored media, including determining the news and opinion of institution-sponsored media, regardless of whether the media is supported financially by the governing board of the institution, supported through the use of campus facilities, or produced in conjunction with a course in which the student is enrolled. The bill defines "institution-sponsored media" as any material that is prepared, substantially written, published, or broadcast by a student journalist at a public institution of higher education under the direction of a student media adviser and distributed or generally made available to members of the student body.

HB 74 (Delegate Kaye Kory) / SB 619 (Senator Creigh Deeds): Public Schools; Mental Health Awareness Training Required.

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:** Creates a new statute, § 22.1-298.6, which requires each school board to (i) adopt and implement policies that require each teacher and other relevant personnel, as determined by the school board, employed on a full-time basis, to complete a mental health awareness training or similar program at least once, and (ii) provide such training, which may be provided pursuant to a contract with the Department of Behavioral Health and Developmental Services, a community services board, a behavioral health authority, a nonprofit organization, or other certified trainer or via an online module.

HB 134 (Delegate Chris Runion) / SB 186 (Senator Siobhan Dunnavant): Individualized Education Program Teams; Department of Education to Develop Guidelines.

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:**
  - Requires the Department of Education to establish guidelines for individualized education program (IEP) teams to utilize when developing IEPs for children with disabilities to ensure that IEP teams consider the need for age-appropriate and developmentally appropriate instruction related to sexual health, self-restraint, self-protection, respect for personal privacy, and personal boundaries of others. The bill requires each local school board, in developing IEPs for children with disabilities, in addition to any other requirements established by the Board of Education, to ensure that IEP teams consider such guidelines.

HB 145 (Delegate Marcus Simon) / SB 161 (Senator Jennifer Boysko): Public Elementary and Secondary Schools; Treatment of Transgender Students, Policies.

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:**
  - Creates a new § 22.1-23.3 which requires the Department of Education to develop and make available to each school board model policies concerning the treatment of transgender students in public elementary and secondary schools that address common issues regarding transgender students in accordance with evidence-based best practices and include information, guidance, procedures, and standards relating to compliance with applicable nondiscrimination laws, maintenance of a safe and supportive learning environment free of discrimination and harassment for all students, prevention of and response to bullying and harassment, maintenance of student records, identification of students, protection of student privacy and the confidentiality of sensitive information, enforcement of sex based dress codes, and student participation in sex specific school activities and events and use of school facilities. Activities and events do not include athletics.
  - Each school board shall adopt policies that are consistent with but may be more comprehensive than the model policies.
  - The model policies shall be developed and made available by December 31, 2020. Each school board shall adopt policies by the beginning of the 2021-2022 school year.

HB 257 (Delegate Michael Mullin) / SB 729 (Senator Jennifer McClellan): School Principals; Incident Reports.

- **Existing Law (through June 30):**
  - Section 22.1-279.3:1 requires a school principal to immediately report to local law-enforcement the following offenses: (i) assault and battery resulting in bodily injury, sexual assault, death, shooting, stabbing, cutting, or wounding of any person, abduction of any person, or stalking of any person on a school bus, on school property, or at a school-sponsored activity; (ii) conduct involving alcohol, marijuana, a controlled

substance, imitation controlled substance, or anabolic steroid on a school bus, on school property, or at a school-sponsored activity (including theft or attempted theft of student prescription medications); (iii) threats against school personnel while on a school bus, on school property or at a school-sponsored activity; (iv) the illegal carrying of a firearm onto school property; (v) illegal conduct involving firebombs, explosive materials or devices, or hoax explosive devices, or explosive or incendiary devices, or chemical bombs on a school bus, on school property, or at a school-sponsored activity; or (vi) threats or false threats to bomb made against school personnel or involving school property or school buses.
    - Section 22.1-279.3:1(D) limits the school principal's discretion to report to law-enforcement to assaults or assaults and battery without bodily injury, of any person on a school bus, on school property, or at a school-sponsored activity.

- **Impact of Legislation:**
    - Amends § 22.1-279.3:1(D) to narrow the offenses a school principal is required to report to local law-enforcement by limiting the reporting requirement to only those enumerated offenses that are classified as felonies.

HB 270 (Schuyler VanValkenburg): Public schools; Lock-Down Drills; Notice to Parents.

- **Existing Law (through June 30):**
    - Section 22.1-137.2 requires lock-down drills but does not require parents to be notified before lock-down drills.
- **Impact of Legislation:**
    - Requires every public school to provide the parents of enrolled students with at least 24 hours' notice before the school conducts any lock-down drill. The bill specifies that no such notice is required to include the exact date and time of the lock-down drill.

HB 271 (Delegate Schuyler VanValkenburg) / SB 170 (Senator Mamie Locke): Public Schools; Resource Officers and School Security Officers, Data.

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:** Requires the Department of Criminal Justice Services, in coordination with the Department of Education and the Department of Juvenile Justice, to annually collect, report, and publish on its website data on the use of force against students, including the use of chemical, mechanical, or other restraints and instances of seclusion; detention of students; arrests of students; student referrals to court or court service units; and other disciplinary actions by school resource officers involving students. Such data shall (i) be published in a manner that protects the identities of students, and (ii) be disaggregated by local school division and by student age, grade, race, ethnicity, gender, and disability, if such data are available.

HB 292 (Schuyler VanValkenburg) / SB 221 (Senator Mamie Locke): School Boards and Local Law-enforcement Agencies; Memorandums of Understanding, Frequency of Review.

- **Existing Law (through June 30):**
  - Section 22.1-280.2:3 requires the school board in each school division in which the local law-enforcement agency employs school resource officers to enter into a memorandum of understanding with the law-enforcement agency that sets forth the powers and duties of such school resources officers. The memorandum of understanding shall be based on the model memorandum of understanding developed by the Virginia Center for School and Campus Safety and 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.

- **Impact of Legislation:**
  - Amends § 22.1-280.2:3 to increase the frequency of the review and amendment of the memorandum from every five years to every two years. The bill also adds that the school board shall ensure that the memorandum is conspicuously published on the division website and to provide notice and opportunity for public input during each memorandum review period.

HB 308 (Delegate Patrick Hope): Students; Department of Education to Establish Guideline for Excused Absence Due to Mental and Behavioral Health.

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:**
  - Creates a Section 1 provision which requires the Department of Education to establish and distribute to each school board by December 31, 2020, guidelines for the granting of an excused absence from school to a student due to his mental or behavioral health and requires that any student who is absent from school due to his mental or behavioral health be granted, subject to such guidelines, an excused absence.

HB 365 (Jennifer Carol Foy) / SB 98 (Mamie Locke): Public Elementary and Secondary School Teachers; Probationary Term of Service; Performance Evaluation.

- **Existing Law (through June 30):**
  - Section 22.1-303 allows local school boards to extend the three-year probationary term of service for teachers by up to two additional years and prohibits school boards from reemploying teachers whose performance evaluation during probationary term of service is unsatisfactory.

- **Impact of Legislation:**
  - Amends § 22.1-303 to remove (i) the option for local school boards to extend the three-year probationary term of service for teachers by up to two additional years, and (ii) the prohibition against school boards reemploying any teacher whose performance evaluation during the probationary term of service is unsatisfactory.

HB 376 (Delegate Rodney Willett): Teacher and Support Staff Shortages; Data, Reporting.

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:**
  - Creates a new statute, § 22.1-290.2, which will require (i) each school board to report to the Department of Education annually the number and type of teacher, other instructional personnel, and support staff vacancies in the school division, and (ii) each approved education preparation program to report to the Department of Education annually the number of individuals who completed the program by endorsement area.

HB 392 (Delegate Jeion Ward): School Boards; Applicants for Employment, Criminal History.

- **Existing Law (through June 30):**
  - Section 22.1-296.1(A) provides that as a condition of employment for all of its public school employees, every school board shall require on its application for employment certification that the applicant has not been convicted of a felony or any offense involving the sexual molestation, physical or sexual abuse, or rape of a child, and whether the applicant has been convicted of a crime of moral turpitude.
  - Section 22.1-296.1(E) provides that as a condition of awarding a contract for the provision of services that require the contractor or his employees to have direct contact with students on school property during regular school hours or during school sponsored activities, the school board shall require the contractor to provide certification that all persons who will provide such services have not been convicted of any felony or any offense involving the sexual molestation, physical or sexual abuse, or rape of a child.

- **Impact of Legislation:**
  - Amends § 22.1-296.1(A) to provide that the application for employment require certification of whether the applicant has been convicted of any violent felony set forth in the definition of barrier crime in subsection A of § 19.2-392.02 (as opposed to any felony).
  - Adds a new subsection B which provides that no school board shall employ any individual who has been convicted of a violent felony set forth in the definition of barrier crime or any offense involving the sexual molestation, physical or sexual abuse, or rape of a child.
  - Adds a new subsection C which provides that any school board may employ any individual who has been convicted of any felony or crime of moral turpitude that is not set forth in the definition of barrier crime and does not involve the sexual molestation, physical or sexual abuse, or rape of a child, provided that in the case of a felony conviction, such individual has had his civil rights restored by the Governor.
  - Amends § 22.1-296.1(E) to provide that the contractor certification be whether any individual has been convicted of any violent felony set forth in the definition of barrier crime in subsection A of § 19.2-392.02 (as opposed to any felony) and adds to the

certification requirements whether any individual has been convicted of any crime of moral turpitude.
  - Adds a new subsection F which provides that no school board shall award a contract for the provision of services that require a contractor or his employees to have direct contact with students on school property during regular school hours or during school sponsored activities when any individual who provides such services has been convicted of any violent felony set forth in the definition of barrier crime or any offense involving the sexual molestation, physical or sexual abuse, or rape of a child.
  - Adds a new subsection G which provides that any school board may award a contract for the provision of services that require a contractor or his employees to have direct contact with students on school property during regular school hours or during school sponsored activities when any individual who provides such services has been convicted of any felony or crime of moral turpitude that is not set forth in the definition of barrier crime and does not involve the sexual molestation, physical or sexual abuse, or rape of a child, provided that in the case of a felony conviction, such individual has had his civil rights restored by the Governor.

HB 516 (Delegate David Bulova) / SB 112 (Senator David Suetterlein): High School Graduation; Standard Diploma Requirements, etc.

