CODE OF VIRGINIA

Title 18.2

Crimes and Offenses Generally

Title 18.2 - CRIMES AND OFFENSES GENERALLY

Chapter 1 - IN GENERAL

Article 1 - TRANSITION PROVISIONS

§ 18.2-1. Repealing clause

All acts and parts of acts, all sections of this Code, and all provisions of municipal charters, inconsistent with the provisions of this title, are, except as herein otherwise provided, repealed to the extent of such inconsistency.

1975, cc. 14, 15.

§ 18.2-2. Effect of repeal of Title 18.1 and enactment of this title

The repeal of Title 18.1, effective as of October 1, 1975, shall not affect any act or offense done or committed, or any penalty or forfeiture incurred, or any right established, accrued or accruing on or before such date, or any prosecution, suit or action pending on that day. Except as herein otherwise provided, neither the repeal of Title 18.1 nor the enactment of this title shall apply to offenses committed prior to October 1, 1975, and prosecutions for such offenses shall be governed by the prior law, which is continued in effect for that purpose. For the purposes of this section, an offense was committed prior to October 1, 1975, if any of the essential elements of the offense occurred prior thereto.

1975, cc. 14, 15.

§ 18.2-3. Certain notices, recognizances and processes validated

Any notice given, recognizance taken, or process or writ issued before October 1, 1975, shall be valid although given, taken or to be returned to a day after such date, in like manner as if this title had been effective before the same was given, taken or issued.

1975, cc. 14, 15.

§ 18.2-4. References to former sections, articles and chapters of Title 18.1 and others

Whenever in this title any of the conditions, requirements, provisions or contents of any section, article or chapter of Title 18.1 or any other title of this Code as such titles existed prior to October 1, 1975, are transferred in the same or in modified form to a new section, article or chapter of this title or any other title of this Code and whenever any such former section, article or chapter is given a new number in this or any other title, all references to any such former section, article or chapter of Title 18.1 or such other title appearing elsewhere in this Code than in this title shall be construed to apply to the new or renumbered section, article or chapter containing such conditions, requirements, provisions or contents or portions thereof.

1975, cc. 14, 15.

Article 2 - CONSTRUCTION AND DEFINITIONS

§ 18.2-5. Repealed

Repealed by Acts 2005, c. 839, cl. 10, effective October 1, 2005.

§ 18.2-6. Meaning of certain terms

As used in this title:

The word "court," unless otherwise clearly indicated by the context in which it appears, shall mean and include any court vested with appropriate jurisdiction under the Constitution and laws of this Commonwealth.

The word "judge," unless otherwise clearly indicated by the context in which it appears, shall mean and include any judge, associate judge or substitute judge, or police justice, of any court.

The words "motor vehicle," "semitrailer," "trailer" and "vehicle" shall have the respective meanings assigned to them by § 46.2-100.

Code 1950, § 18.1-5; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-7. Criminal act not to merge civil remedy

The commission of a crime shall not stay or merge any civil remedy.

Code 1950, § 18.1-7; 1960, c. 358; 1975, cc. 14, 15.

Article 3 - CLASSIFICATION OF CRIMINAL OFFENSES AND PUNISHMENT THEREFOR

§ 18.2-8. Felonies, misdemeanors and traffic infractions defined

Offenses are either felonies or misdemeanors. Such offenses as are punishable with death or confinement in a state correctional facility are felonies; all other offenses are misdemeanors. Traffic infractions are violations of public order as defined in § 46.2-100 and not deemed to be criminal in nature.

Code 1950, § 18.1-6; 1960, c. 358; 1975, cc. 14, 15; 1977, c. 585.

§ 18.2-9. Classification of criminal offenses

(1) Felonies are classified, for the purposes of punishment and sentencing, into six classes:

(a) Class 1 felony

(b) Class 2 felony

(c) Class 3 felony

(d) Class 4 felony

(e) Class 5 felony

(f) Class 6 felony.

(2) Misdemeanors are classified, for the purposes of punishment and sentencing, into four classes:

(a) Class 1 misdemeanor

(b) Class 2 misdemeanor

(c) Class 3 misdemeanor

(d) Class 4 misdemeanor.

1975, cc. 14, 15.

§ 18.2-10. Punishment for conviction of felony; penalty

The authorized punishments for conviction of a felony are:

(a) For Class 1 felonies, death, if the person so convicted was 18 years of age or older at the time of the offense and is not determined to be mentally retarded pursuant to § 19.2-264.3:1.1, or imprisonment for life and, subject to subdivision (g), a fine of not more than $100,000. If the person was under 18 years of age at the time of the offense or is determined to be mentally retarded pursuant to § 19.2-264.3:1.1, the punishment shall be imprisonment for life and, subject to subdivision (g), a fine of not more than $100,000.

(b) For Class 2 felonies, imprisonment for life or for any term not less than 20 years and, subject to subdivision (g), a fine of not more than $100,000.

(c) For Class 3 felonies, a term of imprisonment of not less than five years nor more than 20 years and, subject to subdivision (g), a fine of not more than $100,000.

(d) For Class 4 felonies, a term of imprisonment of not less than two years nor more than 10 years and, subject to subdivision (g), a fine of not more than $100,000.

(e) For Class 5 felonies, a term of imprisonment of not less than one year nor more than 10 years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than $2,500, either or both.

(f) For Class 6 felonies, a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than $2,500, either or both.

(g) Except as specifically authorized in subdivision (e) or (f), or in Class 1 felonies for which a sentence of death is imposed, the court shall impose either a sentence of imprisonment together with a fine, or imprisonment only. However, if the defendant is not a natural person, the court shall impose only a fine.

For any felony offense committed (i) on or after January 1, 1995, the court may, and (ii) on or after July 1, 2000, 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 pursuant to § 19.2-295.2 and compliance with such other terms as the

sentencing court may require. However, such 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 subsection A of § 18.2-370.2, the sentencing court is authorized to impose the punishment set forth in that section in addition to any other penalty provided by law.

1975, cc. 14, 15; 1977, c. 492; 1990, c. 788; 1991, c. 7; 1994, 2nd Sp. Sess., cc. 1, 2; 1995, c. 427; 2000, cc. 361, 767, 770; 2003, cc. 1031, 1040; 2006, cc. 36, 733; 2008, c. 579.

§ 18.2-11. Punishment for conviction of misdemeanor

The authorized punishments for conviction of a misdemeanor are:

(a) For Class 1 misdemeanors, confinement in jail for not more than twelve months and a fine of not more than $2,500, either or both.

(b) For Class 2 misdemeanors, confinement in jail for not more than six months and a fine of not more than $1,000, either or both.

(c) For Class 3 misdemeanors, a fine of not more than $500.

(d) For Class 4 misdemeanors, a fine of not more than $250.

For a misdemeanor offense prohibiting proximity to children as described in subsection A of § 18.2-370.2, the sentencing court is authorized to impose the punishment set forth in subsection B of that section in addition to any other penalty provided by law.

1975, cc. 14, 15; 1990, c. 788; 2000, c. 770.

§ 18.2-12. Same; where no punishment or maximum punishment prescribed

A misdemeanor for which no punishment or no maximum punishment is prescribed by statute shall be punishable as a Class 1 misdemeanor.

Code 1950, § 18.1-9; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-12.1. Mandatory minimum punishment; definition

"Mandatory minimum" wherever it appears in this Code means, for purposes of imposing punishment upon a person convicted of a crime, that the court shall impose the entire term of confinement, the full amount of the fine and the complete requirement of community service prescribed by law. The court shall not suspend in full or in part any punishment described as mandatory minimum punishment.

2004, c. 461.

§ 18.2-13. Same; by reference

Where a statute in this Code prescribes punishment by stating that the offense is a misdemeanor, or that it is punishable as provided for in § 18.2-12, the offense shall be deemed to be a Class 1 misdemeanor.

1975, cc. 14, 15.

§ 18.2-14. How unclassified offenses punished
Offenses defined in Title 18.2 and in other titles in the Code, for which punishment is prescribed without specification as to the class of the offense, shall be punished according to the punishment prescribed in the section or sections thus defining the offense.

1975, cc. 14, 15.

§ 18.2-15. Place of punishment
Imprisonment for conviction of a felony shall be by confinement in a state correctional facility, unless in Class 5 and Class 6 felonies the jury or court trying the case without a jury fixes the punishment at confinement in jail. Imprisonment for conviction of a misdemeanor shall be by confinement in jail.

1975, cc. 14, 15.

§ 18.2-16. How common-law offenses punished
A common-law offense, for which punishment is prescribed by statute, shall be punished only in the mode so prescribed.

Code 1950, § 18.1-8; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-17. When capital punishment inflicted
No crime shall be punished with death unless it be authorized by statute.

Code 1950, § 18.1-10; 1960, c. 358; 1975, cc. 14, 15.

Chapter 2 - PRINCIPALS AND ACCESSORIES

§ 18.2-18. How principals in second degree and accessories before the fact punished
In the case of every felony, every principal in the second degree and every accessory before the fact may be indicted, tried, convicted and punished in all respects as if a principal in the first degree; provided, however, that except in the case of a killing for hire under the provisions of subdivision 2 of § 18.2-31 or a killing pursuant to the direction or order of one who is engaged in a continuing criminal enterprise under the provisions of subdivision 10 of § 18.2-31 or a killing pursuant to the direction or order of one who is engaged in the commission of or attempted commission of an act of terrorism under the provisions of subdivision 13 of § 18.2-31, an accessory before the fact or principal in the second degree to a capital murder shall be indicted, tried, convicted and punished as though the offense were murder in the first degree.

Code 1950, § 18.1-11; 1960, c. 358; 1975, cc. 14, 15; 1977, c. 478; 1997, c. 313; 2002, cc. 588, 623.

§ 18.2-19. How accessories after the fact punished; certain exceptions
Every accessory after the fact is guilty of (i) a Class 6 felony in the case of a homicide offense that is punishable by death or as a Class 2 felony or (ii) a Class 1 misdemeanor in the case of any other felony. However, no person in the relation of husband or wife, parent or grandparent, child or

grandchild, brother or sister, by consanguinity or affinity, or servant to the offender, who, after the commission of a felony, shall aid or assist a principal felon or accessory before the fact to avoid or escape from prosecution or punishment, shall be deemed an accessory after the fact.

Code 1950, §§ 18.1-11, 18.1-12; 1960, c. 358; 1975, cc. 14, 15; 2014, c. 668.

§ 18.2-20. Reserved

Reserved.

§ 18.2-21. When and where accessories tried; how indicted

An accessory, either before or after the fact, may, whether the principal felon be convicted or not, or be amenable to justice or not, be indicted, tried, convicted and punished in the county or corporation in which he became accessory, or in which the principal felon might be indicted. Any such accessory before the fact may be indicted either with such principal or separately.

Code 1950, § 18.1-13; 1960, c. 358; 1975, cc. 14, 15.

Chapter 3 - INCHOATE OFFENSES

Article 1 - CONSPIRACIES

§ 18.2-22. Conspiracy to commit felony

(a) If any person shall conspire, confederate or combine with another, either within or without this Commonwealth, to commit a felony within this Commonwealth, or if he shall so conspire, confederate or combine with another within this Commonwealth to commit a felony either within or without this Commonwealth, he shall be guilty of a felony which shall be punishable as follows:

(1) Every person who so conspires to commit an offense which is punishable by death shall be guilty of a Class 3 felony;

(2) Every person who so conspires to commit an offense which is a noncapital felony shall be guilty of a Class 5 felony; and

(3) Every person who so conspires to commit an offense the maximum punishment for which is confinement in a state correctional facility for a period of less than five years shall be confined in a state correctional facility for a period of one year, or, in the discretion of the jury or the court trying the case without a jury, may be confined in jail not exceeding twelve months and fined not exceeding $500, either or both.

(b) However, in no event shall the punishment for a conspiracy to commit an offense exceed the maximum punishment for the commission of the offense itself.

(c) Jurisdiction for the trial of any person accused of a conspiracy under this section shall be in the county or city wherein any part of such conspiracy is planned or in the county or city wherein any act is done toward the consummation of such plan or conspiracy.

(d) The penalty provisions of this section shall not apply to any person who conspires to commit any offense defined in Chapter 34 of Title 54.1 or of Article 1 (§ 18.2-247 et seq.), Chapter 7 of this title. The penalty for any such violation shall be as provided in § 18.2-256.

Code 1950, § 18.1-15.3; 1972, c. 484; 1973, c. 399; 1975, cc. 14, 15; 1983, c. 19.

§ 18.2-23. Conspiring to trespass or commit larceny

A. If any person shall conspire, confederate or combine with another or others in the Commonwealth to go upon or remain upon the lands, buildings or premises of another, or any part, portion or area thereof, having knowledge that any of them have been forbidden, either orally or in writing, to do so by the owner, lessee, custodian or other person lawfully in charge thereof, or having knowledge that any of them have been forbidden to do so by a sign or signs posted on such lands, buildings, premises or part, portion or area thereof at a place or places where it or they may reasonably be seen, he shall be deemed guilty of a Class 3 misdemeanor.

B. If any person shall conspire, confederate or combine with another or others in the Commonwealth to commit larceny or counsel, assist, aid or abet another in the performance of a larceny, where the aggregate value of the goods or merchandise involved is more than $200, he is guilty of a felony punishable by confinement in a state correctional facility for not less than one year nor more than 20 years. The willful concealment of goods or merchandise of any store or other mercantile establishment, while still on the premises thereof, shall be prima facie evidence of an intent to convert and defraud the owner thereof out of the value of the goods or merchandise. A violation of this subsection constitutes a separate and distinct felony.

C. Jurisdiction for the trial of any person charged under this section shall be in the county or city wherein any part of such conspiracy is planned, or in the county or city wherein any act is done toward the consummation of such plan or conspiracy.

Code 1950, § 18.1-15.1; 1960, cc. 99, 358; 1975, cc. 14, 15; 2003, c. 831.

§ 18.2-23.1. Completed substantive offense bars conviction for conspiracy

Notwithstanding any other provision of this article or of § 18.2-256, in any case where a defendant has been tried and convicted of an act he has also conspired to commit, such defendant shall be subject to conviction only for the completed substantive offense and not thereafter be convicted for the underlying conspiracy.

1985, c. 376.

§ 18.2-24. Reserved

Reserved.

Article 2 - ATTEMPTS

§ 18.2-25. Attempts to commit capital offenses; how punished

If any person attempts to commit an offense which is punishable with death, he shall be guilty of a Class 2 felony.

Code 1950, § 18.1-16; 1960, c. 358; 1975, cc. 14, 15; 1985, c. 280.

§ 18.2-26. Attempts to commit noncapital felonies; how punished

Every person who attempts to commit an offense which is a noncapital felony shall be punished as follows:

(1) If the felony attempted is punishable by a maximum punishment of life imprisonment or a term of years in excess of twenty years, an attempt thereat shall be punishable as a Class 4 felony.

(2) If the felony attempted is punishable by a maximum punishment of twenty years' imprisonment, an attempt thereat shall be punishable as a Class 5 felony.

(3) If the felony attempted is punishable by a maximum punishment of less than twenty years' imprisonment, an attempt thereat shall be punishable as a Class 6 felony.

Code 1950, §§ 18.1-17, 18.1-18; 1960, c. 358; 1975, cc. 14, 15; 1994, c. 639.

§ 18.2-27. Attempts to commit misdemeanors; how punished

Every person who attempts to commit an offense which is a misdemeanor shall be punishable by the same punishment prescribed for the offense the commission of which was the object of the attempt.

Code 1950, § 18.1-19; 1960, c. 358; 1972, c. 52; 1975, cc. 14, 15.

§ 18.2-28. Maximum punishment for attempts

Any provision in this article notwithstanding, in no event shall the punishment for an attempt to commit an offense exceed the maximum punishment had the offense been committed.

Code 1950, § 18.1-20; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-29. Criminal solicitation; penalty

Any person who commands, entreats, or otherwise attempts to persuade another person to commit a felony other than murder, shall be guilty of a Class 6 felony. Any person age eighteen or older who commands, entreats, or otherwise attempts to persuade another person under age eighteen to commit a felony other than murder, shall be guilty of a Class 5 felony. Any person who commands, entreats, or otherwise attempts to persuade another person to commit a murder is guilty of a felony punishable by confinement in a state correctional facility for a term not less than five years or more than forty years.

1975, cc. 14, 15; 1994, cc. 364, 440; 2002, cc. 615, 635.

Chapter 4 - CRIMES AGAINST THE PERSON

Article 1 - HOMICIDE

§ 18.2-30. Murder and manslaughter declared felonies

Any person who commits capital murder, murder of the first degree, murder of the second degree, voluntary manslaughter, or involuntary manslaughter, shall be guilty of a felony.

1975, cc. 14, 15.

§ 18.2-31. Capital murder defined; punishment

The following offenses shall constitute capital murder, punishable as a Class 1 felony:

1. The willful, deliberate, and premeditated killing of any person in the commission of abduction, as defined in § 18.2-48, when such abduction was committed with the intent to extort money or a pecuniary benefit or with the intent to defile the victim of such abduction;

2. The willful, deliberate, and premeditated killing of any person by another for hire;

3. The willful, deliberate, and premeditated killing of any person by a prisoner confined in a state or local correctional facility as defined in § 53.1-1, or while in the custody of an employee thereof;

4. The willful, deliberate, and premeditated killing of any person in the commission of robbery or attempted robbery;

5. The willful, deliberate, and premeditated killing of any person in the commission of, or subsequent to, rape or attempted rape, forcible sodomy or attempted forcible sodomy or object sexual penetration;

6. The willful, deliberate, and premeditated killing of a law-enforcement officer as defined in § 9.1-101, a fire marshal appointed pursuant to § 27-30 or a deputy or an assistant fire marshal appointed pursuant to § 27-36, when such fire marshal or deputy or assistant fire marshal has police powers as set forth in §§ 27-34.2 and 27-34.2:1, an auxiliary police officer appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733, an auxiliary deputy sheriff appointed pursuant to § 15.2-1603, or any law-enforcement officer of another state or the United States having the power to arrest for a felony under the laws of such state or the United States, when such killing is for the purpose of interfering with the performance of his official duties;

7. The willful, deliberate, and premeditated killing of more than one person as a part of the same act or transaction;

8. The willful, deliberate, and premeditated killing of more than one person within a three-year period;

9. The willful, deliberate, and premeditated killing of any person in the commission of or attempted commission of a violation of § 18.2-248, involving a Schedule I or II controlled substance, when such killing is for the purpose of furthering the commission or attempted commission of such violation;

10. The willful, deliberate, and premeditated killing of any person by another pursuant to the direction or order of one who is engaged in a continuing criminal enterprise as defined in subsection I of § 18.2-248;

11. The willful, deliberate, and premeditated killing of a pregnant woman by one who knows that the woman is pregnant and has the intent to cause the involuntary termination of the woman's pregnancy without a live birth;

12. The willful, deliberate, and premeditated killing of a person under the age of fourteen by a person age twenty-one or older;

13. The willful, deliberate, and premeditated killing of any person by another in the commission of or attempted commission of an act of terrorism as defined in § 18.2-46.4;

14. The willful, deliberate, and premeditated killing of a justice of the Supreme Court, a judge of the Court of Appeals, a judge of a circuit court or district court, a retired judge sitting by designation or under temporary recall, or a substitute judge appointed under § 16.1-69.9:1 when the killing is for the purpose of interfering with his official duties as a judge; and

15. The willful, deliberate, and premeditated killing of any witness in a criminal case after a subpoena has been issued for such witness by the court, the clerk, or an attorney, when the killing is for the purpose of interfering with the person's duties in such case.

If any one or more subsections, sentences, or parts of this section shall be judged unconstitutional or invalid, such adjudication shall not affect, impair, or invalidate the remaining provisions thereof but shall be confined in its operation to the specific provisions so held unconstitutional or invalid.

Code 1950, §§ 18.1-21, 53-291; 1960, c. 358; 1962, c. 42; 1966, c. 300; 1970, c. 648; 1973, c. 403; 1975, cc. 14, 15; 1976, c. 503; 1977, c. 478; 1979, c. 582; 1980, c. 221; 1981, c. 607; 1982, c. 636; 1983, c. 175; 1985, c. 428; 1988, c. 550; 1989, c. 527; 1990, c. 746; 1991, c. 232; 1995, c. 340; 1996, cc. 876, 959; 1997, cc. 235, 313, 514, 709; 1998, c. 887; 2002, cc. 588, 623; 2007, cc. 844, 845, 846; 2010, cc. 399, 428, 475.

§ 18.2-32. First and second degree murder defined; punishment

Murder, other than capital murder, by poison, lying in wait, imprisonment, starving, or by any willful, deliberate, and premeditated killing, or in the commission of, or attempt to commit, arson, rape, forcible sodomy, inanimate or animate object sexual penetration, robbery, burglary or abduction, except as provided in § 18.2-31, is murder of the first degree, punishable as a Class 2 felony.

All murder other than capital murder and murder in the first degree is murder of the second degree and is punishable by confinement in a state correctional facility for not less than five nor more than forty years.

Code 1950, § 18.1-21; 1960, c. 358; 1962, c. 42; 1975, cc. 14, 15; 1976, c. 503; 1977, cc. 478, 492; 1981, c. 397; 1993, cc. 463, 490; 1998, c. 281.

§ 18.2-32.1. Murder of a pregnant woman; penalty

The willful and deliberate killing of a pregnant woman without premeditation by one who knows that the woman is pregnant and has the intent to cause the involuntary termination of the woman's pregnancy without a live birth shall be punished by a term of imprisonment of not less than ten years nor more than forty years.

1997, c. 709.

§ 18.2-32.2. Killing a fetus; penalty

A. Any person who unlawfully, willfully, deliberately, maliciously and with premeditation kills the fetus of another is guilty of a Class 2 felony.

B. Any person who unlawfully, willfully, deliberately and maliciously kills the fetus of another is guilty of a felony punishable by confinement in a state correctional facility for not less than five nor more than 40 years.

2004, cc. 1023, 1026.

§ 18.2-32.3. Human infant; independent and separate existence

For the purposes of this article, the fact that the umbilical cord has not been cut or that the placenta remains attached shall not be considered in determining whether a human infant has achieved an independent and separate existence.

2010, cc. 810, 851.

§ 18.2-33. Felony homicide defined; punishment

The killing of one accidentally, contrary to the intention of the parties, while in the prosecution of some felonious act other than those specified in §§ 18.2-31 and 18.2-32, is murder of the second degree and is punishable by confinement in a state correctional facility for not less than five years nor more than forty years.

1975, cc. 14, 15; 1999, c. 282.

§ 18.2-34. Reserved

Reserved.

§ 18.2-35. How voluntary manslaughter punished

Voluntary manslaughter is punishable as a Class 5 felony.

Code 1950, § 18.1-24; 1960, c. 358; 1972, cc. 14, 15.

§ 18.2-36. How involuntary manslaughter punished

Involuntary manslaughter is punishable as a Class 5 felony.

Code 1950, § 18.1-25; 1960, c. 358; 1975, cc. 14, 15; 1982, c. 301.

§ 18.2-36.1. Certain conduct punishable as involuntary manslaughter

A. Any person who, as a result of driving under the influence in violation of clause (ii), (iii), or (iv) of § 18.2-266 or any local ordinance substantially similar thereto unintentionally causes the death of another person, shall be guilty of involuntary manslaughter.

B. If, in addition, the conduct of the defendant was so gross, wanton and culpable as to show a reckless disregard for human life, he shall be guilty of aggravated involuntary manslaughter, a felony punishable by a term of imprisonment of not less than one nor more than 20 years, one year of which shall be a mandatory minimum term of imprisonment.

C. The provisions of this section shall not preclude prosecution under any other homicide statute. This section shall not preclude any other revocation or suspension required by law. The driver's license of any person convicted under this section shall be revoked pursuant to subsection B of § 46.2-391.

1989, cc. 554, 574; 1992, c. 862; 1994, cc. 635, 682; 1999, cc. 945, 987; 2000, cc. 956, 982; 2004, c. 461.

§ 18.2-36.2. Involuntary manslaughter; operating a watercraft while under the influence; penalties

A. Any person who, as a result of operating a watercraft or motorboat in violation of clause (ii), (iii), or (iv) of subsection B of § 29.1-738 or a similar local ordinance, unintentionally causes the death of another person, is guilty of involuntary manslaughter.

B. If, in addition, the conduct of the defendant was so gross, wanton, and culpable as to show a reckless disregard for human life, he shall be guilty of aggravated involuntary manslaughter, a felony punishable by a term of imprisonment of not less than one nor more than 20 years, one year of which shall be a mandatory minimum term of imprisonment.

C. The provisions of this section shall not preclude prosecution under any other homicide statute. The court shall order any person convicted under this section not to operate a watercraft or motorboat that is underway upon the waters of the Commonwealth. After five years have passed from the date of the conviction, the convicted person may petition the court that entered the conviction for the right to operate a watercraft or motorboat upon the waters of the Commonwealth. Upon consideration of such petition, the court may restore the right to operate a watercraft or motorboat subject to such terms and conditions as the court deems appropriate, including the successful completion of a water safety alcohol rehabilitation program described in § 29.1-738.5.

2005, c. 376.

§ 18.2-37. How and where homicide prosecuted and punished if death occur without the Commonwealth

If any person be stricken or poisoned in this Commonwealth, and die by reason thereof out of this Commonwealth, the offender shall be as guilty, and shall be prosecuted and punished, as if the death had occurred in the county or corporation in which the stroke or poison was given or administered.

Code 1950, § 18.1-26; 1960, c. 358; 1975, cc. 14, 15.

Article 2 - CRIMES BY MOBS

§ 18.2-38. "Mob" defined

Any collection of people, assembled for the purpose and with the intention of committing an assault or a battery upon any person or an act of violence as defined in § 19.2-297.1, without authority of law, shall be deemed a "mob."

Code 1950, § 18.1-27; 1960, c. 358; 1975, cc. 14, 15; 1999, c. 623.

§ 18.2-39. "Lynching" defined

Any act of violence by a mob upon the body of any person, which shall result in the death of such person, shall constitute a "lynching."

Code 1950, § 18.1-28; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-40. Lynching deemed murder

Every lynching shall be deemed murder. Any and every person composing a mob and any and every accessory thereto, by which any person is lynched, shall be guilty of murder, and upon conviction, shall be punished as provided in Article 1 (§ 18.2-30 et seq.) of this chapter.

Code 1950, § 18.1-29; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-41. Shooting, stabbing, etc., with intent to maim, kill, etc., by mob

Any and every person composing a mob which shall maliciously or unlawfully shoot, stab, cut or wound any person, or by any means cause him bodily injury with intent to maim, disable, disfigure or kill him, shall be guilty of a Class 3 felony.

Code 1950, § 18.1-30; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-42. Assault or battery by mob

Any and every person composing a mob which shall commit a simple assault or battery shall be guilty of a Class 1 misdemeanor.

Code 1950, § 18.1-31; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-42.1. Acts of violence by mob

Any and every person composing a mob which commits an act of violence as defined in § 19.2-297.1 shall be guilty of that act of violence and, upon conviction, shall be punished as provided in the section of this title which makes that act of violence unlawful.

1999, c. 623.

§ 18.2-43. Apprehension and prosecution of participants in lynching

The attorney for the Commonwealth of any county or city in which a lynching may occur shall promptly and diligently endeavor to ascertain the identity of the persons who in any way participated therein, or who composed the mob which perpetrated the same, and have them apprehended, and shall promptly proceed with the prosecution of any and all persons so found; and to the end that such offenders may not escape proper punishment, such attorney for the

Commonwealth may be assisted in all such endeavors and prosecutions by the Attorney General, or other prosecutors designated by the Governor for the purpose; and the Governor may have full authority to spend such sums as he may deem necessary for the purpose of seeking out the identity, and apprehending the members of such mob.

Code 1950, § 18.1-32; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-44. Civil liability for lynching

No provisions of this article shall be construed to relieve any member of a mob from civil liability to the personal representative of the victim of a lynching.

Code 1950, § 18.1-33; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-45. Persons suffering death from mob attempting to lynch another person

Every person suffering death from a mob attempting to lynch another person shall come within the provisions of this article, and his personal representative shall be entitled to relief in the same manner and to the same extent as if he were the originally intended victim of such mob.

Code 1950, § 18.1-34; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-46. Venue

Venue for all actions and prosecutions under any of the provisions of this article shall be in the county or city wherein a lynching or other violation of any of the provisions of this article may have occurred, or of the county or city from which the person lynched or assaulted may have been taken as aforesaid.

Code 1950, § 18.1-35; 1960, c. 358; 1975, cc. 14, 15; 2004, c. 144.

Article 2.1 - CRIMES BY GANGS

§ 18.2-46.1. Definitions

As used in this article unless the context requires otherwise or it is otherwise provided:

"Act of violence" means those felony offenses described in subsection A of § 19.2-297.1.

"Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, (i) which has as one of its primary objectives or activities the commission of one or more criminal activities; (ii) which has an identifiable name or identifying sign or symbol; and (iii) whose members individually or collectively have engaged in the commission of, attempt to commit, conspiracy to commit, or solicitation of two or more predicate criminal acts, at least one of which is an act of violence, provided such acts were not part of a common act or transaction.

"Predicate criminal act" means (i) an act of violence; (ii) any violation of § 18.2-31, 18.2-42, 18.2-46.3, 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.6, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-55, 18.2-56.1, 18.2-57, 18.2-57.2, 18.2-59, 18.2-83, 18.2-89, 18.2-90, 18.2-95, 18.2-108.1, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, 18.2-147, 18.2-248.01, 18.2-248.03,

18.2-255, 18.2-255.2, 18.2-279, 18.2-282.1, 18.2-286.1, 18.2-287.4, 18.2-289, 18.2-300, 18.2-308.1, 18.2-308.2, 18.2-308.2:01, 18.2-308.4, 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1; (iii) a felony violation of § 18.2-60.3; (iv) a felony violation of § 18.2-248 or of 18.2-248.1 or a conspiracy to commit a felony violation of § 18.2-248 or 18.2-248.1; (v) any violation of a local ordinance adopted pursuant to § 15.2-1812.2; or (vi) any substantially similar offense under the laws of another state or territory of the United States, the District of Columbia, or the United States.

2000, c. 332; 2004, cc. 396, 435, 462, 867; 2005, cc. 764, 813; 2006, cc. 262, 319, 844, 895; 2007, c. 499; 2012, c. 364; 2013, cc. 573, 645; 2014, cc. 674, 719; 2015, cc. 690, 691.

§ 18.2-46.2. Prohibited criminal street gang participation; penalty

A. Any person who actively participates in or is a member of a criminal street gang and who knowingly and willfully participates in any predicate criminal act committed for the benefit of, at the direction of, or in association with any criminal street gang shall be guilty of a Class 5 felony. However, if such participant in or member of a criminal street gang is age eighteen years or older and knows or has reason to know that such criminal street gang also includes a juvenile member or participant, he shall be guilty of a Class 4 felony.

B. Violation of this section shall constitute a separate and distinct offense. If the acts or activities violating this section also violate another provision of law, a prosecution under this section shall not prohibit or bar any prosecution or proceeding under such other provision or the imposition of any penalties provided for thereby.

2000, c. 332.

§ 18.2-46.3. Recruitment of persons for criminal street gang; penalty

A. Any person who solicits, invites, recruits, encourages or otherwise causes or attempts to cause another to actively participate in or become a member of what he knows to be a criminal street gang is guilty of a Class 1 misdemeanor. Any person age 18 years or older who solicits, invites, recruits, encourages or otherwise causes or attempts to cause a juvenile to actively participate in or become a member of what he knows to be a criminal street gang is guilty of a Class 6 felony.

B. Any person who, in order to encourage an individual (a) to join a criminal street gang, (b) to remain as a participant in or a member of a criminal street gang, or (c) to submit to a demand made by a criminal street gang to commit a felony violation of this title, (i) uses force against the individual or a member of his family or household or (ii) threatens force against the individual or a member of his family or household, which threat would place any person in reasonable apprehension of death or bodily injury, is guilty of a Class 6 felony. The definition of "family or household member" set forth in § 16.1-228 applies to this section.

2000, c. 332; 2004, cc. 396, 435.

§ 18.2-46.3:1. Third or subsequent conviction of criminal street gang crimes

Upon a felony conviction of § 18.2-46.2 or § 18.2-46.3, where it is alleged in the warrant, information or indictment on which a person is convicted that (i) such person has been previously

convicted twice under any combination of § 18.2-46.2 or § 18.2-46.3, within 10 years of the third or subsequent offense, and (ii) each such offense occurred on different dates, such person is guilty of a Class 3 felony.

2004, cc. 396, 435, 847.

§ 18.2-46.3:2. Forfeiture

All property, both personal and real, of any kind or character used in substantial connection with, intended for use in the course of, derived from, traceable to, or realized through, including any profit or interest derived from, any conduct in violation of any provision of this article is subject to civil forfeiture to the Commonwealth. Further, all property, both personal and real, of any kind or character used or intended to be used in substantial connection with, during the course of, derived from, traceable to, or realized through, including any profit or interest derived from, criminal street gang member recruitment as prohibited under § 18.2-46.3 is subject to civil forfeiture to the Commonwealth. The forfeiture proceeding shall utilize the provisions of Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2 and the procedures specified therein shall apply, mutatis mutandis, to all forfeitures under this article. The application of one civil remedy under the article does not preclude the application of any other remedy, civil or criminal, under this article or any other provision of the Code.

2004, cc. 396, 435.

§ 18.2-46.3:3. Enhanced punishment for gang activity taking place in a gang-free zone; penalties

Any person who violates § 18.2-46.2 (i) upon the property, including buildings and grounds, of any public or private elementary, secondary, or postsecondary school, or any public or private two-year or four-year institution of higher education; (ii) upon public property or any property open to public use within 1,000 feet of such school property; (iii) on any school bus as defined in § 46.2-100; or (iv) upon the property, including buildings and grounds, of any publicly owned or operated community center or any publicly owned or operated recreation center is guilty of a felony punishable as specified in § 18.2-46.2, and shall be sentenced to a mandatory minimum term of imprisonment of two years to be served consecutively with any other sentence. A person who violates subsection A of § 18.2-46.3 upon any property listed in this section is guilty of a Class 6 felony, except that any person 18 years of age or older who violates subsection A of § 18.2-46.3 upon any property listed in this section, when such offense is committed against a juvenile, is guilty of a Class 5 felony. Any person who violates subsection B of § 18.2-46.3 upon any property listed in this section is guilty of a Class 5 felony. It is a violation of this section if the person violated § 18.2-46.2 or 18.2-46.3 on the property described in clauses (i) through (iii) regardless of where the person intended to commit such violation.

2005, cc. 764, 813; 2010, c. 364; 2013, cc. 761, 774.

Article 2.2 - TERRORISM OFFENSES

§ 18.2-46.4. Definitions

As used in this article unless the context requires otherwise or it is otherwise provided:

"Act of terrorism" means an act of violence as defined in clause (i) of subdivision A of § 19.2-297.1 committed with the intent to (i) intimidate the civilian population at large; or (ii) influence the conduct or activities of the government of the United States, a state or locality through intimidation.

"Base offense" means an act of violence as defined in clause (i) of subdivision A of § 19.2-297.1 committed with the intent required to commit an act of terrorism.

"Weapon of terrorism" means any device or material that is designed, intended or used to cause death, bodily injury or serious bodily harm, through the release, dissemination, or impact of (i) poisonous chemicals; (ii) an infectious biological substance; or (iii) release of radiation or radioactivity.

2002, cc. 588, 623.

§ 18.2-46.5. Committing, conspiring and aiding and abetting acts of terrorism prohibited; penalty

A. Any person who commits or conspires to commit, or aids and abets the commission of an act of terrorism, as defined in § 18.2-46.4, is guilty of a Class 2 felony if the base offense of such act of terrorism may be punished by life imprisonment, or a term of imprisonment of not less than twenty years.

B. Any person who commits, conspires to commit, or aids and abets the commission of an act of terrorism, as defined in § 18.2-46.4, is guilty of a Class 3 felony if the maximum penalty for the base offense of such act of terrorism is a term of imprisonment or incarceration in jail of less than twenty years.

C. Any person who solicits, invites, recruits, encourages, or otherwise causes or attempts to cause another to participate in an act or acts of terrorism, as defined in § 18.2-46.4, is guilty of a Class 4 felony.

2002, cc. 588, 623; 2007, c. 409.

§ 18.2-46.6. Possession, manufacture, distribution, etc. of weapon of terrorism or hoax device prohibited; penalty

A. Any person who, with the intent to commit an act of terrorism, possesses, uses, sells, gives, distributes or manufactures (i) a weapon of terrorism or (ii) a "fire bomb," "explosive material," or "device," as those terms are defined in § 18.2-85, is guilty of a Class 2 felony.

B. Any person who, with the intent to commit an act of terrorism, possesses, uses, sells, gives, distributes or manufactures any device or material that by its design, construction, content or

characteristics appears to be or appears to contain a (i) weapon of terrorism or (ii) a "fire bomb," "explosive material," or "device," as those terms are defined in § 18.2-85, but that is an imitation of any such weapon of terrorism, "fire bomb," "explosive material," or "device" is guilty of a Class 3 felony.

C. Any person who, with the intent to (i) intimidate the civilian population, (ii) influence the conduct or activities of the government of the United States, a state or locality through intimidation, (iii) compel the emergency evacuation of any place of assembly, building or other structure or any means of mass transportation, or (iv) place any person in reasonable apprehension of bodily harm, uses, sells, gives, distributes or manufactures any device or material that by its design, construction, content or characteristics appears to be or appears to contain a weapon of terrorism, but that is an imitation of any such weapon of terrorism is guilty of a Class 6 felony.

2002, cc. 588, 623.

§ 18.2-46.7. Act of bioterrorism against agricultural crops or animals; penalty

Any person who maliciously destroys or devastates agricultural crops or agricultural animals having a value of $2,500 or more through the use of an infectious biological substance with the intent to (i) intimidate the civilian population or (ii) influence the conduct or activities of the government of the United States, a state or locality through intimidation, is guilty of a Class 3 felony.

For the purposes of this section "agricultural animal" means all livestock and poultry as defined in § 3.2-5900 and "agricultural crop" means cultivated plants or produce, including grain, silage, forages, oilseeds, vegetables, fruits, nursery stock or turf grass.

2002, cc. 588, 623.

§ 18.2-46.8. Venue

Venue for any violation of this article may be had in the county or city where such crime is alleged to have occurred or where any act in furtherance of an act prohibited by this article was committed.

2002, cc. 588, 623.

§ 18.2-46.9. Repealed

Repealed by Acts 2004, c. 995.

§ 18.2-46.10. Violation of sections within article separate and distinct offenses

A violation of any section in this article shall constitute a separate and distinct offense. If the acts or activities violating any section within this article also violate another provision of law, a prosecution under any section in this article shall not prohibit or bar any prosecution or proceeding under such other provision or the imposition of any penalties provided for thereby.

2002, cc. 588, 623.

Article 3 - KIDNAPPING AND RELATED OFFENSES

§ 18.2-47. Abduction and kidnapping defined; punishment

A. Any person who, by force, intimidation or deception, and without legal justification or excuse, seizes, takes, transports, detains or secretes another person with the intent to deprive such other person of his personal liberty or to withhold or conceal him from any person, authority or institution lawfully entitled to his charge, shall be deemed guilty of "abduction."

B. Any person who, by force, intimidation or deception, and without legal justification or excuse, seizes, takes, transports, detains or secretes another person with the intent to subject him to forced labor or services shall be deemed guilty of "abduction." For purposes of this subsection, the term "intimidation" shall include destroying, concealing, confiscating, withholding, or threatening to withhold a passport, immigration document, or other governmental identification or threatening to report another as being illegally present in the United States.

C. The provisions of this section shall not apply to any law-enforcement officer in the performance of his duty. The terms "abduction" and "kidnapping" shall be synonymous in this Code. Abduction for which no punishment is otherwise prescribed shall be punished as a Class 5 felony.

D. If an offense under subsection A is committed by the parent of the person abducted and punishable as contempt of court in any proceeding then pending, the offense shall be a Class 1 misdemeanor in addition to being punishable as contempt of court. However, such offense, if committed by the parent of the person abducted and punishable as contempt of court in any proceeding then pending and the person abducted is removed from the Commonwealth by the abducting parent, shall be a Class 6 felony in addition to being punishable as contempt of court.

Code 1950, §§ 18.1-36, 18.1-37; 1960, c. 358; 1975, cc. 14, 15; 1979, c. 663; 1980, c. 506; 1997, c. 747; 2009, c. 662.

§ 18.2-48. Abduction with intent to extort money or for immoral purpose

Abduction (i) of any person with the intent to extort money or pecuniary benefit, (ii) of any person with intent to defile such person, (iii) of any child under sixteen years of age for the purpose of concubinage or prostitution, (iv) of any person for the purpose of prostitution, or (v) of any minor for the purpose of manufacturing child pornography shall be punishable as a Class 2 felony. If the sentence imposed for a violation of (ii), (iii), (iv), or (v) includes a term of confinement less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life subject to revocation by the court.

Code 1950, § 18.1-38; 1960, c. 358; 1966, c. 214; 1975, cc. 14, 15; 1993, c. 317; 1997, c. 747; 2006, cc. 853, 914; 2011, c. 785.

§ 18.2-48.1. Abduction by prisoners or committed persons; penalty

Any person confined in a state, local, or community correctional facility or committed to the Department of Juvenile Justice in any juvenile correctional center, or in the custody of an employee thereof, or who has escaped from any such facility or from any person in charge of such prisoner or committed person, who abducts or takes any person hostage is guilty of a Class 3 felony.

1985, c. 526; 1986, c. 414; 2013, cc. 707, 782.

§ 18.2-49. Threatening, attempting or assisting in such abduction

Any person who (1) threatens, or attempts, to abduct any other person with intent to extort money, or pecuniary benefit, or (2) assists or aids in the abduction of, or threatens to abduct, any person with the intent to defile such person, or (3) assists or aids in the abduction of, or threatens to abduct, any female under sixteen years of age for the purpose of concubinage or prostitution, shall be guilty of a Class 5 felony.

Code 1950, § 18.1-39; 1960, c. 358; 1966, c. 214; 1975, cc. 14, 15.

§ 18.2-49.1. Violation of court order regarding custody and visitation; penalty

A. Any person who knowingly, wrongfully and intentionally withholds a child from either of a child's parents or other legal guardian in a clear and significant violation of a court order respecting the custody or visitation of such child, provided such child is withheld outside of the Commonwealth, is guilty of a Class 6 felony.

B. Any person who knowingly, wrongfully and intentionally engages in conduct that constitutes a clear and significant violation of a court order respecting the custody or visitation of a child is guilty of a Class 3 misdemeanor upon conviction of a first offense. Any person who commits a second violation of this section within 12 months of a first conviction is guilty of a Class 2 misdemeanor, and any person who commits a third violation occurring within 24 months of the first conviction is guilty of a Class 1 misdemeanor.

1987, c. 704; 1989, c. 486; 1994, c. 575; 2002, cc. 576, 596; 2003, c. 261.

§ 18.2-50. Disclosure of information and assistance to law-enforcement officers required

Whenever it is brought to the attention of the members of the immediate family of any person that such person has been abducted, or that threats or attempts have been made to abduct any such person, such members shall make immediate report thereof to the police or other law-enforcement officers of the county, city or town where such person resides, and shall render all such possible assistance to such officers in the capture and conviction of the person or persons guilty of the alleged offense. Any person violating any of the provisions of this section shall be guilty of a Class 2 misdemeanor.

Code 1950, § 18.1-40; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-50.1. Repealed

Repealed by Acts 1992, c. 479 .

§ 18.2-50.2. Emergency control of telephone service in hostage or barricaded person situation

A. The Superintendent of the State Police or the chief law-enforcement officer or sheriff of any county, city or town may designate one or more law-enforcement officers with appropriate technical training or expertise as a hostage and barricade communications specialist.

B. Each telephone company providing service to Virginia residents shall designate a department or one or more individuals to provide liaison with law-enforcement agencies for the purposes of this section and shall designate telephone numbers, not exceeding two, at which such law-enforcement liaison department or individual can be contacted.

C. The supervising law-enforcement officer, who has jurisdiction in any situation in which there is probable cause to believe that the criminal enterprise of hostage holding is occurring or that a person has barricaded himself within a structure and poses an immediate threat to the life, safety or property of himself or others, may order a telephone company, or a hostage and barricade communications specialist to interrupt, reroute, divert, or otherwise control any telephone communications service involved in the hostage or barricade situation for the purpose of preventing telephone communication by a hostage holder or barricaded person with any person other than a law-enforcement officer or a person authorized by the officer.

D. A hostage and barricade communication specialist shall be ordered to act under subsection C only if the telephone company providing service in the area has been contacted and requested to act under subsection C or an attempt to contact has been made, using the telephone company's designated liaison telephone numbers and:

1. The officer's attempt to contact after ten rings for each call is unsuccessful;

2. The telephone company declines to respond to the officer's request because of a threat of personal injury to its employees; or

3. The telephone company indicates when contacted that it will be unable to respond appropriately to the officer's request within a reasonable time from the receipt of the request.

E. The supervising law-enforcement officer may give an order under subsection C only after that supervising law-enforcement officer has given or attempted to give written notification or oral notification of the hostage or barricade situation to the telephone company providing service to the area in which it is occurring. If an order is given on the basis of an oral notice, the oral notice shall be followed by a written confirmation of that notice within forty-eight hours of the order.

F. Good faith reliance on an order by a supervising law-enforcement officer who has the real or apparent authority to issue an order under this section shall constitute a complete defense to any action against a telephone company or a telephone company employee that rises out of attempts by the telephone company or the employees of the telephone company to comply with such an order.

1992, c. 479 .

§ 18.2-50.3. Enticing, etc., another into a dwelling house with intent to commit certain felonies; penalty

Any person who commits a violation of § 18.2-31, 18.2-32, 18.2-32.1, 18.2-48, 18.2-51.2, 18.2-58, 18.2-61, 18.2-67.1, or 18.2-67.2 within a dwelling house and who, with the intent to commit a felony listed in this section, enticed, solicited, requested, or otherwise caused the victim to enter such dwelling house is guilty of a Class 6 felony. A violation of this section is a separate and distinct felony.

2015, c. 392.

Article 4 - ASSAULTS AND BODILY WOUNDINGS

§ 18.2-51. Shooting, stabbing, etc., with intent to maim, kill, etc

If any person maliciously shoot, stab, cut, or wound any person or by any means cause him bodily injury, with the intent to maim, disfigure, disable, or kill, he shall, except where it is otherwise provided, be guilty of a Class 3 felony. If such act be done unlawfully but not maliciously, with the intent aforesaid, the offender shall be guilty of a Class 6 felony.

Code 1950, § 18.1-65; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-51.1. Malicious bodily injury to law-enforcement officers, firefighters, search and rescue personnel, or emergency medical services personnel; penalty; lesser-included offense

If any person maliciously causes bodily injury to another by any means including the means set out in § 18.2-52, with intent to maim, disfigure, disable or kill, and knowing or having reason to know that such other person is a law-enforcement officer, as defined hereinafter, firefighter, as defined in § 65.2-102, search and rescue personnel as defined hereinafter, or emergency medical services personnel, as defined in § 32.1-111.1 engaged in the performance of his public duties as a law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel, such person is guilty of a felony punishable by imprisonment for a period of not less than five years nor more than 30 years and, subject to subdivision (g) of § 18.2-10, a fine of not more than $100,000. Upon conviction, the sentence of such person shall include a mandatory minimum term of imprisonment of two years.

If any person unlawfully, but not maliciously, with the intent aforesaid, causes bodily injury to another by any means, knowing or having reason to know such other person is a law-enforcement officer, firefighter, as defined in § 65.2-102, search and rescue personnel, or emergency medical services personnel, engaged in the performance of his public duties as a law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel as defined in § 32.1-111.1, he is guilty of a Class 6 felony, and upon conviction, the sentence of such person shall include a mandatory minimum term of imprisonment of one year.

Nothing in this section shall be construed to affect the right of any person charged with a violation of this section from asserting and presenting evidence in support of any defenses to the charge that may be available under common law.

As used in this section, "law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof, who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth; any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115; any conservation police officer appointed pursuant to § 29.1-200; and auxiliary police officers appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733 and auxiliary deputy sheriffs appointed pursuant to § 15.2-1603.

As used in this section, "search and rescue personnel" means any employee or member of a search and rescue organization that is authorized by a resolution or ordinance duly adopted by the governing body of any county, city, or town of the Commonwealth or any member of a search and rescue organization operating under a memorandum of understanding with the Virginia Department of Emergency Management.

The provisions of § 18.2-51 shall be deemed to provide a lesser-included offense hereof.

1983, c. 578; 1985, c. 444; 1994, cc. 205, 427; 1997, cc. 8, 120; 2002, cc. 588, 623; 2004, cc. 461, 841; 2007, c. 87; 2010, c. 344; 2015, cc. 502, 503.

§ 18.2-51.2. Aggravated malicious wounding; penalty

A. If any person maliciously shoots, stabs, cuts or wounds any other person, or by any means causes bodily injury, with the intent to maim, disfigure, disable or kill, he shall be guilty of a Class 2 felony if the victim is thereby severely injured and is caused to suffer permanent and significant physical impairment.

B. If any person maliciously shoots, stabs, cuts or wounds any other woman who is pregnant, or by any other means causes bodily injury, with the intent to maim, disfigure, disable or kill the pregnant woman or to cause the involuntary termination of her pregnancy, he shall be guilty of a Class 2 felony if the victim is thereby severely injured and is caused to suffer permanent and significant physical impairment.

C. For purposes of this section, the involuntary termination of a woman's pregnancy shall be deemed a severe injury and a permanent and significant physical impairment.

1986, c. 460; 1991, c. 670; 1997, c. 709.

§ 18.2-51.3. Prohibition against reckless endangerment of others by throwing objects from places higher than one story; penalty

A. It shall be unlawful for any person, with the intent to cause injury to another, to intentionally throw from a balcony, roof top, or other place more than one story above ground level any object capable of causing any such injury.

B. A violation of this section shall be punishable as a Class 6 felony.

1990, c. 761 .

§ 18.2-51.4. Maiming, etc., of another resulting from driving while intoxicated

A. Any person who, as a result of driving while intoxicated in violation of § 18.2-266 or any local ordinance substantially similar thereto in a manner so gross, wanton and culpable as to show a reckless disregard for human life, unintentionally causes the serious bodily injury of another person resulting in permanent and significant physical impairment shall be guilty of a Class 6 felony. The driver's license of any person convicted under this section shall be revoked pursuant to subsection B of § 46.2-391.