- **Existing Law (through June 30):**
  - Section 22.1-253.13:4, pertaining to graduation requirements, requires that students complete an (i) Advanced Placement, honors, or International Baccalaureate, course, or (ii) earn a career and technical education credential.

- **Impact of Legislation:**
  - Amends § 22.1-253.13:4 to require the Board of Education to include in its graduation requirements the options for students to complete a high-quality work-based learning experience, as defined by the Board.

HB 570 (Guzman) / SB 167 (Favola): Teachers, Public School; Grounds for Dismissal

- **Existing Law (through June 30):**
  - Section 22.1-307 provides that teachers may be dismissed for incompetency, immorality, noncompliance with school laws and regulations, disability as shown by competent medical evidence when in compliance with federal laws, conviction of a felony or a crime of moral turpitude, or other good and just cause. It provides a definition for "incompetency" to include, but not be limited to, consistent failure to meet endorsement requirements for the position or one or more unsatisfactory performance evaluations.

- **Impact of Legislation:**
  - Amends § 22.1-307 to remove the definition of "incompetency." Note: Incompetency remains as grounds for dismissal but is no longer defined. It was the only definition in the statute.

HB 837 (Foy): Dress Code Equity Act; guidelines and policies for dress or grooming codes in schools.

- **Existing Law (through June 30):**
  - Section 22.1-279.6 sets forth Board of Education guidelines and model policies for codes of student conduct.

- **Impact of Legislation:**
  - Amends § 22.1-279.6 to require the Board of Education to include in its guidelines and model policies for codes of student conduct (i) standards for reducing bias and harassment in the enforcement of any code of student conduct and (ii) standards for dress or grooming codes. The bill permits any school board to include in its code of student conduct a dress or grooming code. The bill requires any dress or grooming code included in a school board's code of student conduct or otherwise adopted by a school board to (a) permit any student to wear any religiously and ethnically specific or significant head covering or hairstyle, including hijabs, yarmulkes, head wraps, braids, locks, and cornrows; (b) maintain gender neutrality by subjecting any student to the same set of rules and standards regardless of gender; (c) not have a disparate impact on students of a particular gender; (d) be clear, specific, and objective in defining terms, if used; (e) prohibit any school board employee from enforcing the dress or grooming code by direct physical contact with a student or a student's attire; and (f) prohibit any school board employee from requiring a student to undress in front of any other individual, including the enforcing school board employee, to comply with the dress or grooming code.
  - Amends § 22.1-276.01 to provide a definition for "dress or grooming code" to mean any practice, policy, or portion of a code of student conduct adopted by a school board that governs or restricts the attire, appearance, or grooming, including hairstyle, of any enrolled student.

HB 916 (Delegate Mark Sickles) / SB 853 (Senator Jennifer Boysko): Culturally Relevant and Inclusive Education Practices Advisory Committee; Established, Report.

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:**
  - Creates a new statute, § 22.1-208.02, which requires the Department of Education to establish the Culturally Relevant and Inclusive Education Practices Advisory Committee for the purpose of strengthening culturally relevant education practices and supporting anti-bias education and response. The Advisory Committee shall include a geographically, ethnically and religiously diverse representation of teachers, curriculum specialists, principals, superintendents, advocates, higher education institutions, parents, legislators, and community-based organizations. The Advisory Committee shall report its recommendations to the Board of Education, the Governor, and the Chairpersons of the House Committee on Education and the Senate Committee on Education and Health by July 1, 2021.

- The Advisory Committee shall provide standards recommendations to the Virginia Department of Education, and they shall be considered by the Board of Education, during the 2021-2022 review of the history and social science Standards of Learning. The recommendations shall include the Holocaust and other historical genocides, slavery, anti-Semitism, Islamophobia, etc.
- The Advisory Committee shall provide recommendations for the issuance of Board of Education guidelines for local school division staff, including teachers and school counselors, to offer age-appropriate anti-bias education to students.
- The Advisory Committee shall provide recommendations on meaningful professional development with school personnel related to culturally relevant and inclusive education practices, including considerations for the policies and regulations governing teacher preparation programs and the policies and regulations governing teacher licensure and professional development requirements for licensure renewal. These recommendations also shall be provided to the Advisory Committee on Teacher Education and Licensure and the State Council for Higher Education in Virginia.

HB 1419 (Delegate Jerrauld "Jay" Jones) / SB 171 (Senator Mamie Locke): School Resource Officers and School Security Officers; Training Standards.

- **Existing Law (through June 30):**
  - Section 9.1-102(42) requires the Department of Criminal Justice Services, in consultation with the Department of Education and the Virginia State Crime Commission, establish compulsory minimum training standards for school security officers which shall include the role and responsibility of school security officers, relevant state and federal laws, school and personal liability issues, security awareness in the school environment, mediation and conflict resolution, and disaster and emergency response.
  - Section 9.1-102(54) requires DCJS to establish compulsory minimum training standards for law-enforcement officers serving as school resources specific to the role and responsibility of a law-enforcement officer working in a school environment.

- **Impact of Legislation:**
  - Amends § 9.1-102(42) to add that the compulsory minimum training standards for school security officers shall also include de-escalation techniques such as a physical alternative to restraint, awareness of cultural diversity and implicit bias, working with students with disabilities, mental health needs, substance abuse disorders, past traumatic experiences, and child and adolescent development and brain research.
  - Amends § 9.1-102(54) to add that the compulsory minimum training standards for school security officers shall include (i) relevant state and federal laws, (ii) school and personal liability issues, (iii) security awareness in the school environment, (iv) mediation and conflict resolution, including de-escalation techniques, (v) disaster and emergency response, (vi) awareness of cultural diversity and implicit bias, (vii) working with students with disabilities, mental health needs, substance abuse disorders, or past traumatic experiences, and (viii) student behavioral dynamics, including current child and adolescent development and brain research.

HB 1491 (Delegate Nancy Guy): Student Voters; Public High Schools to Provide Virginia Voter Registration Information.

- **Existing Law (though June 30):** Not applicable.

- **Impact of Legislation:**
  - Creates § 22.1-203.4 which requires each public high school to provide to any enrolled student who is of voting age or otherwise eligible to register to vote access to Virginia voter registration information and applications, or access to the Virginia online voter registration system on a school-owned computing device, and the opportunity to complete such application during the normal course of the school day.

HB 1508 (Delegate Delores McQuinn): School Counselors; Minimum Staffing Ratio.

- **Existing Law (through June 30):**
  - Section 22.1-253.13:2 establishes the following ratios for school counselors:
    - 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.

- **Impact of Legislation:**
  - Amends § 22.1-253.13:2 to provide that, effective with the 2021-2022 school year, local school boards shall employ one full time equivalent school counselor position per 325 students in grades kindergarten through 12.

HB 1653 (Delegate Tony Wilt): School Counselors; Staffing Ratios, Report.

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:**
  - This is a § 1 bill that requires the Department of Education to collect data from school boards regarding their ability to fill school counselor positions, including (i) the number of school counselors employed in elementary, middle, and high schools in the local school division, (ii) the number and duration of school counselor vacancies, (iii) the number, role, and license type of other licensed counseling professionals employed by the school board, and (iv) information about their preferences for meeting updated school counselor-to-student ratios with other licensed counseling professionals. The Department of Education shall report the results of such data collection to the Governor, the Secretary of Education, the House Committee on Appropriations, and the Senate Committee on Finance and Appropriations no later than June 30, 2021.

SB 173 (Senator Emmett Hanger): Stun Weapons; Prohibits Possession on School Property.

- **Existing Law (through June 30):**
  - Section 18.2-308.1 makes it a Class 1 misdemeanor for any person to knowingly possess any stun weapon, among other specified weapons, on school property, on any property being used for a school-sponsored function or extracurricular activity, or on any school bus owned or operated by a school. The statute provides for exemptions but no exemption currently applies specifically to stun weapons.

- **Impact of Legislation:**
  - Amends § 18.2-308.1 to create exemptions to the prohibition for 1) a stun weapon that is in a closed container in a motor vehicle, and 2) a stun weapon possessed by a person who has a valid concealed handgun permit while in a motor vehicle in a parking lot, traffic circle, or other means of vehicular ingress or egress to the school.

SB 214 (Senator David Suetterlein): Guardianship; Review of Individualized Education Plan.

- **Existing Law (through June 30):**
  - Section 64.2-2003 pertains to the appointment and duties of a guardian ad litem upon the filing of a petition for guardianship or conservatorship.

- **Impact of Legislation:**
  - Amends § 64.2-2003 to add among the duties of the guardian ad litem that if the respondent is between 17 and a half and 21 years of age and has an Individualized Education Plan, the guardian ad litem shall review the IEP and include the results of the review in the report filed with the court.

SB 1020 (Senator William Stanley): Public Schools; Alternative School Discipline Process.

- **Existing Law (through June 30):**
  - Not applicable.

- **Impact of Legislation:**
  - Creates a new statute, § 22.1-279.3:3, which provides that a school board may establish an alternative school discipline process to provide the parties involved in an incident involving assault and battery without bodily injury that occurs on a school bus, on school property, or at a school-sponsored event the option to enter into a mutually agreed upon process between the involved parties. Such process shall be designed to hold the student accountable for a noncriminal offense through a mutually agreed upon standard. If provided for in the process established by the school board, no principal shall report to law-enforcement pursuant to § 22.1-279.3:1(D) a party who successfully completes the alternative school discipline process. If the parties fail to agree to participate in the process or fail to complete the process successfully, then the principal may report the incident to law-enforcement pursuant to § 22.1-279.3:1(D).

FIREARMS

HB 2 (Delegate Kenneth Plum) / SB70 (Senator Louise Lucas): Firearm transfers; criminal history record information checks, penalty.

- **Existing Law (through January 1, 2021):**
  - Background checks for private sales of firearms are voluntary.

- **Impact of Legislation:**
  - Amends § 18.2-308.2 and adds a new § 18.2-308.2:5 to require a background check for any firearm sale and directs the Department of State Police to establish a process for transferors to obtain such a background check from licensed firearms dealers. A person who sells a firearm to another person without obtaining the required background check is guilty of a Class 1 misdemeanor. The bill also provides that a purchaser who receives a firearm from another person without obtaining the required background check is guilty of a Class 1 misdemeanor. The bill removes the provision that makes background checks of prospective purchasers or transferees at firearms shows voluntary. The bill also provides that the Department of State Police shall have three business days to complete a background check before a firearm may be transferred.