B. The provisions of Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2 shall apply, mutatis mutandis, upon arrest for a violation of this section.

1997, c. 691; 1999, cc. 945, 987; 2000, cc. 956, 982.

§ 18.2-51.5. Maiming, etc., of another resulting from operating a watercraft while intoxicated; penalty

A. Any person who, as a result of operating a watercraft or motorboat in violation of subsection B of § 29.1-738 or a similar local ordinance in a manner so gross, wanton, and culpable as to show reckless disregard for human life, unintentionally causes the serious bodily injury of another person resulting in permanent and significant physical impairment is guilty of a Class 6 felony. The court shall order any person convicted under this section not to operate a watercraft or motorboat that is underway upon the waters of the Commonwealth. After two years have passed from the date of the conviction, the convicted person may petition the court that entered the conviction for the right to operate a watercraft or motorboat upon the waters of the Commonwealth. Upon consideration of such petition, the court may restore the right to operate a watercraft or motorboat subject to such terms and conditions as the court deems appropriate, including the successful completion of a water safety alcohol rehabilitation program described in § 29.1-738.5.

B. The provisions of Article 3 (§ 29.1-734 et seq.) of Chapter 7 of Title 29.1 shall apply, mutatis mutandis, upon arrest for a violation of this section.

2007, cc. 379, 679.

§ 18.2-51.6. Strangulation of another; penalty

Any person who, without consent, impedes the blood circulation or respiration of another person by knowingly, intentionally, and unlawfully applying pressure to the neck of such person resulting in the wounding or bodily injury of such person is guilty of strangulation, a Class 6 felony.

2012, cc. 577, 602.

§ 18.2-52. Malicious bodily injury by means of any caustic substance or agent or use of any explosive or fire

If any person maliciously causes any other person bodily injury by means of any acid, lye or other caustic substance or agent or use of any explosive or fire, he shall be guilty of a felony and shall be punished by confinement in a state correctional facility for a period of not less than five years nor

more than thirty years. If such act is done unlawfully but not maliciously, the offender shall be guilty of a Class 6 felony.

Code 1950, § 18.1-67; 1960, c. 358; 1975, cc. 14, 15, 604; 1995, c. 439.

§ 18.2-52.1. Possession of infectious biological substances or radiological agents; penalties

A. Any person who possesses, with the intent thereby to injure another, an infectious biological substance or radiological agent is guilty of a Class 5 felony.

B. Any person who (i) destroys or damages, or attempts to destroy or damage, any facility, equipment or material involved in the sale, manufacturing, storage or distribution of an infectious biological substance or radiological agent, with the intent to injure another by releasing the substance, or (ii) manufactures, sells, gives, distributes or uses an infectious biological substance or radiological agent with the intent to injure another is guilty of a Class 4 felony.

C. Any person who maliciously and intentionally causes any other person bodily injury by means of an infectious biological substance or radiological agent is guilty of a felony and shall be punished by confinement in a state correctional facility for a period of not less than five years nor more than 30 years.

An "infectious biological substance" includes any bacteria, viruses, fungi, protozoa, or rickettsiae capable of causing death or serious bodily injury. This definition shall not include HIV as defined in § 18.2-67.4:1, syphilis or hepatitis B.

A "radiological agent" includes any substance able to release radiation at levels that are capable of causing death or serious bodily injury.

1996, c. 769; 2002, cc. 588, 623, 816; 2004, c. 833.

§ 18.2-53. Shooting, etc., in committing or attempting a felony

If any person, in the commission of, or attempt to commit, felony, unlawfully shoot, stab, cut or wound another person he shall be guilty of a Class 6 felony.

Code 1950, § 18.1-68; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-53.1. Use or display of firearm in committing felony

It shall be unlawful for any person to use or attempt to use any pistol, shotgun, rifle, or other firearm or display such weapon in a threatening manner while committing or attempting to commit murder, rape, forcible sodomy, inanimate or animate object sexual penetration as defined in § 18.2-67.2, robbery, carjacking, burglary, malicious wounding as defined in § 18.2-51, malicious bodily injury to a law-enforcement officer as defined in § 18.2-51.1, aggravated malicious wounding as defined in § 18.2-51.2, malicious wounding by mob as defined in § 18.2-41 or abduction. Violation of this section shall constitute a separate and distinct felony and any person found guilty thereof shall be sentenced to a mandatory minimum term of imprisonment of three years for a first conviction, and to a mandatory minimum term of five years for a second or subsequent conviction under the provisions of this section. Such punishment shall be separate and apart from,

and shall be made to run consecutively with, any punishment received for the commission of the primary felony.

1975, cc. 624, 628; 1976, c. 371; 1980, c. 333; 1982, c. 654; 1991, c. 506; 1992, cc. 191, 726; 1993, cc. 549, 835; 1994, c. 950; 2004, c. 461.

§ 18.2-54. Conviction of lesser offenses under certain indictments

On any indictment for maliciously shooting, stabbing, cutting or wounding a person or by any means causing him bodily injury, with intent to maim, disfigure, disable or kill him, or of causing bodily injury by means of any acid, lye or other caustic substance or agent, the jury or the court trying the case without a jury may find the accused not guilty of the offense charged but guilty of unlawfully doing such act with the intent aforesaid, or of assault and battery if the evidence warrants.

Code 1950, § 19.1-251; 1960, c. 366; 1975, cc. 14, 15.

§ 18.2-54.1. Attempts to poison

If any person administers or attempts to administer any poison or destructive substance in food, drink, prescription or over-the-counter medicine, or otherwise, or poisons any spring, well, waterworks as defined in § 32.1-167, or reservoir of water with intent to kill or injure another person, he shall be guilty of a Class 3 felony.

Code 1950, § 18.1-64; 1960, c. 358; 1975, cc. 14, 15; 1983, c. 129; 2006, c. 300.

§ 18.2-54.2. Adulteration of food, drink, drugs, cosmetics, etc.; penalty

Any person who adulterates or causes to be adulterated any food, drink, prescription or over-the-counter medicine, cosmetic or other substance with the intent to kill or injure any individual who ingests, inhales or uses such substance shall be guilty of a Class 3 felony.

1983, c. 129.

§ 18.2-55. Bodily injuries caused by prisoners, state juvenile probationers and state and local adult probationers or adult parolees

A. It shall be unlawful for a person confined in a state, local or regional correctional facility as defined in § 53.1-1; in a secure facility or detention home as defined in § 16.1-228 or in any facility designed for the secure detention of juveniles; or while in the custody of an employee thereof to knowingly and willfully inflict bodily injury on:

1. An employee thereof, or

2. Any other person lawfully admitted to such facility, except another prisoner or person held in legal custody, or

3. Any person who is supervising or working with prisoners or persons held in legal custody, or

4. Any such employee or other person while such prisoner or person held in legal custody is committing any act in violation of § 53.1-203.

B. It shall be unlawful for an accused, probationer or parolee under the supervision of, or being investigated by, (i) a probation or parole officer whose powers and duties are defined in § 16.1-237 or § 53.1-145, (ii) a local pretrial services officer associated with an agency established pursuant to Article 5 (§ 19.2-152.2) of Chapter 9 of Title 19.2, or (iii) a local community-based probation officer associated with an agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, to knowingly and willfully inflict bodily injury on such officer while he is in the performance of his duty, knowing or having reason to know that the officer is engaged in the performance of his duty.

Any person violating any provision of this section is guilty of a Class 5 felony.

1975, cc. 14, 15; 1977, c. 553; 1982, c. 636; 1985, c. 508; 1996, c. 527; 1999, cc. 618, 658; 2001, cc. 818, 848; 2007, c. 133.

§ 18.2-55.1. Hazing of youth gang members unlawful; criminal liability

It shall be unlawful to cause bodily injury by hazing (i) any member of a criminal street gang as defined in § 18.2-46.1, or (ii) a person seeking to become a member of a youth gang or criminal street gang. Any person found guilty of hazing is guilty of a Class 1 misdemeanor.

For the purposes of this section, "hazing" means to recklessly or intentionally endanger the health or safety of a person or to inflict bodily injury on a person in connection with or for the purpose of initiation, admission into or affiliation with or as a condition for continued membership in a youth gang or criminal street gang regardless of whether the person so endangered or injured participated voluntarily in the relevant activity.

2004, c. 850; 2005, c. 843.

§ 18.2-56. Hazing unlawful; civil and criminal liability; duty of school, etc., officials; penalty

It shall be unlawful to haze so as to cause bodily injury, any student at any school, college, or university.

Any person found guilty thereof shall be guilty of a Class 1 misdemeanor.

Any person receiving bodily injury by hazing shall have a right to sue, civilly, the person or persons guilty thereof, whether adults or infants.

The president or other presiding official of any school, college or university receiving appropriations from the state treasury shall, upon satisfactory proof of the guilt of any student hazing another student, sanction and discipline such student in accordance with the institution's policies and procedures. The institution's policies and procedures shall provide for expulsions or other appropriate discipline based on the facts and circumstances of each case and shall be consistent with the model policies established by the Department of Education or the State Council of Higher Education for Virginia, as applicable. The president or other presiding official of any school, college or university receiving appropriations from the state treasury shall report hazing which causes

bodily injury to the attorney for the Commonwealth of the county or city in which such school, college or university is, who shall take such action as he deems appropriate.

For the purposes of this section, "hazing" means to recklessly or intentionally endanger the health or safety of a student or students or to inflict bodily injury on a student or students in connection with or for the purpose of initiation, admission into or affiliation with or as a condition for continued membership in a club, organization, association, fraternity, sorority, or student body regardless of whether the student or students so endangered or injured participated voluntarily in the relevant activity.

Code 1950, § 18.1-71; 1960, c. 358; 1975, cc. 14, 15; 2003, cc. 62, 67; 2014, c. 627.

§ 18.2-56.1. Reckless handling of firearms; reckless handling while hunting

A. It shall be unlawful for any person to handle recklessly any firearm so as to endanger the life, limb or property of any person. Any person violating this section shall be guilty of a Class 1 misdemeanor.

A1. Any person who handles any firearm in a manner so gross, wanton, and culpable as to show a reckless disregard for human life and causes the serious bodily injury of another person resulting in permanent and significant physical impairment is guilty of a Class 6 felony.

B. If this section is violated while the person is engaged in hunting, trapping or pursuing game, the trial judge may, in addition to the penalty imposed by the jury or the court trying the case without a jury, revoke such person's hunting or trapping license and privileges to hunt or trap while possessing a firearm for a period of one to five years.

C. Upon a revocation pursuant to subsection B hereof, the clerk of the court in which the case is tried pursuant to this section shall forthwith send to the Department of Game and Inland Fisheries (i) such person's revoked hunting or trapping license or notice that such person's privilege to hunt or trap while in possession of a firearm has been revoked and (ii) a notice of the length of revocation imposed. The Department shall keep a list which shall be furnished upon request to any law-enforcement officer, the attorney for the Commonwealth or court in this Commonwealth, and such list shall contain the names and addresses of all persons whose license or privilege to hunt or trap while in possession of a firearm has been revoked and the court which took such action.

D. If any person whose license to hunt and trap, or whose privilege to hunt and trap while in possession of a firearm, has been revoked pursuant to this section, thereafter hunts or traps while in possession of a firearm, he shall be guilty of a Class 1 misdemeanor, and, in addition to any penalty imposed by the jury or the court trying the case without a jury, the trial judge may revoke such person's hunting or trapping license and privileges to hunt or trap while in possession of a firearm for a period of one year to life. The clerk of the court shall notify the Department of Game and Inland Fisheries as is provided in subsection C herein.

1977, c. 194; 1985, c. 182; 1991, c. 384; 2010, c. 183; 2011, c. 684; 2014, cc. 444, 579.

§ 18.2-56.2. Allowing access to firearms by children; penalty

A. It shall be unlawful for any person 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 fourteen. Any person violating the provisions of this subsection shall be guilty of a Class 3 misdemeanor.

B. It shall be unlawful for any person knowingly to authorize a child under the age of twelve to use a firearm except when the child is under the supervision of an adult. Any person violating this subsection shall be guilty of a Class 1 misdemeanor. For purposes of this subsection, "adult" shall mean a parent, guardian, person standing in loco parentis to the child or a person twenty-one years or over who has the permission of the parent, guardian, or person standing in loco parentis to supervise the child in the use of a firearm.

1991, c. 537; 1994, c. 832.

§ 18.2-57. Assault and battery; penalty

A. Any person who commits a simple assault or assault and battery is guilty of a Class 1 misdemeanor, and if the person intentionally selects the person against whom a simple assault is committed because of his race, religious conviction, color or national origin, the penalty upon conviction shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement.

B. However, if a person intentionally selects the person against whom an assault and battery resulting in bodily injury is committed because of his race, religious conviction, color or national origin, the person is guilty of a Class 6 felony, and the penalty upon conviction shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement.

C. In addition, if any person commits an assault or an assault and battery against another knowing or having reason to know that such other person is a judge, a magistrate, a law-enforcement officer as defined in subsection F, a correctional officer as defined in § 53.1-1, a person directly involved in the care, treatment, or supervision of inmates in the custody of the Department of Corrections or an employee of a local or regional correctional facility directly involved in the care, treatment, or supervision of inmates in the custody of the facility, a person directly involved in the care, treatment, or supervision of persons in the custody of or under the supervision of the Department of Juvenile Justice, an employee or other individual who provides control, care, or treatment of sexually violent predators committed to the custody of the Department of Behavioral Health and Developmental Services, a firefighter as defined in § 65.2-102, or a volunteer firefighter or any emergency medical services personnel member who is employed by or is a volunteer of an emergency medical services agency or as a member of a bona fide volunteer fire department or volunteer emergency medical services agency, regardless of whether a resolution has been adopted by the governing body of a political subdivision recognizing such firefighters or emergency medical services personnel as employees, engaged in the performance of his public duties any-

where in the Commonwealth, such person is guilty of a Class 6 felony, and, upon conviction, the sentence of such person shall include a mandatory minimum term of confinement of six months.

Nothing in this subsection shall be construed to affect the right of any person charged with a violation of this section from asserting and presenting evidence in support of any defenses to the charge that may be available under common law.

D. In addition, if any person commits a battery against another knowing or having reason to know that such other person is a full-time or part-time employee of any public or private elementary or secondary school and is engaged in the performance of his duties as such, he is guilty of a Class 1 misdemeanor and the sentence of such person upon conviction shall include a sentence of 15 days in jail, two days of which shall be a mandatory minimum term of confinement. However, if the offense is committed by use of a firearm or other weapon prohibited on school property pursuant to § 18.2-308.1, the person shall serve a mandatory minimum sentence of confinement of six months.

E. In addition, any person who commits a battery against another knowing or having reason to know that such individual is a health care provider as defined in § 8.01-581.1 who is engaged in the performance of his duties as an emergency health care provider in an emergency room of a hospital or clinic or on the premises of any other facility rendering emergency medical care is guilty of a Class 1 misdemeanor. The sentence of such person, upon conviction, shall include a term of confinement of 15 days in jail, two days of which shall be a mandatory minimum term of confinement.

F. As used in this section:

"Judge" means any justice or judge of a court of record of the Commonwealth including a judge designated under § 17.1-105, a judge under temporary recall under § 17.1-106, or a judge pro tempore under § 17.1-109, any member of the State Corporation Commission, or of the Virginia Workers' Compensation Commission, and any judge of a district court of the Commonwealth or any substitute judge of such district court.

(Effective until July 1, 2018) "Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115, any special agent of the Department of Alcoholic Beverage Control, conservation police officers appointed pursuant to § 29.1-200, full-time sworn members of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217, and any employee with internal investigations authority designated by the Department of Corrections pursuant to subdivision 11 of § 53.1-10, and such officer also includes jail officers in local and regional correctional facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court services or local jail

responsibilities, auxiliary police officers appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733, auxiliary deputy sheriffs appointed pursuant to § 15.2-1603, police officers of the Metropolitan Washington Airports Authority pursuant to § 5.1-158, and fire marshals appointed pursuant to § 27-30 when such fire marshals have police powers as set out in §§ 27-34.2 and 27-34.2:1.

(Effective July 1, 2018) "Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115, any special agent of the Virginia Alcoholic Beverage Control Authority, conservation police officers appointed pursuant to § 29.1-200, full-time sworn members of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217, and any employee with internal investigations authority designated by the Department of Corrections pursuant to subdivision 11 of § 53.1-10, and such officer also includes jail officers in local and regional correctional facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court services or local jail responsibilities, auxiliary police officers appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733, auxiliary deputy sheriffs appointed pursuant to § 15.2-1603, police officers of the Metropolitan Washington Airports Authority pursuant to § 5.1-158, and fire marshals appointed pursuant to § 27-30 when such fire marshals have police powers as set out in §§ 27-34.2 and 27-34.2:1.

"School security officer" means an individual who is employed by the local school board for the purpose of maintaining order and discipline, preventing crime, investigating violations of school board policies and detaining persons violating the law or school board policies on school property, a school bus or at a school-sponsored activity and who is responsible solely for ensuring the safety, security and welfare of all students, faculty and staff in the assigned school.

G. "Simple assault" or "assault and battery" shall not be construed to include the use of, by any school security officer or full-time or part-time employee of any public or private elementary or secondary school while acting in the course and scope of his official capacity, any of the following: (i) incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property; (iii) reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) reasonable and necessary force for self-defense or the defense of others; or (v) reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or associated paraphernalia that are upon the person of the student or within his control.

In determining whether a person was acting within the exceptions provided in this subsection, due deference shall be given to reasonable judgments that were made by a school security officer

or full-time or part-time employee of any public or private elementary or secondary school at the time of the event.

1975, cc. 14, 15; 1994, c. 658; 1997, c. 833; 1999, cc. 771, 1036; 2000, cc. 288, 682; 2001, c. 129; 2002, c. 817; 2004, cc. 420, 461; 2006, cc. 270, 709, 829; 2008, c. 460; 2009, c. 257; 2011, cc. 230, 233, 374; 2013, cc. 698, 707, 711, 748, 782; 2014, cc. 663, 714; 2015, cc. 38, 196, 730; 2016, c. 420.

§ 18.2-57.01. Pointing laser at law-enforcement officer unlawful; penalty

If any person, knowing or having reason to know another person is a law-enforcement officer as defined in § 18.2-57, a probation or parole officer appointed pursuant to § 53.1-143, a correctional officer as defined in § 53.1-1, or a person employed by the Department of Corrections directly involved in the care, treatment or supervision of inmates in the custody of the Department engaged in the performance of his public duties as such, intentionally projects at such other person a beam or a point of light from a laser, a laser gun sight, or any device that simulates a laser, shall be guilty of a Class 2 misdemeanor.

2000, c. 350.

§ 18.2-57.02. Disarming a law-enforcement or correctional officer; penalty

Any person who knows or has reason to know a person is a law-enforcement officer as defined in § 18.2-57, a correctional officer as defined in § 53.1-1, or a person employed by the Department of Corrections directly involved in the care, treatment or supervision of inmates in the custody of the Department, who is engaged in the performance of his duties as such and, with the intent to impede or prevent any such person from performing his official duties, knowingly and without the person's permission removes a chemical irritant weapon or impact weapon from the possession of the officer or deprives the officer of the use of the weapon is guilty of a Class 1 misdemeanor. However, if the weapon removed or deprived in violation of this section is the officer's firearm or stun weapon as defined in § 18.2-308.1, he shall be guilty of a Class 6 felony. A violation of this section shall constitute a separate and distinct offense.

2001, c. 2; 2007, c. 519.

§ 18.2-57.1. Repealed

Repealed by Acts 1997, c. 833.

§ 18.2-57.2. Assault and battery against a family or household member; penalty

A. Any person who commits an assault and battery against a family or household member is guilty of a Class 1 misdemeanor.

B. Upon a conviction for assault and battery against a family or household member, where it is alleged in the warrant, petition, information, or indictment on which a person is convicted, that such person has been previously convicted of two offenses against a family or household member of (i) assault and battery against a family or household member in violation of this section, (ii) malicious wounding or unlawful wounding in violation of § 18.2-51, (iii) aggravated malicious

wounding in violation of § 18.2-51.2, (iv) malicious bodily injury by means of a substance in violation of § 18.2-52, (v) strangulation in violation of § 18.2-51.6, or (vi) an offense under the law of any other jurisdiction which has the same elements of any of the above offenses, in any combination, all of which occurred within a period of 20 years, and each of which occurred on a different date, such person is guilty of a Class 6 felony.

C. Whenever a warrant for a violation of this section is issued, the magistrate shall issue an emergency protective order as authorized by § 16.1-253.4, except if the defendant is a minor, an emergency protective order shall not be required.

D. The definition of "family or household member" in § 16.1-228 applies to this section.

1991, c. 238; 1992, cc. 526, 886; 1996, c. 866; 1997, c. 603; 1999, cc. 697, 721, 807; 2004, cc. 448, 738; 2009, c. 726; 2014, c. 660.

§ 18.2-57.3. Persons charged with first offense of assault and battery against a family or household member may be placed on local community-based probation; conditions; education and treatment programs; costs and fees; violations; discharge

A. When a person is charged with a simple assault in violation of subsection A of § 18.2-57 where the victim was a family or household member of the person or a violation of § 18.2-57.2, the court may defer the proceedings against such person, without a finding of guilt, and place him on probation under the terms of this section.

B. For a person to be eligible for such deferral, the court shall find that (i) the person was an adult at the time of the commission of the offense, (ii) the person has not previously been convicted of any offense under this article or under any statute of the United States or of any state or any ordinance of any local government relating to an assault or assault and battery against a family or household member, (iii) the person has not previously had a proceeding against him for violation of such an offense dismissed as provided in this section, (iv) the person pleads guilty to, or enters a plea of not guilty or nolo contendere and the court finds the evidence is sufficient to find the person guilty of, simple assault in violation of subsection A of § 18.2-57 where the victim was a family or household member of the person or a violation of § 18.2-57.2, and (v) the person consents to such deferral.

C. The court shall (i) where a local community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1 is available, order that the eligible person be placed with such agency and require, as a condition of local community-based probation, the person to successfully complete all treatment, education programs or services, or any combination thereof indicated by an assessment or evaluation obtained by the local community-based probation services agency if such assessment, treatment or education services are available; or (ii) require successful completion of treatment, education programs or services, or any combination thereof, such as, in the opinion of the court, may be best suited to the needs of the person.

D. The court shall require the person entering such education or treatment program or services under the provisions of this section to pay all or part of the costs of the program or services, including the costs of any assessment, evaluation, testing, education and treatment, based upon the person's ability to pay. Such programs or services shall offer a sliding-scale fee structure or other mechanism to assist participants who are unable to pay the full costs of the required programs or services.

The court shall order the person to be of good behavior for a total period of not less than two years following the deferral of proceedings, including the period of supervised probation, if available.

The court shall, unless done at arrest, order the person to report to the original arresting law-enforcement agency to submit to fingerprinting.

E. Upon fulfillment of the terms and conditions specified in the court order, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent proceedings. No charges dismissed pursuant to this section shall be eligible for expungement under § 19.2-392.2.

F. Upon violation of a term or condition of supervised probation or of the period of good behavior, the court may enter an adjudication of guilt and proceed as otherwise provided by law.

G. Notwithstanding any other provision of this section, whenever a court places a person on probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction for purposes of Article 6.1 (§ 18.2-307.1 et seq.) of Chapter 7.

1999, c. 963; 2000, c. 1040; 2003, cc. 33, 38; 2004, c. 377; 2007, c. 133; 2009, cc. 313, 347; 2013, c. 746; 2016, cc. 422, 742.

§ 18.2-57.4. Reporting findings of assault and battery to military family advocacy representatives

If any active duty member of the United States Armed Forces is found guilty of a violation of § 18.2-57.2 or § 18.2-57.3, the court shall report the conviction to family advocacy representatives of the United States Armed Forces.

2004, c. 681.

Article 5 - ROBBERY

§ 18.2-58. How punished

If any person commit robbery by partial strangulation, or suffocation, or by striking or beating, or by other violence to the person, or by assault or otherwise putting a person in fear of serious bodily harm, or by the threat or presenting of firearms, or other deadly weapon or instrumentality whatsoever, he shall be guilty of a felony and shall be punished by confinement in a state correctional facility for life or any term not less than five years.

Code 1950, § 18.1-91; 1960, c. 358; 1966, c. 361; 1975, cc. 14, 15, 605; 1978, c. 608.

§ 18.2-58.1. Carjacking; penalty

A. Any person who commits carjacking, as herein defined, shall be guilty of a felony punishable by imprisonment for life or a term not less than fifteen years.

B. As used in this section, "carjacking" means the intentional seizure or seizure of control of a motor vehicle of another with intent to permanently or temporarily deprive another in possession or control of the vehicle of that possession or control by means of partial strangulation, or suffocation, or by striking or beating, or by other violence to the person, or by assault or otherwise putting a person in fear of serious bodily harm, or by the threat or presenting of firearms, or other deadly weapon or instrumentality whatsoever. "Motor vehicle" shall have the same meaning as set forth in § 46.2-100.

C. The provisions of this section shall not preclude the applicability of any other provision of the criminal law of the Commonwealth which may apply to any course of conduct which violates this section.

1993, c. 500 .

Article 6 - EXTORTION AND OTHER THREATS

§ 18.2-59. Extortion of money, property or pecuniary benefit

Any person who (i) threatens injury to the character, person, or property of another person, (ii) accuses him of any offense, (iii) threatens to report him as being illegally present in the United States, or (iv) knowingly destroys, conceals, removes, confiscates, withholds or threatens to withhold, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person, and thereby extorts money, property, or pecuniary benefit or any note, bond, or other evidence of debt from him or any other person, is guilty of a Class 5 felony.

For the purposes of this section, injury to property includes the sale, distribution, or release of identifying information defined in clauses (iii) through (xii) of subsection C of § 18.2-186.3, but does not include the distribution or release of such information by a person who does so with the intent to obtain money, property or a pecuniary benefit to which he reasonably believes he is lawfully entitled.

Code 1950, § 18.1-184; 1960, c. 358; 1975, cc. 14, 15; 2006, c. 313; 2007, cc. 453, 547; 2010, c. 298.

§ 18.2-60. Threats of death or bodily injury to a person or member of his family; threats to commit serious bodily harm to persons on school property; penalty

A. 1. Any person who knowingly communicates, in a writing, including an electronically transmitted communication producing a visual or electronic message, a threat to kill or do bodily injury to a person, regarding that person or any member of his family, and the threat places such person

in reasonable apprehension of death or bodily injury to himself or his family member, is guilty of a Class 6 felony. However, any person who violates this subsection with the intent to commit an act of terrorism as defined in § 18.2-46.4 is guilty of a Class 5 felony.

2. Any person who communicates a threat, in a writing, including an electronically transmitted communication producing a visual or electronic message, to kill or do bodily harm, (i) on the grounds or premises of any elementary, middle or secondary school property, (ii) at any elementary, middle or secondary school-sponsored event or (iii) on a school bus to any person or persons, regardless of whether the person who is the object of the threat actually receives the threat, and the threat would place the person who is the object of the threat in reasonable apprehension of death or bodily harm, is guilty of a Class 6 felony.

B. Any person who orally makes a threat to any employee of any elementary, middle or secondary school, while on a school bus, on school property or at a school-sponsored activity, to kill or to do bodily injury to such person, is guilty of a Class 1 misdemeanor.

A prosecution pursuant to this section may be either in the county, city or town in which the communication was made or received.

Code 1950, § 18.1-257; 1960, c. 358; 1973, c. 118; 1975, cc. 14, 15; 1994, c. 265; 1998, cc. 687, 788; 2001, cc. 644, 653; 2002, cc. 588, 623.

§ 18.2-60.1. Threatening the Governor or his immediate family

Any person who shall knowingly and willfully send, deliver or convey, or cause to be sent, delivered or conveyed, to the Governor or his immediate family any threat to take the life of or inflict bodily harm upon the Governor or his immediate family, whether such threat be oral or written, shall be guilty of a Class 6 felony.

1982, c. 568.

§ 18.2-60.2. Members of the Governor's immediate family

As used in § 18.2-60.1, the immediate family of the Governor shall include any parent, sibling, child, grandchild, spouse, parent of a spouse, and spouse of a sibling, child or grandchild who resides in the same household as the Governor.

1982, c. 568.

§ 18.2-60.3. Stalking; penalty

A. Any person, except a law-enforcement officer, as defined in § 9.1-101, and acting in the performance of his official duties, and a registered private investigator, as defined in § 9.1-138, who is regulated in accordance with § 9.1-139 and acting in the course of his legitimate business, who on more than one occasion engages in conduct directed at another person with the intent to place, or when he knows or reasonably should know that the conduct places that other person in reasonable fear of death, criminal sexual assault, or bodily injury to that other person or to that other person's family or household member is guilty of a Class 1 misdemeanor. If the person

contacts or follows or attempts to contact or follow the person at whom the conduct is directed after being given actual notice that the person does not want to be contacted or followed, such actions shall be prima facie evidence that the person intended to place that other person, or reasonably should have known that the other person was placed, in reasonable fear of death, criminal sexual assault, or bodily injury to himself or a family or household member.

B. Any person who is convicted of a second offense of subsection A occurring within five years of a prior conviction of such an offense under this section or for a substantially similar offense under the law of any other jurisdiction is guilty of a Class 6 felony.

C. A person may be convicted under this section irrespective of the jurisdiction or jurisdictions within the Commonwealth wherein the conduct described in subsection A occurred, if the person engaged in that conduct on at least one occasion in the jurisdiction where the person is tried. Evidence of any such conduct that occurred outside the Commonwealth may be admissible, if relevant, in any prosecution under this section provided that the prosecution is based upon conduct occurring within the Commonwealth.

D. Upon finding a person guilty under this section, the court shall, in addition to the sentence imposed, issue an order prohibiting contact between the defendant and the victim or the victim's family or household member.

E. The Department of Corrections, sheriff or regional jail director shall give notice prior to the release from a state correctional facility or a local or regional jail of any person incarcerated upon conviction of a violation of this section, to any victim of the offense who, in writing, requests notice, or to any person designated in writing by the victim. The notice shall be given at least 15 days prior to release of a person sentenced to a term of incarceration of more than 30 days or, if the person was sentenced to a term of incarceration of at least 48 hours but no more than 30 days, 24 hours prior to release. If the person escapes, notice shall be given as soon as practicable following the escape. The victim shall keep the Department of Corrections, sheriff or regional jail director informed of the current mailing address and telephone number of the person named in the writing submitted to receive notice.

All information relating to any person who receives or may receive notice under this subsection shall remain confidential and shall not be made available to the person convicted of violating this section.

For purposes of this subsection, "release" includes a release of the offender from a state correctional facility or a local or regional jail (i) upon completion of his term of incarceration or (ii) on probation or parole.

No civil liability shall attach to the Department of Corrections nor to any sheriff or regional jail director or their deputies or employees for a failure to comply with the requirements of this subsection.

F. For purposes of this section:

"Family or household member" has the same meaning as provided in § 16.1-228.

1992, c. 888; 1994, cc. 360, 521, 739; 1995, c. 824; 1996, cc. 540, 866; 1998, c. 570; 2001, c. 197; 2002, c. 377; 2013, c. 759; 2016, cc. 545, 696, 745.

§ 18.2-60.4. Violation of protective orders; penalty

A. Any person who violates any provision of a protective order issued pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10 is guilty of a Class 1 misdemeanor. Conviction hereunder shall bar a finding of contempt for the same act. The punishment for any person convicted of a second offense of violating a protective order, when the offense is committed within five years of the prior conviction and when either the instant or prior offense was based on an act or threat of violence, shall include a mandatory minimum term of confinement of 60 days. Any person convicted of a third or subsequent offense of violating a protective order, when the offense is committed within 20 years of the first conviction and when either the instant or one of the prior offenses was based on an act or threat of violence, is guilty of a Class 6 felony and the punishment shall include a mandatory minimum term of confinement of six months. The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence.

B. In addition to any other penalty provided by law, any person who, while knowingly armed with a firearm or other deadly weapon, violates any provision of a protective order with which he has been served issued pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10 is guilty of a Class 6 felony.

C. If the respondent commits an assault and battery upon any party protected by the protective order resulting in bodily injury to the party or stalks any party protected by the protective order in violation of § 18.2-60.3, he is guilty of a Class 6 felony. Any person who violates such a protective order by furtively entering the home of any protected party while the party is present, or by entering and remaining in the home of the protected party until the party arrives, is guilty of a Class 6 felony, in addition to any other penalty provided by law.

D. Upon conviction of any offense hereunder for which a mandatory minimum term of confinement is not specified, the person shall be sentenced to a term of confinement and in no case shall the entire term imposed be suspended.

E. Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order pursuant to § 19.2-152.10 for a specified period not exceeding two years from the date of conviction.

1998, c. 569; 2003, c. 219; 2011, cc. 445, 480; 2013, cc. 761, 774; 2016, cc. 583, 585, 638.

§ 18.2-60.5. Unauthorized use of electronic tracking device; penalty

A. Any person who installs or places an electronic tracking device through intentionally deceptive means and without consent, or causes an electronic tracking device to be installed or placed

through intentionally deceptive means and without consent, and uses such device to track the location of any person is guilty of a Class 3 misdemeanor.

B. The provisions of this section shall not apply to the installation, placement, or use of an electronic tracking device by:

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 legal guardian of a minor when tracking (i) the minor or (ii) 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, as defined in § 18.2-369;

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, as defined in § 9.1-138, who is regulated in accordance with § 9.1-139 and is acting in the normal course of his business and with the consent of the owner of the property upon which the electronic tracking device is installed and placed. However, such exception shall not apply if the private investigator is working on behalf of a client who is subject to a protective order under § 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 19.2-152.8, 19.2-152.9, 19.2-152.10, or subsection B of § 20-103, or if the private investigator knows or should reasonably know that the client seeks the private investigator's services to aid in the commission of a crime.

C. For the purposes of this section:

"Electronic tracking device" means an electronic or mechanical device that permits a person to remotely determine or track the position and movement of another person.

"Fleet vehicle" means (i) one or more motor vehicles owned by a single entity and operated by employees or agents of the entity for business or government purposes, (ii) motor vehicles held for lease or rental to the general public, or (iii) motor vehicles held for sale by motor vehicle dealers.

2013, c. 434.

Article 7 - CRIMINAL SEXUAL ASSAULT

§ 18.2-61. Rape

A. If any person has sexual intercourse with a complaining witness, whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in sexual

intercourse with any other person and such act is accomplished (i) against the complaining witness's will, by force, threat or intimidation of or against the complaining witness or another person; or (ii) through the use of the complaining witness's mental incapacity or physical helplessness; or (iii) with a child under age 13 as the victim, he or she shall be guilty of rape.

B. A violation of this section shall be punishable, in the discretion of the court or jury, by confinement in a state correctional facility for life or for any term not less than five years; and in addition:

1. For a violation of clause (iii) of subsection A where the offender is more than three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89, 18.2-90, or 18.2-91, or (iii) § 18.2-51.2, the punishment shall include a mandatory minimum term of confinement of 25 years; or

2. For a violation of clause (iii) of subsection A where it is alleged in the indictment that the offender was 18 years of age or older at the time of the offense, the punishment shall include a mandatory minimum term of confinement for life.

The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence. If the term of confinement imposed for any violation of clause (iii) of subsection A, where the offender is more than three years older than the victim, is for a term less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life, subject to revocation by the court.

There shall be a rebuttable presumption that a juvenile over the age of 10 but less than 12, does not possess the physical capacity to commit a violation of this section. In any case deemed appropriate by the court, all or part of any sentence imposed for a violation under this section against a spouse may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant who has not previously had a proceeding against him for violation of this section dismissed pursuant to this subsection and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such

counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

Code 1950, § 18.1-44; 1960, c. 358; 1972, c. 394; 1975, cc. 14, 15, 606; 1981, c. 397; 1982, c. 506; 1986, c. 516; 1994, cc. 339, 772, 794; 1997, c. 330; 1999, c. 367; 2002, cc. 810, 818; 2005, c. 631; 2006, cc. 853, 914; 2012, cc. 575, 605; 2013, cc. 761, 774.

§ 18.2-62. Testing of certain persons for human immunodeficiency virus or hepatitis B or C viruses

A. As soon as practicable following arrest, the attorney for the Commonwealth may request, after consultation with any complaining witness, that any person charged with (i) any crime involving sexual assault pursuant to this article, (ii) any offenses against children as prohibited by §§ 18.2-361, 18.2-366, 18.2-370, and 18.2-370.1, or (iii) any assault and battery in which the complaining witness was exposed to body fluids of the person arrested, be requested to submit to testing for infection with human immunodeficiency virus or hepatitis B or C viruses. The person so charged shall be counseled about the meaning of the test, about acquired immunodeficiency syndrome or hepatitis B or C viruses, and about the transmission and prevention of infection with human immunodeficiency virus or hepatitis B or C viruses.

If the person so charged refuses to submit to the test or the competency of the person to consent to the test is at issue, the court with jurisdiction of the case shall hold a hearing to determine whether there is probable cause that the individual has committed the crime with which he is charged. If the court finds probable cause, the court shall order the accused to undergo testing for infection with human immunodeficiency virus or hepatitis B or C viruses. The court may enter such an order in the absence of the defendant if the defendant is represented at the hearing by counsel or a guardian ad litem. The court's finding shall be without prejudice to either the Commonwealth or the person charged and shall not be evidence in any proceeding, civil or criminal.

B. At any point following indictment, arrest by warrant, or service of a petition in the case of a juvenile, of any crime involving sexual assault pursuant to this article or any offenses against children as prohibited by §§ 18.2-361, 18.2-366, 18.2-370, and 18.2-370.1, the attorney for the Commonwealth may request, or after consultation with a complaining witness and, upon the request of the complaining witness shall request, and the court shall order the defendant to submit to testing for infection with human immunodeficiency virus or hepatitis B or C viruses within 48 hours, and follow-up testing as may be medically appropriate. Any test conducted following indictment, arrest by warrant, or service of a petition shall be in addition to such tests as may have been conducted following arrest pursuant to subsection A.

C. Confirmatory tests shall be conducted before any test result shall be determined to be positive. The results of the tests for infection with human immunodeficiency virus or hepatitis B or C

viruses shall be confidential as provided in § 32.1-36.1; however, the Department of Health shall also disclose the results to any victim and offer appropriate counseling as provided by subsection B of § 32.1-37.2. The Department shall conduct surveillance and investigation in accordance with § 32.1-39.

The results of such tests shall not be admissible as evidence in any criminal proceeding.

The cost of such tests shall be paid by the Commonwealth and taxed as part of the cost of such criminal proceedings.

1990, c. 957; 1992, cc. 500, 587; 1993, c. 512; 2001, c. 862; 2005, c. 661; 2008, c. 756.

§ 18.2-63. Carnal knowledge of child between thirteen and fifteen years of age

A. If any person carnally knows, without the use of force, a child thirteen years of age or older but under fifteen years of age, such person shall be guilty of a Class 4 felony.

B. If any person carnally knows, without the use of force, a child thirteen years of age or older but under fifteen years of age who consents to sexual intercourse and the accused is a minor and such consenting child is three years or more the accused's junior, the accused shall be guilty of a Class 6 felony. If such consenting child is less than three years the accused's junior, the accused shall be guilty of a Class 4 misdemeanor.

In calculating whether such child is three years or more a junior of the accused minor, the actual dates of birth of the child and the accused, respectively, shall be used.

C. For the purposes of this section, (i) a child under the age of thirteen years shall not be considered a consenting child and (ii) "carnal knowledge" includes the acts of sexual intercourse, cunnilingus, fellatio, anilingus, anal intercourse, and animate and inanimate object sexual penetration.

Code 1950, § 18.1-44; 1960, c. 358; 1972, c. 394; 1975, cc. 14, 15, 606; 1981, c. 397; 1993, c. 852; 2007, c. 718.

§ 18.2-63.1. Death of victim

When the death of the victim occurs in connection with an offense under this article, it shall be immaterial in the prosecution thereof whether the alleged offense occurred before or after the death of the victim.

1978, c. 803; 1981, c. 397.

§ 18.2-64. Repealed

Repealed by Acts 1981, c. 397.

§ 18.2-64.1. Carnal knowledge of certain minors

If any person providing services, paid or unpaid, to juveniles under the purview of the Juvenile and Domestic Relations District Court Law, or to juveniles who have been committed to the custody of the State Department of Juvenile Justice, carnally knows, without the use of force, any

minor fifteen years of age or older, when such minor is confined or detained in jail, is detained in any facility mentioned in § 16.1-249, or has been committed to the custody of the Department of Juvenile Justice pursuant to § 16.1-278.8, knowing or having good reason to believe that (i) such minor is in such confinement or detention status, (ii) such minor is a ward of the Department of Juvenile Justice, or (iii) such minor is on probation, furlough, or leave from or has escaped or absconded from such confinement, detention, or custody, he shall be guilty of a Class 6 felony.

For the purposes of this section, "carnal knowledge" includes the acts of sexual intercourse, cunnilingus, fellatio, anallingus, anal intercourse, and animate and inanimate object sexual penetration.

1977, c. 304; 1981, c. 397; 1989, c. 733; 1991, c. 534; 1993, c. 852 .

§ 18.2-64.2. Carnal knowledge of an inmate, parolee, probationer, detainee, or pretrial or posttrial offender; penalty

An accused is guilty of carnal knowledge of an inmate, parolee, probationer, detainee, or pretrial defendant or posttrial offender if he is an employee or contractual employee of, or a volunteer with, a state or local correctional facility or regional jail, the Department of Corrections, the Department of Juvenile Justice, a secure facility or detention home, as defined in § 16.1-228, a state or local court services unit, as defined in § 16.1-235, a local community-based probation services agency or a pretrial services agency; is in a position of authority over the inmate, probationer, parolee, detainee, or a pretrial defendant or posttrial offender; knows that the inmate, probationer, parolee, detainee, or pretrial defendant or posttrial offender is under the jurisdiction of the state or local correctional facility, a regional jail, the Department of Corrections, the Department of Juvenile Justice, a secure facility or detention home, as defined in § 16.1-228, a state or local court services unit, as defined in § 16.1-235, a local community-based probation services agency, or a pretrial services agency; and carnally knows, without the use of force, threat or intimidation (i) an inmate who has been committed to jail or convicted and sentenced to confinement in a state or local correctional facility or regional jail or (ii) a probationer, parolee, detainee, or a pretrial defendant or posttrial offender under the jurisdiction of the Department of Corrections, the Department of Juvenile Justice, a secure facility or detention home, as defined in § 16.1-228, a state or local court services unit, as defined in § 16.1-235, a local community-based probation services agency, a pretrial services agency, a local or regional jail for the purposes of imprisonment, a work program or any other parole/probationary or pretrial services program or agency. Such offense is a Class 6 felony.

An accused is guilty of carnal knowledge of a pretrial defendant or posttrial offender if he (a) is an owner or employee of the bail bond company that posted the pretrial defendant's or posttrial offender's bond, (b) has the authority to revoke the pretrial defendant's or posttrial offender's bond, and (c) carnally knows, without use of force, threat, or intimidation, a pretrial defendant or posttrial offender. Such offense is a Class 1 misdemeanor.

For the purposes of this section, "carnal knowledge" includes the acts of sexual intercourse, cunnilingus, fellatio, anallingus, anal intercourse and animate or inanimate object sexual penetration.

1999, c. 294; 2000, c. 1040; 2001, c. 385; 2007, c. 133; 2013, c. 602.

§ 18.2-65. Repealed

Repealed by Acts 1981, c. 397.

§ 18.2-66. Repealed

Repealed by Acts 2008, cc. 174 and 206, cl. 2.

§ 18.2-67. Depositions of complaining witnesses in cases of criminal sexual assault and attempted criminal sexual assault

Before or during the trial for an offense or attempted offense under this article, the judge of the court in which the case is pending, with the consent of the accused first obtained in open court, by an order of record, may direct that the deposition of the complaining witness be taken at a time and place designated in the order, and the judge may adjourn the taking thereof to such other time and places as he may deem necessary. Such deposition shall be taken before a judge of a circuit court in the county or city in which the offense was committed or the trial is had, and the judge shall rule upon all questions of evidence, and otherwise control the taking of the same as though it were taken in open court. At the taking of such deposition the attorney for the Commonwealth, as well as the accused and his attorneys, shall be present and they shall have the same rights in regard to the examination of such witness as if he or she were testifying in open court. No other person shall be present unless expressly permitted by the judge. Such deposition shall be read to the jury at the time such witness might have testified if such deposition had not been taken, and shall be considered by them, and shall have the same force and effect as though such testimony had been given orally in court. The judge may, in like manner, direct other depositions of the complaining witness, in rebuttal or otherwise, which shall be taken and read in the manner and under the conditions herein prescribed as to the first deposition. The cost of taking such depositions shall be paid by the Commonwealth.

Code 1950, § 18.1-47; 1960, c. 358; 1975, cc. 14, 15, 606; 1981, c. 397.

§ 18.2-67.01. Not in effect

Not in effect.

§ 18.2-67.1. Forcible sodomy

A. An accused shall be guilty of forcible sodomy if he or she engages in cunnilingus, fellatio, anilingus, or anal intercourse with a complaining witness whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in such acts with any other person, and

1. The complaining witness is less than 13 years of age; or

2. The act is accomplished against the will of the complaining witness, by force, threat or intimidation of or against the complaining witness or another person, or through the use of the complaining witness's mental incapacity or physical helplessness.

B. Forcible sodomy is a felony punishable by confinement in a state correctional facility for life or for any term not less than five years; and in addition:

1. For a violation of subdivision A 1, where the offender is more than three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89, 18.2-90, or 18.2-91, or (iii) § 18.2-51.2, the punishment shall include a mandatory minimum term of confinement of 25 years; or

2. For a violation of subdivision A 1 where it is alleged in the indictment that the offender was 18 years of age or older at the time of the offense, the punishment shall include a mandatory minimum term of confinement for life.

The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence. If the term of confinement imposed for any violation of subdivision A 1, where the offender is more than three years older than the victim, is for a term less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life, subject to revocation by the court.

In any case deemed appropriate by the court, all or part of any sentence imposed for a violation under this section against a spouse may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant who has not previously had a proceeding against him for violation of this section dismissed pursuant to this subsection and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

1981, c. 397; 1986, c. 516; 1994, cc. 772, 794; 1999, c. 367; 2005, c. 631; 2006, cc. 853, 914; 2012, cc. 575, 605; 2013, cc. 761, 774.

§ 18.2-67.2. Object sexual penetration; penalty

A. An accused shall be guilty of inanimate or animate object sexual penetration if he or she penetrates the labia majora or anus of a complaining witness, whether or not his or her spouse, other than for a bona fide medical purpose, or causes such complaining witness to so penetrate his or her own body with an object or causes a complaining witness, whether or not his or her spouse, to engage in such acts with any other person or to penetrate, or to be penetrated by, an animal, and

1. The complaining witness is less than 13 years of age; or

2. The act is accomplished against the will of the complaining witness, by force, threat or intimidation of or against the complaining witness or another person, or through the use of the complaining witness's mental incapacity or physical helplessness.

B. Inanimate or animate object sexual penetration is a felony punishable by confinement in the state correctional facility for life or for any term not less than five years; and in addition:

1. For a violation of subdivision A 1, where the offender is more than three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89, 18.2-90, or 18.2-91, or (iii) § 18.2-51.2, the punishment shall include a mandatory minimum term of confinement of 25 years; or

2. For a violation of subdivision A 1 where it is alleged in the indictment that the offender was 18 years of age or older at the time of the offense, the punishment shall include a mandatory minimum term of confinement for life.

The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence. If the term of confinement imposed for any violation of subdivision A 1, where the offender is more than three years older than the victim, is for a term less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life, subject to revocation by the court.

In any case deemed appropriate by the court, all or part of any sentence imposed for a violation under this section against a spouse may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon

motion of the defendant who has not previously had a proceeding against him for violation of this section dismissed pursuant to this subsection and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

1981, c. 397; 1982, c. 508; 1986, c. 516; 1988, c. 437; 1993, c. 549; 1994, cc. 772, 794; 1999, c. 367; 2005, c. 631; 2006, cc. 853, 914; 2012, cc. 575, 605; 2013, cc. 761, 774.

§ 18.2-67.2:1. Repealed

Repealed by Acts 2005, c. 631, cl. 2.

§ 18.2-67.3. Aggravated sexual battery; penalty

A. An accused shall be guilty of aggravated sexual battery if he or she sexually abuses the complaining witness, and

1. The complaining witness is less than 13 years of age, or

2. The act is accomplished through the use of the complaining witness's mental incapacity or physical helplessness, or

3. The offense is committed by a parent, step-parent, grandparent, or step-grandparent and the complaining witness is at least 13 but less than 18 years of age, or

4. The act is accomplished against the will of the complaining witness by force, threat or intimidation, and

a. The complaining witness is at least 13 but less than 15 years of age, or

b. The accused causes serious bodily or mental injury to the complaining witness, or

c. The accused uses or threatens to use a dangerous weapon.

B. Aggravated sexual battery is a felony punishable by confinement in a state correctional facility for a term of not less than one nor more than 20 years and by a fine of not more than $100,000.

1981, c. 397; 1993, c. 590; 2004, c. 843; 2005, cc. 185, 406.

§ 18.2-67.4. Sexual battery

A. An accused is guilty of sexual battery if he sexually abuses, as defined in § 18.2-67.10, (i) the complaining witness against the will of the complaining witness, by force, threat, intimidation, or ruse, (ii) within a two-year period, more than one complaining witness or one complaining witness on more than one occasion intentionally and without the consent of the complaining

witness, (iii) an inmate who has been committed to jail or convicted and sentenced to confinement in a state or local correctional facility or regional jail, and the accused is an employee or contractual employee of, or a volunteer with, the state or local correctional facility or regional jail; is in a position of authority over the inmate; and knows that the inmate is under the jurisdiction of the state or local correctional facility or regional jail, or (iv) a probationer, parolee, or a pretrial defendant or posttrial offender under the jurisdiction of the Department of Corrections, a local community-based probation services agency, a pretrial services agency, a local or regional jail for the purposes of imprisonment, a work program or any other parole/probationary or pretrial services or agency and the accused is an employee or contractual employee of, or a volunteer with, the Department of Corrections, a local community-based probation services agency, a pretrial services agency or a local or regional jail; is in a position of authority over an offender; and knows that the offender is under the jurisdiction of the Department of Corrections, a local community-based probation services agency, a pretrial services agency or a local or regional jail.