HB 9 (Delegate Jeffrey Bourne): Firearms; Reporting Those Lost or Stolen, Civil Penalty.

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:**
  - Creates a new statute, § 18.2-287.5, which requires that, if a firearm is lost or stolen from a person who lawfully possessed it, such person shall report the loss or theft of the firearm to any local law-enforcement agency or the Department of State Police within 48 hours after such person discovers the loss or theft or is informed by a person with personal knowledge of the loss or theft. The bill requires the relevant law-enforcement agency to enter the report information into the National Crime Information Center. A violation is punishable by a civil penalty of not more than $250. The bill provides that a person who, in good faith, reports the loss or theft is immune from criminal or civil liability for acts or omissions that result from the loss or theft. The immunity does not apply to a person who knowingly gives a false report. The bill does not apply to the loss or theft of an antique firearm.

HB 160 (Delegate Marcus Simon): License Plates, Special; Bearing the Legend "Stop Gun Violence," Revenue Sharing Provisions.

- **Existing Law (through June 30):**
  - The license plate bearing the legend "Stop Gun Violence" was slated to become revenue sharing on July 1, 2020.

- **Impact of Legislation:**
  - This license plate will now remain nonrevenue sharing.

HB 264 (Delegate Alfonso Lopez) / SB 263 (Senator John Bell): Concealed Handgun Permits; Demonstration of Competence, Effective Date.

- **Existing Law (through June 30):**
  - Section 18.2-308.2, pertaining to the application for a concealed handgun permit, allows an applicant to complete the required firearms training or safety course or class by electronic, video, or online course conducted by a state-certified or National Rifle Association-certified firearms instructor.

- **Impact of Legislation:**
  - Amends § 18.2-308.2 to remove the option of completing the require course or class by electronic, video, or online course and emphasizes that it must be completed in person.

HB 421 (Delegate Marcia Price) / SB 35 (Senator Scott Surovell): Firearms, Ammunition, etc.; Control by Localities by Governing Possession, etc., Within Locality.

- **Existing Law (through June 30):**
  - Section 15.2-915(A) provides that no locality shall adopt or enforce any ordinance, and no agent of such locality shall take any administrative action, governing the purchase, possession, transfer, ownership, carrying, storage, or transporting of firearms, ammunition, or components or combination thereof other than those expressly authorized by statute.

- **Impact of Legislation:**
  - Amends § 15.2-1425 by adding a new subsection E, which provides that, notwithstanding this section, a locality may adopt an ordinance that prohibits the possession, carrying, or transportation of any firearms, ammunition, or components or combination thereof (i) in any building, or part thereof, owned or used by the locality, or by any authority or local governmental entity created or controlled by the locality, for governmental purposes, (ii) in any public park owned or operated by the locality, or by any authority or local governmental entity created or controlled by the locality, (iii) in any recreation or community center facility operated by the locality, or by any authority or local governmental entity created or controlled by the locality, or (iv) in any public street, road, alley, or sidewalk or public right of way or any other place of whatever nature that is open to the public and is being used by or is adjacent to a permitted event or an event that would otherwise require a permit. In buildings that are not owned by a locality, or by any authority or local governmental entity created or controlled by the locality, such ordinance shall apply only to the part of the building that is being used for a governmental purpose and when such building, or part thereof, is being used for a governmental purpose. Any such ordinance may include security measures designed to reasonably prevent the unauthorized access of such places with any firearms, ammunition, or components or combination thereof, such as through the use of metal detectors and increased security personnel. Notice of any such ordinance must be posted at the entrance of any such places covered.

HB 600 (Delegate Patrick Hope) / SB 593 (Senator Emmett Hanger, Jr.): Family Day Homes, Licensed, etc.; Storage of Unloaded Firearms in a Locked Container, Cabinet, etc.

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:**
  - Creates a new section, § 63.2-1701.01, which requires that during hours of operation, all firearms in a licensed family day home, registered family day home, or family day home approved by a family day system shall be stored unloaded in a locked container, compartment, or cabinet, and that all ammunition be stored in a separate locked container, compartment, or cabinet. The key or combination to such locked containers, compartments, or cabinets shall be inaccessible to all children in the home.

HB 674 (Delegate Richard Sullivan) / SB 240 (Senator George Barker): Firearms; Removal From Persons Posing Substantial Risk of Injury to Himself, etc., Penalties.

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:**
  - Creates a new Chapter 9.2 within Title 19.2 (§ 19.2-152.13 et seq.) governing emergency substantial risk orders (§ 19.2-152.13) and substantial risk orders (§ 19.2-152.14). The bill creates a procedure by which any attorney for the Commonwealth or law-enforcement officer may apply to a general district court, circuit court, or juvenile and domestic relations district court judge or magistrate for an ex parte emergency substantial risk order to prohibit a person who poses a substantial risk of injury to himself or others in the near future by such person's acquisition of a firearm, from purchasing, possessing, or transporting a firearm. In determining whether probable cause exists for the issuance of an order, the judge or magistrate shall consider any relevant evidence, including any recent act of violence, force, or threat. No petition shall be filed unless an independent investigation has been conducted by law-enforcement that determines that grounds for the petition exist. The petition shall be made under oath and shall be supported by an affidavit. Upon service of a substantial risk order, the person who is subject to the order shall be given the opportunity to voluntarily relinquish any firearm. An emergency substantial risk order shall expire on the fourteenth day following issuance of the order.
  - The bill requires a court hearing in the circuit court for the jurisdiction where the order was issued within 14 days from issuance of an emergency substantial risk order to determine whether a substantial risk order should be issued. The attorney for the Commonwealth shall have the burden of proving all material facts by clear and convincing evidence. If the court finds by clear and convincing evidence that the person poses a substantial risk of personal injury to himself or others in the near future by such person's possession or acquisition of a firearm, the court shall issue a substantial risk order. Such order shall prohibit the person from purchasing, possessing, or transporting a firearm for the duration of the order. In determining whether clear and convincing evidence exists, the judge shall consider any relevant evidence including any recent act of violence, force, or threat by such person toward another person or himself. The order

may be issued for a specified period of time up to a maximum of 180 days. Seized firearms shall be retained by a law-enforcement agency for the duration of an emergency substantial risk order or a substantial risk order or, for a substantial risk order with court approval, may be transferred to a third party 21 years of age or older chosen by the person from whom they were seized. The bill allows the complainant of the original warrant to file a motion for a hearing to extend the substantial risk order prior to its expiration. The court may extend the substantial risk order for a period of no longer than 180 days. There is no limit to the number of extensions that may be requested or issued.

- Creates § 18.2-308.1:6, which makes it a Class 1 misdemeanor for any person who is subject to an emergency substantial risk order or a substantial risk order to purchase, possess, or transport any firearm while the order is in effect. It also makes it a Class 1 misdemeanor for any such person with a concealed handgun permit to carry a concealed firearm while the order is in effect, and such person must surrender the concealed handgun permit to the court entering the order.
- Amends § 18.2-308.2:1 to add that it is a Class 4 felony to sell, barter, give, or furnish a firearm to any person who is prohibited from possessing or transporting a firearm pursuant to the new § 18.2-308.2:1.
- Creates § 19.2-152.16, which makes it a Class 1 misdemeanor for any person to knowingly and willfully make a false statement to law-enforcement or the attorney for the Commonwealth who is in the course of conducting an investigation undertaken pursuant to this Chapter.
- Creates a Substantial Risk Order Registry to be kept and maintained by the Department of State Police, which shall be made available to criminal justice agencies, including local law-enforcement agencies, through the Virginia Criminal Information Network (VCIN).

HB 812 (Delegate Jeion Ward) / SB 69 (Senator Mamie Locke): Handguns; Limitation on Purchases, Penalty.

- **Existing Law (through June 30):**
  - Section 18.2-308.2:2 does not limit the number of handgun purchases.

- **Impact of Legislation:**

  Amends §18.2-308.2:2 to prohibit any person who is not a licensed firearms dealer from purchasing more than one handgun in a 30-day period. A violation of this prohibition is a Class 1 misdemeanor. The bill exempts from this provision (i) persons who have been issued a certificate by the Department of State Police under certain circumstances and with an enhanced background check, (ii) law-enforcement agencies and officers, (iii) state and local correctional facilities, (iv) licensed private security companies, (v) persons who hold a valid Virginia concealed handgun permit, (vi) persons whose handgun has been stolen or irretrievably lost or who are trading in a handgun, (vii) purchases of handguns in a private sale, and (viii) purchases of antique firearms.

HB 1004 (Delegate Michael Mullin) / SB 479 (Senator Janet Howell): Protective Orders; Possession of Firearms, Surrender or Transfer of Firearms, Penalty.

- **Existing Law (through June 30):**
  - Section 18.2-308.1:4 makes it a Class 1 misdemeanor for a person subject to a protective order to purchase or transport any firearm while the order is in effect. Any person with a concealed handgun permit shall be prohibited from carrying a concealed firearm, and shall surrender his permit to the court entering the order, for the duration of the protective order. The section also makes it a Class 6 felony for a person who is subject to a protective order entered pursuant to § 16.1-279.1 (protective order in cases of family abuse) to possess a firearm while the order is in effect.

- **Impact of Legislation:**
  - Amends § 18.2-308.1:4 to prohibit any person subject to a permanent protective order (protective order with a maximum duration of two years) from possessing a firearm while the order is in effect. A violation is a Class 6 felony.
  - For a period of 24 hours after being served with a protective order, the person may continue to possess a firearm for the purposes of selling or transferring it to law-enforcement or to any person not otherwise prohibited by law from possessing such firearm.
  - The court shall order a person subject to a permanent protective order to (i) within 24 hours, surrender any firearm to a designated local law-enforcement agency or sell or transfer the firearm to a dealer or to any person who is not otherwise prohibited by law from possessing such firearm and (ii) certify in writing that such person does not possess any firearms or that all firearms possessed by such person have been surrendered, sold, or transferred and file such certification with the clerk of the court that entered the order within 48 hours of being served with the protective order. The willful failure to certify in writing that all firearms possessed by such person have been surrendered, sold, or transferred or that such person does not possess any firearms shall constitute contempt of court.
  - Provides for procedures for designating a local law-enforcement agency to receive and store firearms and to return surrendered firearms.
  - Amends 18.2-308.2:1 to make it a Class 4 felony for any person to sell, barter, give or furnish a firearm to any person he knows is prohibited from possessing or transporting a firearm who is subject to a permanent protective order.