B. Sexual battery is a Class 1 misdemeanor.

1981, c. 397; 1997, c. 643; 1999, c. 294; 2000, cc. 832, 1040; 2006, c. 284; 2007, c. 133; 2014, c. 656.

§ 18.2-67.4:1. Infected sexual battery; penalty

A. Any person who, knowing he is infected with HIV, syphilis, or hepatitis B, has sexual intercourse, cunnilingus, fellatio, anallingus or anal intercourse with the intent to transmit the infection to another person is guilty of a Class 6 felony.

B. Any person who, knowing he is infected with HIV, syphilis, or hepatitis B, has sexual intercourse, cunnilingus, fellatio, anallingus or anal intercourse with another person without having previously disclosed the existence of his infection to the other person is guilty of a Class 1 misdemeanor.

C. "HIV" means the human immunodeficiency virus or any other related virus that causes acquired immunodeficiency syndrome (AIDS).

Nothing in this section shall prevent the prosecution of any other crime against persons under Chapter 4 (§ 18.2-30 et seq.) of this title. Any person charged with a violation of this section alleging he is infected with HIV shall be subject to the testing provisions of § 18.2-62.

2000, c. 831; 2004, c. 449.

§ 18.2-67.4:2. Sexual abuse of a child under 15 years of age; penalty

Any adult who, with lascivious intent, commits an act of sexual abuse, as defined in § 18.2-67.10, with any child 13 years of age or older but under 15 years of age is guilty of a Class 1 misdemeanor.

2007, c. 463.

§ 18.2-67.5. Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual battery, and sexual battery

A. An attempt to commit rape, forcible sodomy, or inanimate or animate object sexual penetration shall be punishable as a Class 4 felony.

B. An attempt to commit aggravated sexual battery shall be a felony punishable as a Class 6 felony.

C. An attempt to commit sexual battery is a Class 1 misdemeanor.

1981, c. 397; 1993, c. 549 .

§ 18.2-67.5:1. Punishment upon conviction of third misdemeanor offense

When a person is convicted of sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of subsection C of § 18.2-67.5, a violation of § 18.2-371 involving consensual intercourse, anal intercourse, cunnilingus, fellatio, or anilingus with a child, indecent exposure of himself or procuring another to expose himself in violation of § 18.2-387, or a violation of § 18.2-130, and it is alleged in the warrant, information, or indictment on which the person is convicted and found by the court or jury trying the case that the person has previously been convicted within the 10-year period immediately preceding the offense charged of two or more of the offenses specified in this section, each such offense occurring on a different date, he is guilty of a Class 6 felony.

1994, c. 468; 2006, c. 875; 2014, c. 794.

§ 18.2-67.5:2. Punishment upon conviction of certain subsequent felony sexual assault

A. Any person convicted of (i) more than one offense specified in subsection B or (ii) one of the offenses specified in subsection B of this section and one of the offenses specified in subsection B of § 18.2-67.5:3 when such offenses were not part of a common act, transaction or scheme, and who has been at liberty as defined in § 53.1-151 between each conviction shall, upon conviction of the second or subsequent such offense, be sentenced to the maximum term authorized by statute for such offense, and shall not have all or any part of such sentence suspended, provided it is admitted, or found by the jury or judge before whom the person is tried, that he has been previously convicted of at least one of the specified offenses.

B. The provisions of subsection A shall apply to felony convictions for:

1. Carnal knowledge of a child between thirteen and fifteen years of age in violation of § 18.2-63 when the offense is committed by a person over the age of eighteen;

2. Carnal knowledge of certain minors in violation of § 18.2-64.1;

3. Aggravated sexual battery in violation of § 18.2-67.3;

4. Crimes against nature in violation of subsection B of § 18.2-361;

5. Adultery or fornication with one's own child or grandchild in violation of § 18.2-366;

6. Taking indecent liberties with a child in violation of § 18.2-370 or § 18.2-370.1; or

7. Conspiracy to commit any offense listed in subdivisions 1 through 6 pursuant to § 18.2-22.

C. For purposes of this section, prior convictions shall include (i) adult convictions for felonies under the laws of any state or the United States that are substantially similar to those listed in subsection B and (ii) findings of not innocent, adjudications or convictions in the case of a juvenile if the juvenile offense is substantially similar to those listed in subsection B, the offense would be a felony if committed by an adult in the Commonwealth and the offense was committed less than twenty years before the second offense.

The Commonwealth shall notify the defendant in writing, at least thirty days prior to trial, of its intention to seek punishment pursuant to this section.

1995, c. 834; 2000, c. 333.

§ 18.2-67.5:3. Punishment upon conviction of certain subsequent violent felony sexual assault

A. Any person convicted of more than one offense specified in subsection B, when such offenses were not part of a common act, transaction or scheme, and who has been at liberty as defined in § 53.1-151 between each conviction shall, upon conviction of the second or subsequent such offense, be sentenced to life imprisonment and shall not have all or any portion of the sentence suspended, provided it is admitted, or found by the jury or judge before whom he is tried, that he has been previously convicted of at least one of the specified offenses.

B. The provisions of subsection A shall apply to convictions for:

1. Rape in violation of § 18.2-61;

2. Forcible sodomy in violation of § 18.2-67.1;

3. Object sexual penetration in violation of § 18.2-67.2;

4. Abduction with intent to defile in violation of § 18.2-48; or

5. Conspiracy to commit any offense listed in subdivisions 1 through 4 pursuant to § 18.2-22.

C. For purposes of this section, prior convictions shall include (i) adult convictions for felonies under the laws of any state or the United States that are substantially similar to those listed in subsection B and (ii) findings of not innocent, adjudications or convictions in the case of a juvenile if the juvenile offense is substantially similar to those listed in subsection B, the offense would be a felony if committed by an adult in the Commonwealth and the offense was committed less than twenty years before the second offense.

The Commonwealth shall notify the defendant in the indictment, information, or warrant, at least thirty days prior to trial, of its intention to seek punishment pursuant to this section.

1995, c. 834; 2007, c. 506.

§ 18.2-67.6. Proof of physical resistance not required

The Commonwealth need not demonstrate that the complaining witness cried out or physically resisted the accused in order to convict the accused of an offense under this article, but the absence of such resistance may be considered when relevant to show that the act alleged was not against the will of the complaining witness.

1981, c. 397.

§ 18.2-67.7. Admission of evidence (Supreme Court Rule 2:412 derived from this section)
A. In prosecutions under this article, or under clause (iii) or (iv) of § 18.2-48, 18.2-370, 18.2-370.01, or 18.2-370.1, general reputation or opinion evidence of the complaining witness's unchaste character or prior sexual conduct shall not be admitted. Unless the complaining witness voluntarily agrees otherwise, evidence of specific instances of his or her prior sexual conduct shall be admitted only if it is relevant and is:

1. Evidence offered to provide an alternative explanation for physical evidence of the offense charged which is introduced by the prosecution, limited to evidence designed to explain the presence of semen, pregnancy, disease, or physical injury to the complaining witness's intimate parts; or

2. Evidence of sexual conduct between the complaining witness and the accused offered to support a contention that the alleged offense was not accomplished by force, threat or intimidation or through the use of the complaining witness's mental incapacity or physical helplessness, provided that the sexual conduct occurred within a period of time reasonably proximate to the offense charged under the circumstances of this case; or

3. Evidence offered to rebut evidence of the complaining witness's prior sexual conduct introduced by the prosecution.

B. Nothing contained in this section shall prohibit the accused from presenting evidence relevant to show that the complaining witness had a motive to fabricate the charge against the accused. If such evidence relates to the past sexual conduct of the complaining witness with a person other than the accused, it shall not be admitted and may not be referred to at any preliminary hearing or trial unless the party offering same files a written notice generally describing the evidence prior to the introduction of any evidence, or the opening statement of either counsel, whichever first occurs, at the preliminary hearing or trial at which the admission of the evidence may be sought.

C. Evidence described in subsections A and B of this section shall not be admitted and may not be referred to at any preliminary hearing or trial until the court first determines the admissibility of that evidence at an evidentiary hearing to be held before the evidence is introduced at such preliminary hearing or trial. The court shall exclude from the evidentiary hearing all persons except the accused, the complaining witness, other necessary witnesses, and required court personnel. If the court determines that the evidence meets the requirements of subsections A and B of this section, it shall be admissible before the judge or jury trying the case in the ordinary course of the preliminary hearing or trial. If the court initially determines that the evidence is inadmissible, but

new information is discovered during the course of the preliminary hearing or trial which may make such evidence admissible, the court shall determine in an evidentiary hearing whether such evidence is admissible.

1981, c. 397; 2007, c. 890; 2011, c. 785.

§ 18.2-67.7:1. Evidence of similar crimes in child sexual offense cases (Supreme Court Rule 2:413 derived from this section)

A. In a criminal case in which the defendant is accused of a felony sexual offense involving a child victim, evidence of the defendant's conviction of another sexual offense or offenses is admissible and may be considered for its bearing on any matter to which it is relevant.

B. The Commonwealth shall provide to the defendant 14 days prior to trial notice of its intention to introduce copies of final orders evidencing the defendant's qualifying prior criminal convictions. Such notice shall include (i) the date of each prior conviction, (ii) the name and jurisdiction of the court where each prior conviction was obtained, and (iii) each offense of which the defendant was convicted. Prior to commencement of the trial, the Commonwealth shall provide to the defendant photocopies of certified copies of the final orders that it intends to introduce.

C. This section shall not be construed to limit the admission or consideration of evidence under any other section or rule of court.

D. For purposes of this section, "sexual offense" means any offense or any attempt or conspiracy to engage in any offense described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 or § 18.2-370, 18.2-370.01, or 18.2-370.1 or any substantially similar offense under the laws of another state or territory of the United States, the District of Columbia, or the United States.

E. Evidence offered in a criminal case pursuant to the provisions of this section shall be subject to exclusion in accordance with the Virginia Rules of Evidence, including but not limited to Rule 2:403.

2014, c. 782.

§ 18.2-67.8. Closed preliminary hearings

In preliminary hearings for offenses charged under this article or under §§ 18.2-361, 18.2-366, 18.2-370 or § 18.2-370.1, the court may, on its own motion or at the request of the Commonwealth, the complaining witness, the accused, or their counsel, exclude from the courtroom all persons except officers of the court and persons whose presence, in the judgment of the court, would be supportive of the complaining witness or the accused and would not impair the conduct of a fair hearing.

1981, c. 397; 1993, c. 440 .

§ 18.2-67.9. Testimony by child victims and witnesses using two-way closed-circuit television

A. The provisions of this section shall apply to an alleged victim who was fourteen years of age or under at the time of the alleged offense and is sixteen or under at the time of the trial and to a witness who is fourteen years of age or under at the time of the trial.

In any criminal proceeding, including preliminary hearings, involving an alleged offense against a child, relating to a violation of the laws pertaining to kidnapping (§ 18.2-47 et seq.), criminal sexual assault (§ 18.2-61 et seq.) or family offenses pursuant to Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2, or involving an alleged murder of a person of any age, the attorney for the Commonwealth or the defendant may apply for an order from the court that the testimony of the alleged victim or a child witness be taken in a room outside the courtroom and be televised by two-way closed-circuit television. The party seeking such order shall apply for the order at least seven days before the trial date or at least seven days before such other preliminary proceeding to which the order is to apply.

B. The court may order that the testimony of the child be taken by closed-circuit television as provided in subsection A if it finds that the child is unavailable to testify in open court in the presence of the defendant, the jury, the judge, and the public, for any of the following reasons:

1. The child's persistent refusal to testify despite judicial requests to do so;

2. The child's substantial inability to communicate about the offense; or

3. The substantial likelihood, based upon expert opinion testimony, that the child will suffer severe emotional trauma from so testifying.

Any ruling on the child's unavailability under this subsection shall be supported by the court with findings on the record or with written findings in a court not of record.

C. In any proceeding in which closed-circuit television is used to receive testimony, the attorney for the Commonwealth and the defendant's attorney shall be present in the room with the child, and the child shall be subject to direct and cross-examination. The only other persons allowed to be present in the room with the child during his testimony shall be those persons necessary to operate the closed-circuit equipment, and any other person whose presence is determined by the court to be necessary to the welfare and well-being of the child.

D. The child's testimony shall be transmitted by closed-circuit television into the courtroom for the defendant, jury, judge and public to view. The defendant shall be provided with a means of private, contemporaneous communication with his attorney during the testimony.

E. Notwithstanding any other provision of law, none of the cost of the two-way closed-circuit television shall be assessed against the defendant.

1988, c. 846; 1999, c. 668; 2001, c. 410.

§ 18.2-67.10. General definitions

As used in this article:

1. "Complaining witness" means the person alleged to have been subjected to rape, forcible sodomy, inanimate or animate object sexual penetration, marital sexual assault, aggravated sexual battery, or sexual battery.

2. "Intimate parts" means the genitalia, anus, groin, breast, or buttocks of any person.

3. "Mental incapacity" means that condition of the complaining witness existing at the time of an offense under this article which prevents the complaining witness from understanding the nature or consequences of the sexual act involved in such offense and about which the accused knew or should have known.

4. "Physical helplessness" means unconsciousness or any other condition existing at the time of an offense under this article which otherwise rendered the complaining witness physically unable to communicate an unwillingness to act and about which the accused knew or should have known.

5. The complaining witness's "prior sexual conduct" means any sexual conduct on the part of the complaining witness which took place before the conclusion of the trial, excluding the conduct involved in the offense alleged under this article.

6. "Sexual abuse" means an act committed with the intent to sexually molest, arouse, or gratify any person, where:

a. The accused intentionally touches the complaining witness's intimate parts or material directly covering such intimate parts;

b. The accused forces the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts;

c. If the complaining witness is under the age of 13, the accused causes or assists the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts; or

d. The accused forces another person to touch the complaining witness's intimate parts or material directly covering such intimate parts.

1981, c. 397; 1987, c. 277; 1993, c. 549; 1994, c. 568; 2004, c. 741.

Article 8 - SEDUCTION

§§ 18.2-68 through 18.2-70. Repealed

Repealed by Acts 1994, c. 59.

Article 9 - ABORTION

§ 18.2-71. Producing abortion or miscarriage, etc.; penalty

Except as provided in other sections of this article, if any person administer to, or cause to be taken by a woman, any drug or other thing, or use means, with intent to destroy her unborn child,

or to produce abortion or miscarriage, and thereby destroy such child, or produce such abortion or miscarriage, he shall be guilty of a Class 4 felony.

Code 1950, § 18.1-62; 1960, c. 358; 1970, c. 508; 1975, cc. 14, 15.

§ 18.2-71.1. Partial birth infanticide; penalty

A. Any person who knowingly performs partial birth infanticide and thereby kills a human infant is guilty of a Class 4 felony.

B. For the purposes of this section, "partial birth infanticide" means any deliberate act that (i) is intended to kill a human infant who has been born alive, but who has not been completely extracted or expelled from its mother, and that (ii) does kill such infant, regardless of whether death occurs before or after extraction or expulsion from its mother has been completed.

The term "partial birth infanticide" shall not under any circumstances be construed to include any of the following procedures: (i) the suction curettage abortion procedure, (ii) the suction aspiration abortion procedure, (iii) the dilation and evacuation abortion procedure involving dismemberment of the fetus prior to removal from the body of the mother, or (iv) completing delivery of a living human infant and severing the umbilical cord of any infant who has been completely delivered.

C. For the purposes of this section, "human infant who has been born alive" means a product of human conception that has been completely or substantially expelled or extracted from its mother, regardless of the duration of pregnancy, which after such expulsion or extraction breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

D. For purposes of this section, "substantially expelled or extracted from its mother" means, in the case of a headfirst presentation, the infant's entire head is outside the body of the mother, or, in the case of breech presentation, any part of the infant's trunk past the navel is outside the body of the mother.

E. This section shall not prohibit the use by a physician of any procedure that, in reasonable medical judgment, is necessary to prevent the death of the mother, so long as the physician takes every medically reasonable step, consistent with such procedure, to preserve the life and health of the infant. A procedure shall not be deemed necessary to prevent the death of the mother if completing the delivery of the living infant would prevent the death of the mother.

F. The mother may not be prosecuted for any criminal offense based on the performance of any act or procedure by a physician in violation of this section.

2003, cc. 961, 963.

§ 18.2-72. When abortion lawful during first trimester of pregnancy

Notwithstanding any of the provisions of § 18.2-71, it shall be lawful for any physician licensed by the Board of Medicine to practice medicine and surgery, to terminate or attempt to terminate a

human pregnancy or aid or assist in the termination of a human pregnancy by performing an abortion or causing a miscarriage on any woman during the first trimester of pregnancy.

1975, cc. 14, 15.

§ 18.2-73. When abortion lawful during second trimester of pregnancy

Notwithstanding any of the provisions of § 18.2-71 and in addition to the provisions of § 18.2-72, it shall be lawful for any physician licensed by the Board of Medicine to practice medicine and surgery, to terminate or attempt to terminate a human pregnancy or aid or assist in the termination of a human pregnancy by performing an abortion or causing a miscarriage on any woman during the second trimester of pregnancy and prior to the third trimester of pregnancy provided such procedure is performed in a hospital licensed by the State Department of Health or operated by the Department of Behavioral Health and Developmental Services.

1975, cc. 14, 15; 2009, cc. 813, 840.

§ 18.2-74. When abortion or termination of pregnancy lawful after second trimester of pregnancy

Notwithstanding any of the provisions of § 18.2-71 and in addition to the provisions of §§ 18.2-72 and 18.2-73, it shall be lawful for any physician licensed by the Board of Medicine to practice medicine and surgery to terminate or attempt to terminate a human pregnancy or aid or assist in the termination of a human pregnancy by performing an abortion or causing a miscarriage on any woman in a stage of pregnancy subsequent to the second trimester provided the following conditions are met:

(a) Said operation is performed in a hospital licensed by the Virginia State Department of Health or operated by the Department of Behavioral Health and Developmental Services.

(b) The physician and two consulting physicians certify and so enter in the hospital record of the woman, that in their medical opinion, based upon their best clinical judgment, the continuation of the pregnancy is likely to result in the death of the woman or substantially and irremediably impair the mental or physical health of the woman.

(c) Measures for life support for the product of such abortion or miscarriage must be available and utilized if there is any clearly visible evidence of viability.

1975, cc. 14, 15; 2009, cc. 813, 840.

§ 18.2-74.1. Abortion, etc., when necessary to save life of woman

In the event it is necessary for a licensed physician to terminate a human pregnancy or assist in the termination of a human pregnancy by performing an abortion or causing a miscarriage on any woman in order to save her life, in the opinion of the physician so performing the abortion or causing the miscarriage, §§ 18.2-71, 18.2-73 and 18.2-74 shall not be applicable.

Code 1950, § 18.1-62.3; 1970, c. 508; 1975, cc. 14, 15.

§ 18.2-74.2. Repealed

Repealed by Acts 2003, cc. 961 and 963.

§ 18.2-75. Conscience clause

Nothing in §§ 18.2-72, 18.2-73 or § 18.2-74 shall require a hospital or other medical facility or physician to admit any patient under the provisions hereof for the purpose of performing an abortion. In addition, any person who shall state in writing an objection to any abortion or all abortions on personal, ethical, moral or religious grounds shall not be required to participate in procedures which will result in such abortion, and the refusal of such person, hospital or other medical facility to participate therein shall not form the basis of any claim for damages on account of such refusal or for any disciplinary or recriminatory action against such person, nor shall any such person be denied employment because of such objection or refusal. The written objection shall remain in effect until such person shall revoke it in writing or terminate his association with the facility with which it is filed.

Code 1950, § 18.1-63.1; 1974, c. 679; 1975, cc. 14, 15.

§ 18.2-76. Informed written consent required; civil penalty

A. Before performing any abortion or inducing any miscarriage or terminating a pregnancy as provided in § 18.2-72, 18.2-73, or 18.2-74, the physician shall obtain the informed written consent of the pregnant woman. However, if the woman has been adjudicated incapacitated by any court of competent jurisdiction or if the physician knows or has good reason to believe that such woman is incapacitated as adjudicated by a court of competent jurisdiction, then only after permission is given in writing by a parent, guardian, committee, or other person standing in loco parentis to the woman, may the physician perform the abortion or otherwise terminate the pregnancy.

B. At least 24 hours before the performance of an abortion, a qualified medical professional trained in sonography and working under the supervision of a physician licensed in the Commonwealth shall perform fetal transabdominal ultrasound imaging on the patient undergoing the abortion for the purpose of determining gestational age. If the pregnant woman lives at least 100 miles from the facility where the abortion is to be performed, the fetal ultrasound imaging shall be performed at least two hours before the abortion. The ultrasound image shall contain the dimensions of the fetus and accurately portray the presence of external members and internal organs of the fetus, if present or viewable. Determination of gestational age shall be based upon measurement of the fetus in a manner consistent with standard medical practice in the community for determining gestational age. When only the gestational sac is visible during ultrasound imaging, gestational age may be based upon measurement of the gestational sac. If gestational age cannot be determined by a transabdominal ultrasound, then the patient undergoing the abortion shall be verbally offered other ultrasound imaging to determine gestational age, which she may refuse. A print of the ultrasound image shall be made to document the measurements that have been taken to determine the gestational age of the fetus.

The provisions of this subsection shall not apply if the woman seeking an abortion is the victim of rape or incest, if the incident was reported to law-enforcement authorities. Nothing herein shall preclude the physician from using any ultrasound imaging that he considers to be medically appropriate pursuant to the standard medical practice in the community.

C. The qualified medical professional performing fetal ultrasound imaging pursuant to subsection B shall verbally offer the woman an opportunity to view the ultrasound image, receive a printed copy of the ultrasound image and hear the fetal heart tones pursuant to standard medical practice in the community, and shall obtain from the woman written certification that this opportunity was offered and whether or not it was accepted and, if applicable, verification that the pregnant woman lives at least 100 miles from the facility where the abortion is to be performed. A printed copy of the ultrasound image shall be maintained in the woman's medical record at the facility where the abortion is to be performed for the longer of (i) seven years or (ii) the extent required by applicable federal or state law.

D. For purposes of this section:

"Informed written consent" means the knowing and voluntary written consent to abortion by a pregnant woman of any age, without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion by the physician who is to perform the abortion or his agent. The basic information to effect such consent, as required by this subsection, shall be provided by telephone or in person to the woman at least 24 hours before the abortion by the physician who is to perform the abortion, by a referring physician, or by a licensed professional or practical nurse working under the direct supervision of either the physician who is to perform the abortion or the referring physician; however, the information in subdivision 5 may be provided instead by a licensed health-care professional working under the direct supervision of either the physician who is to perform the abortion or the referring physician. This basic information shall include:

1. A full, reasonable and comprehensible medical explanation of the nature, benefits, and risks of and alternatives to the proposed procedures or protocols to be followed in her particular case;

2. An instruction that the woman may withdraw her consent at any time prior to the performance of the procedure;

3. An offer for the woman to speak with the physician who is to perform the abortion so that he may answer any questions that the woman may have and provide further information concerning the procedures and protocols;

4. A statement of the probable gestational age of the fetus at the time the abortion is to be performed and that fetal ultrasound imaging shall be performed prior to the abortion to confirm the gestational age; and

5. An offer to review the printed materials described in subsection F. If the woman chooses to review such materials, they shall be provided to her in a respectful and understandable manner, without prejudice and intended to give the woman the opportunity to make an informed choice and shall be provided to her at least 24 hours before the abortion or mailed to her at least 72 hours before the abortion by first-class mail or, if the woman requests, by certified mail, restricted delivery. This offer for the woman to review the material shall advise her of the following: (i) the Department of Health publishes printed materials that describe the unborn child and list agencies that offer alternatives to abortion; (ii) medical assistance benefits may be available for prenatal care, childbirth and neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials published by the Department; (iii) the father of the unborn child is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion, that assistance in the collection of such support is available, and that more detailed information on the availability of such assistance is contained in the printed materials published by the Department; (iv) she has the right to review the materials printed by the Department and that copies will be provided to her free of charge if she chooses to review them; and (v) a statewide list of public and private agencies and services that provide ultrasound imaging and auscultation of fetal heart tone services free of charge. Where the woman has advised that the pregnancy is the result of a rape, the information in clause (iii) may be omitted.

The information required by this subsection may be provided by telephone or in person.

E. The physician need not obtain the informed written consent of the woman when the abortion is to be performed pursuant to a medical emergency or spontaneous miscarriage. "Medical emergency" means any condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function.

F. On or before October 1, 2001, the Department of Health shall publish, in English and in each language which is the primary language of two percent or more of the population of the Commonwealth, the following printed materials in such a way as to ensure that the information is easily comprehensible:

1. Geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth and while the child is dependent, including, but not limited to, information on services relating to (i) adoption as a positive alternative, (ii) information relative to counseling services, benefits, financial assistance, medical care and contact persons or groups, (iii) paternity establishment and child support enforcement, (iv) child development, (v) child rearing and stress management, (vi) pediatric and maternal health care, and (vii) public and private agencies and services that provide ultrasound imaging and auscultation of fetal heart tone services free of charge. The materials shall include a comprehensive list of the names and telephone numbers of the agencies, or, at the option of the Department of

Health, printed materials including a toll-free, 24-hour-a-day telephone number which may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer;

2. Materials designed to inform the woman of the probable anatomical and physiological characteristics of the human fetus at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including any relevant information on the possibility of the fetus's survival and pictures or drawings representing the development of the human fetus at two-week gestational increments. Such pictures or drawings shall contain the dimensions of the fetus and shall be realistic and appropriate for the stage of pregnancy depicted. The materials shall be objective, nonjudgmental and designed to convey only accurate scientific information about the human fetus at the various gestational ages; and

3. Materials containing objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each such procedure, the possible detrimental psychological effects of abortion, and the medical risks commonly associated with carrying a child to term.

The Department of Health shall make these materials available at each local health department and, upon request, to any person or entity, in reasonable numbers and without cost to the requesting party.

G. Any physician who fails to comply with the provisions of this section shall be subject to a $2,500 civil penalty.

Code 1950, § 18.1-62.1; 1970, c. 508; 1972, c. 823; 1975, cc. 14, 15; 1979, c. 250; 1997, c. 801; 2001, cc. 473, 477; 2003, c. 784; 2012, c. 131.

§ 18.2-76.1. Encouraging or promoting abortion

If any person, by publication, lecture, advertisement, or by the sale or circulation of any publication, or through the use of a referral agency for profit, or in any other manner, encourage or promote the performing of an abortion or the inducing of a miscarriage in this Commonwealth which is prohibited under this article, he shall be guilty of a Class 3 misdemeanor.

Code 1950, § 18.1-63; 1960, c. 358; 1972, c. 725; 1975, cc. 14, 15.

§ 18.2-76.2. Repealed

Repealed by Acts 2015, c. 709, cl. 2.

Chapter 5 - CRIMES AGAINST PROPERTY

Article 1 - ARSON AND RELATED CRIMES

§ 18.2-77. Burning or destroying dwelling house, etc

A. If any person maliciously (i) burns, or by use of any explosive device or substance destroys, in whole or in part, or causes to be burned or destroyed, or (ii) aids, counsels or procures the burning

or destruction of any dwelling house or manufactured home whether belonging to himself or another, or any occupied hotel, hospital, mental health facility, or other house in which persons usually dwell or lodge, any occupied railroad car, boat, vessel, or river craft in which persons usually dwell or lodge, or any occupied jail or prison, or any occupied church or occupied building owned or leased by a church that is immediately adjacent to a church, he shall be guilty of a felony, punishable by imprisonment for life or for any period not less than five years and, subject to subdivision g of § 18.2-10, a fine of not more than $100,000. Any person who maliciously sets fire to anything, or aids, counsels or procures the setting fire to anything, by the burning whereof such occupied dwelling house, manufactured home, hotel, hospital, mental health facility or other house, or railroad car, boat, vessel, or river craft, jail or prison, church or building owned or leased by a church that is immediately adjacent to a church, is burned shall be guilty of a violation of this subsection.

B. Any such burning or destruction when the building or other place mentioned in subsection A is unoccupied, shall be punishable as a Class 4 felony.

C. For purposes of this section, "church" shall be defined as in § 18.2-127.

Code 1950, § 18.1-75; 1960, c. 358; 1975, cc. 14, 15; 1977, c. 63; 1978, c. 443; 1993, c. 406; 1997, c. 832.

§ 18.2-78. What not deemed dwelling house

No outhouse, not adjoining a dwelling house, nor under the same roof, although within the curtilage thereof, shall be deemed a part of such dwelling house, within the meaning of this chapter, unless some person usually lodge therein at night.

Code 1950, § 18.1-77; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-79. Burning or destroying meeting house, etc

If any person maliciously burns, or by the use of any explosive device or substance, maliciously destroys, in whole or in part, or causes to be burned or destroyed, or aids, counsels, or procures the burning or destroying, of any meeting house, courthouse, townhouse, college, academy, schoolhouse, or other building erected for public use except an asylum, hotel, jail, prison or church or building owned or leased by a church that is immediately adjacent to a church, or any banking house, warehouse, storehouse, manufactory, mill, or other house, whether the property of himself or of another person, not usually occupied by persons lodging therein at night, at a time when any person is therein, or if he maliciously sets fire to anything, or causes to be set on fire, or aids, counsels, or procures the setting on fire of anything, by the burning whereof any building mentioned in this section is burned, at a time when any person is therein, he shall be guilty of a Class 3 felony. If such offense is committed when no person is in such building mentioned in this section, the offender shall be guilty of a Class 4 felony.

Code 1950, § 18.1-78; 1960, c. 358; 1975, cc. 14, 15; 1997, c. 832.

§ 18.2-80. Burning or destroying any other building or structure

If any person maliciously, or with intent to defraud an insurance company or other person, burn, or by the use of any explosive device or substance, maliciously destroy, in whole or in part, or cause to be burned or destroyed, or aid, counsel or procure the burning or destruction of any building, bridge, lock, dam or other structure, whether the property of himself or of another, at a time when any person is therein or thereon, the burning or destruction whereof is not punishable under any other section of this chapter, he shall be guilty of a Class 3 felony. If he commits such offense at a time when no person is in such building, or other structure, and such building, or other structure, with the property therein, be of the value of $200, or more, he shall be guilty of a Class 4 felony, and if it and the property therein be of less value, he shall be guilty of a Class 1 misdemeanor.

Code 1950, §§ 18.1-80, 18.1-81, 18.1-85; 1960, c. 358; 1975, cc. 14, 15; 1981, c. 197.

§ 18.2-81. Burning or destroying personal property, standing grain, etc

If any person maliciously, or with intent to defraud an insurance company or other person, set fire to or burn or destroy by any explosive device or substance, or cause to be burned, or destroyed by any explosive device or substance, or aid, counsel, or procure the burning or destroying by any explosive device or substance, of any personal property, standing grain or other crop, he shall, if the thing burnt or destroyed, be of the value of $200 or more, be guilty of a Class 4 felony; and if the thing burnt or destroyed be of less value, he shall be guilty of a Class 1 misdemeanor.

Code 1950, §§ 18.1-79, 18.1-85; 1960, c. 358; 1972, c. 53; 1975, cc. 14, 15; 1981, c. 197.

§ 18.2-82. Burning building or structure while in such building or structure with intent to commit felony

If any person while in any building or other structure unlawfully, with intent to commit a felony therein, shall burn or cause to be burned, in whole or in part, such building or other structure, the burning of which is not punishable under any other section of this chapter, he shall be guilty of a Class 4 felony.

Code 1950, § 18.1-80.1; 1970, c. 356; 1975, cc. 14, 15.

§ 18.2-83. Threats to bomb or damage buildings or means of transportation; false information as to danger to such buildings, etc.; punishment; venue

A. Any person (a) who makes and communicates to another by any means any threat to bomb, burn, destroy or in any manner damage any place of assembly, building or other structure, or any means of transportation, or (b) who communicates to another, by any means, information, knowing the same to be false, as to the existence of any peril of bombing, burning, destruction or damage to any such place of assembly, building or other structure, or any means of transportation, shall be guilty of a Class 5 felony; provided, however, that if such person be under fifteen years of age, he shall be guilty of a Class 1 misdemeanor.

B. A violation of this section may be prosecuted either in the jurisdiction from which the communication was made or in the jurisdiction where the communication was received.

Code 1950, §§ 18.1-78.1 through 18.2-78.4; 1960, c. 358; 1975, cc. 14, 15; 1982, c. 502.

§ 18.2-84. Causing, inciting, etc., commission of act proscribed by § 18.2-83

Any person fifteen years of age or over, including the parent of any child, who shall cause, encourage, incite, entice or solicit any person, including a child, to commit any act proscribed by the provisions of § 18.2-83, shall be guilty of a Class 5 felony.

Code 1950, § 18.1-78.5; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-85. Manufacture, possession, use, etc., of fire bombs or explosive materials or devices; penalties

For the purpose of this section:

"Device" means any instrument, apparatus or contrivance, including its component parts, that is capable of producing or intended to produce an explosion but shall not include fireworks as defined in § 27-95.

"Explosive material" means any chemical compound, mechanical mixture or device that is commonly used or can be used for the purpose of producing an explosion and which contains any oxidizing and combustive agents or other ingredients in such proportions, quantities or packaging that an ignition by fire, friction, concussion, percussion, detonation or by any part of the compound or mixture may cause a sudden generation of highly heated gases. These materials include, but are not limited to, gunpowder, powders for blasting, high explosives, blasting materials, fuses (other than electric circuit breakers), detonators, and other detonating agents and smokeless powder.

"Fire bomb" means any container of a flammable material such as gasoline, kerosene, fuel oil, or other chemical compound, having a wick composed of any material or a device or other substance which, if set or ignited, is capable of igniting such flammable material or chemical compound but does not include a similar device commercially manufactured and used solely for the purpose of illumination or cooking.

"Hoax explosive device" means any device which by its design, construction, content or characteristics appears to be or to contain a bomb or other destructive device or explosive but which is an imitation of any such device or explosive.

Any person who (i) possesses materials with which fire bombs or explosive materials or devices can be made with the intent to manufacture fire bombs or explosive materials or devices or, (ii) manufactures, transports, distributes, possesses or uses a fire bomb or explosive materials or devices shall be guilty of a Class 5 felony. Any person who constructs, uses, places, sends, or causes to be sent any hoax explosive device so as to intentionally cause another person to believe that such device is a bomb or explosive shall be guilty of a Class 6 felony.

Nothing in this section shall prohibit the authorized manufacture, transportation, distribution, use or possession of any material, substance, or device by a member of the armed forces of the United States, fire fighters or law-enforcement officers, nor shall it prohibit the manufacture,

transportation, distribution, use or possession of any material, substance or device to be used solely for scientific research, educational purposes or for any lawful purpose, subject to the provisions of §§ 27-97 and 27-97.2.

Code 1950, § 18.1-78.6; 1968, c. 249; 1972, c. 126; 1975, cc. 14, 15, 497; 1976, c. 526; 1977, c. 326; 1990, cc. 644, 647; 1992, c. 540; 2000, cc. 951, 1065; 2002, cc. 588, 623; 2005, c. 204.

§ 18.2-86. Setting fire to woods, fences, grass, etc

If any person maliciously set fire to any wood, fence, grass, straw or other thing capable of spreading fire on land, he shall be guilty of a Class 6 felony.

Code 1950, § 18.1-82; 1960, c. 358; 1968, c. 362; 1975, cc. 14, 15.

§ 18.2-87. Setting woods, etc., on fire intentionally whereby another is damaged or jeopardized

Any person who intentionally sets or procures another to set fire to any woods, brush, leaves, grass, straw, or any other inflammable substance capable of spreading fire, and who intentionally allows the fire to escape to lands not his own, whereby the property of another is damaged or jeopardized, shall be guilty of a Class 1 misdemeanor, and shall be liable for the full amount of all expenses incurred in fighting the fire.

Code 1950, § 18.1-83; 1960, c. 358; 1975, cc. 14, 15; 1988, c. 403.

§ 18.2-87.1. Setting off chemical bombs capable of producing smoke in certain public buildings

It shall be unlawful for any person to willfully and intentionally set off or cause to be set off any chemical bomb capable of producing smoke in any building used for public assembly or regularly used by the public including, but not limited to, schools, theaters, stores, office buildings, shopping malls, coliseums and arenas. Any person convicted of a violation of this section shall be guilty of a Class 2 misdemeanor.

1976, c. 153.

§ 18.2-88. Carelessly damaging property by fire

If any person carelessly, negligently or intentionally set any woods or marshes on fire, or set fire to any stubble, brush, straw, or any other substance capable of spreading fire on lands, whereby the property of another is damaged or jeopardized, he shall be guilty of a Class 4 misdemeanor, and shall be liable for the full amount of all expenses incurred in fighting the fire.

Code 1950, § 18.1-84; 1960, c. 358; 1975, cc. 14, 15.

Article 2 - BURGLARY AND RELATED OFFENSES

§ 18.2-89. Burglary; how punished

If any person break and enter the dwelling house of another in the nighttime with intent to commit a felony or any larceny therein, he shall be guilty of burglary, punishable as a Class 3 felony;

provided, however, that if such person was armed with a deadly weapon at the time of such entry, he shall be guilty of a Class 2 felony.

Code 1950, § 18.1-86; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-90. Entering dwelling house, etc., with intent to commit murder, rape, robbery or arson; penalty

If any person in the nighttime enters without breaking or in the daytime breaks and enters or enters and conceals himself in a dwelling house or an adjoining, occupied outhouse or in the nighttime enters without breaking or at any time breaks and enters or enters and conceals himself in any building permanently affixed to realty, or any ship, vessel or river craft or any railroad car, or any automobile, truck or trailer, if such automobile, truck or trailer is used as a dwelling or place of human habitation, with intent to commit murder, rape, robbery or arson in violation of §§ 18.2-77, 18.2-79 or § 18.2-80, he shall be deemed guilty of statutory burglary, which offense shall be a Class 3 felony. However, if such person was armed with a deadly weapon at the time of such entry, he shall be guilty of a Class 2 felony.

Code 1950, § 18.1-88; 1960, c. 358; 1970, c. 381; 1975, cc. 14, 15; 1985, c. 110; 1992, c. 546; 1997, c. 832; 2004, c. 842.

§ 18.2-91. Entering dwelling house, etc., with intent to commit larceny, assault and battery or other felony

If any person commits any of the acts mentioned in § 18.2-90 with intent to commit larceny, or any felony other than murder, rape, robbery or arson in violation of §§ 18.2-77, 18.2-79 or § 18.2-80, or if any person commits any of the acts mentioned in § 18.2-89 or § 18.2-90 with intent to commit assault and battery, he shall be guilty of statutory burglary, punishable by confinement in a state correctional facility for not less than one or more than twenty years or, in the discretion of the jury or the court trying the case without a jury, be confined in jail for a period not exceeding twelve months or fined not more than $2,500, either or both. However, if the person was armed with a deadly weapon at the time of such entry, he shall be guilty of a Class 2 felony.

Code 1950, § 18.1-89; 1960, c. 358; 1962, c. 505; 1970, c. 381; 1975, cc. 14, 15, 602; 1991, c. 710; 1992, c. 486; 1996, c. 1040; 1997, c. 832.

§ 18.2-92. Breaking and entering dwelling house with intent to commit other misdemeanor

If any person break and enter a dwelling house while said dwelling is occupied, either in the day or nighttime, with the intent to commit any misdemeanor except assault and battery or trespass, he shall be guilty of a Class 6 felony. However, if the person was armed with a deadly weapon at the time of such entry, he shall be guilty of a Class 2 felony.

Code 1950, § 18.1-88.1; 1968, c. 530; 1970, c. 381; 1975, cc. 14, 15; 1992, c. 486 .

§ 18.2-93. Entering bank, armed, with intent to commit larceny

If any person, armed with a deadly weapon, shall enter any banking house, in the daytime or in the nighttime, with intent to commit larceny of money, bonds, notes, or other evidence of debt therein, he shall be guilty of a Class 2 felony.

Code 1950, § 18.1-90; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-94. Possession of burglarious tools, etc

If any person have in his possession any tools, implements or outfit, with intent to commit burglary, robbery or larceny, upon conviction thereof he shall be guilty of a Class 5 felony. The possession of such burglarious tools, implements or outfit by any person other than a licensed dealer, shall be prima facie evidence of an intent to commit burglary, robbery or larceny.

Code 1950, § 18.1-87; 1960, c. 358; 1970, c. 587; 1975, cc. 14, 15.

Article 3 - LARCENY AND RECEIVING STOLEN GOODS

§ 18.2-95. Grand larceny defined; how punished

Any person who (i) commits larceny from the person of another of money or other thing of value of $5 or more, (ii) commits simple larceny not from the person of another of goods and chattels of the value of $200 or more, or (iii) commits simple larceny not from the person of another of any firearm, regardless of the firearm's value, shall be guilty of grand larceny, punishable by imprisonment in a state correctional facility for not less than one nor more than twenty years or, in the discretion of the jury or court trying the case without a jury, be confined in jail for a period not exceeding twelve months or fined not more than $2,500, either or both.

Code 1950, § 18.1-100; 1960, c. 358; 1966, c. 247; 1975, cc. 14, 15, 603; 1980, c. 175; 1991, c. 710; 1992, c. 822; 1998, c. 821.

§ 18.2-96. Petit larceny defined; how punished

Any person who:

1. Commits larceny from the person of another of money or other thing of value of less than $5, or

2. Commits simple larceny not from the person of another of goods and chattels of the value of less than $200, except as provided in subdivision (iii) of § 18.2-95, shall be deemed guilty of petit larceny, which shall be punishable as a Class 1 misdemeanor.

Code 1950, § 18.1-101; 1960, c. 358; 1966, c. 247; 1975, cc. 14, 15; 1980, c. 175; 1992, c. 822 .

§ 18.2-96.1. Identification of certain personalty

A. The owner of personal property may permanently mark such property, including any part thereof, for the purpose of identification with the social security number of the owner, preceded by the letters "VA."

B. [Repealed.]

C. It shall be unlawful for any person to remove, alter, deface, destroy, conceal, or otherwise obscure the manufacturer's serial number or marks, including personalty marked with a social

security number preceded by the letters "VA," from such personal property or any part thereof, without the consent of the owner, with intent to render it or other property unidentifiable.

D. It shall be unlawful for any person to possess such personal property or any part thereof, without the consent of the owner, knowing that the manufacturer's serial number or any other distinguishing identification number or mark, including personalty marked with a social security number preceded by the letters "VA," has been removed, altered, defaced, destroyed, concealed, or otherwise obscured with the intent to violate the provisions of this section.

E. A person in possession of such property which is otherwise in violation of this section may apply in writing to the Bureau of Criminal Investigation, Virginia State Police, for assignment of a number for the personal property providing he can show that he is the lawful owner of the property. If a number is issued in conformity with the provisions of this section, then the person to whom it was issued and any person to whom the property is lawfully disposed of shall not be in violation of this section. This subsection shall apply only when the application has been filed by a person prior to arrest or authorization of a warrant of arrest for that person by a court.

F. Any person convicted of an offense under this section, when the value of the personalty is less than $200, shall be guilty of a Class 1 misdemeanor and, when the value of the personalty is $200 or more, shall be guilty of a Class 5 felony.

1981, c. 165; 1982, c. 382.

§ 18.2-97. Larceny of certain animals and poultry

Any person who shall be guilty of the larceny of a dog, horse, pony, mule, cow, steer, bull or calf shall be guilty of a Class 5 felony; and any person who shall be guilty of the larceny of any poultry of the value of $5 dollars or more, but of the value of less than $200, or of a sheep, lamb, swine, or goat, of the value of less than $200, shall be guilty of a Class 6 felony.

Code 1950, § 18.1-102; 1960, c. 358; 1962, c. 15; 1966, c. 247; 1975, cc. 14, 15; 1981, c. 197.

§ 18.2-97.1. Removal of a transmitting device; penalty

Any person who removes an electronic or radio transmitting device from a dog, falcon, hawk, or owl without the permission of the owner and with the intent to prevent or hinder the owner from locating the dog, falcon, hawk, or owl is guilty of a Class 1 misdemeanor. Upon a finding of guilt, the court shall order that the defendant pay as restitution the actual value of any dog, falcon, hawk, or owl lost or killed as a result of such removal. The court may also order restitution to the owner for any lost breeding revenues.

2007, cc. 484, 721; 2011, c. 191.

§ 18.2-98. Larceny of bank notes, checks, etc., or any book of accounts

If any person steal any bank note, check, or other writing or paper of value, whether the same represents money and passes as currency, or otherwise, or any book of accounts, for or concerning money or goods due or to be delivered, he shall be deemed guilty of larceny thereof, and may be

charged for such larceny under § 18.2-95 or 18.2-96, and if convicted shall receive the same punishment, according to the value of the thing stolen, prescribed for the punishment of the larceny of goods and chattels. The provisions of this section shall be construed to embrace all bank notes and papers of value representing money and passing as currency, whether the same be the issue of this Commonwealth or any other state, or of the United States, or of any corporation, and shall include all other papers of value, of whatever description. In a prosecution under this section, the money due on or secured by the writing, paper or book, and remaining unsatisfied, or which in any event might be collected thereon, or the value of the property or money affected thereby, shall be deemed to be the value of the article stolen.

Code 1950, §§ 18.1-104, 18.1-105; 1960, c. 358; 1975, cc. 14, 15; 2009, c. 591.

§ 18.2-98.1. Repealed

Repealed by Acts 1984, c. 751.

§ 18.2-99. Larceny of things fixed to the freehold

Things which savor of the realty, and are at the time they are taken part of the freehold, whether they be of the substance or produce thereof, or affixed thereto, shall be deemed goods and chattels of which larceny may be committed, although there be no interval between the severing and taking away.

Code 1950, § 18.1-106; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-100. Removal of crop by tenant before rents and advances are satisfied

It shall be unlawful for any person renting the lands of another, either for a share of the crop or for money consideration, to remove therefrom, without the consent of the landlord, any part of such crop until the rents and advances are satisfied. Every such offense shall be punishable as a Class 3 misdemeanor.

Code 1950, § 18.1-115; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-101. Selling, etc., of goods distrained or levied on

If any person fraudulently sell, pledge, encumber, remove, destroy, receive or secrete any goods, chattels or other personal property of any kind whatsoever that has been distrained or levied upon, with intent to defeat such distress or levy, he shall be deemed guilty of the larceny thereof.

Code 1950, § 18.1-108; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-102. Unauthorized use of animal, aircraft, vehicle or boat; consent; accessories or accomplices

Any person who shall take, drive or use any animal, aircraft, vehicle, boat or vessel, not his own, without the consent of the owner thereof and in the absence of the owner, and with intent temporarily to deprive the owner thereof of his possession thereof, without intent to steal the same, shall be guilty of a Class 6 felony; provided, however, that if the value of such animal, aircraft, vehicle, boat or vessel shall be less than $200, such person shall be guilty of a Class 1

misdemeanor. The consent of the owner of an animal, aircraft, vehicle, boat or vessel to its taking, driving or using shall not in any case be presumed or implied because of such owner's consent on a previous occasion to the taking, driving or using of such animal, aircraft, vehicle, boat or vessel by the same or a different person. Any person who assists in, or is a party or accessory to, or an accomplice in, any such unauthorized taking, driving or using shall be subject to the same punishment as if he were the principal offender.

Code 1950, § 18.1-164; 1960, c. 358; 1970, c. 8; 1975, cc. 14, 15; 1981, c. 197.

§ 18.2-102.1. Removal of shopping cart from store premises

(1) The term "shopping cart" when used in this section means those push carts of the type or types which are commonly provided by grocery stores, drugstores, or other merchant stores or markets for the use of the public in transporting commodities in stores and markets from the store to a place outside the store.

(2) It shall be unlawful for any person to remove a shopping cart from the premises, of the owner of such shopping cart without the consent, of the owner or of his agent, servant, or employee given at the time of such removal. For the purpose of this section, the premises shall include all the parking area set aside by the owner, or on behalf of the owner, for the parking of cars for the convenience of the patrons of the owner.

(3) Any person convicted of a violation under subsection (2) shall be guilty of a Class 3 misdemeanor.

Code 1950, § 18.1-117.2; 1975, c. 269.

§ 18.2-102.2. Unauthorized use of dairy milk cases or milk crates; penalty

It shall be unlawful for any person to:

1. Buy, sell, or dispose of any milk case or milk crate bearing the name or label of the owner without the written consent of the owner or his designated agent;

2. Refuse, upon written demand of the owner or his designated agent, to return to the owner or his designated agent any milk case or milk crate bearing the name or label of the owner; or

3. Deface, obliterate, erase, cover up, or otherwise remove or conceal any name, label, registered trademark, insignia, or other business identification of an owner of a milk case or milk crate without the consent of the owner, for the purpose of destroying or removing from the milk case or milk crate evidence of its ownership.

A violation of this section shall be punishable as a Class 4 misdemeanor.

For purposes of this section, milk cases or milk crates shall be deemed to bear a name or label of an owner when there is imprinted or attached on the case or crate a name, insignia, mark, business identification, or label showing ownership or sufficient information to ascertain ownership. The term "milk case" or "milk crate" means a wire or plastic container which holds sixteen quarts

or more of beverage and is used by distributors or retailers or their agents as a means to transport, store, or carry dairy products.

1990, c. 452 .

§ 18.2-103. Concealing or taking possession of merchandise; altering price tags; transferring goods from one container to another; counseling, etc., another in performance of such acts

Whoever, without authority, with the intention of converting goods or merchandise to his own or another's use without having paid the full purchase price thereof, or of defrauding the owner of the value of the goods or merchandise, (i) willfully conceals or takes possession of the goods or merchandise of any store or other mercantile establishment, or (ii) alters the price tag or other price marking on such goods or merchandise, or transfers the goods from one container to another, or (iii) counsels, assists, aids or abets another in the performance of any of the above acts, when the value of the goods or merchandise involved in the offense is less than $200, shall be guilty of petit larceny and, when the value of the goods or merchandise involved in the offense is $200 or more, shall be guilty of grand larceny. The willful concealment of goods or merchandise of any store or other mercantile establishment, while still on the premises thereof, shall be prima facie evidence of an intent to convert and defraud the owner thereof out of the value of the goods or merchandise.