HB 1080 (Delegate Patrick Hope): Firearms and Other Weapons on School Property.

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:**
  - Adds a new section, § 22.1-280.2:4, which provides that no school board may authorize or designate any person to possess a firearm on school property other than those persons expressly authorized by statute.
  - The bill also amends § 18.2-308.1, to clarify that no exemption exists for a special conservator of the peace to possess a firearm or other weapon on school property.

SB 14 (Senator Richard Saslaw): Trigger Activators; Prohibition; Penalty

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:**

  - Adds § 18.2-308.5:1, which prohibits the manufacture, importation, sale or offer to sell, possession, transfer, or transportation of a trigger activator, defined in the bill as a device designed to allow a semi-automatic firearm to shoot more than one shot with a single pull of the trigger by harnessing the recoil energy of any semi-automatic firearm to which it is affixed so that the trigger resets and continues firing without additional physical manipulation of the trigger by the shooter. A violation is punishable as a Class 6 felony.

SB 64 (Senator Louise Lucas): Paramilitary Activities; Penalty

- **Existing Law (through June 30):**
  - Section 18.2-433.2 makes paramilitary activity a Class 5 felony. The crime includes assembling with one or more person for the purpose of training with, practicing with, or being instructed in the use of any firearm, explosive, or incendiary device, or technique capable of causing injury or death to persons, intended to employ such training for use in, or in furtherance of, a civil disorder.

- **Impact of Legislation:**
  - Amends § 18.2-433.2 to add that a person is guilty of unlawful paramilitary activity if such person brandishes a firearm or any air-operated or gas-operated weapon or any object similar in appearance while assembled with one or more persons for the purpose of and with the intent to intimidate any person or group of persons.

SB 71 (Senator Louise Lucas): Firearms; Possession on School Property

- **Existing Law (through June 30):**
  - Section 18.2-308.1 criminalizes the possession of a firearm, stun weapon, or other weapon upon the property of any public, private, or religious elementary, middle, or high school. Such possession of a weapon other than a firearm is a Class 1 misdemeanor. Such possession of a firearm is a Class 6 felony.

- **Impact of Legislation:**
  - Amends § 18.2-308.1 to add child day centers and public, private, or religious preschools to elementary, middle, and high school where possessing a firearm is prohibited. The provisions of the bill regarding child day centers and preschools only apply during the regular operating hours of such child day center or preschool and shall not apply to any person (i) whose residence is on the property of a child day center or a private or religious preschool and (ii) who possesses a firearm or other prohibited weapon while in his residence. The bill also provides that a licensed child day center or religious or private preschool may hire an armed security officer to provide security services.

SB 248 (Senator Barbara Favola): Virginia Gun Violence Intervention and Prevention Fund; Created

- **Existing Law:** Not applicable.

- **Impact of Legislation:**
  - Creates § 9.1-116.6, establishing the Virginia Gun Violence Intervention and Prevention Fund to be administered by the Department of Criminal Justice Services for the purpose of supporting violence intervention and prevention programs, including street outreach, hospital-based violence intervention, and group violence intervention programs.

SB 436 (Senator Scott Surovell): Virginia Voluntary Do Not Sell Firearms List; Established, Penalty

- **Existing Law (through June 30, 2021):** Not applicable.

- **Impact of Legislation:**
  - Creates within a new Chapter 12 of Title 52 (§§ 52-50, 52-51, and 52-52) the Virginia Voluntary Do Not Sell Firearms List that prohibits the possession, transportation, and sale of firearms to any person who voluntarily registers himself to be enrolled into the list. The list shall be maintained and updated by the Department of State Police.
  - Creates a new § 18.2-308.1:6 to make it a Class 3 misdemeanor for any person enrolled into the list to purchase, possess, or transport a firearm.
  - The bill disqualifies any person enrolled into the list from obtaining a concealed handgun permit and prohibits such person from being employed by a firearms dealer. The bill also makes it a Class 1 misdemeanor for any person who sells, barters, gives, or furnishes, or has in his possession or under his control with the intent of selling, bartering, giving, or furnishing, any firearm to any person he knows is enrolled into the list.

SB 543 (Senator John Edwards): Firearms shows; mandatory background check

- **Existing Law (through June 30):**
  - Section 54.1-4201.2 requires the Department of State Police to be available at every firearms show held in the Commonwealth to perform criminal history record information checks on private sales but does not require such checks to be performed unless requested by a party involved in the transaction.

- **Impact of Legislation:**
  - Amends § 54.1-4201.2 to require the Department of State Police to perform a criminal history record information check on the prospective purchaser or transferee prior to the completion of any firearms transaction at a firearms show held in the Commonwealth.

SB 684 (Senator T. Montgomery Mason): Firearms; mental health as disqualifier for possession, etc.

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:**
  - Amends §§ 18.2-308.1:3 and 37.2-821 in response to the holding in *Paugh v. Henrico Area Mental Health and Developmental Services*, Record No. 121562 (2013), in which the Supreme Court of Virginia held that on appeal by trial de novo in circuit court of an order of involuntary commitment, the proper remedy is dismissal of the Commonwealth's petition for involuntary commitment, thereby rendering the original commitment order a nullity. As such, because the original petition would in effect never have existed, forfeiture of the right to possess a firearm as required by § 18.2-308.1:3 upon involuntary commitment would no longer be in effect. § 18.2-308.1:3 requires that a person who has been involuntarily committed and seeks to have his firearm rights restored petition a district court for restoration of his firearm rights. The ruling in *Paugh*, by requiring dismissal of the original petition for commitment, removes that requirement even though on the date of the original commitment hearing the person did meet the criteria for commitment and was, in fact, involuntarily committed. The bill provides that, notwithstanding the outcome of any appeal (trial de novo on the petition for commitment) taken pursuant to § 37.2-821 or § 16.1-345.6, the appellant shall be required to seek restoration of his firearm rights. The bill also provides that, upon a finding by the circuit court that the appellant no longer meets the criteria for involuntary commitment or mandatory outpatient treatment, the court shall reverse the order of the district court but shall not dismiss the Commonwealth's petition. As a consequence of these changes, a person who is involuntarily committed would be required to petition for restoration of his firearm rights notwithstanding the reversal of the commitment order by a circuit court.

MENTAL HEALTH & MEDICAL

HB 259 (Delegate Marcus Simon) / SB 670 (Senator T. Montgomery Mason): Unrestorably Incompetent Defendant; Competency Report.

- **Existing Law (through June 30):**
  - Section 19.2-169.1, pertaining to the evaluation and determination of competency to stand trial, requires a defendant to undergo treatment to restore competency before the court can find him unrestorably incompetent to stand trial.

- **Impact of Legislation:**
  - Amends § 19.2-169.1 to provide that in cases where a defendant is likely to remain incompetent for the foreseeable future due to an ongoing and irreversible medical condition and prior medical or educational records are available to support the

diagnosis, a competency report may recommend that the court find the defendant unrestorably incompetent to stand trial and the court may proceed with the disposition of the case based on such recommendation.
    - Amends § 18.2-308.1:3 to add a person who was found incompetent to stand trial and likely to remain so for the foreseeable future and whose case was disposed of in accordance with § 19.2-169.3 to those persons for whom it is unlawful to purchase, possess, or transport a firearm.

HB 908 (Delegate Cliff Hayes): Naloxone; Possession and Administration, Employee or Person Acting on Behalf of a Public Place.

- **Existing Law (through June 30):**
    - Section 8.01-225 pertains to persons rendering emergency care and exemptions from liability.
    - Section 54.1-3408 (part of the Drug Control Act), governs the possession and administering by specified persons of certain drugs such as epinephrine, topical corticosteroids, topical lidocaine, oxygen, insulin, glucagon, nitrous oxide, and naloxone and other opioid antagonists.

- **Impact of Legislation:**
    - Amends § 8.01-225 to provide that a person who in good faith administers naloxone or other opioid antagonist used for overdose reversal to a person who is believed to be experiencing or about to experience a life threatening opioid overdose in accordance with § 54.1-3408(Z) shall not be liable for any civil damages for any personal injury that results from any act or omission in the administration of naloxone or other opioid antagonist used for overdose reversal, unless such act or omission was the result of gross negligence or willful and wanton misconduct.
    - Amends § 54.1-3408(X) to add to those permitted to possess and administer naloxone or other opioid antagonist, other than naloxone in an injectable formulation, an employee or other person acting on behalf of a public place. Such employees or other such persons may administer naloxone to a person who is believed to be experiencing or about to experience a life threatening opioid overdose if he has completed a training program on the administration of such naloxone and administers naloxone in accordance with protocols developed by the Board of Pharmacy in consultation with the Board of Medicine and the Department of Health. A "public place" is defined as any enclosed area that is used or held out for use by the public, whether owned or operated by a public or private interest.
    - Amends § 54.1-3408 to add a new subsection Z, to provide that a person who is not otherwise authorized to administer naloxone or other opioid antagonist used for overdose reversal may administer it to a person who is believed to be experiencing or about to experience a life threatening opioid overdose.

HB 1118 (Delegate Robert Bell) / SB 603 (Senator Emmett Hanger): Involuntary Admission Order; Transportation, Transfer to Local Law-enforcement.

- **Existing Law (through June 30):**
  - Section 16.1-340.2 pertains to the transportation of a minor in the temporary detention process, § 16.2-345 pertains to involuntary commitment criteria, § 37.2-810 pertains to the transportation of a person in the temporary detention process, and § 37.2-829 pertains to the transportation of a person in the civil admission process.

- **Impact of Legislation:**
  - Amends §§ 16.1-340.2, 16.1-345, and 37.2-810 to provide that if an alternative transportation provider providing transportation of a minor/person who is the subject of a TDO becomes unavailable to continue providing transportation of the minor/person at any time after taking custody of the minor/person, the primary law-enforcement agency for the jurisdiction in which the alternative transportation provider is located at the time he becomes unable to continue providing transportation shall take custody of the minor/person and shall transport the minor/person to the facility of temporary detention or proper facility.
  - The bill also further amends §§ 16.1-340.2 and 37.2-810 to add that the magistrate may change the transportation provider specified in a temporary detention order at any time prior to the initiation of transportation of a minor/person who is the subject of a temporary detention order. If the designated transportation provider is changed by the magistrate at any time after the TDO has been executed but prior to the initiation of transportation, the transportation provider having custody of the minor/person shall transfer custody of the minor to the transportation provider subsequently specified to provide transportation.
  - Amends § 37.2-829 to add that if an alternative transportation provider providing transportation of a person becomes unable to continue providing transportation of the person at any time after taking custody of the person, the primary law-enforcement agency for the jurisdiction in which the alternative transportation provider is located at the time he becomes unable to continue providing transportation shall take custody of the person and shall transport the person to the proper facility.

SB 667 (Senator Jennifer Boysko): Overdoses; Arrest and Prosecution When Experiencing or Reporting.

- **Existing Law (through June 30):**
  - Section 18.2-251.03 makes it an affirmative defense to prosecution of an individual for the unlawful purchase, possession, or consumption of alcohol, possession of a controlled substance, possession of marijuana, public intoxication, or possession of controlled paraphernalia if 1) such individual seeks medical attention for a) himself, if he is experiencing an overdose, or b) for another individual who is experiencing an overdose, by reporting such overdose, 2) such individual remains at the scene, 3) such individual identifies himself to the law-enforcement officer who responds to the report, and 4) the evidence for the prosecution of such an offense was obtained as a result of the individual seeking medical attention.

- **Impact of Legislation:**
  - Amends § 18.2-251.03 to provide that, rather than such reporting constituting an affirmative defense, no individual shall be subject to arrest or prosecution for such offenses and extends this protection to the individual if it is he who is experiencing an overdose and another individual seeks medical attention for him.
  - The provisions of this section do not apply when one seeks medical attention during the execution of a search warrant.
  - Provides that no law-enforcement officer acting in good faith shall be found liable for false arrest if it is later determined that the person arrested was immune from prosecution under this section.

SB 683 (Senator Montgomery Mason): Competency to Stand Trial; Outpatient Treatment May Occur.

- **Existing Law (through June 30):**
  - Section 19.2-169.1(D) provides that, upon completion of the evaluation, the evaluators shall submit a report to the court concerning (i) the defendant's capacity to understand the proceedings against him, (ii) his ability to assist his attorney, and (iii) his need for treatment in the event he is found incompetent but restorable, or incompetent for the foreseeable future. If a need for restoration treatment is identified, the report shall state whether inpatient or outpatient treatment is recommended.
  - Section § 19.2-169.2, pertaining to disposition when a defendant is found incompetent, provides that when there is a finding that the defendant, including a juvenile transferred, is incompetent, the court shall order that the defendant receive treatment to restore his competency on an outpatient basis or, if the court specifically finds that the defendant requires inpatient hospital treatment, at a hospital designated by the Commission of Behavioral Health and Developmental Services for treatment of persons under criminal charge.

- **Impact of Legislation: A**mends § 19.2-169.2 to clarify that if the court orders outpatient treatment, the outpatient treatment may occur in a local correctional facility or at a location determined by the appropriate community services board or behavioral health authority.

HB 818 (Senator Joseph Morrissey): Behavioral Health Docket; Established.

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:**
  - Creates the Behavioral Health Docket Act in § 18.2-154.3 to address co-occurring behavioral health issues such as mental illness and substance abuse. Behavioral health dockets are specialized criminal court dockets within the existing structure of the court system. Under the leadership of presiding judges, the dockets address offenders with mental health conditions and drug addictions that contribute to criminal behavior. The dockets employ evidence-based practices to diagnose behavioral health illness and provide treatment, enhance public safety, reduce

recidivism, ensure offender accountability, and promote offender rehabilitation in the community.

- The Supreme Court of Virginia shall provide administrative oversight of implementation of the Act, including oversight of the distribution of funds for dockets; technical assistance; training for judges; training to the providers of administrative, case management, and treatments services; and monitoring evaluations of the effectiveness and efficiency of the dockets.
- A state behavioral health docket advisory committee is established in the judicial branch.
- Each jurisdiction that establishes such a docket shall establish a local behavioral health docket advisory committee. Jurisdictions that establish separate adult and juvenile behavioral health dockets may establish an advisory committee for each such docket. Each local advisory committee shall ensure quality, efficiency, and fairness in the planning, implementation, and operation of the dockets. Among the required membership is included a representative of the Virginia Department of Corrections or the Department of Juvenile Justice, or both, from the local office that serves the jurisdiction.
- Each local advisory committee shall establish criteria for the eligibility and participation of offenders who have been determined to have problems with a drug addiction, mental illness, or related issues. The committee shall ensure the use of a comprehensive, valid, and reliable screening instrument to assess whether the individual is a candidate for the docket. Once an individual is identified as an appropriate candidate, a full diagnosis and treatment plan shall be prepared by qualified professionals.
- The establishment of such a docket shall not be construed as limiting the discretion of the attorney for the Commonwealth to prosecute any criminal case that he deems advisable to prosecute.
- Each local advisory committee shall establish policies and procedures for the operation of the docket.
- If there is a cause for concern that a defendant was experiencing a crisis related to a mental health or substance abuse disorder then his case will be referred, if such referral is appropriate, to a behavioral health docket to determine eligibility for participation. Participation by an offender is voluntary and made pursuant to a written agreement between the offender and the Commonwealth with the concurrence of the court.
- Each local advisory committee shall submit evaluative reports to the Office of the Executive Secretary. The Office of the Executive Secretary shall, with the assistance of the state behavioral health docket advisory committee, develop a statewide evaluation model and conduct ongoing evaluations of the effectiveness and efficiency of all behavioral health dockets. The Executive Secretary shall submit an annual report of these evaluations to the General Assembly by December 1 of each year.

HB 1452 (Delegate Patrick Hope) / SB 738 (Senator Creigh Deeds): Temporary detention for observation and treatment

- **Existing Law (through June 30):**
  - Section 37.2-808 pertains to the issuance and execution of an emergency custody order.
  - Section 37.2-1104 pertains to temporary detention in a hospital for testing, observation, and treatment.

- **Impact of Legislation:**
  - Amends §§ 37.2-808 and 37.2-1104 to clarify that "mental or physical condition" includes intoxication so that a person can be subject to a temporary detention order for observation and treatment related to intoxication where the person is located, upon a finding that (i) probable cause exists to believe the person is incapable of making or communicating an informed decision regarding treatment due to intoxication and (ii) the medical standard of care calls for observation, testing, or treatment within the next 24 hours to prevent injury, disability, death, or other harm to the individual resulting from such intoxication. The duration of such temporary detention is limited to 24 hours. A person subject to emergency custody due to a mental or physical condition shall remain in custody until (a) a temporary detention order is issued in accordance with § 37.2-809; (b) an order for temporary detention for observation, testing, or treatment is entered in accordance with §37.2-1104, ending law-enforcement custody; (c) the person is released; or (d) the emergency custody order expires.
  - The bill directs the Department of Behavioral Health and Developmental Services to convene a work group to develop standard policies and procedures regarding medical temporary detention orders.

SEX OFFENSES & SEX OFFENDERS

HB 253 (Delegate Vivian Watts): Sex Offender and Crimes Against Minors Registry Act; Offenses Requiring Registration.

- **Existing Law (through June 30):**
  - Section 9.1-102 enumerates the offenses requiring registration with the Sex Offender and Crimes Against Minors Registry.

- **Impact of Legislation:**
  - Adds to the enumerated offenses a third or subsequent conviction of § 18.2-386.2, relating to the unlawful dissemination or sale of images of another, if the offense was committed on or after July 1, 2020.

HB 298 (Delegate Kathy Tran) / SB 724 (Jennifer McClellan): Misdemeanor Sexual Offenses; Increases Statute of Limitations, Where the Victim is a Minor.

- **Existing Law (through June 30):**
  - Section 19.2-8, pertaining to limitation of prosecutions, provides that the prosecution for a misdemeanor violation of (i) carnal knowledge of a detainee by an employee of a bail bonding company, (ii) sexual battery, (iii) attempted sexual battery, (iv) infected sexual battery, (v) sexual abuse by a child age 13 or 14 by an adult, and (vi) tongue penetration by an adult of the mouth of a child under age 13 with lascivious intent, where the victim is a minor at the time of the offense, shall be commenced no later than one year after the victim reaches majority.

- **Impact of Legislation:**
  - Amends § 19.2-8 to provide that the above-noted imitation does not apply if the offender of the listed offenses was an adult and was more than three years older than the victim at the time of the offense, in which instance the prosecution shall be commenced no later than five years, instead of one year, after the victim reaches majority.

HB 752 (Delegate Jerrauld "Jay" Jones) / SB 312 (Senator William Stanley): Felons; Postrelease Incarceration of Offenders Sentenced for Certain Offenses.

- **Existing Law (through June 30):**
  - Section 18.2-10, pertaining to punishment for conviction of a felony, provides that for any felony offense committed on or after July 1, 2000, the court shall, except in cases in which the court orders a suspended term of confinement of at least six months, impose an additional term of not less than six months nor more than three years, which shall be suspended conditioned upon successful completion of a period of post-release supervision and compliance with such other terms as the court may require. The additional term may only be imposed when the sentence includes an active term of incarceration in a correctional facility. For a felony offense prohibiting proximity to children as described in § 18.2-370.2(A), the court is authorized to impose the punishment set forth in that section in addition to any other penalty provided by law.
  - Section 19.2-295.2 provides that when the court imposes a sentence upon a conviction for any felony on or after July 1, 2000, the court shall, in addition to any other punishment imposed if such other punishment includes an active term of incarceration in a state or local correctional facility, except in cases in which the court orders a suspended term of confinement of at least six months, impose a term of post-release supervision of not less than six months nor more than three years. The additional term shall be suspended and the defendant placed under post-release supervision upon release from the active term of incarceration. The period of supervision shall be established by the court however such period shall not be less than six months nor more than three years.
  - Section 19.2-295.2:1 provides that at the time the court imposes a sentence upon a conviction for a first violation of § 18.2-472.1(A) (providing false information to the Sex Offender and Crimes Against Minors Registry – other than a person

convicted of a sexually violent offense or murder), the court shall impose an added term of post-release supervision of six months. For a second or subsequent violation of § 18.2-472.1(A) or a first violation of § 18.2-472.1(B) (providing false information by a person convicted of a sexually violent offense or murder), the court shall impose an added term of post-release supervision by the DOC of two years. For a second or subsequent violation of § 18.2-472.1(B), the court shall impose an added term of post-release supervision by the DOC of five years.