Code 1950, § 18.1-126; 1960, c. 358; 1970, c. 652; 1975, cc. 14, 15; 1994, c. 706.

§ 18.2-104. Punishment for conviction of misdemeanor larceny

When a person is convicted of an offense of larceny or any offense deemed to be or punished as larceny under any provision of the Code, and it is alleged in the warrant, indictment or information on which he is convicted, and admitted, or found by the jury or judge before whom he is tried, that he has been before convicted in the Commonwealth of Virginia or in another jurisdiction for any offense of larceny or any offense deemed or punishable as larceny, or of any substantially similar offense in any other jurisdiction, regardless of whether the prior convictions were misdemeanors, felonies or a combination thereof, he shall be confined in jail not less than thirty days nor more than twelve months; and for a third, or any subsequent offense, he shall be guilty of a Class 6 felony.

Code 1950, § 18.1-126.1; 1970, c. 652; 1975, cc. 14, 15; 1980, c. 174; 1987, c. 178; 1994, c. 706.

§ 18.2-104.1. Liability upon conviction under § 18.2-103

Any person who has been convicted of violating the provisions of § 18.2-103 shall be civilly liable to the owner for the retail value of any goods and merchandise illegally converted and not recovered by the owner, and for all costs incurred in prosecuting such person under the provisions of § 18.2-103. Such costs shall be limited to actual expenses, including the base wage of one employee acting as a witness for the Commonwealth and suit costs. Provided, however, the total amount of allowable costs granted hereunder shall not exceed $250, excluding the retail value of the goods and merchandise.

1976, c. 577.

§ 18.2-105. Repealed

Repealed by Acts 2004, c. 462.

§ 18.2-105.1. Detention of suspected shoplifter

A merchant, agent or employee of the merchant, who has probable cause to believe that a person has shoplifted in violation of § 18.2-95 or § 18.2-96 or § 18.2-103, on the premises of the merchant, may detain such person for a period not to exceed one hour pending arrival of a law-enforcement officer.

1976, c. 515.

§ 18.2-105.2. Manufacture, sale, etc., of devices to shield against electronic detection of shoplifting prohibited; penalty

It shall be unlawful to manufacture, sell, offer for sale, distribute or possess any specially coated or laminated bag or other device primarily designed and intended to shield shoplifted merchandise from detection by an anti-theft electronic alarm sensor, with the intention that the same be used to aid in the shoplifting of merchandise. A violation of this section shall be punishable as a Class 1 misdemeanor.

1984, c. 386; 2003, c. 831.

§ 18.2-106. "Agents of the merchant" defined

As used in this article "agents of the merchant" shall include attendants at any parking lot owned or leased by the merchant, or generally used by customers of the merchant through any contract or agreement between the owner of the parking lot and the merchant.

Code 1950, § 18.1-128; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-107. Theft or destruction of public records by others than officers

If any person steal or fraudulently secrete or destroy a public record or part thereof, including a microphotographic copy thereof, he shall, if the offense be not embraced by § 18.2-472 be guilty of a Class 6 felony.

Code 1950, § 18.1-308; 1960, c. 358; 1974, c. 649; 1975, cc. 14, 15; 1977, c. 107.

§ 18.2-108. Receiving, etc., stolen goods

A. If any person buys or receives from another person, or aids in concealing, any stolen goods or other thing, knowing the same to have been stolen, he shall be deemed guilty of larceny thereof, and may be proceeded against, although the principal offender is not convicted.

B. If any person buys or receives any goods or other thing, used in the course of a criminal investigation by law enforcement that such person believes to have been stolen, he shall be deemed guilty of larceny thereof.

Code 1950, § 18.1-107; 1960, c. 358; 1975, cc. 14, 15; 2008, c. 578.

§ 18.2-108.01. Larceny with intent to sell or distribute; sale of stolen property; penalty
A. Any person who commits larceny of property with a value of $200 or more with the intent to sell or distribute such property is guilty of a felony punishable by confinement in a state correctional facility for not less than two years nor more than 20 years. The larceny of more than one item of the same product is prima facie evidence of intent to sell or intent to distribute for sale.

B. Any person who sells, attempts to sell or possesses with intent to sell or distribute any stolen property with an aggregate value of $200 or more where he knew or should have known that the property was stolen is guilty of a Class 5 felony.

C. A violation of this section constitutes a separate and distinct offense.

2003, c. 831.

§ 18.2-108.1. Receipt of stolen firearm
Notwithstanding the provisions of § 18.2-108, any person who buys or receives a firearm from another person or aids in concealing a firearm, knowing that the firearm was stolen, shall be guilty of a Class 6 felony and may be proceeded against although the principal offender is not convicted.

1988, c. 358; 1998, c. 821.

§ 18.2-109. Receipt or transfer of possession of stolen vehicle, aircraft or boat
Any person who, with intent to procure or pass title to a vehicle, aircraft, boat or vessel, which he knows or has reason to believe has been stolen, shall receive or transfer possession of the same from one to another or who shall with like intent have in his possession any vehicle, aircraft, boat or vessel which he knows or has reason to believe has been stolen, and who is not an officer of the law engaged at the time in the performance of his duty as an officer, shall be guilty of a Class 6 felony.

Code 1950, § 18.1-165; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-110. Repealed
Repealed by Acts 2004, c. 995.

Article 4 - EMBEZZLEMENT AND FRAUDULENT CONVERSIONS

§ 18.2-111. Embezzlement deemed larceny; indictment
If any person wrongfully and fraudulently use, dispose of, conceal or embezzle any money, bill, note, check, order, draft, bond, receipt, bill of lading or any other personal property, tangible or intangible, which he shall have received for another or for his employer, principal or bailor, or by virtue of his office, trust, or employment, or which shall have been entrusted or delivered to him by another or by any court, corporation or company, he shall be guilty of embezzlement. Proof of embezzlement shall be sufficient to sustain the charge of larceny. Any person convicted hereunder shall be deemed guilty of larceny and may be indicted as for larceny and upon conviction shall be punished as provided in § 18.2-95 or § 18.2-96.

Code 1950, § 18.1-109; 1960, c. 358; 1975, cc. 14, 15; 1979, c. 349; 1994, c. 555; 2003, c. 733.

§ 18.2-111.1. Repealed

Repealed by Acts 2004, c. 459.

§ 18.2-111.2. Failure to pay withheld child support; embezzlement

If any employer withholds money from the pay of his employee for the purpose of paying administrative or court-ordered child support on behalf of the employee and then wrongfully and fraudulently fails to make payment of the money withheld, the employer shall be guilty of embezzlement.

1999, c. 56.

§ 18.2-112. Embezzlement by officers, etc., of public or other funds; default in paying over funds evidence of guilt

If any officer, agent or employee of the Commonwealth or of any city, town, county, or any other political subdivision, or the deputy of any such officer having custody of public funds, or other funds coming into his custody under his official capacity, knowingly misuse or misappropriate the same or knowingly dispose thereof otherwise than in accordance with law, he shall be guilty of a Class 4 felony; and any default of such officer, agent, employee or deputy in paying over any such funds to the proper authorities when required by law to do so shall be deemed prima facie evidence of his guilt.

Code 1950, § 18.1-110; 1960, c. 358; 1973, c. 15; 1975, cc. 14, 15; 1979, c. 585.

§ 18.2-112.1. Misuse of public assets; penalty

A. For purposes of this section, "public assets" means personal property belonging to or paid for by the Commonwealth, or any city, town, county, or any other political subdivision, or the labor of any person other than the accused that is paid for by the Commonwealth, or any city, town, county, or any other political subdivision.

B. Any full-time officer, agent, or employee of the Commonwealth, or of any city, town, county, or any other political subdivision who, without lawful authorization, uses or permits the use of public assets for private or personal purposes unrelated to the duties and office of the accused or any other legitimate government interest when the value of such use exceeds $1,000 in any 12-month period, is guilty of a Class 4 felony.

C. Any county, city, or town shall be permitted to adopt a local ordinance that provides that any non-full-time officer, agent, employee, or elected official of the county, city, or town who, without lawful authorization, uses or permits the use of public assets for private or personal purposes unrelated to the duties and office of the accused or any other legitimate government interest when the value of such use exceeds $1,000 in any 12-month period is guilty of a Class 1 misdemeanor.

2008, cc. 738, 755; 2014, c. 321.

§ 18.2-113. Fraudulent entries, etc., in accounts by officers or clerks of financial institutions, joint stock companies or corporations; penalty

If any officer or clerk of any financial institution, joint stock company or corporation makes, alters or omits to make any entry in any account kept in or by such financial institution, company or corporation, with intent, in so doing, to conceal the true state of such account, or to defraud such financial institution, company or corporation, or to enable or assist any person to obtain money to which he was not entitled, such officer or clerk shall be guilty of a Class 4 felony.

Code 1950, § 18.1-111; 1960, c. 358; 1975, cc. 14, 15; 1996, c. 77; 2003, c. 740.

§ 18.2-114. Repealed

Repealed by Acts 2004, c. 459.

§ 18.2-114.1. When collection of money by commissioner, etc., larceny

If any special commissioner or receiver, appointed by any court to collect money, and required by law, or decree of the court, to give bond before collecting the same, shall collect such money, or any part thereof, without giving such bond, and fail properly to account for the same, he shall be deemed guilty of larceny of the money so collected and not so accounted for.

1978, c. 718.

§ 18.2-115. Fraudulent conversion or removal of property subject to lien or title to which is in another

Whenever any person is in possession of any personal property, including motor vehicles or farm products, in any capacity, the title or ownership of which he has agreed in writing shall be or remain in another, or on which he has given a lien, and such person so in possession shall fraudulently sell, pledge, pawn or remove such property from the premises where it has been agreed that it shall remain, and refuse to disclose the location thereof, or otherwise dispose of the property or fraudulently remove the same from the Commonwealth, without the written consent of the owner or lienor or the person in whom the title is, or, if such writing be a deed of trust, without the written consent of the trustee or beneficiary in such deed of trust, he shall be deemed guilty of the larceny thereof.

In any prosecution hereunder, the fact that such person after demand therefor by the lienholder or person in whom the title or ownership of the property is, or his agent, shall fail or refuse to disclose to such claimant or his agent the location of the property, or to surrender the same, shall be prima facie evidence of the violation of the provisions of this section. In the case of farm products, failure to pay the proceeds of the sale of the farm products to the secured party, lienholder or person in whom the title or ownership of the property is, or his agent, within ten days after the sale or other disposition of the farm products unless otherwise agreed by the lender and borrower in the obligation of indebtedness, note or other evidence of the debt shall be prima facie evidence of a violation of the provisions of this section. The venue of prosecutions against persons fraudulently removing any such property, including motor vehicles, from the Commonwealth shall be

the county or city in which such property or motor vehicle was purchased or in which the accused last had a legal residence.

This section shall not be construed to interfere with the rights of any innocent third party purchasing such property, unless such writing shall be docketed or recorded as provided by law.

Code 1950, § 18.1-116; 1960, c. 358; 1975, cc. 14, 15; 1986, c. 484.

§ 18.2-115.1. Unlawful sublease of a motor vehicle; penalty

A. It shall be unlawful for any person, for profit in the course of business, who is not a party to a lease contract, conditional sales contract, or security agreement which transfers any right or interest in a motor vehicle, knowing that the motor vehicle is subject to a lease, security interest or lien, to:

1. Obtain or exercise control over a motor vehicle and sell, transfer, assign, or lease the motor vehicle to another person without the prior written authorization of the secured creditor, lessor, or lienholder if he receives compensation or other consideration for the sale, transfer, assignment, or lease of the motor vehicle; or

2. Assist, cause, or arrange the actual or purported sale, transfer, assignment, or lease of a motor vehicle to another person without the prior written authorization of the secured creditor, lessor, or lienholder if he receives compensation or other consideration for assisting, causing, or arranging the sale, transfer, assignment, or lease of the motor vehicle.

B. A violation of this section is punishable as a Class 3 misdemeanor.

C. This section shall not apply to any employee acting upon request of his employer.

D. This section shall not apply if the entire indebtedness owed under or secured by the lease, conditional sales contract, or security agreement through the date of payment is paid in full and received by the lessor or secured party within thirty days after the sale, transfer, assignment, or lease of the motor vehicle.

1990, c. 844; 1993, c. 608 .

§ 18.2-116. Failure to pay for or return goods delivered for selection or approval

If any person shall solicit and obtain from any merchant any goods, wares or merchandise for examination or approval, and shall thereafter, upon written demand, refuse or fail to return the same to such merchant in unused condition, or to pay for the same, such person so offending shall be deemed guilty of the larceny thereof. But the provisions of this section shall not apply unless such written demand be made within five days after delivery, and unless the goods, wares or merchandise shall have attached to them or to the package in which they are contained a label, card or tag containing the words, "Delivered for selection or approval."

Code 1950, § 18.1-117; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-117. Failure of bailee to return animal, aircraft, vehicle or boat

If any person comes into the possession as bailee of any animal, aircraft, vehicle, boat or vessel, and fail to return the same to the bailor, in accordance with the bailment agreement, he shall be deemed guilty of larceny thereof and receive the same punishment, according to the value of the thing stolen, prescribed for the punishment of the larceny of goods and chattels. The failure to return to the bailor such animal, aircraft, vehicle, boat or vessel, within five days from the time the bailee has agreed in writing to return the same shall be prima facie evidence of larceny by such bailee of such animal, aircraft, vehicle, boat or vessel.

Code 1950, § 18.1-163; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-118. Fraudulent conversion or removal of leased personal property

A. Whenever any person is in possession or control of any personal property, by virtue of or subject to a written lease of such property, except property described in § 18.2-117 or in the Virginia Lease-Purchase Agreement Act (§ 59.1-207.17 et seq.), and such person so in possession or control shall, with intent to defraud, sell, secrete, or destroy the property, or dispose of the property for his own use, or fraudulently remove the same from the Commonwealth without the written consent of the lessor thereof, or fail to return such property to the lessor thereof within 30 days after expiration of the lease or rental period for such property stated in such written lease, he shall be deemed guilty of the larceny thereof.

B. The fact that such person signs the lease or rental agreement with a name other than his own, or fails to return such property to the lessor thereof within 30 days after the giving of written notice to such person that the lease or rental period for such property has expired, shall be prima facie evidence of intent to defraud. For purposes of this section, notice mailed by certified mail and addressed to such person at the address of the lessee stated in the lease, shall be sufficient giving of written notice under this section.

C. The venue of prosecution under this section shall be the county or city in which such property was leased or in which such accused person last had a legal residence.

D. The court shall order a person found guilty of an offense under this section to make restitution as the court deems appropriate to the lessor. Such restitution may include (i) the cost of repairing such property; (ii) if the property is not returned or cannot reasonably be repaired, the actual value of such property; and (iii) any reasonable loss of revenue by the lessor resulting from the fraudulent conversion or removal of such property.

Code 1950, § 18.1-117.1; 1966, c. 474; 1975, cc. 14, 15; 1978, c. 675; 2013, c. 536; 2014, c. 56.

Article 5 - TRESPASS TO REALTY

§ 18.2-119. Trespass after having been forbidden to do so; penalties

If any person without authority of law goes upon or remains upon the lands, buildings or premises of another, or any portion or area thereof, after having been forbidden to do so, either orally or in writing, by the owner, lessee, custodian, or the agent of any such person, or other person lawfully

in charge thereof, or after having been forbidden to do so by a sign or signs posted by or at the direction of such persons or the agent of any such person or by the holder of any easement or other right-of-way authorized by the instrument creating such interest to post such signs on such lands, structures, premises or portion or area thereof at a place or places where it or they may be reasonably seen, or if any person, whether he is the owner, tenant or otherwise entitled to the use of such land, building or premises, goes upon, or remains upon such land, building or premises after having been prohibited from doing so by a court of competent jurisdiction by an order issued pursuant to §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.2 through 16.1-278.6, 16.1-278.8, 16.1-278.14, 16.1-278.15, 16.1-279.1, 19.2-152.8, 19.2-152.9 or § 19.2-152.10 or an ex parte order issued pursuant to § 20-103, and after having been served with such order, he shall be guilty of a Class 1 misdemeanor. This section shall not be construed to affect in any way the provisions of §§ 18.2-132 through 18.2-136.

Code 1950, § 18.1-173; 1960, c. 358; 1975, cc. 14, 15; 1982, c. 169; 1987, cc. 625, 705; 1991, c. 534; 1998, cc. 569, 684; 2011, c. 195.

§ 18.2-119.1. Validity of signs forbidding trespass; penalty

If any person knowingly and intentionally posts No Trespassing signs on the land of another without the permission of a person authorized to post such signs on that land, he shall be guilty of a Class 3 misdemeanor.

1999, c. 274.

§ 18.2-120. Instigating, etc., such trespass by others; preventing service to persons not forbidden to trespass

If any person shall solicit, urge, encourage, exhort, instigate or procure another or others to go upon or remain upon the lands, buildings, or premises of another, or any part, portion or area thereof, knowing such other person or persons to have been forbidden, either orally or in writing, to do so by the owner, lessee, custodian or other person lawfully in charge thereof, or knowing such other person or persons to have been forbidden to do so by a sign or signs posted on such lands, buildings, premises or part, portion or area thereof at a place or places where it or they may reasonably be seen; or if any person shall, on such lands, buildings, premises or part, portion or area thereof prevent or seek to prevent the owner, lessee, custodian, person in charge or any of his employees from rendering service to any person or persons not so forbidden, he shall be guilty of a Class 1 misdemeanor.

Code 1950, § 18.1-173.1; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-121. Entering property of another for purpose of damaging it, etc

It shall be unlawful for any person to enter the land, dwelling, outhouse or any other building of another for the purpose of damaging such property or any of the contents thereof or in any manner to interfere with the rights of the owner, user or the occupant thereof to use such property free from interference.

Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor. However, if a person intentionally selects the property entered because of the race, religious conviction, color or national origin of the owner, user or occupant of the property, the person shall be guilty of a Class 6 felony, and the penalty upon conviction shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement.

Code 1950, § 18.1-183; 1960, c. 358; 1975, cc. 14, 15; 1994, c. 658; 1997, c. 833; 2004, c. 461.

§ 18.2-121.1. Permitting certain animals to run at large

The owner or manager of any animal mentioned in § 55-316, who shall knowingly permit such animal to run at large in any county or portion thereof, under quarantine, shall be deemed to be guilty of a Class 4 misdemeanor.

Code 1950, § 8-885; 1977, c. 624.

§ 18.2-121.2. Trespass by spotlight on agricultural land

If any person shall willfully use a spotlight or similar lighting apparatus to cast a light upon private property used for livestock or crops without the written permission of the person in legal possession of such property, he shall be guilty of a Class 3 misdemeanor.

The prohibition of this section shall not apply to light cast by (i) permanently installed outdoor lighting fixtures, (ii) headlamps on vehicles moving in normal travel on public or private roads, (iii) railroad locomotives or rolling stock being operated on the tracks or right-of-way of a railroad company, (iv) aircraft or watercraft, (v) apparatus used by employees of any public utility in maintaining the utility's lines and equipment, (vi) emergency medical services vehicles used by emergency medical services personnel or fire apparatus used by members of fire departments in the performance of their official duties, (vii) apparatus used by any law-enforcement officer in the performance of his official duties, or (viii) farm machinery or motor vehicles being used in normal farming operations.

1981, c. 460; 2015, cc. 502, 503.

§ 18.2-122. Repealed

Repealed by Acts 1998, c. 6.

§ 18.2-123. Repealed

Repealed by Acts 2004, c. 459.

§ 18.2-124. Jurisdiction over offenses committed in Capitol Square

The Circuit Court of the City of Richmond shall have jurisdiction to try cases of offenses committed in Capitol Square except as hereinafter provided. The district court of the City of Richmond shall have jurisdiction to try misdemeanor cases arising under § 18.2-122, and all other offenses committed in the Capitol Square of which it would have jurisdiction if committed within the corporate limits and jurisdiction of the city; and the Capitol Police, or any member thereof, shall have the same authority to arrest and to swear out warrants for offenses committed on the Capitol

Square as policemen of the City of Richmond have to arrest or to swear out warrants for offenses committed within the jurisdiction of the city.

Code 1950, § 2.1-97; 1966, c. 677; 1975, cc. 14, 15; 2004, c. 459.

§ 18.2-125. Trespass at night upon any cemetery

If any person, without the consent of the owner, proprietor or custodian, go or enter in the night-time, upon the premises, property, driveways or walks of any cemetery, either public or private, for any purpose other than to visit the burial lot or grave of some member of his family, he shall be guilty of a Class 4 misdemeanor.

Code 1950, § 18.1-181; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-126. Violation of sepulture; defilement of a dead human body; penalties

A. If a person unlawfully disinters or displaces a dead human body, or any part of a dead human body which has been deposited in any vault, grave or other burial place, he is guilty of a Class 4 felony.

B. If a person willfully and intentionally physically defiles a dead human body he is guilty of a Class 6 felony. For the purposes of this section, the term "defile" shall not include any autopsy or the recovery of organs or tissues for transplantation, or any other lawful purpose.

Code 1950, § 18.1-243; 1960, c. 358; 1975, cc. 14, 15; 1995, c. 306.

§ 18.2-127. Injuries to churches, church property, cemeteries, burial grounds, etc.; penalty

A. Any person who willfully or maliciously commits any of the following acts is guilty of a Class 1 misdemeanor:

1. Destroys, removes, cuts, breaks, or injures any tree, shrub, or plant on any church property or within any cemetery or lot of any memorial or monumental association;

2. Destroys, mutilates, injures, or removes and carries 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. Obstructs proper ingress to and egress from any church or any cemetery or lot belonging to any memorial or monumental association.

B. Any person who willfully or maliciously destroys, mutilates, defaces, injures, or removes any object or structure permanently attached or affixed within any church or on church property, any tomb, monument, gravestone, or other structure placed within any cemetery, graveyard, or place of burial, or within any lot belonging to any memorial or monumental association, or any fence, railing, or other work for the protection or ornament of any tomb, monument, gravestone, or other structure aforesaid, or of any cemetery lot within any cemetery is guilty of a Class 6 felony. A person convicted under this section who is required to pay restitution by the court shall be required to pay restitution to the church, if the property damaged is property of the church, or to

the owner of a cemetery, if the property damaged is located within such cemetery regardless of whether the property damaged is owned by the cemetery or by another person.

C. This section shall not apply to any work which is done by the authorities of a church or congregation in the maintenance or improvement of any church property or any burial ground or cemetery belonging to it and under its management or control and which does not injure or result in the removal of a tomb, monument, gravestone, grave marker or vault. For purposes of this section, "church" shall mean any place of worship, and "church property" shall mean any educational building or community center owned or rented by a church.

Code 1950, § 18.1-244; 1960, c. 358; 1975, cc. 14, 15; 1982, c. 561; 1983, c. 579; 1990, c. 510; 2004, c. 203.

§ 18.2-128. Trespass upon church or school property

A. Any person who, without the consent of some person authorized to give such consent, goes or enters upon, in the nighttime, the premises or property of any church or upon any school property for any purpose other than to attend a meeting or service held or conducted in such church or school property, shall be guilty of a Class 3 misdemeanor.

B. It shall be unlawful for any person, whether or not a church member or student, to enter upon or remain upon any church or school property in violation of (i) any direction to vacate the property by a person authorized to give such direction or (ii) any posted notice which contains such information, posted at a place where it reasonably may be seen. Each time such person enters upon or remains on the posted premises or after such direction that person refuses to vacate such property, it shall constitute a separate offense.

A violation of this subsection shall be punishable as a Class 1 misdemeanor, except that any person, other than a parent, who violates this subsection on school property with the intent to abduct a student shall be guilty of a Class 6 felony.

C. For purposes of this section: (i) "school property" includes a school bus as defined in § 46.2-100 and (ii) "church" means any place of worship and includes any educational building or community center owned or leased by a church.

Code 1950, § 18.1-182; 1960, c. 358; 1975, cc. 14, 15; 1988, c. 497; 1989, c. 680; 1993, c. 961; 1994, c. 326; 1995, cc. 493, 642; 1997, c. 779.

§ 18.2-129. Repealed

Repealed by Acts 1989, c. 680 .

§ 18.2-130. Peeping or spying into dwelling or enclosure

A. It shall be unlawful for any person to enter upon the property of another and secretly or furtively peep, spy or attempt to peep or spy into or through a window, door or other aperture of any building, structure, or other enclosure of any nature occupied or intended for occupancy as a dwelling, whether or not such building, structure or enclosure is permanently situated or transportable

and whether or not such occupancy is permanent or temporary, or to do the same, without just cause, upon property owned by him and leased or rented to another under circumstances that would violate the occupant's reasonable expectation of privacy.

B. It shall be unlawful for any person to use a peephole or other aperture to secretly or furtively peep, spy or attempt to peep or spy into a restroom, dressing room, locker room, hotel room, motel room, tanning bed, tanning booth, bedroom or other location or enclosure for the purpose of viewing any nonconsenting person who is totally nude, clad in undergarments, or in a state of undress exposing the genitals, pubic area, buttocks or female breast and the circumstances are such that the person would otherwise have a reasonable expectation of privacy.

C. The provisions of this section shall not apply to a lawful criminal investigation or a correctional official or local or regional jail official conducting surveillance for security purposes or during an investigation of alleged misconduct involving a person committed to the Department of Corrections or to a local or regional jail.

D. As used in this section, "peephole" means any hole, crack or other similar opening through which a person can see.

E. A violation of this section is a Class 1 misdemeanor.

Code 1950, § 18.1-174; 1960, c. 358; 1975, cc. 14, 15; 1992, c. 520; 1999, c. 351; 2003, cc. 81, 87.

§ 18.2-131. Trespass upon licensed shooting preserve

It shall be unlawful for any person to trespass on a licensed shooting preserve. Any person convicted of such trespass shall be guilty of a Class 4 misdemeanor and shall be responsible for all damage. Owners or keepers of dogs trespassing on preserves shall be responsible for all damage done by such dogs.

Code 1950, § 29-49; 1975, cc. 14, 15.

§ 18.2-132. Trespass by hunters and fishers

Any person who goes on the lands, waters, ponds, boats or blinds of another to hunt, fish or trap without the consent of the landowner or his agent shall be deemed guilty of a Class 3 misdemeanor.

Code 1950, § 29-165; 1954, c. 155; 1962, c. 469; 1975, cc. 14, 15.

§ 18.2-132.1. Trespass by hunters using dogs; penalty

Any person who intentionally releases hunting dogs on the lands of another which have been posted in accordance with the provisions of § 18.2-134.1 to hunt without the consent of the landowner or his agent is guilty of a Class 3 misdemeanor. A second or subsequent violation of this section within three years is a Class 1 misdemeanor and, upon conviction, the court shall revoke such person's hunting or trapping license for a period of one year. The fact that hunting dogs are present on the lands of another alone is not sufficient evidence to prove that the person acted intentionally.

2016, c. 373.

§ 18.2-133. Refusal of person on land, etc., of another to identify himself

Any person who goes on the lands, waters, ponds, boats or blinds of another to hunt, fish, or trap and willfully refuses to identify himself when requested by the landowner or his agent so to do shall be deemed guilty of a Class 4 misdemeanor.

Code 1950, § 29-165.1; 1954, c. 156; 1962, c. 469; 1975, cc. 14, 15.

§ 18.2-134. Trespass on posted property

Any person who goes on the lands, waters, ponds, boats or blinds of another, which have been posted in accordance with the provisions of § 18.2-134.1, to hunt, fish or trap except with the written consent of or in the presence of the owner or his agent shall be guilty of a Class 1 misdemeanor.

Code 1950, § 29-166; 1954, c. 155; 1962, c. 469; 1975, cc. 14, 15; 1987, c. 603.

§ 18.2-134.1. Method of posting lands

A. The owner or lessee of property described in § 18.2-134 may post property by (i) placing signs prohibiting hunting, fishing or trapping where they may reasonably be seen; or (ii) placing identifying paint marks on trees or posts at each road entrance and adjacent to public roadways and public waterways adjoining the property. Each paint mark shall be a vertical line of at least two inches in width and at least eight inches in length and the center of the mark shall be no less than three feet nor more than six feet from the ground or normal water surface. Such paint marks shall be readily visible to any person approaching the property.

B. The type and color of the paint to be used for posting shall be prescribed by the Department of Game and Inland Fisheries.

1987, c. 603.

§ 18.2-135. Destruction of posted signs; posting land of another

Any person who shall mutilate, destroy or take down any "posted," "no hunting" or similar sign or poster on the lands or waters of another, or who shall post such sign or poster on the lands or waters of another, without the consent of the landowner or his agent, shall be deemed guilty of a Class 3 misdemeanor and his hunting, fishing, and trapping license and privileges shall be revoked for a period of one to five years from the date of conviction.

Code 1950, § 29-167; 1962, c. 469; 1975, cc. 14, 15; 2010, c. 183.

§ 18.2-136. Right of certain hunters to go on lands of another; carrying firearms or bows and arrows prohibited

Fox hunters and coon hunters, when the chase begins on other lands, may follow their dogs on prohibited lands, and hunters of all other game, when the chase begins on other lands, may go upon prohibited lands to retrieve their dogs, falcons, hawks, or owls but may not carry firearms or bows and arrows on their persons or hunt any game while thereon. The use of vehicles to retrieve

dogs, falcons, hawks, or owls on prohibited lands shall be allowed only with the permission of the landowner or his agent. Any person who goes on prohibited lands to retrieve his dogs, falcons, hawks, or owls pursuant to this section and who willfully refuses to identify himself when requested by the landowner or his agent to do so is guilty of a Class 4 misdemeanor.

Code 1950, § 29-168; 1964, c. 600; 1975, cc. 14, 15; 1988, c. 593; 1991, cc. 317, 327; 2007, cc. 145, 658; 2011, c. 191.

§ 18.2-136.1. Enforcement of §§ 18.2-131 through 18.2-135

Conservation police officers, sheriffs and all other law-enforcement officers shall enforce the provisions of §§ 18.2-131, 18.2-132, 18.2-133, 18.2-134 and 18.2-135.

1975, cc. 14, 15.

Article 6 - DAMAGE TO REALTY AND PERSONALTY THEREON

§ 18.2-137. Injuring, etc., any property, monument, etc

A. If any person unlawfully destroys, defaces, damages or removes without the intent to steal any property, real or personal, not his own, or breaks down, destroys, defaces, damages or removes without the intent to steal, any monument or memorial for war veterans described in § 15.2-1812, any monument erected for the purpose of marking the site of any engagement fought during the War between the States, or for the purpose of designating the boundaries of any city, town, tract of land, or any tree marked for that purpose, he shall be guilty of a Class 3 misdemeanor; provided that the court may, in its discretion, dismiss the charge if the locality or organization responsible for maintaining the injured property, monument, or memorial files a written affidavit with the court stating it has received full payment for the injury.

B. If any person intentionally causes such injury, he shall be guilty of (i) a Class 1 misdemeanor if the value of or damage to the property, memorial or monument is less than $1,000 or (ii) a Class 6 felony if the value of or damage to the property, memorial or monument is $1,000 or more. The amount of loss caused by the destruction, defacing, damage or removal of such property, memorial or monument may be established by proof of the fair market cost of repair or fair market replacement value. Upon conviction, the court may order that the defendant pay restitution.

Code 1950, § 18.1-172; 1960, c. 358; 1975, cc. 14, 15, 598; 1990, c. 933; 1999, c. 625.

§ 18.2-138. Damaging public buildings, etc.; penalty

Any person who willfully and maliciously (i) breaks any window or door of the Capitol, any courthouse, house of public worship, college, school house, city or town hall, or other public building or library, (ii) damages or defaces the Capitol or any other public building or any statuary in the Capitol, on the Capitol Square, or in or on any other public buildings or public grounds, or (iii) destroys any property in any of such buildings shall be guilty of a Class 6 felony if damage to the property is $1,000 or more or a Class 1 misdemeanor if the damage is less than $1,000.

Any person who willfully and unlawfully damages or defaces any book, newspaper, magazine, pamphlet, map, picture, manuscript, or other property located in any library, reading room, museum, or other educational institution shall be guilty of a Class 6 felony if damage to the property is $1,000 or more or a Class 1 misdemeanor if the damage is less than $1,000.

Code 1950, § 18.1-177; 1960, c. 358; 1975, cc. 14, 15; 1990, c. 454 .

§ 18.2-138.1. Repealed

Repealed by Acts 2004, c. 462.

§ 18.2-139. Injuries to trees, fences or herbage on grounds of Capitol, or in any public square

If any person:

(1) Cut down, pull up, girdle or otherwise injure or destroy any tree growing in the grounds of the Capitol, or in any public square or grounds, without the consent of the Governor, or of the circuit court of the county or city in which such grounds or square is situated; or

(2) Willfully and maliciously injure the fences or herbage of the Capitol grounds, or of any such square or grounds,

he shall be guilty of a Class 3 misdemeanor.

Code 1950, § 18.1-180; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-140. Destruction of trees, shrubs, etc

It shall be unlawful for any person to pick, pull, pull up, tear, tear up, dig, dig up, cut, break, injure, burn or destroy, in whole or in part, any tree, shrub, vine, plant, flower or turf found, growing or being upon the land of another, or upon any land reserved, set aside or maintained by the Commonwealth as a public park, or as a refuge or sanctuary for wild animals, birds or fish, or upon any land reserved, set aside or maintained as a public park by a park authority created under the provisions of § 15.2-5702, without having previously obtained the permission in writing of such other or his agent or of the superintendent or custodian of such park, refuge or sanctuary so to do, unless the same be done under the personal direction of such owner, his agent, tenant or lessee or superintendent or custodian of such park, refuge or sanctuary.

Any person violating this section shall be guilty of a Class 3 misdemeanor; provided, however, that the approval of the owner, his agent, tenant or lessee, or the superintendent or custodian of such park or sanctuary afterwards given in writing or in open court shall be a bar to further prosecution or suit.

Code 1950, § 18.1-178; 1960, c. 358; 1975, cc. 14, 15; 1976, c. 757; 1998, c. 81.

§ 18.2-141. Cutting or destroying trees; carrying axe, saw, etc., while hunting

It shall be unlawful for any person while hunting for game or wildlife on the property of another to carry any axe other than a belt axe with a handle less than twenty inches, saw or other tool or instrument customarily used for the purpose of cutting, felling, mutilating or destroying trees

without obtaining prior permission of the landowner. Any person violating the provisions of this section shall be guilty of a Class 3 misdemeanor.

Conservation police officers, sheriffs and all law-enforcement officers shall enforce the provisions of this section.

Code 1950, § 18.1-179; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-142. Repealed
Repealed by Acts 1979, c. 252.

§ 18.2-143. Pulling down fences or leaving open gates
If any person, without permission of the owner, pull down the fence of another and leave the same down, or, without permission, open and leave open the gate of another, or any gate across a public road established by order of court, or if any person other than the owner or owners of the lands through which a line of railroad runs open and leave open a gate at any public or private crossing of the right-of-way of a railroad, he shall be guilty of a Class 4 misdemeanor.

Code 1950, § 18.1-176; 1960, c. 358; 1975, cc. 14, 15.

Article 7 - DAMAGE TO AND TAMPERING WITH PROPERTY

§ 18.2-144. Maiming, killing or poisoning animals, fowl, etc
Except as otherwise provided for by law, if any person maliciously shoot, stab, wound or otherwise cause bodily injury to, or administer poison to or expose poison with intent that it be taken by, any horse, mule, pony, cattle, swine or other livestock of another, with intent to maim, disfigure, disable or kill the same, or if he do any of the foregoing acts to any animal of his own with intent to defraud any insurer thereof, he shall be guilty of a Class 5 felony. If any person do any of the foregoing acts to any fowl or to any companion animal with any of the aforesaid intents, he shall be guilty of a Class 1 misdemeanor, except that any second or subsequent offense shall be a Class 6 felony if the current offense or any previous offense resulted in the death of an animal or the euthanasia of an animal based on the recommendation of a licensed veterinarian upon determination that such euthanasia was necessary due to the condition of the animal, and such condition was a direct result of a violation of this section.

Code 1950, § 18.1-159; 1960, c. 358; 1964, c. 400; 1975, cc. 14, 15; 1977, c. 598; 1978, c. 559; 1999, c. 620.

§ 18.2-144.1. Prohibition against killing or injuring police animals; penalty
It shall be unlawful for any person to maliciously shoot, stab, wound or otherwise cause bodily injury to, or administer poison to or expose poison with intent that it be taken by a dog, horse or other animal owned, used or trained by a law-enforcement agency, regional jail or the Department of Corrections while such animal is performing his lawful duties or is being kept in a kennel, pen or stable while off duty. A violation of this section shall be punishable as a Class 5 felony. The

court shall order that the defendant pay restitution for the cost of any animal killed or rendered unable to perform its duties. Such cost shall include training expenses.

1989, c. 558; 1998, c. 8.

§ 18.2-144.2. Prohibition against making a false representation of ownership of an animal to a public or private animal shelter; penalty

A. It shall be unlawful for any person to deliver or release any animal not owned by that person to a public or private animal shelter or humane society, as these terms are defined in § 3.2-6500, or to any other similar facility for animals, or any agent thereof, and to falsely represent to such facility or agent that such person is the owner of the animal.

B. A violation of subsection A is a Class 1 misdemeanor.

C. No public or private animal shelter, humane society or other similar facility for animals, or the directors or employees of any such business or facility, shall, in the absence of gross negligence, be civilly liable for accepting and disposing of any animal in good faith from a person who falsely claims to be the owner of the animal.

1994, c. 885; 2014, c. 148.

§ 18.2-145. Protection of homing pigeons

It shall be unlawful for any person at any time or in any manner to hunt, pursue, take, capture, wound, maim, disfigure, or kill any homing pigeon of another person, or to make use of any pit or pitfall, scaffold, cage, snare, trap, net, baited hook or similar device or drug, poison chemical or explosive, for the purpose of injuring, capturing or killing any such homing pigeon, provided that any officer, employee or agent of a city or county acting pursuant to authority of an ordinance thereof may take, capture and kill pigeons in, on and about any building or structure devoted to business, commercial or industrial purposes when any pigeons are using such premises for roosting, resting or congregating thereon; all pigeons taken upon such premises shall be conclusively deemed not to be homing pigeons or the property of any person.

Any person violating any of the foregoing provisions shall be guilty of a Class 3 misdemeanor.

Code 1950, § 18.1-160; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-145.1. Damaging or destroying research farm product; penalty; restitution

A. Any person or entity that (i) maliciously damages or destroys any farm product, as defined in § 3.2-4709 and (ii) knows the product is grown for testing or research purposes in the context of product development in conjunction or coordination with a private research facility or a university or any federal, state or local government agency is guilty of a Class 1 misdemeanor if the value of the farm product was less than $200, or a Class 6 felony if the value of the farm product was $200 or more.

B. The court shall order the defendant to make restitution in accordance with § 19.2-305.1 for the damage or destruction caused. For the purpose of awarding restitution under this section, the

court shall determine the market value of the farm product prior to its damage or destruction and, in so doing, shall include the cost of: (i) production, (ii) research, (iii) testing, (iv) replacement and (v) product development directly related to the product damaged or destroyed.

2001, cc. 547, 572.

§ 18.2-146. Breaking, injuring, defacing, destroying or preventing the operation of vehicle, aircraft or boat

Any person who shall individually or in association with one or more others willfully break, injure, tamper with or remove any part or parts of any vehicle, aircraft, boat or vessel for the purpose of injuring, defacing or destroying said vehicle, aircraft, boat or vessel, or temporarily or permanently preventing its useful operation, or for any purpose against the will or without the consent of the owner of such vehicle, aircraft, boat or vessel, or who shall in any other manner willfully or maliciously interfere with or prevent the running or operation of such vehicle, aircraft, boat or vessel, shall be guilty of a Class 1 misdemeanor.

Code 1950, § 18.1-166; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-147. Entering or setting in motion, vehicle, aircraft, boat, locomotive or rolling stock of railroad; exceptions

Any person who shall, without the consent of the owner or person in charge of a vehicle, aircraft, boat, vessel, locomotive or other rolling stock of a railroad, climb into or upon such vehicle, aircraft, boat, vessel, locomotive or other rolling stock of a railroad, with intent to commit any crime, malicious mischief, or injury thereto, or who, while a vehicle, aircraft, boat, vessel, locomotive or other rolling stock of a railroad is at rest and unattended, shall attempt to manipulate any of the levers and starting crank or other device, brakes or mechanism thereof or to set into motion such vehicle, aircraft, boat, vessel, locomotive or other rolling stock of a railroad, with the intent to commit any crime, malicious mischief, or injury thereto, shall be guilty of a Class 1 misdemeanor, except that the foregoing provision shall not apply when any such act is done in an emergency or in furtherance of public safety or by or under the direction of an officer in the regulation of traffic or performance of any other official duty.

Code 1950, § 18.1-167; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-147.1. Breaking and entering into railroad cars, motortrucks, aircraft, etc., or pipeline systems

Any person who breaks the seal or lock of any railroad car, vessel, aircraft, motortruck, wagon or other vehicle or of any pipeline system, containing shipments of freight or express or other property, or breaks and enters any such vehicle or pipeline system with the intent to commit larceny or any felony therein shall be guilty of a Class 4 felony; provided, however, that if such person is armed with a firearm at the time of such breaking and entering, he shall be guilty of a Class 3 felony.

1979, c. 336.

§ 18.2-147.2. Devices for puncturing motor vehicle tires

It shall be unlawful for any person to manufacture, distribute, have in his possession or place upon any highway or private property jackrocks which are primarily designed for the purpose of disabling motor vehicles by the puncturing of tires by anyone other than a law-enforcement officer. Any person convicted of unlawful manufacture, distribution, possession or use of such device shall be guilty of a Class 1 misdemeanor. A law-enforcement officer who is lawfully engaged in the discharge of his duties shall not be subject to the provisions of this section.

1982, c. 253; 2007, c. 437.

§ 18.2-148. Bona fide repossession under lien

The provisions of §§ 18.2-102, 18.2-146 and 18.2-147 shall not apply to a bona fide repossession of a vehicle, aircraft, boat or vessel by the holder of a lien on such vehicle, aircraft, boat or vessel, or by the agents or employees of such lienholder.

Code 1950, § 18.1-168; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-149. Injury to hired animal, aircraft, vehicle or boat

If any person after having rented or leased from any other person an animal, aircraft, vehicle, boat or vessel shall willfully injure or damage the same, by hard or reckless driving or using, or by using the same in violation of any statute of this Commonwealth, or allow or permit any other person so to do, or hire the same to any other person without the consent of the bailor, such person shall be guilty of a Class 3 misdemeanor.

Code 1950, § 18.1-161; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-150. Willfully destroying vessel, etc

If any person willfully scuttle, cast away or otherwise dispose of, or in any manner destroy, except as otherwise provided, a ship, vessel or other watercraft, with intent to injure or defraud any owner thereof or of any property on board the same, or any insurer of such ship, vessel or other watercraft, or any part thereof, or of any such property on board the same, if the same be of the value of $200, he shall be guilty of a Class 4 felony, but if it be of less value than $200, he shall be guilty of a Class 1 misdemeanor.

Code 1950, § 18.1-170; 1960, c. 358; 1975, cc. 14, 15; 1981, c. 197.

§ 18.2-151. Opening or carrying away pumps, etc., used for dispensing gasoline, etc

If any person, with intent to commit larceny therefrom, break and open, or open, or carry away, any pump, tank, or other similar equipment or container used for dispensing or storing kerosene, gasoline or motor oils, he shall be guilty of a Class 6 felony.

Code 1950, § 18.1-169; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-151.1. Injuring, destroying, removing, or tampering with firefighting equipment; penalty

Any person who injures, destroys, removes, tampers with, or otherwise interferes with the operation of (i) any equipment or apparatus used for fighting fires or for protecting property or human life by a fire company or fire department, as those terms are defined in § 27-6.01, or (ii) any emergency medical services vehicle, as defined in § 32.1-111.1, intending to temporarily or permanently prevent the useful operation of such equipment or apparatus is guilty of a Class 1 misdemeanor.

2016, c. 687.

§ 18.2-152. Stealing from or tampering with parking meter, vending machine, pay telephone, etc

Any person who enters, forces or attempts to force an entrance into, tampers with, or inserts any part of an instrument into any parking meter, vending machine, pay telephone, money changing machine, or any other device designed to receive money, with intent to steal therefrom, shall for the first conviction thereof be guilty of a Class 1 misdemeanor, and for any subsequent conviction of a violation thereof shall be guilty of a Class 6 felony.

Code 1950, § 18.1-125.1; 1968, c. 518; 1975, cc. 14, 15.

Article 7.1 - COMPUTER CRIMES

§ 18.2-152.1. Short title

This article shall be known and may be cited as the "Virginia Computer Crimes Act."

1984, c. 751.

§ 18.2-152.2. Definitions; computer crimes

For purposes of this article:

"Commercial electronic mail" means electronic mail, the primary purpose of which is the advertisement or promotion of a commercial product or service.

"Computer" means a device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions. Such term does not include simple calculators, automated typewriters, facsimile machines, or any other specialized computing devices that are preprogrammed to perform a narrow range of functions with minimal end-user or operator intervention and are dedicated to a specific task.

"Computer data" means any representation of information, knowledge, facts, concepts, or instructions which is being prepared or has been prepared and is intended to be processed, is being processed, or has been processed in a computer or computer network. "Computer data" may be in any form, whether readable only by a computer or only by a human or by either, including, but not limited to, computer printouts, magnetic storage media, punched cards, or stored internally in the memory of the computer.

"Computer network" means two or more computers connected by a network.

"Computer operation" means arithmetic, logical, monitoring, storage or retrieval functions and any combination thereof, and includes, but is not limited to, communication with, storage of data to, or retrieval of data from any device or human hand manipulation of electronic or magnetic impulses. A "computer operation" for a particular computer may also be any function for which that computer was generally designed.

"Computer program" means an ordered set of data representing coded instructions or statements that, when executed by a computer, causes the computer to perform one or more computer operations.

"Computer services" means computer time or services, including data processing services, Internet services, electronic mail services, electronic message services, or information or data stored in connection therewith.

"Computer software" means a set of computer programs, procedures and associated documentation concerned with computer data or with the operation of a computer, computer program, or computer network.

"Electronic mail service provider" (EMSP) means any person who (i) is an intermediary in sending or receiving electronic mail and (ii) provides to end-users of electronic mail services the ability to send or receive electronic mail.

"Financial instrument" includes, but is not limited to, any check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction authorization mechanism, marketable security, or any computerized representation thereof.

"Network" means any combination of digital transmission facilities and packet switches, routers, and similar equipment interconnected to enable the exchange of computer data.

"Owner" means an owner or lessee of a computer or a computer network or an owner, lessee, or licensee of computer data, computer programs or computer software.

"Person" shall include any individual, partnership, association, corporation or joint venture.

"Property" shall include:

1. Real property;

2. Computers and computer networks;

3. Financial instruments, computer data, computer programs, computer software and all other personal property regardless of whether they are:

a. Tangible or intangible;

b. In a format readable by humans or by a computer;

c. In transit between computers or within a computer network or between any devices which comprise a computer; or

d. Located on any paper or in any device on which it is stored by a computer or by a human; and

4. Computer services.

"Spam" means unsolicited commercial electronic mail. Spam shall not include commercial electronic mail transmitted to a recipient with whom the sender has an existing business or personal relationship.

A person "uses" a computer or computer network when he attempts to cause or causes a computer or computer network to perform or to stop performing computer operations.

A person is "without authority" when he knows or reasonably should know that he has no right, agreement, or permission or acts in a manner knowingly exceeding such right, agreement, or permission.

1984, c. 751; 1999, cc. 886, 904, 905; 2000, c. 627; 2003, cc. 987, 1016; 2005, cc. 761, 812, 827; 2009, cc. 321, 376; 2010, c. 489.

§ 18.2-152.3. Computer fraud; penalty

Any person who uses a computer or computer network, without authority and:

1. Obtains property or services by false pretenses;

2. Embezzles or commits larceny; or

3. Converts the property of another;

is guilty of the crime of computer fraud.

If the value of the property or services obtained is $200 or more, the crime of computer fraud shall be punishable as a Class 5 felony. Where the value of the property or services obtained is less than $200, the crime of computer fraud shall be punishable as a Class 1 misdemeanor.

1984, c. 751; 1985, c. 322; 2003, cc. 987, 1016; 2005, cc. 747, 761, 827, 837.

§ 18.2-152.3:1. Transmission of unsolicited commercial electronic mail (spam); penalty

A. Any person who:

1. Uses a computer or computer network with the intent to falsify or forge electronic mail transmission information or other routing information in any manner in connection with the transmission of spam through or into the computer network of an electronic mail service provider or its subscribers; or

2. Knowingly sells, gives, or otherwise distributes or possesses with the intent to sell, give, or distribute software that (i) is primarily designed or produced for the purpose of facilitating or enabling the falsification of the transmission information or other routing information of spam; (ii) has only limited commercially significant purpose or use other than to facilitate or enable the falsification of the transmission information or other routing information of spam; or (iii) is marketed by that person acting alone or with another for use in facilitating or enabling the

falsification of the transmission information or other routing information of spam is guilty of a Class 1 misdemeanor.

B. Any person who commits a violation of subdivision A 1 when (i) the volume of spam transmitted exceeded 10,000 attempted recipients in any 24-hour time period, 100,000 attempted recipients in any 30-day time period, or one million attempted recipients in any one-year time period or (ii) revenue generated from a specific transmission of spam exceeded $1,000 or the total revenue generated from all spam transmitted to any EMSP exceeded $50,000, is guilty of a Class 6 felony.

C. Any person who knowingly hires, employs, uses, or permits any minor to assist in the transmission of spam in violation of subsection B is guilty of a Class 6 felony.

2003, cc. 987, 1016; 2010, c. 489.

§ 18.2-152.4. Computer trespass; penalty

A. It shall be unlawful for any person, with malicious intent, to:

1. Temporarily or permanently remove, halt, or otherwise disable any computer data, computer programs or computer software from a computer or computer network;

2. Cause a computer to malfunction, regardless of how long the malfunction persists;

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 or computer network to cause physical injury to the property of another;

6. Use a computer or computer network to make or cause to be made an unauthorized copy, in any form, including, but not limited to, 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. [Repealed.]

8. Install or cause to be installed, or collect information through, computer software that records all or a majority of the keystrokes made on the computer of another without the computer owner's authorization; or

9. Install or cause to be installed on the computer of another, computer software for the purpose of (i) taking control of that computer so that it can cause damage to another computer or (ii) disabling or disrupting the ability of the computer to share or transmit instructions or data to other computers or to any related computer equipment or devices, including but not limited to printers, scanners, or fax machines.

B. Any person who violates this section is guilty of computer trespass, which shall be a Class 1 misdemeanor. If there is damage to the property of another valued at $1,000 or more caused by such

person's act in violation of this section, the offense shall be a Class 6 felony. If a person installs or causes to be installed computer software in violation of this section on more than five computers of another, the offense shall be a Class 6 felony. If a person violates subdivision A 8, the offense shall be a Class 6 felony.

C. Nothing in this section shall be construed to interfere with or prohibit terms or conditions in a contract or license related to computers, computer data, computer networks, computer operations, computer programs, computer services, or computer software or to create any liability by reason of terms or conditions adopted by, or technical measures implemented by, a Virginia-based electronic mail service provider to prevent the transmission of unsolicited electronic mail in violation of this article. Nothing in this section shall be construed to prohibit the monitoring of computer usage of, the otherwise lawful copying of data of, or the denial of computer or Internet access to a minor by a parent or legal guardian of the minor.

1984, c. 751; 1985, c. 322; 1990, c. 663; 1998, c. 892; 1999, cc. 886, 904, 905; 2002, c. 195; 2003, cc. 987, 1016; 2005, cc. 761, 812, 827; 2007, c. 483.

§ 18.2-152.5. Computer invasion of privacy; penalties

A. A person is guilty of the crime of computer invasion of privacy when he uses a computer or computer network and intentionally examines without authority any employment, salary, credit or any other financial or identifying information, as defined in clauses (iii) through (xiii) of subsection C of § 18.2-186.3, relating to any other person. "Examination" under this section requires the offender to review the information relating to any other person after the time at which the offender knows or should know that he is without authority to view the information displayed.

B. The crime of computer invasion of privacy shall be punishable as a Class 1 misdemeanor.

C. Any person who violates this section after having been previously convicted of a violation of this section or any substantially similar laws of any other state or of the United States is guilty of a Class 6 felony.

D. Any person who violates this section and sells or distributes such information to another is guilty of a Class 6 felony.

E. Any person who violates this section and uses such information in the commission of another crime is guilty of a Class 6 felony.

F. This section shall not apply to any person collecting information that is reasonably needed to (i) protect the security of a computer, computer service, or computer business, or to facilitate diagnostics or repair in connection with such computer, computer service, or computer business or (ii) determine whether the computer user is licensed or authorized to use specific computer software or a specific computer service.

1984, c. 751; 1985, c. 398; 2001, c. 358; 2005, cc. 747, 761, 827, 837.

§ 18.2-152.5:1. Using a computer to gather identifying information; penalties

A. It is unlawful for any person, other than a law-enforcement officer, as defined in § 9.1-101, and acting in the performance of his official duties, to use a computer to obtain, access, or record, through the use of material artifice, trickery or deception, any identifying information, as defined in clauses (iii) through (xiii) of subsection C of § 18.2-186.3. Any person who violates this section is guilty of a Class 6 felony.

B. Any person who violates this section and sells or distributes such information to another is guilty of a Class 5 felony.

C. Any person who violates this section and uses such information in the commission of another crime is guilty of a Class 5 felony.

2005, cc. 747, 760, 761, 827, 837.

§ 18.2-152.6. Theft of computer services; penalties

Any person who willfully obtains computer services without authority is guilty of the crime of theft of computer services, which shall be punishable as a Class 1 misdemeanor. If the theft of computer services is valued at $2,500 or more, he is guilty of a Class 6 felony.

1984, c. 751; 1985, c. 322; 2003, cc. 987, 1016; 2005, cc. 746, 761, 827.

§ 18.2-152.7. Personal trespass by computer; penalty

A. A person is guilty of the crime of personal trespass by computer when he uses a computer or computer network to cause physical injury to an individual.

B. If committed maliciously, the crime of personal trespass by computer shall be punishable as a Class 3 felony. If such act is done unlawfully but not maliciously, the crime of personal trespass by computer shall be punishable as a Class 6 felony.

1984, c. 751; 1985, c. 322; 2003, cc. 987, 1016; 2005, cc. 746, 761, 827.

§ 18.2-152.7:1. Harassment by computer; penalty

If any person, with the intent to coerce, intimidate, or harass any person, shall use a computer or computer network to communicate obscene, vulgar, profane, lewd, lascivious, or indecent language, or make any suggestion or proposal of an obscene nature, or threaten any illegal or immoral act, he shall be guilty of a Class 1 misdemeanor.

2000, c. 849.

§ 18.2-152.8. Property capable of embezzlement

For purposes of §§ 18.2-95, 18.2-96, 18.2-108, and 18.2-111, personal property subject to embezzlement, larceny, or receiving stolen goods shall include:

1. Computers and computer networks;

2. Financial instruments, computer data, computer programs, computer software and all other personal property regardless of whether they are:

a. Tangible or intangible;

b. In a format readable by humans or by a computer;

c. In transit between computers or within a computer network or between any devices which comprise a computer; or

d. Located on any paper or in any device on which it is stored by a computer or by a human; and

3. Computer services.

1984, c. 751; 2005, cc. 746, 761, 827.

§§ 18.2-152.9, 18.2-152.10. Repealed

Repealed by Acts 2005, cc. 746, 761, and 827, cl. 2.

§ 18.2-152.11. Article not exclusive

The provisions of this article shall not be construed to preclude the applicability of any other provision of the criminal law of this Commonwealth which presently applies or may in the future apply to any transaction or course of conduct which violates this article, unless such provision is clearly inconsistent with the terms of this article.

1984, c. 751.

§ 18.2-152.12. Civil relief; damages

A. Any person whose property or person is injured by reason of a violation of any provision of this article or by any act of computer trespass set forth in subdivisions A 1 through A 8 of § 18.2-152.4 regardless of whether such act is committed with malicious intent may sue therefor and recover for any damages sustained and the costs of suit. Without limiting the generality of the term, "damages" shall include loss of profits.

B. If the injury under this article arises from the transmission of spam in contravention of the authority granted by or in violation of the policies set by the electronic mail service provider where the defendant has knowledge of the authority or policies of the EMSP or where the authority or policies of the EMSP are available on the electronic mail service provider's website, the injured person, other than an electronic mail service provider, may also recover attorneys' fees and costs, and may elect, in lieu of actual damages, to recover the lesser of $10 for each and every spam message transmitted in violation of this article, or $25,000 per day. The injured person shall not have a cause of action against the electronic mail service provider that merely transmits the spam over its computer network. Transmission of electronic mail from an organization to its members shall not be deemed to be spam.

C. If the injury under this article arises from the transmission of spam in contravention of the authority granted by or in violation of the policies set by the electronic mail service provider where the defendant has knowledge of the authority or policies of the EMSP or where the authority or policies of the EMSP are available on the electronic mail service provider's website, an injured electronic mail service provider may also recover attorneys' fees and costs, and may elect, in lieu of actual damages, to recover $1 for each and every intended recipient of a spam message where

the intended recipient is an end user of the EMSP or $25,000 for each day an attempt is made to transmit a spam message to an end user of the EMSP. In calculating the statutory damages under this provision, the court may adjust the amount awarded as necessary, but in doing so shall take into account the number of complaints to the EMSP generated by the defendant's messages, the defendant's degree of culpability, the defendant's prior history of such conduct, and the extent of economic gain resulting from the conduct. Transmission of electronic mail from an organization to its members shall not be deemed to be spam.

D. At the request of any party to an action brought pursuant to this section, the court may, in its discretion, conduct all legal proceedings in such a way as to protect the secrecy and security of the computer, computer network, computer data, computer program and computer software involved in order to prevent possible recurrence of the same or a similar act by another person and to protect any trade secrets of any party and in such a way as to protect the privacy of nonparties who complain about violations of this section.

E. The provisions of this article shall not be construed to limit any person's right to pursue any additional civil remedy otherwise allowed by law.

F. A civil action under this section must be commenced before expiration of the time period prescribed in § 8.01-40.1. In actions alleging injury arising from the transmission of spam, personal jurisdiction may be exercised pursuant to § 8.01-328.1.

1984, c. 751; 1985, c. 92; 1999, cc. 886, 904, 905; 2003, cc. 987, 1016; 2005, cc. 746, 761, 827; 2010, cc. 489, 529.

§ 18.2-152.13. Repealed

Repealed by Acts 2015, c. 709, cl. 2.

§ 18.2-152.14. Computer as instrument of forgery

The creation, alteration, or deletion of any computer data contained in any computer or computer network, which if done on a tangible document or instrument would constitute forgery under Article 1 (§ 18.2-168 et seq.) of Chapter 6 of this Title, will also be deemed to be forgery. The absence of a tangible writing directly created or altered by the offender shall not be a defense to any crime set forth in Article 1 (§ 18.2-168 et seq.) of Chapter 6 of this Title if a creation, alteration, or deletion of computer data was involved in lieu of a tangible document or instrument.

1984, c. 751; 1985, c. 322.

§ 18.2-152.15. Encryption used in criminal activity

Any person who willfully uses encryption to further any criminal activity shall be guilty of an offense which is separate and distinct from the predicate criminal activity and punishable as a Class 1 misdemeanor.

"Encryption" means the enciphering of intelligible data into unintelligible form or the deciphering of unintelligible data into intelligible form.

1999, c. 455.

§ 18.2-152.16. Repealed

Repealed by Acts 2004, c. 995.

Article 7.2 - FRAUDULENT PROCUREMENT, SALE, OR RECEIPT OF TELEPHONE RECORDS

§ 18.2-152.17. Fraudulent procurement, sale, or receipt of telephone records

A. Whoever (i) knowingly procures, attempts to procure, solicits, or conspires with another to procure a telephone record by fraudulent means; (ii) knowingly sells, or attempts to sell, a telephone record without the authorization of the customer to whom the record pertains; or (iii) receives a telephone record knowing that such record has been obtained by fraudulent means is guilty of a Class 1 misdemeanor.

B. As used in this section:

"Procure" in regard to such a telephone record means to obtain by any means, whether electronically, in writing, or in oral form, with or without consideration.

"Telecommunications carrier" means any person that provides commercial telephone services to a customer, irrespective of the communications technology used to provide such service, including, but not limited to, traditional wireline or cable telephone service; cellular, broadband PCS, or other wireless telephone service; microwave, satellite, or other terrestrial telephone service; and voice over Internet telephone service.

"Telephone record" means information retained by a telecommunications carrier that relates to the telephone number dialed by the customer or the incoming number of a call directed to a customer, or other data related to such calls typically contained on a customer telephone bill such as the time the call started and ended, the duration of the call, the time of day the call was made, and any charges applied. For purposes of this section, any information collected and retained by customers utilizing Caller I.D., or other similar technology, does not constitute a telephone record.

C. Nothing in this section shall be construed to prevent any action by a law-enforcement agency, or any officer or employee of such agency, from obtaining telephone records in connection with the performance of the official duties of the agency.

D. Nothing in this section shall be construed to prohibit a telecommunications carrier from obtaining, using, disclosing, or permitting access to any telephone record, either directly or indirectly through its agents (i) in compliance with a subpoena or subpoena duces tecum or as otherwise authorized by law; (ii) with the lawful consent of the customer or subscriber; (iii) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, subscription to, such services; (iv) to a governmental entity, if the telecommunications carrier reasonably believes that an emergency involving immediate danger of

death or serious physical injury to any person justifies disclosure of the information; or (v) to the National Center for Missing and Exploited Children, in connection with a report submitted thereto under the Victims of Child Abuse Act of 1990.

E. Venue for the trial of any person charged with an offense under this section may be in the locality in which:

1. Any act was performed in furtherance of any course of conduct in violation of this section;

2. The accused has his principal place of business in the Commonwealth;

3. Any accused had control or possession of any proceeds of the violation or of any books, records, documents, property, financial instrument, telephone record, or other material or objects that were used in furtherance of the violation;

4. From which, to which, or through which any access to a telecommunication carrier was made whether by wires, electromagnetic waves, microwaves, optics or any other means of communication; or

5. The accused resides, or resided at the time of the offense.

2006, c. 469.

Article 8 - OFFENSES RELATING TO RAILROADS AND OTHER UTILITIES

§ 18.2-153. Obstructing or injuring canal, railroad, power line, etc

If any person maliciously obstruct, remove or injure any part of a canal, railroad or urban, suburban or interurban electric railway, or any lines of any electric power company, or any bridge or fixture thereof, or maliciously obstruct, tamper with, injure or remove any machinery, engine, car, trolley, supply or return wires or any other work thereof, or maliciously open, close, displace, tamper with or injure any switch, switch point, switch lever, signal lever or signal of any such company, whereby the life of any person on such canal, railroad, urban, suburban or interurban electric railway, is put in peril, he shall be guilty of a Class 4 felony; and, in the event of the death of any such person resulting from such malicious act, the person so offending shall be deemed guilty of murder, the degree to be determined by the jury or the court trying the case without a jury.

If any such act be committed unlawfully, but not maliciously, the person so offending shall be guilty of a Class 6 felony; and in the event of the death of any such person resulting from such unlawful act, the person so offending shall be deemed guilty of involuntary manslaughter.

Code 1950, § 18.1-147; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-154. Shooting at or throwing missiles, etc., at train, car, vessel, etc.; penalty

Any person who maliciously shoots at, or maliciously throws any missile at or against, any train or cars on any railroad or other transportation company or any vessel or other watercraft, or any motor vehicle or other vehicles when occupied by one or more persons, whereby the life of any person on such train, car, vessel, or other watercraft, or in such motor vehicle or other vehicle, may

be put in peril, is guilty of a Class 4 felony. In the event of the death of any such person, resulting from such malicious shooting or throwing, the person so offending is guilty of murder in the second degree. However, if the homicide is willful, deliberate, and premeditated, he is guilty of murder in the first degree.

If any such act is committed unlawfully, but not maliciously, the person so offending is guilty of a Class 6 felony and, in the event of the death of any such person, resulting from such unlawful act, the person so offending is guilty of involuntary manslaughter.

If any person commits a violation of this section by maliciously or unlawfully shooting, with a firearm, at a conspicuously marked law-enforcement, fire, or emergency medical services vehicle, the sentence imposed shall include a mandatory minimum term of imprisonment of one year to be served consecutively with any other sentence.

Code 1950, § 18.1-152; 1960, c. 358; 1975, cc. 14, 15; 1990, c. 426; 2004, c. 461; 2005, c. 143; 2013, cc. 761, 774; 2015, cc. 502, 503.

§ 18.2-155. Injuring, etc., signal used by railroad

If any person maliciously injure, destroy, molest, or remove any switchlamp, flag or other signal used by any railroad, or any line, wire, post, lamp or any other structure or mechanism used in connection with any signal on a railroad, or destroys or in any manner interferes with the proper working of any signal on a railroad, whereby the life of any person is or may be put in peril he shall be guilty of a Class 4 felony; and in the event of the death of such person resulting from such malicious injuring, destroying or removing, the person so offending shall be deemed guilty of murder, the degree to be determined by the jury or the court trying the case without a jury. If such act be done unlawfully but not maliciously the offender shall be guilty of a Class 1 misdemeanor, provided that in the event of the death of any such person resulting from such unlawful injuring, destroying or removing, the person so offending shall be deemed guilty of involuntary manslaughter.

Code 1950, § 18.1-153; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-156. Taking or removing waste or packing from journal boxes

If any person shall willfully and maliciously take or remove the waste or packing from any journal box of any locomotive, engine, tender, carriage, coach, car, caboose or truck used or operated upon any railroad, whether the same be operated by steam or electricity, he shall be guilty of a Class 6 felony.

Code 1950, § 18.1-151; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-157. Injury to fences or cattle stops along line of railroad

Any person who shall willfully or maliciously cut, break down, injure or destroy any fence erected along the line of any railroad for the purpose of fencing the track or depot grounds of such road, or shall break down, injure or destroy any cattle stop along the line of any railroad, shall be guilty of a Class 3 misdemeanor.

Code 1950, § 18.1-155; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-158. Driving, etc., animal on track to recover damages

If any person, with a view to the recovery of damages against a railroad company, willfully ride, drive, or lead any animal, or otherwise contrive for any animal to go, on the railroad track of such company, and such animal is by reason thereof killed or injured, he shall be guilty of a Class 3 misdemeanor.

Code 1950, § 18.1-154; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-159. Trespassing on railroad track

Any person who goes upon the track of a railroad other than to pass over such road at a public or private crossing, or who willfully rides, drives or leads any animal or contrives for any animal to go on such track except to cross as aforesaid, without the consent of the railroad company or person operating such road, shall be guilty of a Class 4 misdemeanor. A second violation of the provisions of this section occurring within two years of the first violation shall be punishable as a Class 3 misdemeanor. A third or subsequent violation of the provisions of this section occurring within two years of a second or a subsequent violation shall be punishable as a Class 1 misdemeanor. This section shall not apply to any section of track which has been legally abandoned pursuant to an order of a federal or state agency having jurisdiction over the track and is not being used for railroad service.

For purposes of this section, track shall mean the rail, ties, and ballast of the railroad.

Code 1950, § 18.1-148; 1960, c. 358; 1975, cc. 14, 15; 1993, c. 845 .

§ 18.2-160. Trespassing on railroad trains

If any person, not being a passenger or employee, shall be found trespassing upon any railroad car or train of any railroad in this Commonwealth, by riding on any car, or any part thereof, on its arrival, stay or departure at or from any station or depot of such railroad, or on the passage of any such car or train over any part of any such railroad, such person shall be guilty of a Class 4 misdemeanor.

Code 1950, § 18.1-150; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-160.1. Boarding or riding transportation district train without lawful payment of fare; penalty

A. It is unlawful for any person to board or ride a train operated by, or under contract with, a transportation district created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title 33.2 when he fails or refuses to pay the posted fare published by the transportation district, or fails to properly validate a train ticket of the transportation district. A violation of this subsection continues from the point of boarding through termination of the train's scheduled trip. Any person who violates the provisions of this subsection is subject to a civil penalty of $100.

B. It is unlawful for any person to board or ride a train operated by, or under contract with, a transportation district created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title 33.2 with a validated ticket and to willfully use the ticket outside the designated zone of the paid ride. A violation of this subsection continues throughout the time that such ticket is used outside the designated zone of the paid ride. Any person who violates the provisions of this subsection is subject to a civil penalty of $100.

C. It is unlawful for any person to board or ride a train operated by, or under contract with, a transportation district created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title 33.2 when he uses a fraudulent or counterfeit ticket as a means to evade payment of the posted fare published by the transportation district. A violation of this subsection continues from the point of boarding through termination of the train's scheduled trip. A violation of this subsection is punishable as a Class 2 misdemeanor with a fine of not less than $500 for a first violation and with a fine of not less than $750 for a second or subsequent conviction when the second or subsequent conviction occurs more than 24 hours after but within 365 days of a prior violation.

D. Any person who has been convicted of violating subsection C shall be civilly liable to the Commonwealth and the transportation district for all costs incurred in prosecuting such person. The costs shall be limited to actual expenses, including the base wage of one employee acting as a witness for the Commonwealth and suit costs, but the total costs recovered shall not exceed the maximum amount of the fine that may be imposed for the offense.

1988, c. 762; 1991, c. 241; 2009, c. 760; 2010, cc. 445, 837; 2012, c. 676.

§ 18.2-160.2. Trespassing on public transportation; penalty

Any person who enters or remains upon or within a vehicle operated by a public transportation service without the permission of, or after having been forbidden to do so by, the owner, lessee, or authorized operator thereof is guilty of a Class 4 misdemeanor.

"Public transportation service" means passenger transportation service provided by bus, rail or other surface conveyance that provides transportation to the general public on a regular and continuing basis.

2007, c. 461.

§ 18.2-160.3. Fare enforcement inspectors; failure to produce proof of payment of fare; penalty

A. For the purposes of this section, "eligible entity" means any transit operation in Planning District 8 that is owned or operated directly or indirectly by a political subdivision of the Commonwealth or any governmental entity established by an interstate compact of which Virginia is a signatory.

B. Any eligible entity that either directly or by contract operates any form of mass transit may appoint fare enforcement inspectors and establish the qualifications required for their

appointment. Fare enforcement inspectors shall have the power to (i) request patrons at transit boarding locations or on transit vehicles to show proof of payment of the applicable fare; (ii) inspect the proof of payment for validity; (iii) issue a civil summons for violations authorized by this section; (iv) assist with crowd control while on a transit vehicle or at a transit boarding location; and (v) perform such other customer service and safety duties as may be assigned by the eligible entity. The powers of fare enforcement inspectors are limited to those powers enumerated in this section, and fare enforcement inspectors are not required to be law-enforcement officers. The powers of fare enforcement inspectors appointed pursuant to this section shall be exercisable anywhere in the Commonwealth where the appointing eligible entity operates transit service. Fare enforcement inspectors shall report to the department or agency designated by the appointing eligible entity.

C. It shall be unlawful for any person to board or ride a transit operation operated by an eligible entity when he fails or refuses to pay the applicable fare or refuses to produce valid proof of payment of the fare upon request of a fare enforcement inspector. Any person who violates this section shall be liable for a civil penalty of not more than $100. Any person summoned for a violation may make an appearance in person or in writing by mail to the department of finance or the treasurer of the locality, or the designee of the department of finance or the treasurer, where the violation occurred as specified on the summons prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the violation charged. Such persons shall be informed of their right to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of court. If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be brought by the eligible entity or the locality in which the violation occurred and tried as a civil case in the general district court in the same manner and with the same right of appeal as provided for by law. In any trial for a violation authorized by this section, it shall be the burden of the eligible entity or locality in which the violation occurred to show the liability of the violator by a preponderance of the evidence. The penalty for failure to pay the established fare on transit properties covered by another provision of law shall be governed by that provision and not by this section.

D. The governing bodies of counties, cities, and towns may adopt ordinances not in conflict with the provisions of this section to appoint fare enforcement inspectors and prescribe their duties in such counties, cities, and towns.

E. The penalty imposed by this section shall not apply to a law-enforcement officer while he is engaged in the performance of his official duties.

2014, cc. 281, 447.

§ 18.2-161. Repealed

Repealed by Acts 2004, c. 459.

§ 18.2-162. Damage or trespass to public services or utilities

Any person who shall intentionally destroy or damage any facility which is used to furnish oil, telegraph, telephone, electric, gas, sewer, wastewater or water service to the public, shall be guilty of a Class 4 felony, provided that in the event the destruction or damage may be remedied or repaired for $200 or less such act shall constitute a Class 3 misdemeanor. On electric generating property marked with no trespassing signs, the security personnel of a utility may detain a trespasser for a period not to exceed one hour pending arrival of a law-enforcement officer.

Notwithstanding any other provisions of this title, any person who shall intentionally destroy or damage, or attempt to destroy or damage, any such facility, equipment or material connected therewith, the destruction or damage of which might, in any manner, threaten the release of radioactive materials or ionizing radiation beyond the areas in which they are normally used or contained, shall be guilty of a Class 4 felony, provided that in the event the destruction or damage results in the death of another due to exposure to radioactive materials or ionizing radiation, such person shall be guilty of a Class 2 felony; provided further, that in the event the destruction or damage results in injury to another, such person shall be guilty of a Class 3 felony.

Code 1950, § 18.1-158; 1960, c. 358; 1964, c. 224; 1966, c. 446; 1975, cc. 14, 15; 1980, c. 548; 1981, c. 197; 1985, c. 299; 1992, c. 352 .

§ 18.2-162.1. Diverting wastewater line; diverting or wasting public water supply

Any person who willfully and maliciously (i) diverts any public wastewater or sewer line or (ii) diverts or wastes any public water supply by tampering with any fire hydrant shall be guilty of a Class 2 misdemeanor.

1980, c. 140; 1992, c. 352 .

§ 18.2-163. Tampering with metering device; diverting service; civil liability

A. Any person who (i) tampers with any metering device incident to the facilities set forth in § 18.2-162, or otherwise intentionally prevents such a metering device from properly registering the degree, amount or quantity of service supplied, or (ii) diverts such service, except telephonic or electronic extension service not owned or controlled by any such company without authorization from the owner of the facility furnishing the service to the public, shall be guilty of a Class 1 misdemeanor.

B. The presence of any metering device found to have been altered, tampered with, or bypassed in a manner that would cause the metering device to inaccurately measure and register the degree, amount or quantity of service supplied or which would cause the service to be diverted from the recording apparatus of the meter shall be prima facie evidence of intent to violate and of the violation of this section by the person to whose benefit it is that such service be unmetered, unregistered or diverted.

C. The court may order restitution for the value of the services unlawfully used and for all costs. Such costs shall be limited to actual expenses, including the base wages of employees acting as wit-

nesses for the Commonwealth, and suit costs. However, the total amount of allowable costs granted hereunder shall not exceed $250, excluding the value of the service.

Code 1950, § 18.1-158.1; 1966, c. 446; 1975, cc. 14, 15; 1976, c. 273; 1978, c. 813; 1992, c. 525 .

§ 18.2-164. Unlawful use of, or injury to, telephone and telegraph lines; copying or obstructing messages; penalty

A. If any person commits any of the following acts, he is guilty of a Class 2 misdemeanor:

1. Maliciously injure, molest, cut down, or destroy any telephone or telegraph line, wire, cable, pole, tower, or the material or property belonging thereto;

2. Maliciously cut, break, tap, or make any connection with any telephone or telegraph line, wire, cable, or instrument of any telegraph or telephone company which has legally acquired the right-of-way by purchase, condemnation, or otherwise;

3. Maliciously copy in any unauthorized manner any message, either social, business, or otherwise, passing over any telephone or telegraph line, wire, cable, or wireless telephone transmission in the Commonwealth;

4. Willfully or maliciously prevent, obstruct, or delay by any means or contrivance whatsoever the sending, conveyance, or delivery in the Commonwealth of any authorized communication by or through any telephone or telegraph line, wire, cable, or wireless transmission device under the control of any telephone or telegraph company doing business in the Commonwealth;

5. Maliciously aid, agree with, employ, or conspire with any unauthorized person or persons unlawfully to do or cause to be done any of the acts hereinbefore mentioned.

B. If any person, with the intent to prevent another person from summoning law-enforcement, fire, or rescue services:

1. Commits any act set forth in subsection A; or

2. Maliciously prevents or interferes with telephone or telegraph communication by disabling or destroying any device that enables such communication, whether wired or wireless, he is guilty of a Class 1 misdemeanor.

Code 1950, § 18.1-156; 1960, c. 358; 1975, cc. 14, 15; 2002, cc. 810, 818; 2006, c. 457.

§ 18.2-165. Unlawful use of, or injury to, television or radio signals and equipment

Any person who shall willfully or maliciously break, injure or otherwise destroy or damage any of the posts, wires, towers or other materials or fixtures employed in the construction or use of any line of a television coaxial cable, or a microwave radio system, or willfully or maliciously interfere with such structure so erected, or in any way attempt to lead from its uses or make use of the electrical signal or any portion thereof properly belonging to or in use or in readiness to be made use of for the purpose of using said electrical signal from any television coaxial cable company or microwave system or owner of such property, shall be guilty of a Class 3 misdemeanor.

Code 1950, § 18.1-157; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-165.1. Tampering with or unlawful use of cable television service

Any person who (i) shall knowingly obtain or attempt to obtain cable television service from another by means, artifice, trick, deception or device without the payment to the operator of such service of all lawful compensation for each type of service obtained; (ii) shall knowingly, and with intent to profit thereby from any consideration received or expected, assist or instruct any other person in obtaining or attempting to obtain any cable television service without the payment to the operator of said service of all lawful compensation; (iii) shall knowingly tamper or otherwise interfere with or connect to by any means whether mechanical, electrical, acoustical or other, any cables, wires, or other devices used for the distribution of cable television service without authority from the operator of such service; or (iv) shall knowingly sell, rent, lend, promote, offer or advertise for sale, rental or use any device of any description or any plan for making or assembling the same to any person, with knowledge that the person intends to use such device or plan to do any of the acts hereinbefore mentioned or if the device or plan was represented either directly or indirectly by the person distributing it as having the ability to facilitate the doing of any of the acts hereinbefore mentioned, shall be guilty of a Class 6 felony if convicted under clause (ii) or (iv) above and shall be guilty of a Class 1 misdemeanor if convicted under clause (i) or (iii) above.

As used herein, cable television service shall include any and all services provided by or through the facilities of any cable television system or closed circuit coaxial cable communications system or any microwave, satellite or similar transmission service used in connection with any cable television system or other similar closed circuit coaxial cable communications system.

In any prosecution under this section, the existence on property in the actual possession of the accused, of any connection, wire, conductor, or any device whatsoever, which permits the use of cable television service without the same being reported for payment to and specifically authorized by the operator of the cable television service shall be prima facie evidence of intent to violate and of the violation of this section by the accused.

Nothing contained in this section shall be construed so as to abrogate or interfere with any contract right or remedy of any person having a contract with the owner of a television coaxial cable, or a cablevision system, or a microwave radio system.

1978, c. 712; 1979, c. 500; 1981, c. 197; 1991, c. 502 .

§ 18.2-165.2. Unlawful interference with emergency two-way radio communications; penalty

A. It shall be unlawful for any person to knowingly and willfully (i) interfere with the transmission of a radio communication, the purpose of which is to inform or to inquire about an emergency or (ii) transmit false information about an emergency.

B. For the purposes of this section, "emergency" means a condition or circumstance in which an individual is or is reasonably believed by the person transmitting the communication to be in

imminent danger of death or serious bodily harm or in which property is in imminent danger of damage or destruction.

C. Any person who violates the provisions of this section shall be guilty of a Class 1 misdemeanor.

1985, c. 100.

§ 18.2-166. Disclosing or inducing disclosure of certain information concerning customers of telephone companies

Any person:

(1) Who is an employee of a telephone company, or an employee of a company which prints or otherwise handles lists of telephone customers for a telephone company and who discloses to another the names, addresses, or telephone numbers of any two or more customers of telephone service, knowing that such disclosure is without the consent of the telephone company furnishing said service; or

(2) Who knowingly induces such an employee to make such disclosure by giving, offering, or promising to such employee any gift, gratuity, or thing of value, or by doing or promising to do any act beneficial to such employee; or

(3) Who takes, copies, or compiles any list containing the aforesaid information knowing that such conduct is without the consent of the telephone company furnishing said service; or

(4) Who attempts, aids or abets another, or conspires with another, to commit any of the aforesaid acts,

shall be guilty of a Class 3 misdemeanor.

Code 1950, § 18.1-417.1; 1968, c. 332; 1975, cc. 14, 15.

§ 18.2-167. Selling or transferring certain telephonic instruments

(a) It shall be unlawful for any person knowingly to make, sell, offer or advertise for sale, possess, or give or otherwise transfer to another any instrument, apparatus, equipment, or device or plans or instructions for making or assembling any instrument, apparatus, equipment or device which has been designed, adapted, used, or employed with the intent or for the purpose of (1) obtaining long distance toll telephone or telegraph service or the transmission of a long distance toll message, signal, or other communication by telephone or telegraph, or over telephone or telegraph facilities, without the payment of charges for any such long distance message, signal or other communication; or (2) concealing or assisting another to conceal from any supplier of telephone or telegraph service or from any person charged with the responsibility of enforcing this section, the existence or place of origin or of destination of any long distance toll message, signal, or other communication by telephone or telegraph, or over telephone or telegraph facilities. Persons violating any provision of this section shall be guilty of a Class 3 misdemeanor.

(b) Any such instrument, apparatus, equipment or device, or plans or instructions therefor, may be seized by court order or under a warrant; and, upon a final conviction of any person owning the

seized materials, or having any ownership interest therein, for a violation of any provision of this section, the instrument, apparatus, equipment, device, or plans or instructions shall be ordered destroyed as contraband by the court in which the person is convicted.

Code 1950, § 18.1-238.3; 1966, c. 445; 1975, cc. 14, 15.

§ 18.2-167.1. Interception or monitoring of customer telephone calls; penalty

It shall be unlawful for any person, firm or corporation to intercept or monitor, or attempt to intercept or monitor, the transmission of a message, signal or other communication by telephone between an employee or other agent of such person, firm or corporation and a customer of such person, firm or corporation.

The provisions of this section shall not apply if the person, firm or corporation gives notice to such employee or agent that such monitoring may occur at any time during the course of such employment.

Any person, firm or corporation violating the provisions of this section shall be guilty of a Class 4 misdemeanor. The provisions of this section shall not apply to any wiretap or other interception of any communication authorized pursuant to Chapter 6 of Title 19.2 (§ 19.2-61 et seq.).

1982, c. 380.

Chapter 6 - CRIMES INVOLVING FRAUD

Article 1 - FORGERY

§ 18.2-168. Forging public records, etc

If any person forge a public record, or certificate, return, or attestation, of any public officer or public employee, in relation to any matter wherein such certificate, return, or attestation may be received as legal proof, or utter, or attempt to employ as true, such forged record, certificate, return, or attestation, knowing the same to be forged, he shall be guilty of a Class 4 felony.

Code 1950, § 18.1-92; 1960, c. 358; 1975, cc. 14, 15; 1976, c. 146.

§ 18.2-169. Forging, or keeping an instrument for forging, a seal

If any person forge, or keep or conceal any instrument for the purpose of forging, the seal of the Commonwealth, the seal of a court, or of any public office, or body politic or corporate in this Commonwealth, he shall be guilty of a Class 4 felony.

Code 1950, § 18.1-93; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-170. Forging coin or bank notes

If any person (1) forge any coin, note or bill current by law or usage in this Commonwealth or any note or bill of a banking company, (2) fraudulently make any base coin, or a note or bill purporting to be the note or bill of a banking company, when such company does not exist, or (3) utter, or attempt to employ as true, or sell, exchange, or deliver, or offer to sell, exchange, or deliver, or receive on sale, exchange, or delivery, with intent to utter or employ, or to have the

same uttered or employed as true, any such false, forged, or base coin, note or bill, knowing it to be so, he shall be guilty of a Class 4 felony.

Code 1950, § 18.1-94; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-171. Making or having anything designed for forging any writing, etc

If any person engrave, stamp, or cast, or otherwise make or mend, any plate, block, press, or other thing, adapted and designed for the forging and false making of any writing or other thing, the forging or false making whereof is punishable by this chapter, or if such person have in possession any such plate, block, press, or other thing, with intent to use, or cause or permit it to be used, in forging or false making any such writing or other thing, he shall be guilty of a Class 4 felony.

Code 1950, § 18.1-95; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-172. Forging, uttering, etc., other writings

If any person forge any writing, other than such as is mentioned in §§ 18.2-168 and 18.2-170, to the prejudice of another's right, or utter, or attempt to employ as true, such forged writing, knowing it to be forged, he shall be guilty of a Class 5 felony. Any person who shall obtain, by any false pretense or token, the signature of another person, to any such writing, with intent to defraud any other person, shall be deemed guilty of the forgery thereof, and shall be subject to like punishment.

Code 1950, § 18.1-96; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-172.1. Falsifying or altering and fraudulently using transcripts or diplomas; penalty

Any person who materially falsifies or alters a transcript or diploma from an institution of post-secondary education and fraudulently uses the same for pecuniary gain or in furtherance of such person's education shall be guilty of a Class 3 misdemeanor.

1983, c. 91.

§ 18.2-172.2. Maliciously affixing another's signature to writing; penalty

Any person who maliciously affixes a facsimile or likeness of the signature of another person to any writing without the permission of that person and with the intent to create the false impression that the writing was signed by that person is guilty of a Class 1 misdemeanor.

2008, c. 595.

§ 18.2-173. Having in possession forged coin or bank notes

If any person have in his possession forged bank notes or forged or base coin, such as are mentioned in § 18.2-170, knowing the same to be forged or base, with the intent to utter or employ the same as true, or to sell, exchange, or deliver them, so as to enable any other person to utter or employ them as true, he shall, if the number of such notes or coins in his possession at the same time, be ten or more, be guilty of a Class 6 felony; and if the number be less than ten, he shall be guilty of a Class 3 misdemeanor.

Code 1950, § 18.1-97; 1960, c. 358; 1975, cc. 14, 15.

Article 2 - IMPERSONATION

§ 18.2-174. Impersonating law-enforcement officer; penalty

Any person who falsely assumes or exercises the functions, powers, duties, and privileges incident to the office of sheriff, police officer, marshal, or other peace officer, or any local, city, county, state, or federal law-enforcement officer, or who falsely assumes or pretends to be any such officer, is guilty of a Class 1 misdemeanor. A second or subsequent offense is punishable as a Class 6 felony.

Code 1950, § 18.1-311; 1960, c. 358; 1975, cc. 14, 15; 2013, cc. 410, 431, 638.

§ 18.2-174.1. Impersonating certain public safety personnel; penalty

Any person who willfully impersonates, with the intent to make another believe he is, an emergency medical services provider, firefighter, special forest warden designated pursuant to § 10.1-1135, fire marshal, or fire chief is guilty of a Class 1 misdemeanor. A second or subsequent offense is punishable as a Class 6 felony.

1993, c. 403; 2000, c. 962; 2002, c. 536; 2013, c. 431; 2015, cc. 502, 503.

§ 18.2-175. Unlawful wearing of officer's uniform or insignia; unlawful use of vehicle with word "police" shown thereon

No person, not such an officer as is referred to in § 19.2-78, shall wear any such uniform as is designated pursuant to the provisions of such section or wear an insignia or markings containing the Seal of the Commonwealth or the insignia of any such officer's uniform, nor shall any person not such an officer, or not authorized by such officer, or not authorized by the military police of the armed forces or of the National Guard, or not authorized by the military police of other governmental agencies, use or cause to be used on the public roads or highways of this Commonwealth, any motor vehicle bearing markings with the word "police" shown thereon. However, the prohibition against wearing an insignia or markings containing the Seal of the Commonwealth shall not apply to any certified firefighter or to any certified or licensed emergency medical personnel. Any violation of this section shall be a Class 1 misdemeanor.

Code 1950, § 18.1-312; 1960, c. 358; 1966, c. 420; 1968, c. 675; 1975, cc. 14, 15; 1979, c. 704; 1991, c. 424 .

§ 18.2-176. Unauthorized wearing or displaying on motor vehicles of any button, insignia or emblem of certain associations or societies or of Southern Cross of Honor

(a) No person shall wear the button or insignia of any order of police, trade union or veterans' organization or display upon a motor vehicle the insignia or emblem of any automobile club, medical society, order of police, trade union or veterans' organization or use such button, insignia or emblem to obtain aid or assistance unless entitled to wear, display or use the same under the constitution, bylaws, rules or regulations of the organization concerned.

(b) No person shall wear any Southern Cross of Honor when not entitled to do so by the regulations under which such Crosses of Honor are given.

(c) A violation of this section shall be a Class 3 misdemeanor.

Code 1950, § 18.1-410; 1960, c. 358; 1964, c. 124; 1975, cc. 14, 15.

§ 18.2-177. Illegal use of insignia

Any person who shall willfully wear, exhibit, display, print, or use, for any purpose, the badge, motto, button, decoration, charm, emblem, rosette, or other insignia of any such association or organization mentioned in § 2.2-411, duly registered under Article 2 (§ 2.2-411 et seq.) of Chapter 4, Title 2.2, unless he shall be entitled to use and wear the same under the constitution and bylaws, rules and regulations of such association or organization, shall be guilty of a Class 4 misdemeanor.

Code 1950, § 2.1-80; 1966, c. 677; 1975, cc. 14, 15.

§ 18.2-177.1. False representation of military status; penalty

A. It is unlawful for any person, with the intent to obtain any services, to falsely represent himself to be a member or veteran of the United States Armed Forces, Armed Forces Reserves, or National Guard by wearing the uniform or any medal or insignia authorized for use by the members or veterans of the United States Armed Forces, Armed Forces Reserves, or National Guard by federal or state law or regulation and obtain any services through such false representation.

B. It is unlawful for any person, with the intent to obtain any services, to falsely represent himself as a recipient of any decoration or medal created by federal or state law or regulation to honor the members or veterans of the United States Armed Forces, Armed Forces Reserves, or National Guard and obtain any services through such false representation.

C. A violation of this section is a Class 1 misdemeanor.

D. The provisions of this section shall not preclude prosecution under any other statute.

2016, c. 236.

Article 3 - FALSE PRETENSES

§ 18.2-178. Obtaining money or signature, etc., by false pretense

A. If any person obtain, by any false pretense or token, from any person, with intent to defraud, money, a gift certificate or other property that may be the subject of larceny, he shall be deemed guilty of larceny thereof; or if he obtain, by any false pretense or token, with such intent, the signature of any person to a writing, the false making whereof would be forgery, he shall be guilty of a Class 4 felony.

B. Venue for the trial of any person charged with an offense under this section may be in the county or city in which (i) any act was performed in furtherance of the offense, or (ii) the person charged with the offense resided at the time of the offense.

Code 1950, § 18.1-118; 1960, c. 358; 1975, cc. 14, 15; 2001, c. 131; 2006, c. 321.

§ 18.2-178.1. Financial exploitation of mentally incapacitated persons; penalty

A. It is unlawful for any person who knows or should know that another person suffers from mental incapacity to, through the use of that other person's mental incapacity, take, obtain, or convert money or other thing of value belonging to that other person with the intent to permanently deprive him thereof. Any person who violates this section shall be deemed guilty of larceny.

B. Venue for the trial of an accused charged with a violation of this section shall be in any county or city in which (i) any act was performed in furtherance of the offense or (ii) the accused resided at the time of the offense.

C. This section shall not apply to a transaction or disposition of money or other thing of value in which the accused acted for the benefit of the person with mental incapacity or made a good faith effort to assist such person with the management of his money or other thing of value.

D. As used in this section, "mental incapacity" means that condition of a person existing at the time of the offense described in subsection A that prevents him from understanding the nature or consequences of the transaction or disposition of money or other thing of value involved in such offense.

2013, cc. 419, 452.

§ 18.2-179. Unlawful operation of coin box telephone, parking meter, vending machine, etc

Any person who shall operate, cause to be operated, or attempt to operate or cause to be operated any coin box telephone, parking meter, vending machine or other machine that operates on the coin-in-the-slot principle, whether of like kind or not, designed only to receive lawful coin of the United States of America, in connection with the use or enjoyment of telephone or telegraph service, parking privileges or any other service, or the sale of merchandise or other property, by means of a slug, or any false, counterfeit, mutilated, sweated or foreign coin, or by any means, method, trick or device whatsoever, not authorized by the owner, lessee or licensee of such coin box telephone, parking meter, vending machine or other machine; or who shall obtain or receive telephone or telegraph service, parking privileges, merchandise, or any other service or property from any such coin box telephone, parking meter, vending machine or other machines, designed only to receive lawful coin of the United States of America, without depositing in or surrendering to such coin box telephone, parking meter, vending machine, or other machine lawful coin of the United States of America to the amount required therefor by the owner, lessee or licensee of such coin box telephone, parking meter, vending machine or other machine, shall be guilty of a Class 3 misdemeanor.

Code 1950, § 28.1-124; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-180. Manufacture, etc., of slugs, etc., for such unlawful use

Any person who, with intent to cheat or defraud the owner, lessee, licensee or other person entitled to the contents of any such coin box telephone, parking meter, vending machine or other

machine operated on the coin-in-the-slot principle, designed only to receive lawful coin of the United States of America, in connection with the use of any such coin box telephone, parking meter, vending machine or other machine, or who, knowing or having reason to believe that the same is intended for such unlawful use, shall manufacture, sell, offer to sell, advertise for sale or give away any slug, device or substance whatsoever, intended or calculated to be placed or deposited in any such coin box telephone, parking meter, vending machine or other machine, shall be guilty of a Class 3 misdemeanor.

The manufacture, sale, offer for sale, advertisement for sale, giving away or possession of any such slug, device or substance whatsoever, intended or calculated to be placed or deposited in any such coin box telephone, parking meter, vending machine or other machine that operates on the coin-in-the-slot principle, shall be prima facie evidence of intent to cheat or defraud within the meaning of this section and § 18.2-179.

Code 1950, § 18.1-125; 1960, c. 358; 1975, cc. 14, 15.

Article 4 - BAD CHECK LAW

§ 18.2-181. Issuing bad checks, etc., larceny

Any person who, with intent to defraud, shall make or draw or utter or deliver any check, draft, or order for the payment of money, upon any bank, banking institution, trust company, or other depository, knowing, at the time of such making, drawing, uttering or delivering, that the maker or drawer has not sufficient funds in, or credit with, such bank, banking institution, trust company, or other depository, for the payment of such check, draft or order, although no express representation is made in reference thereto, shall be guilty of larceny; and, if this check, draft, or order has a represented value of $200 or more, such person shall be guilty of a Class 6 felony. In cases in which such value is less than $200, the person shall be guilty of a Class 1 misdemeanor.

The word "credit" as used herein, shall be construed to mean any arrangement or understanding with the bank, trust company, or other depository for the payment of such check, draft or order.

Any person making, drawing, uttering or delivering any such check, draft or order in payment as a present consideration for goods or services for the purposes set out in this section shall be guilty as provided herein.

Code 1950, § 6.1-115; 1966, c. 584; 1975, cc. 14, 15; 1978, c. 791; 1981, c. 230.

§ 18.2-181.1. Issuance of bad checks

It shall be a Class 6 felony for any person, within a period of ninety days, to issue two or more checks, drafts or orders for the payment of money in violation of § 18.2-181, which have an aggregate represented value of $200 or more and which (i) are drawn upon the same account of any bank, banking institution, trust company or other depository and (ii) are made payable to the same person, firm or corporation.

1988, c. 496.

§ 18.2-182. Issuing bad checks on behalf of business firm or corporation in payment of wages; penalty

Any person who shall make, draw, or utter, or deliver any check, draft, or order for the payment of money, upon any bank, banking institution, trust company or other depository on behalf of any business firm or corporation, for the purpose of paying wages to any employee of such firm or corporation, or for the purpose of paying for any labor performed by any person for such firm or corporation, knowing, at the time of such making, drawing, uttering or delivering, that the account upon which such check, draft or order is drawn has not sufficient funds, or credit with, such bank, banking institution, trust company or other depository, for the payment of such check, draft or order, although no express representation is made in reference thereto, shall be guilty of a Class 1 misdemeanor; except that if this check, draft, or order has a represented value of $200 or more, such person shall be guilty of a Class 6 felony.

The word "credit," as used herein, shall be construed to mean any arrangement or understanding with the bank, banking institution, trust company, or other depository for the payment of such check, draft or order.

In addition to the criminal penalty set forth herein, such person shall be personally liable in any civil action brought upon such check, draft or order.

Code 1950, § 6.1-116; 1966, c. 584; 1975, cc. 14, 15; 2005, c. 598.

§ 18.2-182.1. Issuing bad checks in payment of taxes

Any person who shall make, draw, utter, or deliver two or more checks, drafts, or orders within a period of ninety days which have an aggregate represented value of $1,000 or more, for the payment of money upon any bank, banking institution, trust company, or other depository on behalf of any taxpayer for the payment of any state tax under § 58.1-486 or § 58.1-637, knowing, at the time of such making, drawing, uttering, or delivering, that the account upon which such check, draft, or order is drawn has not sufficient funds or credit with such bank, banking institution, trust company, or other depository for the payment of such check, draft, or order, although no express representation is made in reference thereto, shall be guilty of a Class 1 misdemeanor.

The word "credit," as used herein, means any arrangement or understanding with the bank, banking institution, trust company, or other depository for the payment of such check, draft, or order.

1992, c. 763 .

§ 18.2-183. Issuance of bad check prima facie evidence of intent and knowledge; notice by certified or registered mail

In any prosecution or action under the preceding sections, the making or drawing or uttering or delivery of a check, draft, or order, payment of which is refused by the drawee because of lack of funds or credit shall be prima facie evidence of intent to defraud or of knowledge of insufficient funds in, or credit with, such bank, banking institution, trust company or other depository unless such maker or drawer, or someone for him, shall have paid the holder thereof the amount due

thereon, together with interest, and protest fees (if any), within five days after receiving written notice that such check, draft, or order has not been paid to the holder thereof. Notice mailed by certified or registered mail, evidenced by return receipt, to the last known address of the maker or drawer shall be deemed sufficient and equivalent to notice having been received by the maker or drawer.

If such check, draft or order shows on its face a printed or written address, home, office, or otherwise, of the maker or drawer, then the foregoing notice, when sent by certified or registered mail to such address, with or without return receipt requested, shall be deemed sufficient and equivalent to notice having been received by the maker or drawer, whether such notice shall be returned undelivered or not.

When a check is drawn on a bank in which the maker or drawer has no account, it shall be presumed that such check was issued with intent to defraud, and the five-day notice set forth above shall not be required in such case.

Code 1950, § 6.1-117; 1966, c. 584; 1975, cc. 14, 15.

§ 18.2-184. Presumption as to notation attached to check, draft or order

In any prosecution or action under the preceding sections, any notation attached to or stamped upon a check, draft or order which is refused by the drawee because of lack of funds or credit, bearing the terms "not sufficient funds," "uncollected funds," "account closed," or "no account in this name," or words of similar import, shall be prima facie evidence that such notation is true and correct.

Code 1950, § 6.1-117.1; 1970, c. 695; 1974, c. 322; 1975, cc. 14, 15.

§ 18.2-185. Evidence and presumptions in malicious prosecution actions after issuance of bad check

In any civil action growing out of an arrest under § 18.2-181 or § 18.2-182, no evidence of statements or representations as to the status of the check, draft, order or deposit involved, or of any collateral agreement with reference to the check, draft, or order, shall be admissible unless such statements, or representations, or collateral agreement, be written upon the instrument at the time it is given by the drawer.

If payment of any check, draft, or order for the payment of money be refused by the bank, banking institution, trust company or other depository upon which such instrument is drawn, and the person who drew or uttered such instrument be arrested or prosecuted under the provisions of § 18.2-181 or § 18.2-182, for failure or refusal to pay such instrument, the one who arrested or caused such person to be arrested and prosecuted, or either, shall be conclusively deemed to have acted with reasonable or probable cause in any suit for damages that may be brought by the person who drew or uttered such instrument, if the one who arrested or caused such person to be arrested and prosecuted, or either, shall have, before doing so, presented or caused such instrument to be presented to the depository on which it was drawn where it was refused, and then waited five days

after notice, as provided in § 18.2-183, without the amount due under the provisions of such instrument being paid.

Code 1950, § 6.1-118; 1966, c. 584; 1975, cc. 14, 15.