- **Impact of Legislation:**
  - Amends § 18.2-10 to clarify that the additional term of not less than six month nor more than three years is an additional term of incarceration.
  - Amends § 19.2-295.2 to clarify that it is the period of post-release incarceration that is required to be suspended, not the period of post-release supervision.
  - Amends § 19.2-295.2:1 to replace the references to "post-release supervision" with "post-release incarceration" in order to clarify that offenders who fail to register or provide false information to the Registry are subject to added terms of post-release incarceration.

HB 806 (Delaney) / SB 949 (Lucas): Criminal Injuries Compensation Fund; Victims of Sexual Assault, Report

- **Existing Law (through June 30):**
  - Section 15.2-1627.4 requires the attorney for the Commonwealth in each political subdivision to coordinate the establishment of a multidisciplinary response to criminal sexual assault and to hold a meeting, at least annually, to discuss implementation of protocols and policies for sexual assault response teams consistent with those established by DCJS and to establish and review guidelines for the community's response. The statute specifies the persons who should be invited to participate.

- **Impact of Legislation:**
  - Amends § 15.2-1627.4 by adding to those persons invited to participate in the annual meeting of the group led by the attorney for the Commonwealth (i) local health department district directors; (ii) the administrator of each licensed hospital within the jurisdiction; (iii) the director of each health safety net clinic within the jurisdiction; and (iv) any other local health care providers, or their designees, and authorizes attorneys for the Commonwealth to conduct the sexual assault response team annual meetings using other methods, such as electronic communication, to encourage attendance. The bill also directs the Secretary of Health and Human Resources to establish a work group to evaluate the feasibility of moving responsibility for the SAFE program from the Virginia Workers' Compensation Commission to the Department of Medical Assistance Services and to provide recommendations related to (i) the feasibility and cost of expanding the type of services for which the Criminal Injuries Compensation Fund will make awards to include claims or portions of claims based on the claimant's actual expenses incurred for unreimbursed medical costs resulting from sexual abuse, including the cost of physical evidence recovery kit examinations conducted on victims of sexual assault, unreimbursed medical expenses or indebtedness reasonably incurred for medical expenses, expenses attributable to pregnancy resulting from such sexual

abuse, and any other reasonable and necessary expenses and indebtedness associated with or attributable to the sexual abuse upon which such claim is based and (ii) the feasibility of transferring responsibility from the Virginia Workers' Compensation Commission to the Department of Medical Assistance Services for the Sexual Assault Forensic Examination program (the SAFE program) and related claims for medical expenses related to sexual assault, strangulation, domestic and intimate partner violence, human trafficking, and adult and child abuse. If the work group finds that it is not feasible to move responsibility for the SAFE program and related claims from the Virginia Workers' Compensation Commission to the Department of Medical Assistance Services, the work group shall develop recommendations for creation of an efficient, seamless electronic medical claims processing system for hospitals and health care providers that coordinates payments from all available sources, suppresses explanations of benefits, and removes the patient from the medical billing and reimbursement process. The work group's report shall include specific legislative, regulatory, and budgetary changes necessary to implement the work group's recommendations. The work group shall report its findings and recommendations to the Governor and the Chairs of the House Committee on Appropriations, the Senate Committee on Finance and Appropriations, and the Joint Commission on Health Care by September 1, 2020.

HB 808 (Delegate Karrie Delaney): Survivors of Sexual Assault; Definitions, Every Hospital to Provide Treatment or Transfer Services.

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:**
  - Creates a new Article, set forth in § 32.1-162.15:2 et seq., titled "Services for Survivors of Sexual Assault."
  - Defines "sexual assault survivor transfer services" to mean an appropriate medical examination and stabilizing treatment needed prior to the transfer of a sexual assault survivor from a transfer hospital to a treatment hospital in accordance with a transfer plan.
  - Defines "sexual assault survivor treatment services" to mean a forensic medical examination and other health care services provided to a sexual assault survivor by a hospital or pediatric health care facility.
  - Requires every hospital to develop and implement a plan to provide either sexual assault survivor treatment services or sexual assault survivor transfer services. Sexual assault survivor treatment plans shall include provisions for the (i) delivery of services and (ii) the storage, retention, and dissemination of photographic evidence. Sexual assault survivor transfer service plans shall include (i) provisions for the delivery of services, and (ii) the written agreement of a treatment hospital to accept transfer of survivors of sexual assaults.
  - A treatment hospital or a transfer hospital may enter into an agreement for the transfer of pediatric survivors of sexual assault from the treatment or transfer hospital to an approved pediatric health care facility pursuant to a pediatric sexual assault survivor transfer plan. The plan shall include (i) provisions for the delivery

of services and (ii) the written agreement of an approved pediatric health care facility to accept transfer of survivors of sexual assault.

- Requires the adoption of regulations to establish standards for review and approval of sexual assault survivor treatment plans which will include provisions for services.
- Requires the adoption of regulations to establish standards for review and approval of sexual assault transfer plans and pediatric sexual assault survivor transfer plans, which shall include provisions for services.
- Provides that a pediatric health care facility may provide treatment services or transfer services to pediatric survivors of sexual assault in accordance with a pediatric sexual assault survivor treatment plan or pediatric sexual assault survivor transfer plan. No pediatric health care facility shall provide pediatric sexual assault treatment or transfer services to a pediatric survivor of sexual assault unless a pediatric sexual assault survivor treatment plan for the pediatric health care facility has been approved. A pediatric health care facility wishing to provide pediatric sexual assault survivor treatment services or transfer services shall submit a pediatric sexual assault survivor treatment plan or transfer plan. Regulations shall be adopted to establish standards for the review and approval of pediatric sexual assault survivor treatment plans, which shall include provisions for the delivery of treatment services.
- The Department of Health shall conduct inspections of hospitals licensed by the Department as may be necessary to ensure that treatment plans and transfer plans are implemented in accordance with the Article. The Department shall report to the Governor and the General Assembly the names of hospitals that have submitted plans or failed to submit plans.
- Photographic documentation collected by a treatment hospital or approved pediatric health care facility shall be maintained by the treatment hospital or approved pediatric health care facility as part of the patient's forensic medical examination.
- Every treatment hospital and approved pediatric health care facility that provides a forensic medical examination that includes completion of a physical evidence recovery kit to a survivor of sexual assault who has elected to report the assault to law-enforcement shall notify the law-enforcement agency within four hours of the forensic medical examination and arrange for collection of the physical evidence recovery kit within a reasonable timeframe.
- Creates a Task Force on Services for Survivors of Sexual Assault which shall: (i) develop model treatment and transfer plans and work with hospitals and pediatric health care facilities to facilitate the development of treatment and transfer plans, and (ii) develop model written transfer agreements and work with treatment hospitals, transfer hospitals, and pediatric health care facilities to facilitate the development of transfer agreements.

HB 1006 (Delegate Charniele Herring) / SB 706 (Senator Mark Obenshain): Human Trafficking; Assessments by Local Departments.

- **Existing Law (through June 30):**
  - Section 63.2-1506.1, pertaining to human trafficking assessments by local departments of social services, provides that if a report or complaint is based upon information and allegations that a child is a victim of sex trafficking or severe forms of trafficking, the local department of social services shall conduct a sex trafficking assessment, unless at any time during the sex trafficking assessment the local department determines that an investigation or family assessment is required pursuant to § 63.2-1505 or 63.2-1506. The sex trafficking assessment requires collection of information necessary to determine 1) the immediate safety needs of the child, 2) the protective and rehabilitative services needs of the child and the child's family that will deter abuse and neglect, and 3) future risk of harm of the child. The local department may 1) consult with the family to arrange for protective and rehabilitative services to be provided to the child or the child's family, 2) petition the court for services deemed necessary, or 3) commence an investigation or family assessment, if at any time during the sex trafficking assessment it determines that an investigation or family assessment is required pursuant to § 63.2-1505 or 63.2-1506. The local department shall notify the Child Protective Services Unit in writing whenever a sex trafficking assessment is conducted.

- **Impact of Legislation:**
  - Amends § 63.2-1506 to changes references to "sex trafficking assessment" to "human trafficking assessment" and to add that the local department may interview the alleged child victim or his siblings without the consent and outside the presence of such child's or siblings' parent, guardian, legal custodian, or other person standing in loco parentis, or school personnel.

HB 1330 (Delegate Kathy Byron): Child Pornography; Possession, Distribution, Production, Publication, Sale, Financing, etc.

- **Existing Law (through June 30):**
  - Section 18.2-374.1, pertaining to the production, publication, sale, and financing of child pornography, provides that venue may lie in the jurisdiction where the unlawful act occurs or where any sexually explicit visual material associated with a violation is produced, reproduced, found, stored, or possessed.
  - Section 18.2-374.1:1, pertaining to the possession, reproduction, distribution, solicitation, and facilitation of child pornography, provides that venue may lie in the jurisdiction where the unlawful act occurs or where any child pornography is produced, reproduced, found, stored, received, or possessed.

- **Impact of Legislation:**
  - Amends §§ 18.2-374.1 and 18.2-374.1:1 to add that venue may also lie where the alleged offender resides.

HB 1524 (Delegate Karrie Delaney): Prostitution; Touching the Unclothed Genitals or Anus of Another, Penalty.