Article 5 - FALSE REPRESENTATIONS TO OBTAIN PROPERTY OR CREDIT

§ 18.2-186. False statements to obtain property or credit

A. A person shall be guilty of a Class 1 misdemeanor if he makes, causes to be made or conspires to make directly, indirectly or through an agency, any materially false statement in writing, knowing it to be false and intending that it be relied upon, concerning the financial condition or means or ability to pay of himself, or of any other person for whom he is acting, or any firm or corporation in which he is interested or for which he is acting, for the purpose of procuring, for his own benefit or for the benefit of such person, firm or corporation, the delivery of personal property, the payment of cash, the making of a loan or credit, the extension of a credit, the discount of an account receivable, or the making, acceptance, discount, sale or endorsement of a bill of exchange or promissory note.

B. Any person who knows that a false statement has been made in writing concerning the financial condition or ability to pay of himself or of any person for whom he is acting, or any firm or corporation in which he is interested or for which he is acting and who, with intent to defraud, procures, upon the faith thereof, for his own benefit, or for the benefit of the person, firm or corporation in which he is interested or for which he is acting, any such delivery, payment, loan, credit, extension, discount making, acceptance, sale or endorsement, shall, if the value of the thing or the amount of the loan, credit or benefit obtained is $200 or more, be guilty of grand larceny or, if the value is less than $200, be guilty of petit larceny.

C. Venue for the trial of any person charged with an offense under this section may be in the county or city in which (i) any act was performed in furtherance of the offense, or (ii) the person charged with the offense resided at the time of the offense.

D. As used in this section, "in writing" shall include information transmitted by computer, facsimile, e-mail, Internet, or any other electronic medium, and shall not include information transmitted by any such medium by voice transmission.

Code 1950, § 18.1-119; 1960, c. 358; 1966, c. 247; 1975, cc. 14, 15; 1981, c. 197; 1991, c. 546; 2006, c. 321; 2007, c. 518.

§ 18.2-186.1. Repealed

Repealed by Acts 1981, c. 255.

§ 18.2-186.2. False statements or failure to disclose material facts in order to obtain aid or benefits under any local, state or federal housing assistance program

Any person who (i) knowingly makes or causes to be made either directly or indirectly or through any agent or agency, any false statement in writing with the intent that it shall be relied upon, or

fails to disclose any material fact concerning the financial means or ability to pay of himself or of any other person for whom he is acting, for the purpose of procuring aid and benefits available under any local, state or federally funded housing assistance program, or (ii) knowingly fails to disclose a change in circumstances in order to obtain or continue to receive under any such program aid or benefits to which he is not entitled or who knowingly aids and abets another person in the commission of any such act is guilty of a Class 1 misdemeanor.

1980, c. 303.

§ 18.2-186.3. Identity theft; penalty; restitution; victim assistance

A. It shall be unlawful for any person, without the authorization or permission of the person or persons who are the subjects of the identifying information, with the intent to defraud, for his own use or the use of a third person, to:

1. Obtain, record, or access identifying information which is not available to the general public that would assist in accessing financial resources, obtaining identification documents, or obtaining benefits of such other person;

2. Obtain money, credit, loans, goods, or services through the use of identifying information of such other person;

3. Obtain identification documents in such other person's name; or

4. Obtain, record, or access identifying information while impersonating a law-enforcement officer or an official of the government of the Commonwealth.

B. It shall be unlawful for any person without the authorization or permission of the person who is the subject of the identifying information, with the intent to sell or distribute the information to another to:

1. Fraudulently obtain, record, or access identifying information that is not available to the general public that would assist in accessing financial resources, obtaining identification documents, or obtaining benefits of such other person;

2. Obtain money, credit, loans, goods, or services through the use of identifying information of such other person;

3. Obtain identification documents in such other person's name; or

4. Obtain, record, or access identifying information while impersonating a law-enforcement officer or an official of the Commonwealth.

B1. It shall be unlawful for any person to use identification documents or identifying information of another person, whether that person is dead or alive, or of a false or fictitious person, to avoid summons, arrest, prosecution, or to impede a criminal investigation.

C. As used in this section, "identifying information" shall include but not be limited to: (i) name; (ii) date of birth; (iii) social security number; (iv) driver's license number; (v) bank account

numbers; (vi) credit or debit card numbers; (vii) personal identification numbers (PIN); (viii) electronic identification codes; (ix) automated or electronic signatures; (x) biometric data; (xi) fingerprints; (xii) passwords; or (xiii) any other numbers or information that can be used to access a person's financial resources, obtain identification, act as identification, or obtain money, credit, loans, goods, or services.

D. Violations of this section shall be punishable as a Class 1 misdemeanor. Any violation resulting in financial loss of greater than $200 shall be punishable as a Class 6 felony. Any second or subsequent conviction shall be punishable as a Class 6 felony. Any violation of subsection B where five or more persons' identifying information has been obtained, recorded, or accessed in the same transaction or occurrence shall be punishable as a Class 5 felony. Any violation of subsection B where 50 or more persons' identifying information has been obtained, recorded, or accessed in the same transaction or occurrence shall be punishable as a Class 4 felony. Any violation resulting in the arrest and detention of the person whose identification documents or identifying information were used to avoid summons, arrest, prosecution, or to impede a criminal investigation shall be punishable as a Class 5 felony. In any proceeding brought pursuant to this section, the crime shall be considered to have been committed in any locality where the person whose identifying information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in such locality.

E. Upon conviction, in addition to any other punishment, a person found guilty of this offense shall be ordered by the court to make restitution as the court deems appropriate to any person whose identifying information was appropriated or to the estate of such person. Such restitution may include the person's or his estate's actual expenses associated with correcting inaccuracies or errors in his credit report or other identifying information.

F. Upon the request of a person whose identifying information was appropriated, the Attorney General may provide assistance to the victim in obtaining information necessary to correct inaccuracies or errors in his credit report or other identifying information; however, no legal representation shall be afforded such person.

2000, c. 349; 2001, c. 423; 2003, cc. 847, 914, 918; 2004, c. 450; 2006, cc. 455, 496; 2007, c. 441; 2009, cc. 314, 380; 2013, cc. 420, 466.

§ 18.2-186.3:1. Identity fraud; consumer reporting agencies; police reports

A. A consumer may report a case of identity theft to the law-enforcement agency in the jurisdiction where he resides. If a consumer, as defined by the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., submits to a consumer reporting agency, as defined by the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., a copy of a valid police report, the consumer reporting agency shall, within 30 days of receipt thereof, block the reporting of any information that the consumer alleges appears on his credit report, as defined by the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., as a result of a violation of § 18.2-186.3. The consumer reporting agency shall promptly notify the

furnisher of the information that a police report has been filed, that a block has been requested, and the effective date of the block.

B. Consumer reporting agencies may decline to block or may rescind any block of consumer information if, in the exercise of good faith and reasonable judgment, the consumer reporting agency believes that: (i) the information was blocked due to a misrepresentation of a material fact by the consumer; (ii) the information was blocked due to fraud, in which the consumer participated, or of which the consumer had knowledge, and which may for purposes of this section be demonstrated by circumstantial evidence; (iii) the consumer agrees that portions of the blocked information or all of it were blocked in error; (iv) the consumer knowingly obtained or should have known that he obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions; or (v) the consumer reporting agency, in the exercise of good faith and reasonable judgment, has substantial reason based on specific, verifiable facts to doubt the authenticity of the consumer's report of a violation of § 18.2-186.3.

C. If blocked information is unblocked pursuant to this section, the consumer shall be notified in the same manner as consumers are notified of the reinsertion of information pursuant to the Fair Credit Reporting Act at 15 U.S.C. § 1681i, as amended. The prior presence of the blocked information in the consumer reporting agency's file on the consumer is not evidence of whether the consumer knew or should have known that he obtained possession of any goods, services, or moneys.

D. A consumer reporting agency shall accept the consumer's version of the disputed information and correct the disputed item when the consumer submits to the consumer reporting agency documentation obtained from the source of the item in dispute or from public records confirming that the report was inaccurate or incomplete, unless the consumer reporting agency, in the exercise of good faith and reasonable judgment, has substantial reason based on specific, verifiable facts to doubt the authenticity of the documentation submitted and notifies the consumer in writing of that decision, explaining its reasons for unblocking the information and setting forth the specific, verifiable facts on which the decision is based.

E. A consumer reporting agency shall delete from a consumer credit report inquiries for credit reports based upon credit requests that the consumer reporting agency verifies were initiated as a result of a violation of § 18.2-186.3.

F. The provisions of this section do not apply to (i) a consumer reporting agency that acts as a reseller of credit information by assembling and merging information contained in the databases of other consumer reporting agencies, and that does not maintain a permanent database of credit information from which new consumer credit reports are produced, (ii) a check services or fraud prevention services company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar payment methods, or (iii) a demand deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, automatic teller machine abuse or

similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a demand deposit account at the inquiring bank or financial institution.

2003, cc. 914, 918; 2006, c. 298.

§ 18.2-186.4. Use of a person's identity with the intent to coerce, intimidate, or harass; penalty

It shall be unlawful for any person, with the intent to coerce, intimidate, or harass another person, to publish the person's name or photograph along with identifying information as defined in clauses (iii) through (ix), or clause (xii) of subsection C of § 18.2-186.3, or identification of the person's primary residence address. Any person who violates this section is guilty of a Class 1 misdemeanor.

Any person who violates this section knowing or having reason to know that person is a law-enforcement officer, as defined in § 9.1-101, is guilty of a Class 6 felony. The sentence shall include a mandatory minimum term of confinement of six months.

2001, cc. 775, 782; 2007, c. 736; 2010, c. 767.

§ 18.2-186.4:1. Internet publication of personal information of certain public officials

A. The Commonwealth shall not publish on the Internet the personal information of any public official if a court has, pursuant to subsection B, ordered that the official's personal information is prohibited from publication and the official has made a demand in writing to the Commonwealth, accompanied by the order of the court, that the Commonwealth not publish such information.

B. Any public official may petition a circuit court for an order prohibiting the publication on the Internet, by the Commonwealth, of the official's personal information. The petition shall set forth the specific reasons that the official seeks the order. The court shall issue such an order only if it finds that (i) there exists a threat to the official or a person who resides with him that would result from publication of the information or (ii) the official has demonstrated a reasonable fear of a risk to his safety or the safety of someone who resides with him that would result from publication of the information on the Internet.

C. If the Commonwealth publishes the public official's personal information on the Internet prior to receipt of a written demand by the official under subsection A, it shall remove the information from publication on the Internet within 48 hours of receipt of the written demand.

D. A written demand made by any public official pursuant to this section shall be effective for four years as follows:

1. For a law-enforcement officer, if the officer remains continuously employed as a law-enforcement officer throughout the four-year period;

2. For a federal or state judge or justice, if such public official continuously serves throughout the four-year period; and

3. For an attorney for the Commonwealth, if such public official continuously serves throughout the four-year period.

E. For purposes of this section:

"Commonwealth" means any agency or political subdivision of the Commonwealth of Virginia.

"Law-enforcement officer" means the same as that term is defined in § 9.1-101, 5 U.S.C. § 8331 (20), excluding officers whose duties relate to detention as defined in 5 U.S.C. § 8331(20), and any other federal officer or agent who is credentialed with the authority to enforce federal law.

"Personal information" means home address, home telephone numbers, personal cell phone numbers, or personal email address.

"Publication" and "publishes" means intentionally communicating personal information to, or otherwise making personal information available to, and accessible by, the general public through the Internet or other online service.

"Public official" means any state or federal judge or justice, law-enforcement officer, or attorney for the Commonwealth.

F. No provision of this section shall apply to lists of registered voters and persons who voted, voter registration records, or lists of absentee voters prepared or provided under Title 24.2.

2010, c. 767; 2012, c. 143; 2014, c. 170.

§ 18.2-186.5. Expungement of false identity information from police and court records; Identity Theft Passport

Any person whose name or other identification has been used without his consent or authorization by another person who has been charged or arrested using such name or identification may file a petition with the court for relief pursuant to § 19.2-392.2. A person who has petitioned the court pursuant to § 19.2-392.2 as a result of a violation of § 18.2-186.3, may submit to the Attorney General a certified copy of a court order obtained pursuant to § 19.2-392.2. Upon receipt by the Attorney General of a certified copy of the court order and upon request by such person, the Office of the Attorney General, in cooperation with the State Police, may issue an "Identity Theft Passport" stating that such an order has been submitted. The Office of the Attorney General shall provide access to identity theft information to (i) criminal justice agencies and (ii) individuals who have submitted a court order pursuant to this section. When the Office of the Attorney General issues an Identity Theft Passport, it shall transmit a record of the issuance of the passport to the Department of Motor Vehicles. The Department shall note on the individual's driver abstract that a court order was obtained pursuant to § 19.2-392.2 and that an Identity Theft Passport has been issued. The provisions of § 2.2-3808 shall not apply to this section.

2003, cc. 914, 918; 2004, c. 450; 2006, c. 298; 2011, c. 619.

§ 18.2-186.6. Breach of personal information notification

A. As used in this section:

"Breach of the security of the system" means the unauthorized access and acquisition of unencrypted and unredacted computerized data that compromises the security or confidentiality of personal information maintained by an individual or entity as part of a database of personal information regarding multiple individuals and that causes, or the individual or entity reasonably believes has caused, or will cause, identity theft or other fraud to any resident of the Commonwealth. Good faith acquisition of personal information by an employee or agent of an individual or entity for the purposes of the individual or entity is not a breach of the security of the system, provided that the personal information is not used for a purpose other than a lawful purpose of the individual or entity or subject to further unauthorized disclosure.

"Encrypted" means the transformation of data through the use of an algorithmic process into a form in which there is a low probability of assigning meaning without the use of a confidential process or key, or the securing of the information by another method that renders the data elements unreadable or unusable.

"Entity" includes corporations, business trusts, estates, partnerships, limited partnerships, limited liability partnerships, limited liability companies, associations, organizations, joint ventures, governments, governmental subdivisions, agencies, or instrumentalities or any other legal entity, whether for profit or not for profit.

"Financial institution" has the meaning given that term in 15 U.S.C. § 6809 (3).

"Individual" means a natural person.

"Notice" means:

1. Written notice to the last known postal address in the records of the individual or entity;

2. Telephone notice;

3. Electronic notice; or

4. Substitute notice, if the individual or the entity required to provide notice demonstrates that the cost of providing notice will exceed $50,000, the affected class of Virginia residents to be notified exceeds 100,000 residents, or the individual or the entity does not have sufficient contact information or consent to provide notice as described in subdivisions 1, 2, or 3 of this definition. Substitute notice consists of all of the following:

a. E-mail notice if the individual or the entity has e-mail addresses for the members of the affected class of residents;

b. Conspicuous posting of the notice on the website of the individual or the entity if the individual or the entity maintains a website; and

c. Notice to major statewide media.

Notice required by this section shall not be considered a debt communication as defined by the Fair Debt Collection Practices Act in 15 U.S.C. § 1692a.

Notice required by this section shall include a description of the following:

(1) The incident in general terms;

(2) The type of personal information that was subject to the unauthorized access and acquisition;

(3) The general acts of the individual or entity to protect the personal information from further unauthorized access;

(4) A telephone number that the person may call for further information and assistance, if one exists; and

(5) Advice that directs the person to remain vigilant by reviewing account statements and monitoring free credit reports.

"Personal information" means the first name or first initial and last name in combination with and linked to any one or more of the following data elements that relate to a resident of the Commonwealth, when the data elements are neither encrypted nor redacted:

1. Social security number;

2. Driver's license number or state identification card number issued in lieu of a driver's license number; or

3. Financial account number, or credit card or debit card number, in combination with any required security code, access code, or password that would permit access to a resident's financial accounts.

The term does not include information that is lawfully obtained from publicly available information, or from federal, state, or local government records lawfully made available to the general public.

"Redact" means alteration or truncation of data such that no more than the following are accessible as part of the personal information:

1. Five digits of a social security number; or

2. The last four digits of a driver's license number, state identification card number, or account number.

B. If unencrypted or unredacted personal information was or is reasonably believed to have been accessed and acquired by an unauthorized person and causes, or the individual or entity reasonably believes has caused or will cause, identity theft or another fraud to any resident of the Commonwealth, an individual or entity that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the system following discovery or notification of the breach of the security of the system to the Office of the Attorney General and any affected resident of the Commonwealth without unreasonable delay. Notice required by this section may be reasonably delayed to allow the individual or entity to determine the scope of the

breach of the security of the system and restore the reasonable integrity of the system. Notice required by this section may be delayed if, after the individual or entity notifies a law-enforcement agency, the law-enforcement agency determines and advises the individual or entity that the notice will impede a criminal or civil investigation, or homeland or national security. Notice shall be made without unreasonable delay after the law-enforcement agency determines that the notification will no longer impede the investigation or jeopardize national or homeland security.

C. An individual or entity shall disclose the breach of the security of the system if encrypted information is accessed and acquired in an unencrypted form, or if the security breach involves a person with access to the encryption key and the individual or entity reasonably believes that such a breach has caused or will cause identity theft or other fraud to any resident of the Commonwealth.

D. An individual or entity that maintains computerized data that includes personal information that the individual or entity does not own or license shall notify the owner or licensee of the information of any breach of the security of the system without unreasonable delay following discovery of the breach of the security of the system, if the personal information was accessed and acquired by an unauthorized person or the individual or entity reasonably believes the personal information was accessed and acquired by an unauthorized person.

E. In the event an individual or entity provides notice to more than 1,000 persons at one time pursuant to this section, the individual or entity shall notify, without unreasonable delay, the Office of the Attorney General and all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined in 15 U.S.C. § 1681a (p), of the timing, distribution, and content of the notice.

F. An entity that maintains its own notification procedures as part of an information privacy or security policy for the treatment of personal information that are consistent with the timing requirements of this section shall be deemed to be in compliance with the notification requirements of this section if it notifies residents of the Commonwealth in accordance with its procedures in the event of a breach of the security of the system.

G. An entity that is subject to Title V of the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.) and maintains procedures for notification of a breach of the security of the system in accordance with the provision of that Act and any rules, regulations, or guidelines promulgated thereto shall be deemed to be in compliance with this section.

H. An entity that complies with the notification requirements or procedures pursuant to the rules, regulations, procedures, or guidelines established by the entity's primary or functional state or federal regulator shall be in compliance with this section.

I. Except as provided by subsections J and K, pursuant to the enforcement duties and powers of the Office of the Attorney General, the Attorney General may bring an action to address violations of this section. The Office of the Attorney General may impose a civil penalty not to exceed

$150,000 per breach of the security of the system or a series of breaches of a similar nature that are discovered in a single investigation. Nothing in this section shall limit an individual from recovering direct economic damages from a violation of this section.

J. A violation of this section by a state-chartered or licensed financial institution shall be enforceable exclusively by the financial institution's primary state regulator.

K. A violation of this section by an individual or entity regulated by the State Corporation Commission's Bureau of Insurance shall be enforced exclusively by the State Corporation Commission.

L. The provisions of this section shall not apply to criminal intelligence systems subject to the restrictions of 28 C.F.R. Part 23 that are maintained by law-enforcement agencies of the Commonwealth and the organized Criminal Gang File of the Virginia Criminal Information Network (VCIN), established pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52.

2008, cc. 566, 801.

§ 18.2-187. Repealed

Repealed by Acts 1978, c. 807.

§ 18.2-187.1. Obtaining or attempting to obtain oil, electric, gas, water, telephone, telegraph, cable television or electronic communication service without payment; penalty; civil liability

A. It shall be unlawful for any person knowingly, with the intent to defraud, to obtain or attempt to obtain, for himself or for another, oil, electric, gas, water, telephone, telegraph, cable television or electronic communication service by the use of any false information, or in any case where such service has been disconnected by the supplier and notice of disconnection has been given.

B. It shall be unlawful for any person to obtain or attempt to obtain oil, electric, gas, water, telephone, telegraph, cable television or electronic communication service by the use of any scheme, device, means or method, or by a false application for service with intent to avoid payment of lawful charges therefor.

B1. It shall be unlawful for any person to obtain, or attempt to obtain, electronic communication service as defined in § 18.2-190.1 by the use of an unlawful electronic communication device as defined in § 18.2-190.1.

C. The word "notice" as used in subsection A shall be notice given in writing to the person to whom the service was assigned. The sending of a notice in writing by registered or certified mail in the United States mail, duly stamped and addressed to such person at his last known address, requiring delivery to the addressee only with return receipt requested, and the actual signing of the receipt for such mail by the addressee, shall be prima facie evidence that such notice was duly received.

D. Any person who violates any provisions of this section, if the value of service, credit or benefit procured is $200 or more, shall be guilty of a Class 6 felony; or if the value is less than $200, shall

be guilty of a Class 1 misdemeanor. In addition, the court may order restitution for the value of the services unlawfully used and for all costs. Such costs shall be limited to actual expenses, including the base wages of employees acting as witnesses for the Commonwealth, and suit costs. However, the total amount of allowable costs granted hereunder shall not exceed $250, excluding the value of the service.

E. Any party providing oil, electric, gas, water, telephone, telegraph, cable television or electronic communication service who is aggrieved by a violation of this section may, in a civil proceeding in any court of competent jurisdiction, seek both injunctive and equitable relief, and an award of damages, including attorney's fees and costs. In addition to any other remedy provided by law, the party aggrieved may recover an award of actual damages or $500 whichever is greater for each action.

1978, c. 807; 1981, c. 197; 1992, c. 525; 1993, c. 439; 2002, c. 671; 2003, c. 354.

§ 18.2-187.2. Audiovisual recording of motion pictures unlawful; penalty

A. It shall be unlawful for any person to operate an audiovisual recording function of a device in a commercial theater, excluding the lobby and other common areas, to record a motion picture or any portion thereof without the consent of the owner or lessee of the theater. Any person who violates the provisions of this section is guilty of a Class 1 misdemeanor.

B. The owner or lessee of a commercial theater where a motion picture is being exhibited, or his authorized agent or employee, who has probable cause to believe that a person has made a recording in violation of subsection A on the premises of the owner or lessee, may detain such person for a period not to exceed one hour pending arrival of a law-enforcement officer. Such owner, lessee, agent or employee shall not be held civilly liable for unlawful detention if such detention does not exceed one hour, slander, malicious prosecution, false imprisonment, false arrest, or assault and battery of the person so arrested or detained, whether such arrest or detention takes place on the premises of the owner or lessee or after close pursuit from such premises, provided that, in causing the arrest or detention of such person, the owner, lessee, agent or employee had at the time of such arrest or detention probable cause to believe the person was making or had made an illegal recording in violation of subsection A.

C. This section shall not apply to any lawfully authorized investigative, law-enforcement, protective, or intelligence gathering activity by an agent or employee of the Commonwealth or the federal government.

D. The term "audiovisual recording function" means that component of an analog or digital photographic or video camera or other device developed with the capability to record or transmit a motion picture or any part thereof.

2004, c. 759.

§ 18.2-188. Defrauding hotels, motels, campgrounds, boardinghouses, etc

It shall be unlawful for any person, without paying therefor, and with the intent to cheat or defraud the owner or keeper to:

1. Put up at a hotel, motel, campground or boardinghouse;

2. Obtain food from a restaurant or other eating house;

3. Gain entrance to an amusement park; or

4. Without having an express agreement for credit, procure food, entertainment or accommodation from any hotel, motel, campground, boardinghouse, restaurant, eating house or amusement park.

It shall be unlawful for any person, with intent to cheat or defraud the owner or keeper out of the pay therefor to obtain credit at a hotel, motel, campground, boardinghouse, restaurant or eating house for food, entertainment or accommodation by means of any false show of baggage or effects brought thereto.

It shall be unlawful for any person, with intent to cheat or defraud, to obtain credit at a hotel, motel, campground, boardinghouse, restaurant, eating house or amusement park for food, entertainment or accommodation through any misrepresentation or false statement.

It shall be unlawful for any person, with intent to cheat or defraud, to remove or cause to be removed any baggage or effects from a hotel, motel, campground, boardinghouse, restaurant or eating house while there is a lien existing thereon for the proper charges due from him for fare and board furnished.

Any person who violates any provision of this section shall, if the value of service, credit or benefit procured or obtained is $200 or more, be guilty of a Class 5 felony; or if the value is less than $200, a Class 1 misdemeanor.

Code 1950, § 18.1-120; 1960, c. 358; 1974, c. 615; 1975, cc. 14, 15; 1977, c. 178; 1981, c. 197; 1993, c. 575 .

§ 18.2-188.1. Defrauding person having a lien on an animal; penalty

It shall be unlawful to remove or cause any horse or other animal to be removed from the possession of the owner or keeper of a livery stable or other person having a lien on the horse or animal for keep, support and care pursuant to § 43-32, with intent to defraud or cheat the lienholder. A violation of this section shall be punishable as a Class 2 misdemeanor.

1990, c. 639 .

§ 18.2-189. Defrauding keeper of motor vehicles or watercraft

A person shall be guilty of a Class 2 misdemeanor if he:

1. Stores a motor vehicle, boat or other watercraft with any person, firm or corporation engaged in the business of conducting a garage, marina, watercraft dealership or other facility for the (i) storage of motor vehicles, boats or other watercraft, (ii) furnishing of supplies to motor vehicles, boats or other watercraft, or (iii) alteration or repair of motor vehicles, boats or other watercraft, and

obtains storage, supplies, alterations or repairs for such motor vehicle, boat or other watercraft, without having an express agreement for credit, or procures storage, supplies, alterations or repairs on account of such motor vehicle, boat or other watercraft so stored, without paying therefor, and with the intent to cheat or defraud the owner or keeper of the garage, marina or boat repair facility; or

2. With such intent, obtains credit at the garage, marina, watercraft dealership or boat repair facility for such storage, supplies, alterations or repairs through any misrepresentation or false statement; or

3. With such intent, removes or causes to be removed any such motor vehicle, boat or other watercraft from any such garage, marina, watercraft dealership or boat repair facility while there is a lien existing thereon for the proper charges due from him for storage, supplies, alterations or repairs furnished thereon, in accordance with the provisions of § 43-32, 43-33, 46.2-644.01, or § 46.2-644.02.

Code 1950, § 18.1-121; 1960, c. 358; 1975, cc. 14, 15; 1978, c. 245; 1988, c. 414; 2009, c. 664.

§ 18.2-190. Fraudulent misrepresentation as to breed of bull or cattle

Any person who, in the sale, gift or transfer, of any bull or cattle, knowingly shall make any false representation that such bull is registered, or entitled to registration, in some recognized standard and accredited herd of cattle, or three-quarters blood of such breed, or that such cattle are from such a herd or breed of cattle, shall be guilty of a Class 1 misdemeanor.

Code 1950, §§ 18.1-185, 18.1-186; 1960, c. 358; 1975, cc. 14, 15.

Article 5.1 - OFFENSES INVOLVING ELECTRONIC COMMUNICATION DEVICES

§ 18.2-190.1. Definitions

As used in this article, unless the context requires a different meaning:

"Electronic communication device" means (i) any type of instrument, device, machine, equipment or software that is capable of transmitting, acquiring, encrypting, decrypting or receiving any signs, signals, writings, images and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems or (ii) any part, accessory or component of such an instrument, device, machine, equipment or software, including, but not limited to, any computer circuit, computer chip, security module, smart card, electronic mechanism, or other component, accessory or part, that is capable of facilitating the transmission, acquisition, encryption, decryption or reception of signs, signals, writings, images, and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems.

"Electronic communication service" means any service provided for a charge or compensation to facilitate the lawful origination, transmission, emission or reception of signs, signals, writings, images and sounds or intelligence of any nature through the use of an electronic communication device as that term is defined in this section.

"Electronic communication service provider" means any person or entity providing any electronic communication service including (i) any person or entity owning or operating any cable television, satellite, Internet-based, telephone, wireless, microwave, fiber optic, data transmission or radio distribution network, system or facility; (ii) any person or entity that for a fee supplies equipment or services to an electronic communication service provider; and (iii) any person or entity providing an electronic communication service directly or indirectly using any of the systems, networks, or facilities described in clause (i).

"Equipment or materials used to manufacture an unlawful electronic communication device" means (i) a scanner capable of intercepting the electronic serial number or mobile identification number of a cellular or other wireless telephone; (ii) electronic software or hardware capable of altering or changing the factory-installed electronic serial number of a cellular or other wireless telephone or a computer containing such software; (iii) a list of cellular or other wireless telephone electronic serial numbers with their associated mobile identification numbers; or (iv) a part, accessory or component of an unlawful electronic communications device possessed or used in the manufacture of such device including any electronic serial number, computer software, mobile identification number, service access card, account number, or personal identification number used to acquire, receive, use, decrypt or transmit an electronic communication service without the actual consent or knowledge of the electronic communication service provider.

"Manufacture of an unlawful electronic communication device" means to make, produce or assemble an unlawful electronic communication device, or to modify, alter, program or reprogram an electronic communication device to be capable of performing any of the illegal functions of an unlawful electronic communication device as that term is defined in this section.

"Sell" means to sell, exchange, lease, give or dispose of to another or to offer or agree to do the same.

"Unlawful electronic communication device" means any electronic communication device that has been manufactured, designed, developed, altered, modified, programmed or reprogrammed, alone or in conjunction with another electronic communication device, so as to be capable of facilitating the disruption, acquisition, receipt, transmission, retransmission or decryption of an electronic communication service without the actual consent or knowledge of the electronic communication service provider. Such unlawful devices include, but are not limited to (i) any device, technology, product, service, equipment, computer software, or any component or part thereof, primarily distributed, sold, designed, assembled, developed, manufactured, modified, programmed, reprogrammed or used for the purpose of facilitating the unauthorized receipt of, transmission of, disruption of, decryption of, access to, or acquisition of any electronic communication service provided by any electronic communication service provider; and (ii) any type of instrument, device, machine, equipment, technology, or software that is primarily designed, assembled, manufactured, developed, sold, distributed, possessed, used or offered, promoted or advertised for the purpose of defeating or circumventing any technology, device or software, or any component or

part thereof, used by the provider, owner or licensee of any electronic communication service or of any data, audio or video programs or transmissions, to protect any such electronic communication, data, audio or video services, programs or transmissions from unauthorized receipt, acquisition, access, decryption, disclosure, communication, transmission or retransmission.

1993, c. 439; 1998, c. 518; 2002, c. 671; 2003, c. 354.

§ 18.2-190.2. Possession of an unlawful electronic communication device or equipment etc., used to manufacture such device; penalty

A person who knowingly possesses (i) an unlawful electronic communication device or (ii) equipment or materials used to manufacture an unlawful electronic communication device as defined in § 18.2-190.1 with the intent to manufacture an unlawful electronic communication device shall be guilty of a Class 6 felony unless such possession is by an electronic communication equipment manufacturer while lawfully acting in that capacity, or a facilities-based electronic communication service provider licensed by the Federal Communications Commission or by a law-enforcement agency.

1993, c. 439; 1998, c. 518; 2002, c. 671; 2003, c. 354.

§ 18.2-190.3. Sale of an unlawful electronic communication device; penalty

A person who (i) knowingly sells an unlawful electronic communication device or (ii) sells material, including hardware, data, computer software or other information or equipment, knowing, or having reason to know, that the purchaser or a third person intends to use such material in the manufacture of an unlawful electronic communication device, shall be guilty of a Class 6 felony.

1993, c. 439; 1998, c. 518; 2002, c. 671; 2003, c. 354.

§ 18.2-190.4. Manufacture of an unlawful electronic communication device; penalty

A person who knowingly manufactures an unlawful electronic communication device shall be guilty of a Class 6 felony.

1993, c. 439; 1998, c. 518; 2002, c. 671; 2003, c. 354.

§ 18.2-190.5. Separate offenses; penalty

For purposes of imposing criminal penalties for violations of §§ 18.2-190.3 and 18.2-190.4, the commission of the prohibited activity regarding each unlawful electronic communication device shall be deemed a separate offense.

2002, c. 671; 2003, c. 354.

§ 18.2-190.6. Restitution

The court may, in addition to any other sentence authorized by law, require a person convicted of violating § 18.2-190.3 or § 18.2-190.4 to make restitution in the manner provided in § 19.2-305.1.

2002, c. 671.

§ 18.2-190.7. Repealed

Repealed by Acts 2004, c. 995.

§ 18.2-190.8. Civil relief; damages

Any electronic communication service provider aggrieved by a violation of this article may seek both injunctive and equitable relief and an award of damages including attorney's fees and costs. In addition to any other remedy provided by law, the party aggrieved may recover an award of actual damages or $500, whichever is greater, for each unlawful electronic communications device involved in the action. In any case in which the court finds that the violation was committed for purposes of commercial advantage or financial gain, the award shall be increased by an amount not to exceed three times the actual damages sustained or $1,500 for each unlawful electronic communications device involved, whichever is greater.

2002, c. 671; 2003, c. 354.

Article 6 - OFFENSES RELATING TO CREDIT CARDS

§ 18.2-191. Definitions

The following words and phrases as used in this article, unless a different meaning is plainly required by the context, shall have the following meanings:

"Acquirer" means a business organization, financial institution or an agent of a business organization or financial institution that authorizes a merchant to accept payment by credit card or credit card number for money, goods, services or anything else of value.

"Cardholder" means the person or organization named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer.

"Credit card" means any instrument or device, whether known as a credit card, credit plate, payment device number, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value on credit. For the purpose of this article, "credit card" shall also include a similar device, whether known as a debit card, or any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value by charging the account of the cardholder with a bank or any other person even though no credit is thereby extended.

"Expired credit card" means a credit card which is no longer valid because the term shown on it has elapsed.

"Issuer" means the business organization or financial institution or its duly authorized agent which issues a credit card.

"Payment device number" means any code, account number or other means of account access, other than a check, draft or similar paper instrument, that can be used to obtain money, goods, services or anything else of value, or to initiate a transfer of funds. "Payment device number" does not include an encoded or truncated credit card number or payment device number.

"Receives" or "receiving" means acquiring possession or control of the credit card number or payment device number or accepting the same as security for a loan.

"Revoked credit card" means a credit card which is no longer valid because permission to use it has been suspended or terminated by the issuer.

"Sales draft" means a paper form evidencing a purchase of goods, services or anything else of value from a merchant through the use of a credit card.

"Cash advance/withdrawal draft" means a paper form evidencing a cash advance or withdrawal from a bank or other financial institution through the use of a credit card.

Code 1950, § 18.1-125.2; 1968, c. 480; 1975, cc. 14, 15; 1977, c. 103; 1980, c. 99; 1985, c. 266; 1991, c. 546 .

§ 18.2-192. Credit card theft

(1) A person is guilty of credit card or credit card number theft when:

(a) He takes, obtains or withholds a credit card or credit card number from the person, possession, custody or control of another without the cardholder's consent or who, with knowledge that it has been so taken, obtained or withheld, receives the credit card or credit card number with intent to use it or sell it, or to transfer it to a person other than the issuer or the cardholder; or

(b) He receives a credit card or credit card number that he knows to have been lost, mislaid, or delivered under a mistake as to the identity or address of the cardholder, and who retains possession with intent to use, to sell or to transfer the credit card or credit card number to a person other than the issuer or the cardholder; or

(c) He, not being the issuer, sells a credit card or credit card number or buys a credit card or credit card number from a person other than the issuer; or

(d) He, not being the issuer, during any twelve-month period, receives credit cards or credit card numbers issued in the names of two or more persons which he has reason to know were taken or retained under circumstances which constitute a violation of § 18.2-194 and subdivision (1) (c) of this section.

(2) Credit card or credit card number theft is grand larceny and is punishable as provided in § 18.2-95.

Code 1950, § 18.1-125.3; 1968, c. 480; 1975, cc. 14, 15; 1976, c. 318; 1985, c. 266.

§ 18.2-193. Credit card forgery

(1) A person is guilty of credit card forgery when:

(a) With intent to defraud a purported issuer, a person or organization providing money, goods, services or anything else of value, or any other person, he falsely makes or falsely embosses a purported credit card or utters such a credit card; or

(b) He, not being the cardholder or a person authorized by him, with intent to defraud the issuer, or a person or organization providing money, goods, services or anything else of value, or any other person, signs a credit card; or

(c) He, not being the cardholder or a person authorized by him, with intent to defraud the issuer, or a person or organization providing money, goods, services or anything else of value, or any other person, forges a sales draft or cash advance/withdrawal draft, or uses a credit card number of a card of which he is not the cardholder, or utters, or attempts to employ as true, such forged draft knowing it to be forged.

(2) A person falsely makes a credit card when he makes or draws, in whole or in part, a device or instrument which purports to be the credit card of a named issuer but which is not such a credit card because the issuer did not authorize the making or drawing, or alters a credit card which was validly issued.

(3) A person falsely embosses a credit card when, without the authorization of the named issuer, he completes a credit card by adding any of the matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder. Conviction of credit card forgery shall be punishable as a Class 5 felony.

Code 1950, § 18.1-125.4; 1968, c. 480; 1975, cc. 14, 15; 1980, c. 99; 1985, c. 266.

§ 18.2-194. Unauthorized possession of two or more signed credit cards or credit card numbers

When a person, other than the cardholder or a person authorized by him, possesses two or more credit cards which are signed or two or more credit card numbers, such possession shall be prima facie evidence that said cards or credit card numbers were obtained in violation of § 18.2-192.

Code 1950, § 18.1-125.5; 1968, c. 480; 1975, cc. 14, 15; 1985, c. 266; 2005, c. 157.

§ 18.2-195. Credit card fraud; conspiracy; penalties

(1) A person is guilty of credit card fraud when, with intent to defraud any person, he:

(a) Uses for the purpose of obtaining money, goods, services or anything else of value a credit card or credit card number obtained or retained in violation of § 18.2-192 or a credit card or credit card number which he knows is expired or revoked;

(b) Obtains money, goods, services or anything else of value by representing (i) without the consent of the cardholder that he is the holder of a specified card or credit card number or (ii) that he is the holder of a card or credit card number and such card or credit card number has not in fact been issued;

(c) Obtains control over a credit card or credit card number as security for debt; or

(d) Obtains money from an issuer by use of an unmanned device of the issuer or through a person other than the issuer when he knows that such advance will exceed his available credit with the issuer and any available balances held by the issuer.

(2) A person who is authorized by an issuer to furnish money, goods, services or anything else of value upon presentation of a credit card or credit card number by the cardholder, or any agent or

employee of such person, is guilty of a credit card fraud when, with intent to defraud the issuer or the cardholder, he:

(a) Furnishes money, goods, services or anything else of value upon presentation of a credit card or credit card number obtained or retained in violation of § 18.2-192, or a credit card or credit card number which he knows is expired or revoked;

(b) Fails to furnish money, goods, services or anything else of value which he represents or causes to be represented in writing or by any other means to the issuer that he has furnished; or

(c) Remits to an issuer or acquirer a record of a credit card or credit card number transaction which is in excess of the monetary amount authorized by the cardholder.

(3) Conviction of credit card fraud is punishable as a Class 1 misdemeanor if the value of all money, goods, services and other things of value furnished in violation of this section, or if the difference between the value of all money, goods, services and anything else of value actually furnished and the value represented to the issuer to have been furnished in violation of this section, does not exceed $200 in any six-month period; conviction of credit card fraud is punishable as a Class 6 felony if such value exceeds $200 in any six-month period.

(4) Any person who conspires, confederates or combines with another, (i) either within or without the Commonwealth to commit credit card fraud within the Commonwealth or (ii) within the Commonwealth to commit credit card fraud within or without the Commonwealth, is guilty of a Class 6 felony.

Code 1950, § 18.1-125.6; 1968, c. 480; 1975, cc. 14, 15; 1978, c. 364; 1980, c. 99; 1981, c. 197; 1985, c. 266; 1991, c. 546 .

§ 18.2-195.1. Credit card factoring

A. Any authorized person who presents to the issuer or acquirer for payment a credit card or credit card number transaction record of a sale which was not made by such person or his agent or employee, without the express authorization of the acquirer and with intent to defraud the issuer, acquirer or cardholder, is guilty of a Class 5 felony. If such act is done without authorization of the acquirer but without intent to defraud, he shall be guilty of a Class 1 misdemeanor.

B. Any person who, without the express authorization of the acquirer and with intent to defraud the issuer, acquirer or cardholder, employs or otherwise causes an authorized person to remit to an acquirer or issuer a credit card transaction record of sale that was not made by the authorized person is guilty of a Class 5 felony. If such act is done without the authorization of the acquirer but without intent to defraud, he shall be guilty of a Class 1 misdemeanor.

C. As used in this section, "authorized person" means a person authorized by the acquirer to furnish money, goods, services or anything else of value upon presentation of a credit card or credit card number by a cardholder and includes an agent or employee of a person having such authority.

1991, c. 546 .

§ 18.2-195.2. Fraudulent application for credit card; penalties

A. A person shall be guilty of a Class 1 misdemeanor if he makes, causes to be made or conspires to make, directly, indirectly or through an agency, any materially false statement in writing concerning the financial condition or means or ability to pay of himself or of any other person for whom he is acting or any firm or corporation in which he is interested or for which he is acting, knowing the statement to be false and intending that it be relied upon for the purpose of procuring a credit card. However, if the statement is made in response to an unrequested written solicitation from the issuer or an agent of the issuer to apply for a credit card, he shall be guilty of a Class 4 misdemeanor.

B. A person who knows that a false statement has been made in writing concerning the financial condition or ability to pay of himself or of any person for whom he is acting or any firm or corporation in which he is interested or for which he is acting and who with intent to defraud, procures a credit card, upon the faith of such false statement, for his own benefit, or for the benefit of the person, firm or corporation in which he is interested or for which he is acting, and obtains by use of the credit card, money, property, services or any thing of value, is guilty of grand larceny if the value of whatever is obtained is $200 or more or petit larceny if the value is less than $200.

C. As used in this section, "in writing" shall include information transmitted by computer, facsimile, e-mail, Internet, or any other electronic medium, and shall not include information transmitted by any such medium by voice transmission.

1991, c. 546; 2007, c. 518.

§ 18.2-196. Criminal possession of credit card forgery devices

(1) A person is guilty of criminal possession of credit card forgery devices when:

(a) He is a person other than the cardholder and possesses two or more incomplete credit cards, with intent to complete them without the consent of the issuer; or

(b) He possesses, with knowledge of its character, machinery, plates or any other contrivance designed to reproduce instruments purporting to be credit cards of an issuer who has not consented to the preparation of such credit cards.

(2) A credit card is incomplete if part of the matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder, has not yet been stamped, embossed, imprinted or written upon.

Conviction of criminal possession of credit card forgery devices is punishable as a Class 6 felony.

Code 1950, § 18.1-125.7; 1968, c. 480; 1975, cc. 14, 15.

§ 18.2-196.1. Unlawful use of payment card scanning devices and re-encoders; penalty

A. Any person who with malicious intent uses a scanning device or a re-encoder on the payment card of another without the permission of the authorized payment card user is guilty of a Class 1 misdemeanor.

B. Any person who violates this section and sells or distributes such information to another is guilty of a Class 6 felony.

C. Any person who violates this section and uses such information in the commission of another crime is guilty of a Class 6 felony.

D. For the purposes of this section:

1."Authorized payment card user" means any person with the authorization or permission to use any payment card to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant.

2. "Merchant" means an owner or operator of any mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of such owner or operator who receives from an authorized payment card user or someone he believes to be an authorized payment card user, a payment card or information from a payment card, or what he believes to be a payment card or information from a payment card, as the instrument for obtaining, purchasing or receiving goods, services, money, or anything else of value from him.

3. "Payment card" means a credit card, charge card, debit card, hotel key card, stored-value card, white plastic, or any other card containing encoded information that allows an authorized payment card user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant.

4. "Re-encoder" means an electronic device that transfers encoded information from the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different payment card.

5."Scanning device" means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, temporarily store, or permanently store encoded information on the magnetic strip or stripe of a payment card.

2005, c. 166.

§ 18.2-197. Criminally receiving goods and services fraudulently obtained

A person is guilty of criminally receiving goods and services fraudulently obtained when he receives money, goods, services or anything else of value obtained in violation of subsection (1) of § 18.2-195 with the knowledge or belief that the same were obtained in violation of subsection (1) of § 18.2-195. Conviction of criminal receipt of goods and services fraudulently obtained is punishable as a Class 1 misdemeanor if the value of all money, goods, services and anything else of value, obtained in violation of this section, does not exceed $200 in any six-month period; conviction of criminal receipt of goods and services fraudulently obtained is punishable as a Class 6 felony if such value exceeds $200 in any six-month period.

Code 1950, § 18.1-125.8; 1968, c. 480; 1975, cc. 14, 15; 1981, c. 197.

§ 18.2-198. Obtaining airline, railroad, steamship, etc., ticket at discount price

A person who obtains at a discount price a ticket issued by an airline, railroad, steamship or other transportation company from other than an apparent agent of such company which was acquired in violation of subsection (1) of § 18.2-195 without reasonable inquiry to ascertain that the person from whom it was obtained had a legal right to possess it shall be presumed to know that such ticket was acquired under circumstances constituting a violation of subsection (1) of § 18.2-195.

Code 1950, § 18.1-125.9; 1968, c. 480; 1975, cc. 14, 15.

§ 18.2-198.1. Venue

Notwithstanding the provisions of § 19.2-244, a prosecution for a violation of this article may be had in any county or city in which (i) any act in furtherance of the crime was committed or (ii) an issuer or acquirer, or an agent of either, sustained a financial loss as a result of the offense. A prosecution for a violation of § 18.2-192 may be had in any county or city where a credit card number is used, is attempted to be used, or is possessed with intent to violate § 18.2-193, 18.2-195, or 18.2-197.

1991, c. 546; 2008, c. 797.

§ 18.2-199. Penalties for violation of article

Persons violating any provision of this article for which no other specific punishment is provided for shall be guilty of a Class 6 felony.

Code 1950, § 18.1-125.10; 1968, c. 480; 1975, cc. 14, 15.

Article 7 - MISCELLANEOUS FALSE AND FRAUDULENT ACTS

§ 18.2-200. Failure to perform promise to deliver crop, etc., in return for advances

If any person obtain from another an advance of money, merchandise or other thing, upon a promise in writing that he will send or deliver to such other person his crop or other property, and fraudulently fail or refuse to perform such promise, and also fail to make good such advance, he shall be deemed guilty of the larceny of such money, merchandise or other thing.

Code 1950, § 18.1-113; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-200.1. Failure to perform promise for construction, etc., in return for advances

If any person obtain from another an advance of money, merchandise or other thing, of value, with fraudulent intent, upon a promise to perform construction, removal, repair or improvement of any building or structure permanently annexed to real property, or any other improvements to such real property, including horticulture, nursery or forest products, and fail or refuse to perform such promise, and also fail to substantially make good such advance, he shall be deemed guilty of the larceny of such money, merchandise or other thing if he fails to return such advance within fifteen days of a request to do so sent by certified mail, return receipt requested, to his last known address or to the address listed in the contract.

1980, c. 459; 1987, c. 358.

§ 18.2-201. Advances secured by fraudulent promise to perform agricultural labor

If any person enter into a contract of employment, oral or written, for the performance of personal service to be rendered within one year, in and about the cultivation of the soil, and, at any time during the pendency of such contract, thereby obtain from the landowner, or the person so engaged in the cultivation of the soil, advances of money or other thing of value under such contract, with intent to injure or defraud his employer, and fraudulently refuses or fails to perform such service or to refund such money or other thing of value so obtained, he shall be guilty of a Class 3 misdemeanor. But no prosecution hereunder shall be commenced more than sixty days after the breach of such contract.

Code 1950, § 18.1-114; 1960, c. 358; 1975, cc. 14, 15.

§§ 18.2-202, 18.2-203. Repealed

Repealed by Acts 2004, c. 459.

§ 18.2-204. False statement for the purpose of defrauding industrial sick benefit company

Any agent, physician or other person who shall knowingly or willfully make any false or fraudulent statement or representation of any material fact:

(1) In or with reference to any application for insurance in any industrial sick benefit company licensed, or which may be licensed, to do business in this Commonwealth,

(2) As to the death or disability of a policy or certificate holder in any such company,

(3) For the purpose of procuring or attempting to procure the payment of any false or fraudulent claim against any such company, or

(4) For the purpose of obtaining or attempting to obtain any money from or benefit in any such company,

shall be guilty of a Class 3 misdemeanor.

Any such person who shall willfully make a false statement of any material fact or thing in a sworn statement as to the death or disability of a policy or certificate holder in any such company for the purpose of procuring payment of a benefit named in the policy or certificate of such holder, shall be guilty of perjury, and shall be proceeded against and punished as provided by the statutes of this Commonwealth in relation to the crime of perjury.

Code 1950, § 18.1-122; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-204.1. Fraudulent use of birth certificates, etc.; penalty

A. Any person who obtains or possesses a fictitious birth certificate or the birth certificate of another for the purpose of establishing a false identity for himself is guilty of a Class 1 misdemeanor. Any person who manufactures, sells, or transfers a fictitious birth certificate or the birth certificate of another for the purpose of establishing a false identity for himself or for another person is guilty of a Class 6 felony.

B. Except as provided in subsection A, any person who obtains, possesses, sells, or transfers any document for the purpose of establishing a false status, occupation, membership, license or identity for himself or any other person is guilty of a Class 1 misdemeanor.

C. Any person who obtains, possesses, sells, or transfers such birth certificate or document with the intent that such certificate or document be used to purchase a firearm is guilty of a Class 6 felony.

D. The provisions of this section shall not apply to members of state, federal, county, city or town law-enforcement agencies in the performance of their duties.

E. The provisions of this section shall not preclude prosecution under any other statute.

1978, c. 615; 1979, c. 479; 1981, c. 593; 2003, cc. 889, 914, 918; 2006, c. 271; 2011, c. 401.

§ 18.2-204.2. Manufacture, sale, etc., or possession of fictitious, facsimile or simulated official license or identification; penalty

A. Except as provided in subsection D of § 18.2-204.1, it shall be unlawful for any person to manufacture, advertise for sale, sell or possess any fictitious, facsimile or simulated driver's license issued by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any foreign country or government; United States Armed Forces identification card; United States passport or foreign government visa; Virginia Department of Motor Vehicles special identification card; official identification issued by any other federal, state or foreign government agency; or official university or college student identification card, or in any way reproduce any identification card or facsimile thereof in such a manner that it could be mistaken for a valid license or identification of any type specified in this subsection.

B. Any person manufacturing, advertising for sale, selling or reproducing such card or facsimile thereof shall be guilty of a Class 1 misdemeanor.