- **Existing Law (through June 30):**
  - Section 18.2-346, pertaining to prostitution, provides that any person who, for money or its equivalent, commits or offers to commit adultery, fornication, or any act in violation of § 18.2-361, performs cunnilingus, fellatio, or anilingus upon or by another person, or engages in, and thereafter does any substantial act in furtherance thereof is guilty of prostitution, punishable as a Class 1 misdemeanor.
  - Section 18.2-348, pertaining to aiding prostitution, makes it a Class 1 misdemeanor for any person, with knowledge of or good reason to believe the immoral purpose of such a visit, to take or transport any person to a place used or to be used for the purpose of lewdness, assignation, or prostitution, or to procure or assist in procuring for the purpose of illicit sexual intercourse, anal intercourse, cunnilingus, fellatio, or anilingus or any act in violation of § 18.2-361, or to give any information or direction to any person with intent to enable such person to commit an act of prostitution.
  - Section 18.2-356, pertaining to receiving money for procuring a person, makes it a Class 4 felony to receive money or other valuable thing for (i) procuring for or placing in a house of prostitution or elsewhere any person for the purpose of causing such person to engage in unlawful sexual intercourse, anal intercourse, cunnilingus, fellatio, or anilingus, or any act in violation of § 18.2-361, or (ii) causing any person to engage in forced labor or services, concubinage, prostitution, or the manufacture of any obscene material or child pornography.

- **Impact of Legislation:**
  - Amends § 18.2-346 to add to the acts that may give rise to prostitution, touching the unclothed genitals or anus of another person with the intent to sexually arose or gratify or to allow another to touch his unclothed genitals or anus with the intent to sexually arose or gratify.
  - Amends § 18.2-348 to add among the planned acts that may give rise to aiding in prostitution, to touch the unclothed genitals or anus of another person with the intent to sexually arose or gratify.
  - Amends § 18.2-356 to add to the acts that may give rise to receiving money for procuring a person, touching of the unclothed genitals or anus of another with the intent to sexually arouse or gratify.

SB 42 (Senator Bill DeSteph): Aggravated Sexual Battery; Penalty.

- **Existing Law (through June 30):**
  - Section 18.2-67.3 provides that a person is guilty of sexual battery if he sexually abuses the victim and 1) the victim is less than 13, 2) the act is accomplished through the use of the victim's mental incapacity or physical helplessness, 3) the offense is committed by a parent, step-parent, grandparent, or step-grandparent and the victim is at least 13 but less than 18, or 4) the act is accomplished against the will of the victim by force, threat or intimidation and i) the victim is at least 13 but less than 15, ii) the accused causes serious bodily or mental injury to the victim, or the accused uses or threatens to

use a dangerous weapon. Aggravated sexual battery is a felony punishable by confinement for a term of not less than one nor more than 20 years and a fine of not more than $100,000.

- **Impact of Legislation:**
  - Amends § 18.2-67.3 to add that aggravated sexual battery is also committed when one sexually abuses the victim and the offense is not a recognized form of treatment in the profession, and is committed, without the express consent of the patient, by (i) a massage therapist, or a person purporting to be a massage therapist, during an actual or purported practice of massage therapy, (ii) a person practicing or purporting to practice the healing arts, during an actual of purported practice of the healing arts, or (iii) a physical therapist, or a person purporting to be a physical therapist, during an actual or purported practice of physical therapy.

SOCIAL SERVICES

HB 99 (Rasoul): Fair Housing Law; unlawful discriminatory housing practices, status as a victim of family abuse.

- **Existing Law (through June 30):**
  - Under existing law, applicants may not be subject to consideration as a tenant if low credit score is only barrier and the tenant is a victim of family abuse.

- **Impact of Legislation:**
  - Amends §§ 36-96.2, 55.1-1203, and 55.1-1209 to allow an applicant for a lease to recover actual damages, including all amounts paid to the landlord as an application fee, application deposit, or reimbursement for any of the landlord's out-of-pocket expenses that were charged to the applicant, along with attorney fees, if the landlord does not consider evidence of the applicant's status as a victim of family abuse to mitigate any adverse effect of the otherwise qualified applicant's low credit score.

HB 904 (Delegate Cliff Hayes, Jr.): Child Abuse and Neglect Reporting; Public Sports Programs.

- **Existing Law (through June 30):**
  - Section 63.2-1509 sets forth the persons who, in their professional capacity, have reason to suspect that a child is an abused or neglected child, shall report the matter immediately to the local department. The list currently includes any athletic coach, director or other person 18 years of age or older employed by or volunteering with a private sports organization or team.

- **Impact of Legislation:**
  - Amends § 63.2-1509 to add to the list of mandatory reporters of suspected child abuse and neglect athletic coaches, directors, and other persons 18 years of age or older that are employed by or volunteering with a *public* sports organization or team.

SB 156 (Senator Barbara Favola): Fostering Futures Program; Established.

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:**
  - Creates a new Article 2 within Chapter 9 of Title 63.2 (§§ 63.2-917 through 63.2-923) which establishes the Fostering Futures Program to provide services and support to individuals between the ages of 18 and 21 who were in foster care as a minor and are transitioning to full adulthood and self-sufficiency. Such services and support shall be designed to assist the program participant in transitioning to adulthood, becoming self-sufficient, and creating permanent, positive relationships. The program is voluntary and does not abrogate any rights that a person 18 years of age or older may have.
  - The program is available, on a voluntary basis, to an individual between 18 and 21 who 1) was (i) in the custody of a local department immediately prior to reaching 18, remained in foster care upon turning 18, and entered foster care pursuant to a court order, or (ii) in the custody of a local department immediately prior to commitment to DJJ and is transitioning from such commitment to self-sufficiency, and 2) is (i) completing secondary education or an equivalent credential, (ii) enrolled in an institution that provides postsecondary or vocational education, (iii) employed for at least 80 hours per month, (iv) participating in a program or activity designed to promote employment or remove barriers to employment, or (v) incapable of performing any of the activities described in (i) through (iv) due to a medical condition.
  - The continuing services and support include medical care, housing, and support in the form of maintenance payments, and case management services.
  - The case management services includes a case plan that describes (i) the participant's housing or living arrangement, (ii) the resources available to the participant in the transition from the program to independent adulthood, and (iii) the services and support to be provided to meet the participant's individual goals, provided such services and support are appropriate for and consented to by the participant. All case plans shall be developed in consultation with the participant and, at the participant's option, with up to two members of the case panning team who are chosen by the participant and are not a foster parent of or caseworker for the participant.
  - In order to participate in the program, the participant shall enter into a written voluntary continuing services and support agreement with the local department. The agreement shall include 1) a requirement that the participant maintain eligibility criteria for the duration of the agreement, 2) a disclosure to the participant that participation in the program is voluntary and that the participant may terminate the agreement at any time, 3) the specific conditions that may result in the termination of the agreement and the participant's early discharge from the program, and 4) the participant's right to appeal the denial or delay of a service required in the case plan. The local department shall assign a service worker for each participant in the program to provide case management services. Every service

worker shall have specialized training in providing transition services and support for participants and knowledge of resources available in the community.
    - A local department that enters into a voluntary continuing services and support agreement with a participant shall file a petition for review of the agreement and the participant's case plan in accordance with § 16.1-283.3 (described below). If no subsequent hearings are held by the court to review the agreement and case plan after the initial review hearing held pursuant to § 16.1-283.3, the local department shall conduct administrative reviews of the case for the remaining term of the agreement no less than every six months.
    - DSS shall establish criteria and promulgate regulations to implement the provisions of the program.
    - Creates a new § 16.1-283.3, which governs the court's review of the agreement and case plan for a program participant who enters into a voluntary continuing services and support agreement with a local department of social services pursuant to § 63.2-921.

HB 566 (Delegate Elizabeth Guzman) / SB 124 (Senator Mamie Locke): Food Stamps and TANF; Eligibility, Drug-Related Felonies.

- **Existing Law (through June 30):**
    - Section 63.2-505.2 provides that a person who is otherwise eligible may not be denied food stamp benefits based on a felony conviction of possession of a controlled substance in violation of § 18.2-250 (marijuana), provided that such person is complying with, or has already complied with, all obligations imposed by the criminal court, is actively engaged in or has completed substance abuse treatment program, participates in periodic drug screenings, and meets any other obligations as determined by the Department of Social Services.
    - There is no provision of eligibility for TANF benefits.

- **Impact of Legislation:**
    - Amends § 63.2-505.2 to provide that a person who is otherwise eligible to receive food stamp benefits shall not be denied food stamp benefits solely because he has been convicted of a drug-related felony.
    - Creates a new § 63.2-607.1 that provides that a person who is otherwise eligible to receive TANF benefits shall not be denied such assistance solely because he has been convicted of a drug-related felony.

HB 1301 (Delegate Chris Hurst): Office of the Children's Ombudsman Established

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:**
    - Adds Chapter 4.4 in Title 2.2 (§§ 2.2-438 through 2.2-449), which establishes the Office of the Children's Ombudsman as a means of effecting changes in policy, procedure, and legislation; educating the public; investigating and reviewing actions of the State Department of Social Services, local departments of social services, child-placing agencies, or child-caring institutions; and monitoring and ensuring compliance

with relevant statutes, rules, and policies pertaining to children's protective services and the placement, supervision, treatment, and improvement of delivery of care to children in foster care and adoptive homes. The Office of the Children's Ombudsman is headed by the Children's Ombudsman, who is appointed for a term of four years by the Governor and subject to confirmation by the General Assembly.

STATE & LOCAL ADMINISTRATION OF GOVERNMENT

HB 395 (Delegate Jeion Ward) / SB 7 (Senator Richard Saslaw): Minimum Wage; Increases to $9.50 Per Hour, etc.

- **Existing Law (through December 31, 2020):**
  - Section 40.1-28.10 provides that every employer shall pay to each of its employees wages at a rate not less than the federal minimum wage.

- **Impact of Legislation:**
  - Amends § 40.1-28.10 to require every employer to pay each of its employees wages at a rate not less than the greater of:
    - From May 1, 2021, to January 1, 2022, $9.50 per hour or the federal minimum wage.
    - From January 1, 2022, until January 1, 2023, $11.00 per hour or the federal minimum wage.
    - From January 1, 2023, until January 1, 2025, $12.00 per hour or the federal minimum wage.
    - From January 1, 2025, until January 1, 2026, $13.50 per hour or the federal minimum wage.
    - From January 1, 2026, until January 1, 2027, $15.00 per hour or the federal minimum wage.
    - From and after January 1, 2027, the adjusted state hourly minimum wage or the federal minimum wage.
  - Amends § 40.1-28.10 to provide that by October 1, 2026, and annually thereafter, the Commissioner shall establish the adjusted state hourly minimum wage that shall be in effect during the 12 month period commencing on the following January 1. The Commissioner shall set the adjusted state hourly minimum wage at the sum of (i) the amount of the state hourly minimum wage that is in effect on the date such adjustment is made and (ii) a percentage of the amount described in clause (i) that is equal to the percentage by which the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or a successor index as calculated by the U.S. Department of Labor, has increased during the most recent calendar year for which such information is available. The amount of each annual adjustment shall not be less than zero.
  - Beginning January 1, 2022, the Virginia Department of Housing and Community Development, the Virginia Economic Development Partnership Authority, and the Virginia Employment Commission shall conduct a joint review of the feasibility

and potential impact of instituting a regional minimum wage in the Commonwealth. These agencies shall also provide an assessment of options for utilizing a minimum wage in the Commonwealth, the feasibility of a regional minimum wage, and the economic benefits or impacts of utilizing a minimum wage. These agencies shall also assess the effects of the minimum wage increases scheduled and shall submit to the General Assembly and the Governor a report of their findings and recommendations.

- The increases scheduled for January 1, 2025, and January 1, 2026, shall not become effective unless reenacted by the General Assembly prior to July 1, 2024. If the General Assembly does not reenact those scheduled increases, then (i) the Commissioner of Labor and Industry shall establish the adjusted state hourly minimum wage as specified above by October 1, 2024, and annually thereafter, and (ii) from and after January 1, 2025, every employer shall pay to each of his employees wages at a rate not less than the greater of the adjusted state hourly minimum wage or the federal minimum wage.
- The bill also makes amendments to § 40.1-28.9 (definitions). The definition of employee (for whom the law applies) is amended to include any person employed in domestic service or in or about a private home or in an eleemosynary institution primarily supported by public funds, any person who normally works in and is paid based on the amount of work done, any person whose earning capacity is impaired by physical deficiency, mental illness, or intellectual disability, any person employed by an employer who does not have four or more persons employed at any one time provided that husbands, wives, sons, daughters and parents of the employer shall not be counted in determining the number of persons employed, and any person who is less than 18 and who is under the jurisdiction and direction of a juvenile and domestic relations district court. The definition of employee is also amended to not include, among existing limited workers, persons participating in the U.S. Department of State's au pair program, persons employed as temporary foreign workers, and persons employed by certain amusement or recreational establishments, organized camps, or religious or nonprofit educational conference centers.

HB 719 (Delegate David Reed): Administration of Government; State Publications to be Made Available in Electronic Format.

- **Existing Law (through June 30):**
  - Section 2.2-608 provides that agencies, institutions, collegial bodies, and other governmental bodies that are required to report annually or biennially to the Governor and General Assembly shall post such reports on the entity's website on or before October 1 of each year.

- **Impact of Legislation:**
  - Amends § 2.2-608 to provide that any governmental entity outside of the legislative branch required to submit a report to (i) the General Assembly or any committee, subcommittee, commission, agency, or other body within the legislative branch or (ii) the chairman or agency head of any such entity shall make such reports

available as read-only and text-searchable PDF files or some other widely used and accessible read-only and text-searchable electronic format.
    - Creates a new § 2.2-608.1 that provides that publications of any agency, institution, collegial body, or other governmental entity shall be available as read-only and text-searchable PDF files or some other widely used and accessible read-only and text-searchable electronic document format. All requests for such publications shall be made electronically.

HB 757 (Delegate Lashrecse Aird): Public Employment; Limitations on Inquiries by State Agencies and Localities Regarding Arrests.

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:**
    - Creates a new § 2.2-2812.1 to prohibit state agencies and localities from including on any employment application a question inquiring whether the prospective employee has ever been arrested for, charged with, or convicted of any crime. This prohibition does not apply to applications for employment with law-enforcement agencies or positions related to law-enforcement agencies.
    - Nothing in the new section prevents a state agency from considering information received during or after a staff interview pertaining to a prospective employee having been arrested for, charged with, or convicted of any crime.
    - The prohibition in the new section does not apply to positions designated as sensitive pursuant to § 2.2-1201.1, to law-enforcement agency positions or positions related to law-enforcement agencies, or to state agencies that are expressly permitted to inquire into an individual's criminal arrests or charges for employment purposes pursuant to any provision of federal or state law.
    - Also creates a new § 15.2-1503.3 to do the same with regard to localities. For localities, the prohibition also does not apply to positions for employment by the local school board.

HB 1049 (Delegate Mark Levine): Prohibited Discrimination; Sexual Orientation and Gender Identity.

- **Existing Law (through June 30):**
    - Current law only prohibits discrimination on the basis of race, religion, color, sex, and national origin. For housing practices discrimination also includes elderliness and familial status.

- **Impact of Legislation:**
    - Adds §§ 2.2-2901.1, 15.2-1500.1, and 22.1-295.2 to the *Code of Virginia* to prohibit discrimination in employment, public accommodation, public contracting, apprenticeship programs, housing, banking, and insurance on the basis of sexual orientation or gender identity. The bills also adds discrimination based on sexual orientation or gender identity to the list of unlawful discriminatory housing practices. The bill contains technical amendments.

HB 1250 (Delegate Luke Torian): Community Policing Act; Data Collection and Reporting Requirements.

- **Existing Law (through June 30):** Not applicable.

- **Impact of Legislation:**
  - Creates The Virginia Community Policing Report in Article 14 of Chapter 1 of Title 9.1 which prohibits law-enforcement officers and State Police officers from engaging in bias-based profiling, defined in the bill, in the performance of their official duties. The bill directs the Department of State Police (the Department) to create the Community Policing Reporting Database into which sheriffs, police forces, and State Police officers report certain data pertaining to motor vehicle or investigatory stops. The Department is directed to provide access to the database to the Department of Criminal Justice Services (DCJS) for the purpose of analyzing motor vehicle and investigatory stops and records of complaints alleging the use of excessive force. The data analysis shall be used to determine the existence and prevalence of the practice of bias-based profiling and the prevalence of complaints alleging the use of excessive force. The bill requires that each time a local law-enforcement officer or State Police officer stops a driver of a motor vehicle, the officer shall collect the following data based on the officer's observation or information provided to the officer by the driver: (i) the race, ethnicity, age, and gender of the person stopped; (ii) the reason for the stop; (iii) the location of the stop; (iv) whether a warning, written citation, or summons was issued or whether any persons were arrested; (v) if a warning, written citation, or summons was issued or an arrest was made, the warning provided, violation charged, or crime charged; and (vi) whether the vehicle or any person was searched. The bill requires each state and local law-enforcement agency to also collect and report to the State Police the number of complaints the agency receives alleging the use of excessive force.
  - The bill also requires the Director of DCJS to annually report the findings and recommendations resulting from the collection, analysis, and interpretation of the data from the Database to the Governor, the General Assembly, and the Attorney General beginning July 1, 2021. The report shall include information regarding any state or local law-enforcement agency that has failed or refused to report the required data. A copy of the report shall be provided to each attorney for the Commonwealth of the county or city in which a reporting law-enforcement agency is located.

HB 1418 (Delegate Vivian Watts): Virginia Human Rights Act; Workplace Harassment; Civil Actions by Private Parties.

- **Existing Law (through June 30):**
  - Does not clearly define harassment or civil actions.

- **Impact of Legislation:**
  - Creates in Chapter 39 of Title 2.2 §§ 2.2-3904, 2.2-3905, and 2.2-3906 a cause of action against any employer employing more than five employees who discharges or engages in an unlawful discriminatory act against any employee on the basis of race; color; religion; national origin; sex; sexual orientation; gender identity; pregnancy; childbirth

or related medical conditions, including lactation; marital status; status as a veteran; or age if the employee is 40 years of age or older. The bill permits a court, in cases where the employee prevails, to award compensatory or punitive damages and reasonable attorney fees and costs. The bill provides rules for determining whether conduct constitutes workplace harassment, defined in the bill, and lays out a number of factors to consider in determining whether conduct constitutes workplace harassment.

HB 1514 (Delegate Delores McQuinn / SB 50 (Senator Lionell Spruill): Virginia Human Rights Act; Racial Discrimination; Hair

- **Existing Law (through June 30):**
  - Section 2.2-3901 provides that conduct that violates any Virginia or federal statute or regulation governing discrimination on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability shall be an unlawful discriminatory practice for the purposes of the Human Rights Act.
- **Impact of Legislation:**
  - Amends § 2.2-3901 to include that the terms "because of race" and "on the basis of race," and terms of similar import, when used in reference to discrimination in the Code of Virginia and acts of the General Assembly, include because of or on the basis of traits historically associated with race, including hair texture, hair type, and protective hairstyles such as braids, locks, and twists.

SB 138 (Senator Richard Stuart): Virginia Freedom of Information Act (FOIA); FOIA Officers, Training and Reporting Requirements

- **Existing Law (through June 30):**
  - Section 2.2-3704.2 requires all state and local public bodies to designate and publicly identify one or more FOIA officers whose responsibility it is to serve as a point of contact for members of the public in requesting public records and to coordinate the public bodies' compliance with FOIA. The FOIA officer must be trained at least annually by legal counsel for the public body or the Virginia FOIA Council. Contact information for the FOIA officer is required to be submitted by July 1 of each year.

- **Impact of Legislation:**
  - Amends § 2.2-3704.2 by adding regional public bodies to the types of public bodies that must designate a FOIA officer. The bill also changes the frequency for required FOIA officer training to once during each consecutive period of two calendar years and provides that the name and contact information of a FOIA officer needs to be submitted by July 1 of the initial year of training.

SB 153 (Senator Richard Stuart): Virginia Freedom of Information Act; Cost Estimates, Response Time

- **Existing Law (through June 30):**
  - Section 2.2-3704 pertains to the procedure for requesting records and charges.

- **Impact of Legislation:**
  - Amends § 2.2-3704 to provide that the period within which the public body shall respond to a FOIA request shall be tolled for the amount of time that elapses between notice of the cost estimate and the response of the requester. If the public body receives no response from the requester within 30 days of sending the cost estimate, the request shall be deemed withdrawn.
  - The bill also clarifies that in any case where the public body determines in advance that charges for producing the requested records are likely to exceed $200, the public body may, before continuing to process the request, require the requester to "pay" (rather than the current "agree to pay") a deposit not to exceed the amount of the advance determination.