C. Any person possessing any such card or facsimile thereof shall be guilty of a Class 2 misdemeanor.

D. The provisions of this section shall not preclude an election to prosecute under § 18.2-172, except to prosecute for forgery or uttering of such license or identification card or facsimile thereof as proof of age.

1980, c. 281; 1989, c. 705; 1992, c. 531; 2006, cc. 445, 484; 2011, c. 401.

§ 18.2-204.3. Transfers for the sole or primary purpose of obtaining a lower unemployment tax rate; penalty

A. Any person who transfers or attempts to transfer any trade or business to another person, where the sole or primary purpose of the transfer is to obtain a lower unemployment tax rate, is guilty of a Class 1 misdemeanor.

B. Any person who knowingly advises another person to transfer any trade or business to another person where the sole or primary purpose of the transfer is to obtain a lower unemployment tax rate, is guilty of a Class 1 misdemeanor.

C. Any person who is found guilty of more than two such actions under subsections A or B is guilty of a Class 6 felony.

D. It shall be the duty of the attorney for the Commonwealth to whom the Commission shall report, pursuant to subsection B of § 60.2-500, any violation of this section, to determine whether to proceed with prosecution.

2005, cc. 47, 91.

§ 18.2-205. False pretense in obtaining registration of cattle and other animals and giving false pedigree

Every person who by any false pretense shall obtain from any club, association, society or company for improving the breed of cattle, horses, sheep, swine or other domestic animals the registration of any animal in the herd register or other register of any such club, association, society or company, or a transfer of any such registration, and every person who shall knowingly give a false pedigree of any animal shall be guilty of a Class 3 misdemeanor.

Code 1950, § 18.1-123; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-206. Procuring an animal, aircraft, vehicle or boat with intent to defraud

If any person procure any such animal, aircraft, vehicle, boat or vessel mentioned in § 18.2-149 by fraud or by misrepresenting himself as some other person or with the intent to cheat or defraud such other person, he shall be guilty of a Class 1 misdemeanor. The failure to pay the rental for or damage to such animal, aircraft, vehicle, boat or vessel, or absconding without paying such rental or damage, shall be prima facie evidence of the intent to defraud at the time of renting or leasing such animal, aircraft, vehicle, boat or vessel.

Code 1950, § 18.1-162; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-207. Making false entry, etc., in marriage register, etc

If any clerk of a court, commissioner of the revenue, physician, surgeon, medical examiner or minister celebrating a marriage, or clerk or keeper of the records of any religious society, shall, in any book, register, record, certificate or copy which such person is by Title 20 (§ 20-13 et seq.) required to keep, make, or give, knowingly make any false, erroneous, or fraudulent entry, record, registration, or written statement, he shall, for every such offense, be guilty of a Class 3 misdemeanor.

Code 1950, § 18.1-98; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-208. Making false statement, etc., for marriage record, etc

If any person, upon whose information or statement any record or registration may lawfully be made under Title 20 (§ 20-13 et seq.), knowingly give any false information, or make any false

statement to be used for the purpose of making any such record or registration, he shall, for every such offense, be guilty of a Class 4 misdemeanor.

Code 1950, § 18.1-99; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-209. False publications

Any person who knowingly and willfully states, delivers or transmits by any means whatever to any publisher, or employee of a publisher, of any newspaper, magazine, or other publication or to any owner, or employee of an owner, of any radio station, television station, news service or cable service, any false and untrue statement, knowing the same to be false or untrue, concerning any person or corporation, with intent that the same shall be published, broadcast or otherwise disseminated, shall be guilty of a Class 3 misdemeanor.

Code 1950, § 18.1-407; 1960, c. 358; 1975, cc. 14, 15; 1978, c. 359.

§ 18.2-209.1. Penalties for false certificate or failure to give bond

A. If any clerk make a certificate as to any bond of a special commissioner appointed under Article 11 (§ 8.01-96 et seq.) of Chapter 3 of Title 8.01, knowing it to be false, he shall be guilty of a Class 3 misdemeanor, and shall, upon conviction, be removed from his office.

B. If any special commissioner appointed under Article 11 of Chapter 3 of Title 8.01 shall advertise property for sale or rent, and shall sell or rent the same before he shall have given bond as is required by § 8.01-99, he shall be guilty of a Class 3 misdemeanor.

1978, c. 718.

§ 18.2-209.2. Failure of clerk to give notice of appointment of special commissioner to collect purchase money or rent

If any clerk fail to give notice as required by § 8.01-103 of a special commissioner, he shall be guilty of a Class 4 misdemeanor.

1978, c. 718.

§ 18.2-210. Stamping, etc., on newspapers, any word, etc., to cause belief it was done by publisher; circulating such newspapers

No person, without first obtaining the consent of the publisher so to do, shall affix to, or place or insert in, or print, stamp or impress upon any newspaper or any part thereof, after the same shall have been issued for circulation by the publisher thereof, any word, figure, design, picture, emblem or advertisement with intent to cause, or which when so affixed, placed, inserted, printed, stamped or impressed may cause, the public to believe that such word, figure, design, picture, emblem or advertisement was affixed, placed, printed, inserted, stamped or impressed in and upon such newspaper by the publisher of the same as a part thereof.

No person shall knowingly circulate, distribute or sell, or cause to be circulated, distributed or sold, any newspaper upon which has been so affixed, placed, inserted, printed, stamped or

impressed any word, figure, design, picture, emblem or advertisement in violation of the terms hereof.

Any person violating the provisions hereof shall be guilty of a Class 4 misdemeanor. Each violation shall constitute a separate offense.

Code 1950, § 18.1-409; 1960, c. 358; 1964, c. 560; 1975, cc. 14, 15.

§ 18.2-211. Repealed

Repealed by Acts 2004, c. 459.

§ 18.2-212. Calling or summoning emergency medical services vehicle or firefighting apparatus without just cause; maliciously activating fire alarms in public buildings; venue

A. Any person who without just cause therefor calls or summons, by telephone or otherwise, any emergency medical services vehicle or firefighting apparatus, or any person who maliciously activates a manual or automatic fire alarm in any building used for public assembly or for other public use, including, but not limited to, schools, theaters, stores, office buildings, shopping centers and malls, coliseums, and arenas, regardless of whether an emergency medical services vehicle or fire apparatus responds or not, is guilty of a Class 1 misdemeanor.

B. A violation of this section may be prosecuted either in the jurisdiction from which the call or summons was made or in the jurisdiction where the call or summons was received.

Code 1950, § 18.1-412; 1960, c. 358; 1975, cc. 14, 15; 1976, c. 75; 1982, c. 502; 2015, cc. 502, 503.

§ 18.2-212.1. Unlawful for person not blind or incapacitated to carry white, white tipped with red or metallic cane

It is unlawful for any person, unless totally or partially blind or otherwise incapacitated, while on any public street or highway to carry in a raised or extended position a cane or walking stick which is metallic or white in color or white tipped with red. Any person violating any provisions of this section shall be guilty of a Class 4 misdemeanor.

Code 1950, §§ 46.1-238, 46.1-239; 1958, c. 541; 1964, c. 20; 1975, cc. 14, 15.

§ 18.2-213. Simulation of warrants, processes, writs and notices

Any person who, for the purpose of collecting money, shall knowingly deliver, mail, send or otherwise use or cause to be used any paper or writing simulating or intended to simulate any warrant, process, writ, notice of execution lien or notice of motion for judgment shall be guilty of a Class 4 misdemeanor.

Code 1950, § 18.1-313; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-213.1. Obtaining certification as small, women-owned, or minority-owned business by deception; penalty

A. Except as otherwise provided by § 18.2-498.3, a person shall be guilty of a Class 1 misdemeanor if, in the course of business, he:

1. Fraudulently obtains or retains certification as a small, women-owned, or minority-owned business;

2. Willfully makes a false statement knowing it to be untrue, whether by affidavit, report or other representation, to an official or employee of a public body for the purpose of influencing the certification or denial of certification of any business entity as a small, women-owned, or minority-owned business;

3. Willfully obstructs or impedes any agency official or employee who is investigating the qualifications of a business entity which has requested certification as a small, women-owned, or minority-owned business; or

4. Fraudulently obtains public moneys reserved for or allocated or available to small, women-owned, or minority-owned businesses.

B. For the purposes of this section, "minority-owned business," and "small business" and "women-owned business" shall have the same meaning as those terms are defined in § 2.2-1604.

1987, c. 689; 1989, c. 570; 2006, cc. 831, 921; 2009, c. 869; 2013, c. 482; 2015, cc. 696, 697.

§ 18.2-213.2. Filing false lien or encumbrance against another

Any person who maliciously files a lien or encumbrance in a public record against the real or personal property of another knowing that such lien or encumbrance is false is guilty of a Class 5 felony. The court in its conviction order or in a separate order, shall direct the clerk of any jurisdiction in which a false lien or encumbrance has been filed to release from record such lien or encumbrance specifically described in the conviction order or separate order, including any notice or memorandum of lien. Such lien or encumbrance shall be deemed invalid and shall be treated as if it was never filed.

2013, c. 454.

Article 8 - MISREPRESENTATIONS AND OTHER OFFENSES CONNECTED WITH SALES

§ 18.2-214. Changing or removing, etc., trademarks, identification marks, etc

Any person, firm, association or corporation who or which intentionally removes, defaces, alters, changes, destroys or obliterates in any manner or way or who causes to be removed, defaced, altered, changed, destroyed or obliterated in any manner or way any trademark, distinguishment or identification number, serial number or mark on or from any article or device, in order to secrete its identification with intent to defraud, shall be guilty of a Class 1 misdemeanor.

Code 1950, § 59.1-42; 1968, c. 439; 1975, cc. 14, 15.

§ 18.2-214.1. Penalties for failure to report removal or alteration of identification or serial number on business machines

It shall be unlawful for any person, firm, association, or corporation regularly engaged in the business of repairing, selling, renting or leasing of business machines to fail to report any business machine which such person, firm, association, or corporation knows has an altered or removed identification or serial number. The report shall be made to the appropriate law-enforcement agency for the county, city, or town where such business machine is located.

For purposes of this section, the term "business machines" includes, but is not limited to, typewriters, adding machines, check-writing machines, cash registers, calculators, addressing machines, copying, and accounting equipment, and recording equipment.

Any person, firm, association, or corporation violating the provisions of this section shall be guilty of a Class 4 misdemeanor.

1981, c. 186; 1982, c. 154.

§ 18.2-215. Removal or alteration of identification numbers on household electrical appliances; possession of such appliances

No person, firm, association or corporation, either individually or in association with one or more other persons, firms, associations or corporations shall remove, change or alter the serial number or other identification number stamped upon, cut into or attached as a permanent part of any household or electrical or electronic appliance where such number was stamped upon, cut into or attached to such appliance by the manufacturer thereof.

No person, firm, association or corporation shall knowingly have in his or its possession for the purpose of resale or keep in his possession for a period in excess of forty-eight hours without reporting such possession to the appropriate law-enforcement agency in his county, town or city a household or electrical or electronic appliance, with knowledge that the serial number or other identification number has been removed, changed or altered.

Any person, firm, association or corporation violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

Code 1950, § 59.1-43; 1968, c. 439; 1975, cc. 14, 15; 1976, c. 305.

§ 18.2-216. Untrue, deceptive or misleading advertising, inducements, writings or documents

A. Any person, firm, corporation or association who, with intent to sell or in anywise dispose of merchandise, securities, service or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, makes, publishes, disseminates, circulates or places before the public, or causes, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper or other publications, or in the form of a book, notice, handbill, poster, blueprint, map, bill, tag, label, circular, pamphlet or letter or in any other way, an advertisement of any sort regarding merchandise, securities, service,

land, lot or anything so offered to the public, which advertisement contains any promise, assertion, representation or statement of fact which is untrue, deceptive or misleading, or uses any other method, device or practice which is fraudulent, deceptive or misleading to induce the public to enter into any obligation, shall be guilty of a Class 1 misdemeanor.

The actions prohibited in this section, shall be construed as including (i) the advertising in any manner by any person of any goods, wares or merchandise as a bankrupt stock, receiver's stock or trustee's stock, if such stock contains any goods, wares or merchandise put therein subsequent to the date of the purchase by such advertiser of such stock, and if such advertisement of any such stock fail to set forth the fact that such stock contains other goods, wares or merchandise put therein, subsequent to the date of the purchase by such advertiser of such stock in type as large as the type used in any other part of such advertisement, including the caption of the same, it shall be a violation of this section; and (ii) the use of any writing or document which appears to be, but is not in fact a negotiable check, negotiable draft or other negotiable instrument unless the writing clearly and conspicuously, in at least 14-point bold type, bears the phrase "THIS IS NOT A CHECK" printed on its face.

B. An allegation made by a plaintiff in a civil pleading that a defendant real estate licensee has violated this section shall be stated with particularity.

Code 1950, § 59.1-44; 1968, c. 439; 1975, cc. 14, 15, 507; 2005, c. 150; 2014, cc. 650, 696.

§ 18.2-216.1. Unauthorized use of name or picture of any person; punishment

A person, firm, or corporation that knowingly uses for advertising purposes, or for the purpose of trade, the name, portrait, or picture of any person resident in the Commonwealth, without having first obtained the written consent of such person, or if dead, of his surviving consort, or if none, his next of kin, or, if a minor, of his or her parent or guardian, as well as that of such minor, shall be deemed guilty of a misdemeanor and be fined not less than $50 nor more than $1,000.

Code 1950, § 8-650; 1977, c. 624.

§ 18.2-217. Advertising merchandise, etc., for sale with intent not to sell at price or terms advertised; prima facie evidence of violation

(a) Any person, firm, corporation or association who in any manner advertises or offers for sale to the public any merchandise, goods, commodity, service or thing with intent not to sell, or with intent not to sell at the price or upon the terms advertised or offered, shall be guilty of a Class 1 misdemeanor.

(b) In any prosecution or civil action under this section, the refusal by any person, firm, corporation or association or any employee, agent or servant thereof to sell, or the refusal to sell at the price or upon the terms advertised or offered, any merchandise, goods, commodity, service or thing advertised or offered for sale to the public, shall be prima facie evidence of a violation of this section; provided, that this subsection shall not apply when it is clearly stated in the advertisement or offer by which such merchandise, goods, commodity, service or thing is advertised or

offered for sale to the public, that the advertiser or offeror has a limited quantity or amount of such merchandise, goods, commodity, service or thing for sale, and the advertiser or offeror at the time of such advertisement or offer did in fact have at least such quantity or amount for sale.

Code 1950, § 59.1-45; 1968, c. 439; 1972, c. 217; 1975, cc. 14, 15.

§ 18.2-218. Failure to indicate goods, etc., are "seconds," "irregulars," "secondhand," etc
Any person, firm, corporation or association who in any manner knowingly advertises or offers for sale to the public any merchandise, goods, commodity or thing which is defective, blemished, secondhand or used, or which has been designated by the manufacturer thereof as "seconds," "irregulars," "imperfects," "not first class," or words of similar import without clearly and unequivocally indicating in the advertisement or offer of the merchandise, goods, commodity or thing or the articles, units or parts, thereof so advertised or offered for sale to the public is defective, blemished, secondhand or used or consists of "seconds," "irregulars," "imperfects" or "not first class," shall be guilty of a Class 1 misdemeanor.

Code 1950, § 59.1-46; 1968, c. 439; 1975, cc. 14, 15.

§ 18.2-219. Repealed
Repealed by Acts 1992, c. 768 .

§ 18.2-220. Use of word "wholesale" or "wholesaler."
Any person, firm, corporation or association who in any manner in any advertisement or offer for sale to the public of any merchandise, goods, commodity or thing uses the words "wholesale" or "wholesaler" to represent or describe the nature of its business shall be guilty of a Class 1 misdemeanor, unless such person, firm, corporation or association is actually engaged in selling at wholesale the merchandise, goods, commodity or thing advertised or offered for sale.

Code 1950, § 59.1-48; 1968, c. 439; 1975, cc. 14, 15.

§ 18.2-221. Advertising new or used automobiles or trucks
Any person, firm, corporation or association engaged in selling new or used automobiles or trucks to the public shall be guilty of a Class 2 misdemeanor unless, in any printed advertisement or printed offer in which a price is stated, the following is included: (a) the make, year, and model of such automobile or truck; (b) if reference is made to items of optional equipment which are not included in the advertised price, the additional cost of each such items of optional equipment; and (c) if the manufacturer's suggested retail price is stated, whether such price is an F.O.B. factory or delivered price.

Code 1950, § 59.1-49; 1968, c. 439; 1975, cc. 14, 15; 1985, c. 420.

§ 18.2-222. Misrepresentation as to source of merchandise; penalty
No person, firm, corporation or association selling or offering for sale any article or merchandise, shall in any manner represent, contrary to fact, that the article was made for, or acquired directly

or indirectly from, the United States government or its military or naval forces or any agency of the United States government, or that it has been disposed of by the United States government.

Any person, firm, corporation or association violating any provision of this section shall be guilty of a Class 3 misdemeanor.

Code 1950, § 59.1-53; 1968, c. 439; 1975, cc. 14, 15; 1983, c. 290.

§ 18.2-223. "Going out of business" sales; permit required

It shall be unlawful for any person to advertise, or conduct, a sale for the purpose of discontinuing a retail business, or to modify the word "sale" in any advertisement with the words "going out of business" or any other words which tend to insinuate that the retail business is to be discontinued and the merchandise liquidated, unless such person obtains a permit to conduct such sale from the city, town or county, or from each city, town or county, wherein such sale is to be conducted.

A violation of the provisions of this section shall be punishable as a Class 1 misdemeanor.

Code 1950, § 59.1-53.1; 1972, c. 399; 1975, cc. 14, 15.

§ 18.2-224. "Going out of business" sales; counties, cities and towns to issue permits; inspections; application for permit; inventory required; commingling of other goods prohibited; duration; additional permits; inclusion of permit number and dates in advertisements; fee

Every county, town and city shall issue permits to retail merchants for special sales as required by § 18.2-223 upon the application of such merchant and shall inspect the advertisement and conducting of such sale to insure that it is being advertised and conducted in conformity with the required permit.

All applications for special sale permits shall be accompanied by an inventory, including the kind and quantity of all goods which are to be offered for sale during the sale and only the goods specified in the inventory list may be advertised or sold during the sale period. Goods not included on the inventory of special sale goods shall not be commingled with or added to the special sale goods. Each county, city or town shall have the right to revoke a special sale permit upon proof that goods not appearing on the original inventory of special sale goods have been commingled with or added to the special sale goods.

Each special sale permit shall be valid for a period of no longer than sixty days, and any extension of that time shall constitute a new special sale and shall require an additional permit and inventory. A maximum of one permit beyond the initial sixty-day permit may be granted solely for the purpose of liquidating only those goods contained in the initial inventory list which remain unsold.

Any person who advertises such sale shall conspicuously include in the advertisement the permit number assigned for the sale by the city, town or county wherein the sale is to be conducted and the effective dates of the sale as authorized in the permit.

Each county, town and city is authorized to charge a fee for the issuance of special sale permits. Such fee shall not exceed sixty-five dollars for each permit.

Code 1950, § 59.1-53.2; 1972, c. 399; 1975, cc. 14, 15; 1983, c. 445; 1988, c. 779; 1992, c. 562 .

§ 18.2-225. Misrepresentations as to agricultural products

Misrepresentation by advertising in the press or by radio or by television, or misrepresentation by letter, statement, mark representing grade, quality or condition, label or otherwise in handling, selling, offering or exposing for sale any agricultural commodities is hereby prohibited.

Any person, firm, association or corporation who shall violate any of the provisions of this section shall be guilty of a Class 3 misdemeanor.

The Director of the Division of Marketing, with the approval of the Commissioner of Agriculture and Consumer Services, may, in his discretion, cause prosecutions for violations of this section to be instituted through the attorneys for the Commonwealth, or otherwise, in counties or cities of the Commonwealth where in his opinion violations of this section are found.

Code 1950, § 59.1-54; 1968, c. 439; 1975, cc. 14, 15.

§ 18.2-226. Fraud and misrepresentation in sale of liquid fuels, lubricating oils and similar products

It shall be unlawful for any person, firm, association or corporation, to store, sell, expose for sale or offer for sale any liquid fuels, lubricating oils or other similar products, in any manner whatsoever, so as to deceive or tend to deceive the purchaser as to the nature, quality and identity of the product so sold or offered for sale.

Code 1950, § 59.1-55; 1968, c. 439; 1975, cc. 14, 15.

§ 18.2-227. Same; sale from pump indicating other brand

It shall be unlawful for any person, firm, association or corporation to store, keep, expose for sale, offer for sale or sell, from any tank or container, or from any pump or other distributing device or equipment, any other liquid fuels, lubricating oils or other similar products than those indicated by the name, trade name, symbol, sign or other distinguishing mark or device of the manufacturer or distributor, appearing upon the tank, container, pump or other distributing equipment from which the same are sold, offered for sale or distributed.

Code 1950, § 59.1-56; 1968, c. 439; 1975, cc. 14, 15.

§ 18.2-228. Same; imitating indicia of other brands

It shall be unlawful, for any person, firm, association or corporation to disguise or camouflage his or their own equipment by imitating the design, symbol or trade name of the equipment under which recognized brands of liquid fuels, lubricating oils and similar products are generally marketed.

Code 1950, § 59.1-57; 1968, c. 439; 1975, cc. 14, 15.

§ 18.2-229. Same; false trade name or mixing brands

It shall be unlawful for any person, firm, association or corporation to expose for sale, offer for sale or sell, under any trademark or trade name in general use, any liquid fuels, lubricating oils or other like products, except those manufactured or distributed by the manufacturer or distributor marketing liquid fuels, lubricating oils or other like products under such trademark or trade name, or to substitute, mix or adulterate the liquid fuels, lubricating oils or other similar products sold, offered for sale or distributed under such trademark or trade name.

Code 1950, § 59.1-58; 1968, c. 439; 1975, cc. 14, 15.

§ 18.2-230. Same; assisting in violation of §§ 18.2-226 through 18.2-229

It shall be unlawful for any person, firm, association or corporation to aid or assist any other person, firm, association or corporation in the violation of the provisions of §§ 18.2-226 through 18.2-229 by depositing or delivering into any tank, receptacle or other container any other liquid fuels, lubricating oils or like products than those intended to be stored therein and distributed therefrom, as indicated by the name of the manufacturer or distributor or the trademark or trade name of the product displayed on the container itself, or on the pump or other distributing device used in connection therewith.

Code 1950, § 59.1-59; 1968, c. 439; 1975, cc. 14, 15.

§ 18.2-231. Same; label required

There shall be firmly attached to or painted at or near the point of outlet from which lubricating oil is drawn or poured out for sale or delivery a sign or label consisting of the word or words in letters not less than one inch in height comprising the brand or trade name of such lubricating oil. But if any lubricating oil shall have no brand or trade name, the above sign or label shall consist of the words "lubricating oil, no brand."

Code 1950, § 59.1-60; 1968, c. 439; 1975, cc. 14, 15.

§ 18.2-232. Same; punishment for violation of §§ 18.2-226 through 18.2-231

Any person, firm, association or corporation or any officer, agent or employee thereof who shall violate any provision of §§ 18.2-226 through 18.2-231, shall be guilty of a Class 3 misdemeanor; and a second or any subsequent offense shall be punishable as a Class 1 misdemeanor.

Code 1950, § 59.1-61; 1968, c. 439; 1975, cc. 14, 15.

§ 18.2-233. Sale of goods marked "sterling" and "sterling silver."

A person who makes or sells or offers to sell or dispose of or has in his possession with intent to sell or dispose of any article of merchandise marked, stamped or branded with the words "sterling" or "sterling silver," or encased or enclosed in any box, package, cover or wrapper, or other thing in or by which such article is packed, enclosed or otherwise prepared for sale or disposition, having thereon any engraving or printed label, stamp, imprint, mark or trademark indicating or denoting by such marking, stamping, branding, engraving or printing that such article is silver, sterling silver or solid silver, unless nine hundred and twenty-five one-thousandths part of the component

parts of the metal of which such article is manufactured is pure silver, shall be guilty of a Class 2 misdemeanor.

Code 1950, § 59.1-62; 1968, c. 439; 1975, cc. 14, 15.

§ 18.2-234. Sale of goods marked "coin" and "coin silver."

A person who makes or sells or offers to sell or dispose of, or has in his possession with intent to sell or dispose of, any article of merchandise marked, stamped or branded with words "coin" or "coin silver," or encased or enclosed in any box, package, cover, wrapper or other thing in or by which such article is packed, enclosed, or otherwise prepared for sale or disposition, having thereon any engraving or printed label, stamp, imprint, mark or trademark indicating or denoting by such marking, stamping, branding, engraving or printing that such article is coin or coin silver, unless nine hundred one-thousandths part of the component parts of the metal of which such article is manufactured is pure silver, shall be guilty of a Class 2 misdemeanor.

Code 1950, § 59.1-63; 1968, c. 439; 1975, cc. 14, 15.

§ 18.2-235. Regulating sale of merchandise made of gold

Any person who marks or sells or offers to sell or dispose of or has in his possession with intent to sell or dispose of any article of merchandise made of gold of a less carat of fineness than is stamped or marked on it or of a less carat of fineness than is engraved, stamped or imprinted on the tag, card, box, label, package, wrapper, cover or other thing in or by which such article is packed, enclosed or otherwise prepared for sale or disposition shall be guilty of a Class 2 misdemeanor.

Code 1950, § 59.1-64; 1968, c. 439; 1975, cc. 14, 15.

§ 18.2-236. Repealed

Repealed by Acts 2006, cc. 392 and 485, cl. 2, effective July 1, 2006.

§ 18.2-237. Buying, etc., certain secondhand materials; intent; possession

If any person buy or receive secondhand grate baskets, keys, bells and bell fixtures, gas fixtures, water fixtures, water pipes, gas pipes, or any part of such fixtures or pipes with intent to defraud, he shall be guilty of a Class 2 misdemeanor. Possession of any such secondhand baskets, keys, bells and bell fixtures, water fixtures, gas fixtures, water pipes, gas pipes, or any part of such fixtures or pipes if bought or received from any other person than the manufacturer thereof or his authorized agent or the owner thereof shall be prima facie evidence of such intent.

Code 1950, § 59.1-66; 1968, c. 439; 1975, cc. 14, 15.

§ 18.2-238. Buying, etc., pig iron, etc., with intent to defraud; possession; evidence of intent

If any person buy or receive pig iron or railroad, telephone, telegraph, coal mining, industrial, manufacturing or public utility iron, brass, copper, metal or any composition thereof with intent to defraud, he shall be guilty of a Class 6 felony. Possession of any pig iron or railroad, telephone, telegraph, coal mining, industrial, manufacturing or public utility iron, brass, copper, metal or any

composition thereof, if bought or received from any other person than the manufacturer thereof or his authorized agent or of a regularly licensed dealer therein, shall be prima facie evidence of such intent.

Code 1950, § 59.1-67; 1968, c. 439; 1975, cc. 14, 15.

§ 18.2-239. Pyramid promotional schemes; misdemeanor; definitions; contracts void

Every person who contrives, prepares, sets up, operates, advertises or promotes any pyramid promotional scheme shall be guilty of a Class 1 misdemeanor. For the purposes of this section:

(1) "Compensation" means the transfer of money or anything of value.

"Compensation" does not mean payment based on sales of goods or services to persons who are not participants in the scheme and who are not purchasing in order to participate in the scheme;

(2) "Consideration" means the payment of cash or the purchase of goods, services, or intangible property;

(3) "Promotes" means inducing one or more other persons to become a participant; and

(4) "Pyramid promotional scheme" means any plan or operation by which a person gives consideration for the opportunity to receive compensation a majority of which is derived from the introduction of other persons into the plan or operation rather than from the sale or consumption of goods, services, or intangible property by a participant or other persons introduced into the plan or operation.

All contracts and agreements, now existing or hereafter formed, whereof the whole or any part of the consideration is given for the right to participate in pyramid promotional scheme programs, are against public policy, void and unenforceable.

Any violation of the provisions of this section shall constitute a prohibited practice under the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

Code 1950, §§ 59.1-67.1, 59.1-67.2; 1970, c. 450; 1975, cc. 14, 15; 2008, cc. 791, 842.

§ 18.2-240. Same; injunction

Any attorney for the Commonwealth may petition a court of competent jurisdiction to enjoin the further prosecution of any pyramid promotional scheme as defined in § 18.2-239, and to appoint receivers to secure and distribute in an equitable manner any assets received by any participant as a result of such scheme, any such distribution to effect reimbursement, to the extent possible, for uncompensated payments made to become a participant in the scheme. The procedure in any such suit shall be similar to the procedure in other suits for equitable relief, except that no bond shall be required upon the granting of either a temporary or permanent injunction therein. Any person who organizes an endless chain scheme and, either directly or through an agent, promotes such scheme within the Commonwealth shall be deemed subject to the personal jurisdiction of such

court of competent jurisdiction under §§ 8.01-328 through 8.01-330, and shall be liable for reasonable costs and attorneys' fees in such suit.

Code 1950, § 59.1-67.3; 1970, c. 450; 1975, cc. 14, 15.

§ 18.2-241. Acceptance of promissory notes in payment for food sold at retail

As used in this section, "food" includes food, groceries and beverages, for human consumption. "Retailer" means a person who sells food for consumption and not for resale.

It shall be unlawful for any retailer to accept, in payment for any food sold by him to a customer, a promissory note or notes for an amount in excess of twice the sales price of food delivered by him to the customer. As used in this section the word "delivered" means that actual physical delivery into the exclusive custody and control of the customer is made within seven days of the receipt of the note by the seller.

Any person who violates the provisions of this section shall be guilty of a Class 3 misdemeanor.

Code 1950, § 59.1-68; 1968, c. 439; 1975, cc. 14, 15.

§ 18.2-242. Use of games, lotteries, etc., for promoting sale of certain products

(a) No retail establishment in this Commonwealth shall use any game, contest, lottery or other scheme or device, whereby a person or persons may receive gifts, prizes or gratuities as determined by chance for the purpose of promoting, furthering or advertising the sale of any product or products having both a federal and state excise tax placed upon it, and the fact that no purchase is required in order to participate in such game, contest, lottery or scheme shall not exclude such game, contest, lottery or scheme from the provisions of this section.

(b) Any person violating the provision of this section shall be guilty of a Class 3 misdemeanor.

Code 1950, § 59.1-68.01; 1970, c. 764; 1975, cc. 14, 15.

§ 18.2-242.1. Certain referral transactions in connection with consumer sales or leases prohibited; effect of such transactions

(a) For the purpose of this section, the term "consumer sale or lease of goods or services" means the sale or lease of goods or services which are purchased or leased by a natural person primarily for a personal, family or household purpose, and not for resale.

(b) With respect to a consumer sale or lease of goods or services, no seller or lessor shall give or offer to give a rebate or discount or otherwise pay or offer to pay value to the buyer or lessee as an inducement for the sale or lease in return for the buyer's giving to the seller or lessor the names of prospective buyers or lessees, or otherwise aiding the seller or lessor in entering into a transaction with another buyer or lessee, if the earning of the rebate, discount, or other value is contingent upon the occurrence of any sale, lease, appointment, demonstration, interview, conference, seminar, bailment, testimonial or endorsement subsequent to the time the buyer or lessee enters into the agreement of sale or lease.

(c) Agreements made in whole or in part pursuant to a referral transaction as above described shall be void and unenforceable by the seller or lessor. The buyer or lessee shall be entitled to retain the goods, services or money received pursuant to a referral transaction without obligation to make any further or future payments of any sort on the transaction total, or he shall be entitled to avoid the transaction and to recover from the seller or lessor any sums paid to the seller or lessor pursuant to the transaction.

Code 1950, § 59.1-68.02; 1975, c. 3; 1976, c. 641.

§ 18.2-243. When issuer or distributor of advertisements not guilty of violation; inadvertent error

A person, firm, corporation or association who or which, for compensation, issues or distributes any advertisement or offer, written, printed, oral or otherwise, in reliance upon the copy or information supplied him by the advertiser or offeror, shall not be deemed to have violated the provisions of this article, nor shall an inadvertent error on the part of any such person, firm, corporation or association be deemed a violation of such provisions.

Code 1950, § 59.1-51; 1968, c. 439; 1975, cc. 14, 15.

§ 18.2-244. Right to select clientele or customers not affected

Nothing in this article shall be deemed to impair the right of any person, firm, corporation or association to select its clientele or customers.

Code 1950, § 59.1-52; 1968, c. 439; 1975, cc. 14, 15.

§ 18.2-245. Enjoining violation of this article

(a) Any person, firm, corporation or association who violates any one or more of the sections in this article, may be enjoined by any court of competent jurisdiction notwithstanding the existence of an adequate remedy at law. In any action under this section, it shall not be necessary that damages be alleged or proved.

(b) Actions for injunctive relief under this section may be brought by an attorney for the Commonwealth in the name of the Commonwealth of Virginia upon their own complaint or upon the complaint of any person, firm, corporation or association. The bringing of an action under this section shall not prevent the institution or continuation of criminal proceedings against the same defendant or defendants.

Code 1950, § 59.1-50; 1968, c. 439; 1975, cc. 14, 15.

§ 18.2-246. Penalty in general for violations

Unless otherwise provided, any person who shall violate any provision of any section in this article shall be guilty of a Class 1 misdemeanor.

Code 1950, § 59.1-68.1; 1968, c. 439; 1975, cc. 14, 15.

Article 9 - VIRGINIA COMPREHENSIVE MONEY LAUNDERING ACT

§ 18.2-246.1. Title

This article shall be known and may be cited as the "Virginia Comprehensive Money Laundering Act."

1999, c. 348.

§ 18.2-246.2. Definitions

"Conduct" or "conducts" includes initiating, concluding, participating in, or assisting in a financial transaction.

"Financial transaction" means any purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, transportation, delivery, deposit, withdrawal, payment, transfer between accounts, exchange of currency, extension of credit, purchase or sale of monetary instruments, use of a safe-deposit box, or any other acquisition or disposition of monetary instruments by any means including the movement of funds by wire or other electronic means, which is knowingly designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the property involved in the transaction.

"Monetary instruments" means (i) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, cashier's checks, credit cards, debit cards, and money orders or (ii) securities or other negotiable instruments, in bearer form or otherwise.

"Person" includes any individual, partnership, association, corporation or joint venture.

"Proceeds" means property acquired or derived, directly or indirectly, from, produced through, realized through, or caused by an act or omission and includes property, real or personal, of any kind.

"Property" means anything of value, and includes any interest therein, including any benefit, privilege, claim or right with respect to anything of value, whether real or personal, tangible or intangible.

1999, c. 348; 2003, cc. 541, 549.

§ 18.2-246.3. Money laundering; penalties

A. It shall be unlawful for any person knowingly to conduct a financial transaction where the person knows the property involved in the transaction represents the proceeds of an activity which is punishable as a felony under the laws of the Commonwealth, another state or territory of the United States, the District of Columbia, or the United States. A violation of this section is punishable by imprisonment of not more than forty years or a fine of not more than $500,000 or by both imprisonment and a fine.

B. Any person who, for compensation, converts cash into negotiable instruments or electronic funds for another, knowing the cash is the proceeds of some form of activity which is punishable as a felony under the laws of the Commonwealth, another state or territory of the United States,

the District of Columbia, or the United States, shall be guilty of a Class 1 misdemeanor. Any second or subsequent violation of this subsection shall be punishable as a Class 6 felony.

1999, c. 348.

§ 18.2-246.4. Repealed

Repealed by Acts 2004, c. 995.

§ 18.2-246.5. Forfeiture of business license or registration upon conviction of sale or distribution of imitation controlled substance; money laundering

Any person, firm or corporation holding a license or registration to operate any business as required by either state or local law shall forfeit such license or registration upon conviction of a violation of (i) § 18.2-248 relating to an imitation controlled substance or (ii) § 18.2-246.3 relating to money laundering. Upon a conviction under this section the attorney for the Commonwealth shall notify any appropriate agency.

1999, c. 348.

Article 10 - CIGARETTE DELIVERY SALE REQUIREMENTS

§ 18.2-246.6. Definitions

For purposes of this article:

"Adult" means a person who is at least the legal minimum purchasing age.

(Effective until July 1, 2018) "Board" means the Virginia Alcoholic Beverage Control Board.

(Effective July 1, 2018) "Board" means the Board of Directors of the Virginia Alcoholic Beverage Control Authority.

"Consumer" means an individual who is not permitted as a wholesaler pursuant to § 58.1-1011 or who is not a retailer.

"Delivery sale" means any sale of cigarettes to a consumer in the Commonwealth regardless of whether the seller is located in the Commonwealth where either (i) the purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery service, or the Internet or other online service; or (ii) the cigarettes are delivered by use of the mails or a delivery service. A sale of cigarettes not for personal consumption to a person who is a wholesale dealer or retail dealer, as such terms are defined in § 58.1-1000, shall not be a delivery sale. A delivery of cigarettes, not through the mail or by a common carrier, to a consumer performed by the owner, employee or other individual acting on behalf of a retailer authorized to sell such cigarettes shall not be a delivery sale.

"Delivery service" means any person who is engaged in the commercial delivery of letters, packages, or other containers.

"Legal minimum purchasing age" is the minimum age at which an individual may legally purchase cigarettes in the Commonwealth.

"Mails" or "mailing" means the shipment of cigarettes through the United States Postal Service.

"Shipping container" means a container in which cigarettes are shipped in connection with a delivery sale.

"Shipping documents" means bills of lading, airbills, or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

2003, c. 1010; 2005, c. 839; 2015, cc. 38, 730.

§ 18.2-246.7. Requirements for delivery sales

A. No person shall make a delivery sale of cigarettes to any individual who is under the legal minimum purchase age in the Commonwealth.

B. Each person accepting a purchase order for a delivery sale shall comply with:

1. The age verification requirements set forth in § 18.2-246.8;

2. The disclosure requirements set forth in § 18.2-246.9;

3. The shipping requirements set forth in § 18.2-246.10;

4. The registration and reporting requirements set forth in § 18.2-246.11;

5. The tax collection requirements set forth in § 18.2-246.12; and

6. All other laws of the Commonwealth generally applicable to sales of cigarettes that occur entirely within the Commonwealth, including, but not limited to, those laws imposing: (i) excise taxes, (ii) sales taxes, and (iii) license and revenue-stamping requirements.

2003, c. 1010.

§ 18.2-246.8. Age verification requirements

A. No person shall mail, ship, or otherwise deliver cigarettes in connection with a delivery sale unless prior to the first delivery sale to a consumer such person:

1. Obtains from the prospective consumer a certification that includes (i) a reliable confirmation that the consumer is at least the legal minimum purchase age, and (ii) a statement signed by the prospective consumer in writing that certifies the prospective consumer's address and that the consumer is at least 18 years of age. Such statement shall also confirm (a) that the prospective consumer understands that signing another person's name to such certification is illegal, (b) that the sale of cigarettes to individuals under the legal minimum purchase age is illegal, and (c) that the purchase of cigarettes by individuals under the legal minimum purchase age is illegal under the laws of the Commonwealth;

2. Makes a good faith effort to verify the information contained in the certification provided by the prospective consumer pursuant to subsection A against a commercially available database of valid, government-issued identification that contains the date of birth or age of the individual placing

the order, or obtains a photocopy or other image of the valid, government-issued identification stating the date of birth or age of the individual placing the order;

3. Provides to the prospective consumer, via e-mail or other means, a notice that meets the requirements of § 18.2-246.9; and

4. Receives payment for the delivery sale from the prospective consumer by a credit or debit card that has been issued in such consumer's name or by a check drawn on the consumer's account.

B. Persons accepting purchase orders made via the Internet for delivery sales may request that prospective consumers provide their e-mail addresses.

2003, c. 1010.

§ 18.2-246.9. Disclosure requirements

The notice required under subdivision A 3 of § 18.2-246.8 shall include:

1. A prominent and clearly legible statement that cigarette sales to consumers below the legal minimum purchase age are illegal;

2. A prominent and clearly legible statement that consists of one of the warnings set forth in section 4(a)(1) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. § 1333 (a)(1)) rotated on a quarterly basis;

3. A prominent and clearly legible statement that sales of cigarettes are restricted to those consumers who provide verifiable proof of age in accordance with § 18.2-246.8; and

4. A prominent and clearly legible statement that cigarette sales are subject to tax under § 58.1-1001, and an explanation of how such tax has been, or is to be, paid with respect to such delivery sale.

2003, c. 1010.

§ 18.2-246.10. Shipping requirements

Each person who mails, ships, or otherwise delivers cigarettes in connection with a delivery sale:

1. Shall include as part of the shipping documents a clear and conspicuous statement providing as follows: "Cigarettes: Virginia Law Prohibits Shipping to Individuals Under 18, and Requires the Payment of all Applicable Taxes";

2. Shall use a method of mailing, shipping, or delivery that obligates the delivery service or any party making delivery to require (i) the consumer placing the purchase order for the delivery sale, or an adult of legal minimum purchase age, to sign to accept delivery of the shipping container, and (ii) proof, in the form of a valid, government-issued identification bearing a photograph of the individual who signs to accept delivery of the shipping container, demonstrating that he is either the addressee who is of legal minimum purchase age or another adult of legal minimum purchase age. However, proof of the legal minimum purchase age shall be required only if such individual appears to be under 27 years of age; and

3. Shall provide to the delivery service retained for such delivery sale evidence of full compliance with § 18.2-246.12.

2003, c. 1010.

§ 18.2-246.11. Registration and reporting requirements

A. Prior to making delivery sales or mailing, shipping, or otherwise delivering cigarettes in connection with any such delivery sales, every person shall file with the Board and with the Attorney General a statement setting forth such person's name, trade name, and the address of such person's principal place of business and any other place of business.

B. Not later than the tenth day of each calendar month, each person that has made a delivery sale or mailed, shipped, or otherwise delivered cigarettes in connection with any such delivery sale during the previous calendar month shall file with the Board and with the Attorney General a report in the format prescribed by the Board, which may include an electronic format, that provides for each and every such delivery sale:

1. The name and address of the consumer to whom such delivery sale was made;

2. The brand or brands of the cigarettes that were sold in such delivery sale; and

3. The quantity of cigarettes that were sold in such delivery sale.

C. Any person who satisfies the requirements of § 376 of Title 15 of the United States Code shall be deemed to satisfy the requirements of this section.

D. For purposes of any penalty that may be imposed for a violation of this section, a failure to file a particular statement or report with both the Board and the Attorney General shall constitute a single violation.

2003, c. 1010; 2009, c. 847.

§ 18.2-246.12. Collection of taxes

Each person accepting a purchase order for a delivery sale shall collect and remit to the Board all cigarette taxes imposed by the Commonwealth with respect to such delivery sale, except that such collection and remission shall not be required to the extent such person has obtained proof (in the form of the presence of applicable revenue stamps or otherwise) that such taxes already have been paid to the Commonwealth. In the event the Board finds that any tax imposed by the Commonwealth and administered by the Department of Taxation has not been collected and remitted, the Board shall provide the Department of Taxation with a notification of such sale which shall include:

1. The name and address of the consumer to whom such sale was made;

2. The name and address of the seller of the cigarettes;

3. The brand or brands of the cigarettes that were sold in such sale; and

4. The quantity of cigarettes that were sold in such sale.

2003, c. 1010.

§ 18.2-246.13. Civil penalties; penalties

A. In addition to any criminal penalties for violations of this article and except for civil penalties otherwise provided in this article, a first violation of any provision of this article shall be punishable by a civil penalty of no more than $1,000. A second or subsequent violation of any provision of this article shall be punishable by a civil penalty of no more than $10,000.

B. Any prospective consumer who knowingly submits a false certification under subdivision A 1 of § 18.2-246.8 shall be subject to a civil penalty of no more than $5,000 for each such offense.

C. Any person failing to collect or remit to the Board or the Department of Taxation any tax required in connection with a delivery sale shall be assessed, in addition to any other applicable penalty, a civil penalty of no more than five times the retail value of the cigarettes involved.

D. Any civil penalty collected under this article shall be paid to the general fund.

E. Any person who fails to file the statement required by subsection A of § 18.2-246.11 and thereafter makes a delivery sale is guilty of a Class 1 misdemeanor and for any second or subsequent offense is guilty of a violation of § 18.2-498.3.

F. Any person who knowingly and with the intent to defraud, mislead, or deceive makes a statement filed as required by subsection A of § 18.2-246.11 which is false is guilty of a violation of § 18.2-498.3. Each such filed statement containing one or more false statements shall constitute a separate offense.

G. Any person who fails to make the report required by subsection B of § 18.2-246.11 is guilty of a Class 1 misdemeanor and for any second or subsequent offense is guilty of a violation of § 18.2-498.3.

H. Any person who knowingly and with the intent to defraud, mislead, or deceive makes a materially false statement in any report required by subsection B of § 18.2-246.11 is guilty of a violation of § 18.2-498.3. Each such report containing one or more false statements constitutes a separate offense.

2003, c. 1010; 2004, c. 995; 2009, c. 847; 2013, c. 625.

§ 18.2-246.14. Counterfeit cigarettes; penalty; civil penalty

A. It is unlawful to distribute or possess counterfeit cigarettes.

B. Any person who knowingly distributes or possesses with the intent to distribute a total quantity of less than 10 cartons of counterfeit cigarettes is guilty of a Class 1 misdemeanor. Any person who is convicted of a second or subsequent offense involving a total quantity of less than 10 cartons of counterfeit cigarettes is guilty of a Class 6 felony, provided that the accused was at liberty as defined in § 53.1-151 between each conviction, and it is admitted, or found by the jury or judge before whom the person is tried, that the accused was previously convicted of a violation of

this subsection. Any person who knowingly distributes or possesses with the intent to distribute a total quantity of 10 or more cartons of counterfeit cigarettes is guilty of a Class 6 felony.

C. Any person who knowingly violates subsection A with a total quantity of less than two cartons of cigarettes shall be punished by a civil penalty of no more than $1,000. Any person who knowingly violates subsection A shall, for a second or subsequent offense involving a total quantity of less than two cartons of cigarettes, be punished by a civil penalty of no more than $5,000 and, if applicable, the revocation by the Department of Taxation of his wholesale dealer license.

D. Any person who knowingly violates subsection A with a total quantity of two or more cartons of cigarettes shall be punished by a civil penalty of no more than $2,000. Any person who knowingly violates subsection A shall, for a second or subsequent offense involving a total quantity of two or more cartons of cigarettes, be punished by a civil penalty of no more than $50,000 and, if applicable, the revocation by the Department of Taxation of his wholesale dealer license.

For purposes of this section, counterfeit cigarettes shall include but not be limited to cigarettes that (i) have false manufacturing labels, (ii) are not manufactured by the manufacturer indicated on the container, or (iii) have affixed to the container a false tax stamp.

2003, c. 1010; 2004, c. 995; 2013, c. 625.

§ 18.2-246.15. Enforcement

The Attorney General is authorized to enforce the provisions of this article. The Attorney General may assess the civil penalties authorized by this article, with the concurrence of the attorney for the Commonwealth pursuant to § 2.2-511, may prosecute criminal violations under this article, and may bring an action in the appropriate court to collect assessed penalties or prevent or restrain violations of this article by any person, or any person controlling such person. The Board and the State Department of Taxation shall cooperate with the Attorney General in his enforcement efforts and provide to the Attorney General all information and documentation in their possession necessary for the Attorney General to accomplish such enforcement.

2003, c. 1010; 2009, c. 847; 2013, c. 625.

Chapter 7 - CRIMES INVOLVING HEALTH AND SAFETY

Article 1 - DRUGS

§ 18.2-247. Use of terms "controlled substances," "marijuana," "Schedules I, II, III, IV, V and VI," "imitation controlled substance" and "counterfeit controlled substance" in Title 18.2

A. Wherever the terms "controlled substances" and "Schedules I, II, III, IV, V and VI" are used in Title 18.2, such terms refer to those terms as they are used or defined in the Drug Control Act (§ 54.1-3400 et seq.).

B. The term "imitation controlled substance" when used in this article means (i) a counterfeit controlled substance or (ii) a pill, capsule, tablet, or substance in any form whatsoever which is not a controlled substance subject to abuse, and:

1. Which by overall dosage unit appearance, including color, shape, size, marking and packaging or by representations made, would cause the likelihood that such a pill, capsule, tablet, or substance in any other form whatsoever will be mistaken for a controlled substance unless such substance was introduced into commerce prior to the initial introduction into commerce of the controlled substance which it is alleged to imitate; or

2. Which by express or implied representations purports to act like a controlled substance as a stimulant or depressant of the central nervous system and which is not commonly used or recognized for use in that particular formulation for any purpose other than for such stimulant or depressant effect, unless marketed, promoted, or sold as permitted by the United States Food and Drug Administration.

C. In determining whether a pill, capsule, tablet, or substance in any other form whatsoever, is an "imitation controlled substance," there shall be considered, in addition to all other relevant factors, comparisons with accepted methods of marketing for legitimate nonprescription drugs for medicinal purposes rather than for drug abuse or any similar nonmedicinal use, including consideration of the packaging of the drug and its appearance in overall finished dosage form, promotional materials or representations, oral or written, concerning the drug, and the methods of distribution of the drug and where and how it is sold to the public.

D. The term "marijuana" when used in this article means any part of a plant of the genus Cannabis, whether growing or not, its seeds or resin; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or its resin. Marijuana shall not include any oily extract containing one or more cannabinoids unless such extract contains less than 12 percent of tetrahydrocannabinol by weight, or the mature stalks of such plant, fiber produced from such stalk, oil or cake made from the seed of such plant, unless such stalks, fiber, oil or cake is combined with other parts of plants of the genus Cannabis.

E. The term "counterfeit controlled substance" means a controlled substance that, without authorization, bears, is packaged in a container or wrapper that bears, or is otherwise labeled to bear, the trademark, trade name, or other identifying mark, imprint or device or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the manufacturer, processor, packer, or distributor who did in fact so manufacture, process, pack or distribute such drug.

1975, cc. 14, 15; 1979, c. 435; 1982, c. 462; 1984, c. 684; 1992, c. 756; 1999, cc. 661, 722; 2004, c. 688.

§ 18.2-248. Manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute a controlled substance or an imitation controlled substance prohibited; penalties

A. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), it shall be unlawful for any person to manufacture, sell, give, distribute, or possess with intent to manufacture, sell, give or distribute a controlled substance or an imitation controlled substance.

B. In determining whether any person intends to manufacture, sell, give or distribute an imitation controlled substance, the court may consider, in addition to all other relevant evidence, whether any distribution or attempted distribution of such pill, capsule, tablet or substance in any other form whatsoever included an exchange of or a demand for money or other property as consideration, and, if so, whether the amount of such consideration was substantially greater than the reasonable value of such pill, capsule, tablet or substance in any other form whatsoever, considering the actual chemical composition of such pill, capsule, tablet or substance in any other form whatsoever and, where applicable, the price at which over-the-counter substances of like chemical composition sell.

C. Except as provided in subsection C1, any person who violates this section with respect to a controlled substance classified in Schedule I or II shall upon conviction be imprisoned for not less than five nor more than 40 years and fined not more than $500,000. Upon a second conviction of such a violation, and it is alleged in the warrant, indictment, or information that the person has been before convicted of such an offense or of a substantially similar offense in any other jurisdiction, which offense would be a felony if committed in the Commonwealth, and such prior conviction occurred before the date of the offense alleged in the warrant, indictment, or information, any such person may, in the discretion of the court or jury imposing the sentence, be sentenced to imprisonment for life or for any period not less than five years, three years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence, and he shall be fined not more than $500,000.

When a person is convicted of a third or subsequent offense under this subsection and it is alleged in the warrant, indictment or information that he has been before convicted of two or more such offenses or of substantially similar offenses in any other jurisdiction which offenses would be felonies if committed in the Commonwealth and such prior convictions occurred before the date of the offense alleged in the warrant, indictment, or information, he shall be sentenced to imprisonment for life or for a period of not less than 10 years, 10 years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence, and he shall be fined not more than $500,000.

Any person who manufactures, sells, gives, distributes or possesses with the intent to manufacture, sell, give, or distribute the following is guilty of a felony punishable by a fine of not more than $1 million and imprisonment for five years to life, five years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence:

1. 100 grams or more of a mixture or substance containing a detectable amount of heroin;

2. 500 grams or more of a mixture or substance containing a detectable amount of:

a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;

c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

d. Any compound, mixture, or preparation that contains any quantity of any of the substances referred to in subdivisions 2a through 2c;

3. 250 grams or more of a mixture or substance described in subdivisions 2a through 2d that contain cocaine base; or

4. 10 grams or more of methamphetamine, its salts, isomers, or salts of its isomers or 20 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

The mandatory minimum term of imprisonment to be imposed for a violation of this subsection shall not be applicable if the court finds that:

a. The person does not have a prior conviction for an offense listed in subsection C of § 17.1-805;

b. The person did not use violence or credible threats of violence or possess a firearm or other dangerous weapon in connection with the offense or induce another participant in the offense to do so;

c. The offense did not result in death or serious bodily injury to any person;

d. The person was not an organizer, leader, manager, or supervisor of others in the offense, and was not engaged in a continuing criminal enterprise as defined in subsection I; and

e. Not later than the time of the sentencing hearing, the person has truthfully provided to the Commonwealth all information and evidence the person has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the person has no relevant or useful other information to provide or that the Commonwealth already is aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

C1. Any person who violates this section with respect to the manufacturing of methamphetamine, its salts, isomers, or salts of its isomers or less than 200 grams of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers shall, upon conviction, be imprisoned for not less than 10 nor more than 40 years and fined not more than $500,000. Upon a second conviction of such a violation, any such person may, in the discretion of the court or jury imposing the sentence, be sentenced to imprisonment for life or for any period not less than 10 years, and be fined not more than $500,000. When a person is convicted of a third or subsequent offense under this subsection and it is alleged in the warrant, indictment, or information that he has been previously convicted of two or more such offenses or

of substantially similar offenses in any other jurisdiction, which offenses would be felonies if committed in the Commonwealth and such prior convictions occurred before the date of the offense alleged in the warrant, indictment, or information, he shall be sentenced to imprisonment for life or for a period not less than 10 years, three years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence and he shall be fined not more than $500,000.

Upon conviction, in addition to any other punishment, a person found guilty of this offense shall be ordered by the court to make restitution, as the court deems appropriate, to any innocent property owner whose property is damaged, destroyed, or otherwise rendered unusable as a result of such methamphetamine production. This restitution shall include the person's or his estate's estimated or actual expenses associated with cleanup, removal, or repair of the affected property. If the property that is damaged, destroyed, or otherwise rendered unusable as a result of such methamphetamine production is property owned in whole or in part by the person convicted, the court shall order the person to pay to the Methamphetamine Cleanup Fund authorized in § 18.2-248.04 the reasonable estimated or actual expenses associated with cleanup, removal, or repair of the affected property or, if actual or estimated expenses cannot be determined, the sum of $10,000. The convicted person shall also pay the cost of certifying that any building that is cleaned up or repaired pursuant to this section is safe for human occupancy according to the guidelines established pursuant to § 32.1-11.7.

D. If such person proves that he gave, distributed or possessed with intent to give or distribute a controlled substance classified in Schedule I or II only as an accommodation to another individual who is not an inmate in a community correctional facility, local correctional facility or state correctional facility as defined in § 53.1-1 or in the custody of an employee thereof, and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the controlled substance to use or become addicted to or dependent upon such controlled substance, he shall be guilty of a Class 5 felony.

E. If the violation of the provisions of this article consists of the filling by a pharmacist of the prescription of a person authorized under this article to issue the same, which prescription has not been received in writing by the pharmacist prior to the filling thereof, and such written prescription is in fact received by the pharmacist within one week of the time of filling the same, or if such violation consists of a request by such authorized person for the filling by a pharmacist of a prescription which has not been received in writing by the pharmacist and such prescription is, in fact, written at the time of such request and delivered to the pharmacist within one week thereof, either such offense shall constitute a Class 4 misdemeanor.

E1. Any person who violates this section with respect to a controlled substance classified in Schedule III except for an anabolic steroid classified in Schedule III, constituting a violation of § 18.2-248.5, shall be guilty of a Class 5 felony.

E2. Any person who violates this section with respect to a controlled substance classified in Schedule IV shall be guilty of a Class 6 felony.

E3. Any person who proves that he gave, distributed or possessed with the intent to give or distribute a controlled substance classified in Schedule III or IV, except for an anabolic steroid classified in Schedule III, constituting a violation of § 18.2-248.5, only as an accommodation to another individual who is not an inmate in a community correctional facility, local correctional facility or state correctional facility as defined in § 53.1-1 or in the custody of an employee thereof, and not with the intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the controlled substance to use or become addicted to or dependent upon such controlled substance, is guilty of a Class 1 misdemeanor.

F. Any person who violates this section with respect to a controlled substance classified in Schedule V or Schedule VI or an imitation controlled substance which imitates a controlled substance classified in Schedule V or Schedule VI, shall be guilty of a Class 1 misdemeanor.

G. Any person who violates this section with respect to an imitation controlled substance which imitates a controlled substance classified in Schedule I, II, III, or IV shall be guilty of a Class 6 felony. In any prosecution brought under this subsection, it is not a defense to a violation of this subsection that the defendant believed the imitation controlled substance to actually be a controlled substance.

H. Any person who manufactures, sells, gives, distributes or possesses with the intent to manufacture, sell, give or distribute the following:

1. 1.0 kilograms or more of a mixture or substance containing a detectable amount of heroin;

2. 5.0 kilograms or more of a mixture or substance containing a detectable amount of:

a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;

c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

d. Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subdivisions a through c;

3. 2.5 kilograms or more of a mixture or substance described in subdivision 2 which contains cocaine base;

4. 100 kilograms or more of a mixture or substance containing a detectable amount of marijuana; or

5. 100 grams or more of methamphetamine, its salts, isomers, or salts of its isomers or 200 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers shall be guilty of a felony punishable by a fine of not more than $1

million and imprisonment for 20 years to life, 20 years of which shall be a mandatory minimum sentence. Such mandatory minimum sentence shall not be applicable if the court finds that (i) the person does not have a prior conviction for an offense listed in subsection C of § 17.1-805; (ii) the person did not use violence or credible threats of violence or possess a firearm or other dangerous weapon in connection with the offense or induce another participant in the offense to do so; (iii) the offense did not result in death or serious bodily injury to any person; (iv) the person was not an organizer, leader, manager, or supervisor of others in the offense, and was not engaged in a continuing criminal enterprise as defined in subsection I of this section; and (v) not later than the time of the sentencing hearing, the person has truthfully provided to the Commonwealth all information and evidence the person has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the person has no relevant or useful other information to provide or that the Commonwealth already is aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

H1. Any person who was the principal or one of several principal administrators, organizers or leaders of a continuing criminal enterprise shall be guilty of a felony if (i) the enterprise received at least $100,000 but less than $250,000 in gross receipts during any 12-month period of its existence from the manufacture, importation, or distribution of heroin or cocaine or ecgonine or methamphetamine or the derivatives, salts, isomers, or salts of isomers thereof or marijuana or (ii) the person engaged in the enterprise to manufacture, sell, give, distribute or possess with the intent to manufacture, sell, give or distribute the following during any 12-month period of its existence:

1. At least 1.0 kilograms but less than 5.0 kilograms of a mixture or substance containing a detectable amount of heroin;

2. At least 5.0 kilograms but less than 10 kilograms of a mixture or substance containing a detectable amount of:

a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;

c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

d. Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subdivisions a through c;

3. At least 2.5 kilograms but less than 5.0 kilograms of a mixture or substance described in subdivision 2 which contains cocaine base;

4. At least 100 kilograms but less than 250 kilograms of a mixture or substance containing a detectable amount of marijuana; or

5. At least 100 grams but less than 250 grams of methamphetamine, its salts, isomers, or salts of its isomers or at least 200 grams but less than 1.0 kilograms of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

A conviction under this section shall be punishable by a fine of not more than $1 million and imprisonment for 20 years to life, 20 years of which shall be a mandatory minimum sentence.

H2. Any person who was the principal or one of several principal administrators, organizers or leaders of a continuing criminal enterprise if (i) the enterprise received $250,000 or more in gross receipts during any 12-month period of its existence from the manufacture, importation, or distribution of heroin or cocaine or ecgonine or methamphetamine or the derivatives, salts, isomers, or salts of isomers thereof or marijuana or (ii) the person engaged in the enterprise to manufacture, sell, give, distribute or possess with the intent to manufacture, sell, give or distribute the following during any 12-month period of its existence:

1. At least 5.0 kilograms of a mixture or substance containing a detectable amount of heroin;

2. At least 10 kilograms of a mixture or substance containing a detectable amount of:

a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;

c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

d. Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subdivisions a through c;

3. At least 5.0 kilograms of a mixture or substance described in subdivision 2 which contains cocaine base;

4. At least 250 kilograms of a mixture or substance containing a detectable amount of marijuana; or

5. At least 250 grams of methamphetamine, its salts, isomers, or salts of its isomers or at least 1.0 kilograms of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers shall be guilty of a felony punishable by a fine of not more than $1 million and imprisonment for life, which shall be served with no suspension in whole or in part. Such punishment shall be made to run consecutively with any other sentence. However, the court may impose a mandatory minimum sentence of 40 years if the court finds that the defendant substantially cooperated with law-enforcement authorities.

I. For purposes of this section, a person is engaged in a continuing criminal enterprise if (i) he violates any provision of this section, the punishment for which is a felony and either (ii) such violation is a part of a continuing series of violations of this section which are undertaken by such person in concert with five or more other persons with respect to whom such person occupies a

position of organizer, a supervisory position, or any other position of management, and from which such person obtains substantial income or resources or (iii) such violation is committed, with respect to methamphetamine or other controlled substance classified in Schedule I or II, for the benefit of, at the direction of, or in association with any criminal street gang as defined in § 18.2-46.1.

J. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), any person who possesses any two or more different substances listed below with the intent to manufacture methamphetamine, methcathinone, or amphetamine is guilty of a Class 6 felony: liquified ammonia gas, ammonium nitrate, ether, hypophosphorus acid solutions, hypophosphite salts, hydrochloric acid, iodine crystals or tincture of iodine, phenylacetone, phenylacetic acid, red phosphorus, methylamine, methyl formamide, lithium, sodium metal, sulfuric acid, sodium hydroxide, potassium dichromate, sodium dichromate, potassium permanganate, chromium trioxide, methylbenzene, methamphetamine precursor drugs, trichloroethane, or 2-propanone.

K. The term "methamphetamine precursor drug," when used in this article, means a drug or product containing ephedrine, pseudoephedrine, or phenylpropanolamine or any of their salts, optical isomers, or salts of optical isomers.

Code 1950, § 54-524.101:1; 1972, c. 798; 1973, c. 479; 1974, c. 586; 1975, cc. 14, 15; 1976, c. 614; 1977, c. 409; 1978, cc. 177, 779; 1979, c. 435; 1982, cc. 276, 462; 1985, c. 569; 1986, c. 453; 1988, c. 355; 1990, c. 82; 1991, c. 13; 1992, cc. 685, 737, 756; 1995, c. 538; 1999, c. 722; 2000, cc. 1020, 1041; 2004, c. 461; 2005, cc. 174, 759, 796, 923, 941; 2006, cc. 697, 759; 2008, cc. 79, 618; 2009, c. 750; 2012, cc. 219, 710, 844; 2013, c. 426; 2014, c. 513.

§ 18.2-248.01. Transporting controlled substances into the Commonwealth; penalty

Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.) it is unlawful for any person to transport into the Commonwealth by any means with intent to sell or distribute one ounce or more of cocaine, coca leaves or any salt, compound, derivative or preparation thereof as described in Schedule II of the Drug Control Act or one ounce or more of any other Schedule I or II controlled substance or five or more pounds of marijuana. A violation of this section shall constitute a separate and distinct felony. Upon conviction, the person shall be sentenced to not less than five years nor more than 40 years imprisonment, three years of which shall be a mandatory minimum term of imprisonment, and a fine not to exceed $1,000,000. A second or subsequent conviction hereunder shall be punishable by a mandatory minimum term of imprisonment of 10 years, which shall be served consecutively with any other sentence.

1992, c. 723; 2000, cc. 1020, 1041; 2004, c. 461.

§ 18.2-248.02. Allowing a minor or incapacitated person to be present during manufacture or attempted manufacture of methamphetamine prohibited; penalties

Any person 18 years of age or older who knowingly allows (i) a minor under the age of 15, (ii) a minor 15 years of age or older with whom he maintains a custodial relationship, including but not

limited to as a parent, step-parent, grandparent, step-grandparent, or who stands in loco parentis with respect to such minor, or (iii) a mentally incapacitated or physically helpless person of any age, to be present in the same dwelling, apartment as defined by § 55-79.2, unit of a hotel as defined in § 35.1-1, garage, shed, or vehicle during the manufacture or attempted manufacture of methamphetamine as prohibited by subsection C1 of § 18.2-248 is guilty of a felony punishable by imprisonment for not less than 10 nor more than 40 years. This penalty shall be in addition to and served consecutively with any other sentence.

2005, cc. 923, 941; 2013, c. 743.

§ 18.2-248.03. Manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute methamphetamine; penalty

A. Notwithstanding any other provision of law, any person who manufactures, sells, gives, distributes, or possesses with intent to manufacture, sell, give, or distribute 28 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers is guilty of a felony punishable by a fine of not more than $500,000 and imprisonment for not less than five nor more than 40 years, three years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence.

B. Notwithstanding any other provision of law, any person who manufactures, sells, gives, distributes, or possesses with intent to manufacture, sell, give, or distribute 227 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers is guilty of a felony punishable by a fine of not more than $1 million and imprisonment for not less than five years nor more than life, five years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence.

2008, cc. 858, 874.

§ 18.2-248.04. Methamphetamine Cleanup Fund established

There is hereby created in the state treasury a special nonreverting fund to be known as the Methamphetamine Cleanup Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys assessed against a person convicted of manufacture of methamphetamine as methamphetamine cleanup funds pursuant to subsection C1 of § 18.2-248 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of restoration to an environmentally sound state sites used for the criminal manufacture of methamphetamine. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by any agency of the Commonwealth, law-enforcement agency, or locality with the responsibility for and engaged in a specific methamphetamine site cleanup.

2012, c. 219.

§ 18.2-248.1. Penalties for sale, gift, distribution or possession with intent to sell, give or distribute marijuana

Except as authorized in the Drug Control Act, Chapter 34 of Title 54.1, it shall be unlawful for any person to sell, give, distribute or possess with intent to sell, give or distribute marijuana.

(a) Any person who violates this section with respect to:

(1) Not more than one-half ounce of marijuana is guilty of a Class 1 misdemeanor;

(2) More than one-half ounce but not more than five pounds of marijuana is guilty of a Class 5 felony;

(3) More than five pounds of marijuana is guilty of a felony punishable by imprisonment of not less than five nor more than 30 years.

If such person proves that he gave, distributed or possessed with intent to give or distribute marijuana only as an accommodation to another individual and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the marijuana to use or become addicted to or dependent upon such marijuana, he shall be guilty of a Class 1 misdemeanor.

(b) Any person who gives, distributes or possesses marijuana as an accommodation and not with intent to profit thereby, to an inmate of a state or local correctional facility as defined in § 53.1-1, or in the custody of an employee thereof shall be guilty of a Class 4 felony.

(c) Any person who manufactures marijuana, or possesses marijuana with the intent to manufacture such substance, not for his own use is guilty of a felony punishable by imprisonment of not less than five nor more than 30 years and a fine not to exceed $10,000.

(d) When a person is convicted of a third or subsequent felony offense under this section and it is alleged in the warrant, indictment or information that he has been before convicted of two or more felony offenses under this section or of substantially similar offenses in any other jurisdiction which offenses would be felonies if committed in the Commonwealth and such prior convictions occurred before the date of the offense alleged in the warrant, indictment or information, he shall be sentenced to imprisonment for life or for any period not less than five years, five years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence and he shall be fined not more than $500,000.

1979, c. 435; 1986, c. 467; 2000, cc. 819, 1020, 1041; 2004, c. 461; 2006, cc. 697, 759.

§ 18.2-248.1:1. Repealed

Repealed by Acts 2014, cc. 674 and 719, cl. 2.

§ 18.2-248.2. Repealed

Repealed by Acts 1981, c. 598.

§ 18.2-248.3. Professional use of imitation controlled substances

No civil or criminal liability shall be imposed by virtue of this article on any person licensed under the Drug Control Act, Chapter 34 of Title 54.1, who manufactures, sells, gives or distributes an imitation controlled substance for use as a placebo by a licensed practitioner in the course of professional practice or research.

1982, c. 462.

§ 18.2-248.4. Advertisement of imitation controlled substances prohibited; penalty

It shall be a Class 1 misdemeanor for any person knowingly to sell or display for sale, or to distribute, whether or not any charge is made therefor, any book, pamphlet, handbill or other printed matter which he knows is intended to promote the distribution of an imitation controlled substance.

1982, c. 462.

§ 18.2-248.5. Illegal stimulants and steroids; penalty

A. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), Chapter 34 of Title 54.1, it shall be unlawful for any person to knowingly manufacture, sell, give, distribute or possess with intent to manufacture, sell, give or distribute any anabolic steroid.

A violation of subsection A shall be punishable by a term of imprisonment of not less than one year nor more than 10 years or, in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months or a fine of not more than $20,000, either or both. Any person violating the provisions of this subsection shall, upon conviction, be incarcerated for a mandatory minimum term of six months to be served consecutively with any other sentence.

B. It shall be unlawful for any person to knowingly sell or otherwise distribute, without prescription, to a minor any pill, capsule or tablet containing any combination of caffeine and ephedrine sulfate.

A violation of this subsection B shall be punishable as a Class 1 misdemeanor.

1984, c. 620; 1988, c. 428; 1989, c. 567; 2000, cc. 1020, 1041; 2004, c. 461.

§§ 18.2-248.6, 18.2-248.7. Repealed

Repealed by Acts 1999, c. 348, cl. 2.

§ 18.2-248.8. Repealed

Repealed by Acts 2012, cc. 160 and 252, cl. 2, effective January 1, 2013.

§ 18.2-249. Repealed

Repealed by Acts 2004, c. 995.

§ 18.2-250. Possession of controlled substances unlawful

A. It is unlawful for any person knowingly or intentionally to possess a controlled substance 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 otherwise authorized by the Drug Control Act (§ 54.1-3400 et seq.).

Upon the prosecution of a person for a violation of this section, ownership or occupancy of premises or vehicle upon or in which a controlled substance was found shall not create a presumption that such person either knowingly or intentionally possessed such controlled substance.

(a) Any person who violates this section with respect to any controlled substance classified in Schedule I or II of the Drug Control Act shall be guilty of a Class 5 felony, except that any person other than an inmate of a penal institution as defined in § 53.1-1 or in the custody of an employee thereof who violates this section with respect to a cannabimimetic agent is guilty of a Class 1 misdemeanor.

(b) Any person other than an inmate of a penal institution as defined in § 53.1-1 or in the custody of an employee thereof, who violates this section with respect to a controlled substance classified in Schedule III shall be guilty of a Class 1 misdemeanor.

(b1) Violation of this section with respect to a controlled substance classified in Schedule IV shall be punishable as a Class 2 misdemeanor.

(b2) Violation of this section with respect to a controlled substance classified in Schedule V shall be punishable as a Class 3 misdemeanor.

(c) Violation of this section with respect to a controlled substance classified in Schedule VI shall be punishable as a Class 4 misdemeanor.

B. The provisions of this section shall not apply to members of state, federal, county, city or town law-enforcement agencies, jail officers, or correctional officers, as defined in § 53.1-1, certified as handlers of dogs trained in the detection of controlled substances when possession of a controlled substance or substances is necessary in the performance of their duties.

Code 1950, § 54-524.101:2; 1972, c. 798; 1973, c. 64; 1975, cc. 14, 15; 1976, c. 614; 1978, cc. 151, 177, 179; 1979, c. 435; 1980, c. 285; 1991, c. 649; 1998, c. 116; 2014, cc. 674, 719.

§ 18.2-250.1. Possession of marijuana unlawful

A. It is unlawful for any person knowingly or intentionally to 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 otherwise authorized by the Drug Control Act (§ 54.1-3400 et seq.).

Upon the prosecution of a person for violation of this section, ownership or occupancy of the premises or vehicle upon or in which marijuana was found shall not create a presumption that such person either knowingly or intentionally possessed such marijuana.

Any person who violates this section is guilty of a misdemeanor and shall be confined in jail not more than 30 days and fined not more than $500, either or both; any person, upon a second or subsequent conviction of a violation of this section, is guilty of a Class 1 misdemeanor.

B. The provisions of this section shall not apply to members of state, federal, county, city, or town law-enforcement agencies, jail officers, or correctional officers, as defined in § 53.1-1, certified as handlers of dogs trained in the detection of controlled substances when possession of marijuana is necessary for the performance of their duties.

C. In any prosecution under this section involving marijuana in the form of cannabidiol oil or THC-A oil as those terms are defined in § 54.1-3408.3, it shall be an affirmative defense that the individual possessed such oil pursuant to a valid written certification issued by a practitioner in the course of his professional practice pursuant to § 54.1-3408.3 for treatment or to alleviate the symptoms of (i) the individual's intractable epilepsy or (ii) if such individual is the parent or legal guardian of a minor, such minor's intractable epilepsy. If the individual files the valid written certification with the court at least 10 days prior to trial and causes a copy of such written certification to be delivered to the attorney for the Commonwealth, such written certification shall be prima facie evidence that such oil was possessed pursuant to a valid written certification.

1979, c. 435; 1991, c. 649; 1998, c. 116; 2015, cc. 7, 8.

§ 18.2-251. Persons charged with first offense may be placed on probation; conditions; substance abuse screening, assessment treatment and education programs or services; drug tests; costs and fees; violations; discharge

Whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of such an offense dismissed as provided in this section, pleads guilty to or enters a plea of not guilty to possession of a controlled substance under § 18.2-250 or to possession of marijuana under § 18.2-250.1, 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 upon terms and conditions.

As a term or condition, the court shall require the accused to undergo a substance abuse assessment pursuant to § 18.2-251.01 or 19.2-299.2, as appropriate, and enter treatment and/or education program or services, if available, such as, in the opinion of the court, may be best suited to the needs of the accused based upon consideration of the substance abuse assessment. The program or services may be located in the judicial district in which the charge is brought or in any other judicial district as the court may provide. The services shall be provided by (i) a program licensed by the Department of Behavioral Health and Developmental Services, by a similar program which is made available through the Department of Corrections, (ii) a local community-based

probation services agency established pursuant to § 9.1-174, or (iii) an ASAP program certified by the Commission on VASAP.

The court shall require the person entering such program under the provisions of this section to pay all or part of the costs of the program, including the costs of the screening, assessment, testing, and treatment, based upon the accused's ability to pay unless the person is determined by the court to be indigent.

As a condition of probation, the court shall require the accused (i) to successfully complete treatment or education program or services, (ii) to remain drug and alcohol free during the period of probation and submit to such tests during that period as may be necessary and appropriate to determine if the accused is drug and alcohol free, (iii) to make reasonable efforts to secure and maintain employment, and (iv) to comply with a plan of at least 100 hours of community service for a felony and up to 24 hours of community service for a misdemeanor. Such testing shall be conducted by personnel of the supervising probation agency or personnel of any program or agency approved by the supervising probation agency.

The court shall, unless done at arrest, order the accused to report to the original arresting law-enforcement agency to submit to fingerprinting.

Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent proceedings.

Notwithstanding any other provision of this section, whenever a court places an individual on probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction for purposes of §§ 18.2-259.1, 22.1-315, and 46.2-390.1, and the driver's license forfeiture provisions of those sections shall be imposed. The provisions of this paragraph shall not be applicable to any offense for which a juvenile has had his license suspended or denied pursuant to § 16.1-278.9 for the same offense.

Code 1950, § 54-524.101:3; 1972, c. 798; 1975, cc. 14, 15; 1976, c. 181; 1979, c. 435; 1983, c. 513; 1991, c. 482; 1992, cc. 58, 833; 1993, c. 410; 1997, c. 380; 1998, cc. 688, 783, 840; 2000, cc. 1020, 1041; 2001, cc. 430, 450, 827; 2007, c. 133; 2009, cc. 813, 840; 2011, cc. 384, 410; 2014, cc. 674, 719.

§ 18.2-251.01. Substance abuse screening and assessment for felony convictions

A. When a person is convicted of a felony, not a capital offense, committed on or after January 1, 2000, he shall be required to undergo a substance abuse screening and, if the screening indicates a substance abuse or dependence problem, an assessment by a certified substance abuse counselor as defined in § 54.1-3500 employed by the Department of Corrections or by an agency employee under the supervision of such counselor. If the person is determined to have a substance abuse

problem, the court shall require him to enter treatment and/or education program or services, if available, which, in the opinion of the court, is best suited to the needs of the person. The program or services may be located in the judicial district in which the conviction was had or in any other judicial district as the court may provide. The treatment and/or education program or services shall be licensed by the Department of Behavioral Health and Developmental Services or shall be a similar program or services which are made available through the Department of Corrections if the court imposes a sentence of one year or more or, if the court imposes a sentence of 12 months or less, by a similar program or services available through a local or regional jail, a local community-based probation services agency established pursuant to § 9.1-174, or an ASAP program certified by the Commission on VASAP. The services agency or program may require the person entering such program or services under the provisions of this section to pay a fee for the education and treatment component, or both, based upon the defendant's ability to pay.

B. As a condition of any suspended sentence and probation, the court shall order the person to undergo periodic testing and treatment for substance abuse, if available, as the court deems appropriate based upon consideration of the substance abuse assessment.

1998, cc. 783, 840; 1999, cc. 891, 913; 2000, cc. 1020, 1041; 2007, c. 133; 2009, cc. 813, 840.

§ 18.2-251.02. Drug Offender Assessment and Treatment Fund

There is hereby established in the state treasury the Drug Offender Assessment and Treatment Fund which shall consist of moneys received from fees imposed on certain drug offense convictions pursuant to subdivisions A 10 and A 11 of § 17.1-275 and § 16.1-69.48:3. All interest derived from the deposit and investment of moneys in the Fund shall be credited to the Fund. Any moneys not appropriated by the General Assembly shall remain in the Drug Offender Assessment and Treatment Fund and shall not be transferred or revert to the general fund at the end of any fiscal year. All moneys in the Fund shall be subject to annual appropriation by the General Assembly to the Department of Corrections, the Department of Juvenile Justice, and the Commission on VASAP to implement and operate the offender substance abuse screening and assessment program; the Department of Criminal Justice Services for the support of community-based probation and local pretrial services agencies; and the Office of the Executive Secretary of the Supreme Court of Virginia for the support of drug treatment court programs.

1998, cc. 783, 840; 2003, c. 606; 2004, c. 1004.

§ 18.2-251.03. Safe reporting of overdoses

A. For purposes of this section, "overdose" means a life-threatening condition resulting from the consumption or use of a controlled substance, alcohol, or any combination of such substances.

B. It shall be an affirmative defense to prosecution of an individual for the unlawful purchase, possession, or consumption of alcohol pursuant to § 4.1-305, possession of a controlled substance pursuant to § 18.2-250, possession of marijuana pursuant to § 18.2-250.1, intoxication in public pursuant to § 18.2-388, or possession of controlled paraphernalia pursuant to § 54.1-3466 if:

1. Such individual, in good faith, seeks or obtains emergency medical attention for himself, if he is experiencing an overdose, or for another individual, if such other individual is experiencing an overdose, by contemporaneously reporting such overdose to a firefighter, as defined in § 65.2-102, emergency medical services personnel, as defined in § 32.1-111.1, a law-enforcement officer, as defined in § 9.1-101, or an emergency 911 system;

2. Such individual remains at the scene of the overdose or at any alternative location to which he or the person requiring emergency medical attention has been transported until a law-enforcement officer responds to the report of an overdose. If no law-enforcement officer is present at the scene of the overdose or at the alternative location, then such individual shall cooperate with law enforcement as otherwise set forth herein;

3. Such individual identifies himself to the law-enforcement officer who responds to the report of the overdose;

4. If requested by a law-enforcement officer, such individual substantially cooperates in any investigation of any criminal offense reasonably related to the controlled substance, alcohol, or combination of such substances that resulted in the overdose; and

5. The evidence for the prosecution of an offense enumerated in this subsection was obtained as a result of the individual seeking or obtaining emergency medical attention.

C. No individual may assert the affirmative defense provided for in this section if the person sought or obtained emergency medical attention for himself or another individual during the execution of a search warrant or during the conduct of a lawful search or a lawful arrest.

D. This section does not establish an affirmative defense for any individual or offense other than those listed in subsection B.

2015, cc. 418, 436.

§ 18.2-251.1. Possession or distribution of marijuana for medical purposes permitted

A. No person shall be prosecuted under § 18.2-250 or § 18.2-250.1 for the possession of marijuana or tetrahydrocannabinol when that possession occurs pursuant to a valid prescription issued by a medical doctor in the course of his professional practice for treatment of cancer or glaucoma.

B. No medical doctor shall be prosecuted under § 18.2-248 or § 18.2-248.1 for dispensing or distributing marijuana or tetrahydrocannabinol for medical purposes when such action occurs in the course of his professional practice for treatment of cancer or glaucoma.

C. No pharmacist shall be prosecuted under §§ 18.2-248 to 18.2-248.1 for dispensing or distributing marijuana or tetrahydrocannabinol to any person who holds a valid prescription of a medical doctor for such substance issued in the course of such doctor's professional practice for treatment of cancer or glaucoma.

1979, c. 435.

§ 18.2-251.2. Possession and distribution of flunitrazepam; enhanced penalty

Notwithstanding the provisions of §§ 54.1-3446 and 54.1-3452, the drug flunitrazepam shall be deemed to be listed on Schedule I for the purposes of penalties for violations of the Drug Control Act (§ 54.1-3400 et seq.). Any person knowingly manufacturing, selling, giving, distributing or possessing the drug flunitrazepam shall be punished under the penalties prescribed for such violations in accordance with §§ 18.2-248 and 18.2-250.

1997, c. 595.

§ 18.2-251.3. Possession and distribution of gamma-butyrolactone; 1, 4-butanediol; enhanced penalty

Any person who knowingly manufactures, sells, gives, distributes or possesses with the intent to distribute the substances gamma-butyrolactone; or 1, 4-butanediol, when intended for human consumption shall be guilty of a Class 3 felony.

2000, c. 348.

§ 18.2-251.4. Defeating drug and alcohol screening tests; penalty

A. It is unlawful for a person to:

1. Sell, give away, distribute, transport or market human urine in the Commonwealth with the intent of using the urine to defeat a drug or alcohol screening test;

2. Attempt to defeat a drug or alcohol screening test by the substitution of a sample;

3. Adulterate a urine or other bodily fluid sample with the intent to defraud a drug or alcohol screening test.

B. A violation of this section is a Class 1 misdemeanor.

2001, c. 379.

§ 18.2-252. Suspended sentence conditioned upon substance abuse screening, assessment, testing, and treatment or education

The trial judge or court trying the case of any person found guilty of violating any law concerning the use, in any manner, of drugs, controlled substances, narcotics, marijuana, noxious chemical substances and like substances, shall condition any suspended sentence by first requiring such person to agree to undergo a substance abuse screening pursuant to § 18.2-251.01 and to submit to such periodic substance abuse testing, to include alcohol testing, as may be directed by the court. Such testing shall be conducted by the supervising probation agency or by personnel of any program or agency approved by the supervising probation agency. The cost of such testing ordered by the court shall be paid by the Commonwealth and taxed as a part of the costs of such criminal proceedings. The judge or court shall order the person, as a condition of any suspended sentence, to undergo such treatment or education for substance abuse, if available, as the judge or court deems appropriate based upon consideration of the substance abuse assessment. The treatment or education shall be provided by a program or agency licensed by the Department of Behavioral Health and Developmental Services, by a similar program or services available through the Department of

Corrections if the court imposes a sentence of one year or more or, if the court imposes a sentence of 12 months or less, by a similar program or services available through a local or regional jail, a local community-based probation services agency established pursuant to § 9.1-174, or an ASAP program certified by the Commission on VASAP.

Code 1950, § 54-524.101:4; 1973, c. 473; 1975, cc. 14, 15; 1979, c. 435; 1998, cc. 783, 840; 2000, cc. 1020, 1041; 2007, c. 133; 2009, cc. 813, 840.

§§ 18.2-253 through 18.2-253.2. Repealed

Repealed by Acts 2004, c. 995.

§ 18.2-254. Commitment of convicted person for treatment for substance abuse

A. Whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to narcotic drugs, marijuana, stimulant, depressant, or hallucinogenic drugs or has not previously had a proceeding against him for violation of such an offense dismissed as provided in § 18.2-251 is found guilty of violating any law concerning the use, in any manner, of drugs, controlled substances, narcotics, marijuana, noxious chemical substances, and like substances, the judge or court shall require such person to undergo a substance abuse screening pursuant to § 18.2-251.01 and to submit to such periodic substance abuse testing, to include alcohol testing, as may be directed by the court. The cost of such testing ordered by the court shall be paid by the Commonwealth and taxed as a part of the costs of the criminal proceedings. The judge or court shall also order the person to undergo such treatment or education for substance abuse, if available, as the judge or court deems appropriate based upon consideration of the substance abuse assessment. The treatment or education shall be provided by a program or agency licensed by the Department of Behavioral Health and Developmental Services or by a similar program or services available through the Department of Corrections if the court imposes a sentence of one year or more or, if the court imposes a sentence of 12 months or less, by a similar program or services available through a local or regional jail, a local community-based probation services agency established pursuant to § 9.1-174, or an ASAP program certified by the Commission on VASAP.

B. The court trying the case of any person alleged to have committed any offense designated by this article or by the Drug Control Act (§ 54.1-3400 et seq.) or in any other criminal case in which the commission of the offense was motivated by or closely related to the use of drugs and determined by the court, pursuant to a substance abuse screening and assessment, to be in need of treatment for the use of drugs may commit, based upon a consideration of the substance abuse assessment, such person, upon his conviction, to any facility for the treatment of persons with substance abuse, licensed by the Department of Behavioral Health and Developmental Services, if space is available in such facility, for a period of time not in excess of the maximum term of imprisonment specified as the penalty for conviction of such offense or, if sentence was determined by a jury, not in excess of the term of imprisonment as set by such jury. Confinement under such commitment shall be, in all regards, treated as confinement in a penal institution and the

person so committed may be convicted of escape if he leaves the place of commitment without authority. A charge of escape may be prosecuted in either the jurisdiction where the treatment facility is located or the jurisdiction where the person was sentenced to commitment. The court may revoke such commitment at any time and transfer the person to an appropriate state or local correctional facility. Upon presentation of a certified statement from the director of the treatment facility to the effect that the confined person has successfully responded to treatment, the court may release such confined person prior to the termination of the period of time for which such person was confined and may suspend the remainder of the term upon such conditions as the court may prescribe.

C. The court trying a case in which commission of the offense was related to the defendant's habitual abuse of alcohol and in which the court determines, pursuant to a substance abuse screening and assessment, that such defendant is in need of treatment, may commit, based upon a consideration of the substance abuse assessment, such person, upon his conviction, to any facility for the treatment of persons with substance abuse licensed by the Department of Behavioral Health and Developmental Services, if space is available in such facility, for a period of time not in excess of the maximum term of imprisonment specified as the penalty for conviction. Confinement under such commitment shall be, in all regards, treated as confinement in a penal institution and the person so committed may be convicted of escape if he leaves the place of commitment without authority. The court may revoke such commitment at any time and transfer the person to an appropriate state or local correctional facility. Upon presentation of a certified statement from the director of the treatment facility to the effect that the confined person has successfully responded to treatment, the court may release such confined person prior to the termination of the period of time for which such person was confined and may suspend the remainder of the term upon such conditions as the court may prescribe.

Code 1950, § 54-524.102; 1972, c. 758; 1974, c. 447; 1975, cc. 14, 15; 1978, c. 640; 1979, cc. 413, 435; 1992, c. 852; 1998, c. 724; 2000, cc. 1020, 1041; 2004, c. 130; 2005, c. 716; 2007, c. 133; 2009, cc. 813, 840.

§ 18.2-254.1. Drug Treatment Court Act

A. This section shall be known and may be cited as the "Drug Treatment Court Act."

B. The General Assembly recognizes that there is a critical need in the Commonwealth for effective treatment programs that reduce the incidence of drug use, drug addiction, family separation due to parental substance abuse, and drug-related crimes. It is the intent of the General Assembly by this section to enhance public safety by facilitating the creation of drug treatment courts as means by which to accomplish this purpose.

C. The goals of drug treatment courts include: (i) reducing drug addiction and drug dependency among offenders; (ii) reducing recidivism; (iii) reducing drug-related court workloads; (iv) increas-

ing personal, familial and societal accountability among offenders; and, (v) promoting effective planning and use of resources among the criminal justice system and community agencies.

D. Drug treatment courts are specialized court dockets within the existing structure of Virginia's court system offering judicial monitoring of intensive treatment and strict supervision of addicts in drug and drug-related cases. Local officials must complete a recognized planning process before establishing a drug treatment court program.

E. Administrative oversight for implementation of the Drug Treatment Court Act shall be conducted by the Supreme Court of Virginia. The Supreme Court of Virginia shall be responsible for (i) providing oversight for the distribution of funds for drug treatment courts; (ii) providing technical assistance to drug treatment courts; (iii) providing training for judges who preside over drug treatment courts; (iv) providing training to the providers of administrative, case management, and treatment services to drug treatment courts; and (v) monitoring the completion of evaluations of the effectiveness and efficiency of drug treatment courts in the Commonwealth.

F. A state drug treatment court advisory committee shall be established to (i) evaluate and recommend standards for the planning and implementation of drug treatment courts; (ii) assist in the evaluation of their effectiveness and efficiency; and (iii) encourage and enhance cooperation among agencies that participate in their planning and implementation. The committee shall be chaired by the Chief Justice of the Supreme Court of Virginia or his designee and shall include a member of the Judicial Conference of Virginia who presides over a drug treatment court; a district court judge; the Executive Secretary or his designee; the directors of the following executive branch agencies: Department of Corrections, Department of Criminal Justice Services, Department of Juvenile Justice, Department of Behavioral Health and Developmental Services, Department of Social Services; a representative of the following entities: a local community-based probation and pretrial services agency, the Commonwealth's Attorney's Association, the Virginia Indigent Defense Commission, the Circuit Court Clerk's Association, the Virginia Sheriff's Association, the Virginia Association of Chiefs of Police, the Commission on VASAP, and two representatives designated by the Virginia Drug Court Association.

G. Each jurisdiction or combination of jurisdictions that intend to establish a drug treatment court or continue the operation of an existing one shall establish a local drug treatment court advisory committee. Jurisdictions that establish separate adult and juvenile drug treatment courts may establish an advisory committee for each such court. Each advisory committee shall ensure quality, efficiency, and fairness in the planning, implementation, and operation of the drug treatment court or courts that serve the jurisdiction or combination of jurisdictions. Advisory committee membership shall include, but shall not be limited to the following people or their designees: (i) the drug treatment court judge; (ii) the attorney for the Commonwealth, or, where applicable, the city or county attorney who has responsibility for the prosecution of misdemeanor offenses; (iii) the public defender or a member of the local criminal defense bar in jurisdictions in which there is no public defender; (iv) the clerk of the court in which the drug treatment court is located; (v) a

representative of the Virginia Department of Corrections, or the Department of Juvenile Justice, or both, from the local office which serves the jurisdiction or combination of jurisdictions; (vi) a representative of a local community-based probation and pretrial services agency; (vii) a local law-enforcement officer; (viii) a representative of the Department of Behavioral Health and Developmental Services or a representative of local drug treatment providers; (ix) the drug court administrator; (x) a representative of the Department of Social Services; (xi) county administrator or city manager; and (xii) any other people selected by the drug treatment court advisory committee.

H. Each local drug treatment court advisory committee shall establish criteria for the eligibility and participation of offenders who have been determined to be addicted to or dependent upon drugs. Subject to the provisions of this section, neither the establishment of a drug treatment court nor anything herein shall be construed as limiting the discretion of the attorney for the Commonwealth to prosecute any criminal case arising therein which he deems advisable to prosecute, except to the extent the participating attorney for the Commonwealth agrees to do so. As defined in § 17.1-805 or 19.2-297.1, adult offenders who have been convicted of a violent criminal offense within the preceding 10 years, or juvenile offenders who previously have been adjudicated not innocent of any such offense within the preceding 10 years, shall not be eligible for participation in any drug treatment court established or continued in operation pursuant to this section.

I. Each drug treatment court advisory committee shall establish policies and procedures for the operation of the court to attain the following goals: (i) effective integration of drug and alcohol treatment services with criminal justice system case processing; (ii) enhanced public safety through intensive offender supervision and drug treatment; (iii) prompt identification and placement of eligible participants; (iv) efficient access to a continuum of alcohol, drug, and related treatment and rehabilitation services; (v) verified participant abstinence through frequent alcohol and other drug testing; (vi) prompt response to participants' noncompliance with program requirements through a coordinated strategy; (vii) ongoing judicial interaction with each drug court participant; (viii) ongoing monitoring and evaluation of program effectiveness and efficiency; (ix) ongoing interdisciplinary education and training in support of program effectiveness and efficiency; and (x) ongoing collaboration among drug treatment courts, public agencies, and community-based organizations to enhance program effectiveness and efficiency.

J. Participation by an offender in a drug treatment court shall be voluntary and made pursuant only to a written agreement entered into by and between the offender and the Commonwealth with the concurrence of the court.

K. Nothing in this section shall preclude the establishment of substance abuse treatment programs and services pursuant to the deferred judgment provisions of § 18.2-251.

L. Each offender shall contribute to the cost of the substance abuse treatment he receives while participating in a drug treatment court pursuant to guidelines developed by the drug treatment court advisory committee.

M. Nothing contained in this section shall confer a right or an expectation of a right to treatment for an offender or be construed as requiring a local drug treatment court advisory committee to accept for participation every offender.

N. The Office of the Executive Secretary shall, with the assistance of the state drug treatment court advisory committee, develop a statewide evaluation model and conduct ongoing evaluations of the effectiveness and efficiency of all local drug treatment courts. A report of these evaluations shall be submitted to the General Assembly by December 1 of each year. Each local drug treatment court advisory committee shall submit evaluative reports to the Office of the Executive Secretary as requested.

O. Notwithstanding any other provision of this section, no drug treatment court shall be established subsequent to March 1, 2004, unless the jurisdiction or jurisdictions intending or proposing to establish such court have been specifically granted permission under the Code of Virginia to establish such court. The provisions of this subsection shall not apply to any drug treatment court established on or before March 1, 2004, and operational as of July 1, 2004.

P. Subject to the requirements and conditions established by the state Drug Treatment Court Advisory Committee, there shall be established a drug treatment court in the following jurisdictions: the City of Chesapeake and the City of Newport News.

Q. Subject to the requirements and conditions established by the state Drug Treatment Court Advisory Committee, there shall be established a drug treatment court in the Juvenile and Domestic Relations District Court for the County of Franklin, provided that such court is funded solely through local sources.

R. Subject to the requirements and conditions established by the state Drug Treatment Court Advisory Committee, there shall be established a drug treatment court in the City of Bristol and the County of Tazewell, provided that the court is funded within existing state and local appropriations.

2004, c. 1004; 2005, cc. 519, 602; 2006, cc. 175, 341; 2007, c. 133; 2009, cc. 205, 281, 294, 813, 840; 2010, c. 258.

§ 18.2-255. Distribution of certain drugs to persons under 18 prohibited; penalty

A. Except as authorized in the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, it shall be unlawful for any person who is at least 18 years of age to knowingly or intentionally (i) distribute any drug classified in Schedule I, II, III or IV or marijuana to any person under 18 years of age who is at least three years his junior or (ii) cause any person under 18 years of age to assist in such distribution of any drug classified in Schedule I, II, III or IV or marijuana. Any person violating this provision shall upon conviction be imprisoned in a state correctional facility for a period not less than 10 nor more than 50 years, and fined not more than $100,000. Five years of the sentence imposed for a conviction under this section involving a Schedule I or II controlled substance or one ounce or more of marijuana shall be a mandatory minimum sentence. Two years

of the sentence imposed for a conviction under this section involving less than one ounce of marijuana shall be a mandatory minimum sentence.

B. It shall be unlawful for any person who is at least 18 years of age to knowingly or intentionally (i) distribute any imitation controlled substance to a person under 18 years of age who is at least three years his junior or (ii) cause any person under 18 years of age to assist in such distribution of any imitation controlled substance. Any person violating this provision shall be guilty of a Class 6 felony.

Code 1950, § 54-524.103; 1970, c. 650; 1972, c. 798; 1975, cc. 14, 15; 1976, c. 614; 1979, c. 435; 1982, c. 462; 1990, cc. 720, 864, 866; 1992, cc. 708, 724; 2000, cc. 1020, 1041; 2004, c. 461; 2011, cc. 384, 410; 2014, cc. 674, 719.

§ 18.2-255.1. Distribution, sale or display of printed material advertising instruments for use in administering marijuana or controlled substances to minors; penalty

It shall be a Class 1 misdemeanor for any person knowingly to sell, distribute, or display for sale to a minor any book, pamphlet, periodical or other printed matter which he knows advertises for sale any instrument, device, article, or contrivance for advertised use in unlawfully ingesting, smoking, administering, preparing or growing marijuana or a controlled substance.

1980, c. 737; 2011, cc. 384, 410; 2014, cc. 674, 719.

§ 18.2-255.2. Prohibiting the sale or manufacture of drugs on or near certain properties; penalty

A. It shall be unlawful for any person to manufacture, sell or distribute or possess with intent to sell, give or distribute any controlled substance, imitation controlled substance, or marijuana while:

1. Upon the property, including buildings and grounds, of any public or private elementary, secondary, or post secondary school, or any public or private two-year or four-year institution of higher education, or any clearly marked licensed child day center as defined in § 63.2-100;

2. Upon public property or any property open to public use within 1,000 feet of the property described in subdivision 1;

3. On any school bus as defined in § 46.2-100;

4. Upon a designated school bus stop, or upon either public property or any property open to public use which is within 1,000 feet of such school bus stop, during the time when school children are waiting to be picked up and transported to or are being dropped off from school or a school-sponsored activity;

5. Upon the property, including buildings and grounds, of any publicly owned or publicly operated recreation or community center facility or any public library; or

6. Upon the property of any state facility as defined in § 37.2-100 or upon public property or property open to public use within 1,000 feet of such an institution. It is a violation of the provisions

of this section if the person possessed the controlled substance, imitation controlled substance, or marijuana on the property described in subdivisions 1 through 6, regardless of where the person intended to sell, give or distribute the controlled substance, imitation controlled substance, or marijuana. Nothing in this section shall prohibit the authorized distribution of controlled substances.

B. Violation of this section shall constitute a separate and distinct felony. Any person violating the provisions of this section shall, upon conviction, be imprisoned for a term of not less than one year nor more than five years and fined not more than $100,000. A second or subsequent conviction hereunder for an offense involving a controlled substance classified in Schedule I, II, or III of the Drug Control Act (§ 54.1-3400 et seq.) or more than one-half ounce of marijuana shall be punished by a mandatory minimum term of imprisonment of one year to be served consecutively with any other sentence. However, if such person proves that he sold such controlled substance or marijuana only as an accommodation to another individual and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the controlled substance or marijuana to use or become addicted to or dependent upon such controlled substance or marijuana, he is guilty of a Class 1 misdemeanor.

C. If a person commits an act violating the provisions of this section, and the same act also violates another provision of law that provides for penalties greater than those provided for by this section, then nothing in this section shall prohibit or bar any prosecution or proceeding under that other provision of law or the imposition of any penalties provided for thereby.

1982, c. 594; 1989, cc. 619, 682, 709; 1990, cc. 617, 622; 1991, c. 268; 1991, 1st Sp. Sess., c. 14; 1993, cc. 30, 708, 729; 1999, c. 873; 2000, cc. 1020, 1041; 2003, cc. 80, 91; 2004, c. 461; 2005, c. 716; 2006, c. 325; 2011, cc. 384, 410; 2014, cc. 674, 719.

§ 18.2-256. Conspiracy

Any person who conspires to commit any offense defined in this article or in the Drug Control Act (§ 54.1-3400 et seq.) is punishable by imprisonment or fine or both which may not be less than the minimum punishment nor exceed the maximum punishment prescribed for the offense, the commission of which was the object of the conspiracy.

Code 1950, § 54-524.104; 1970, c. 650; 1972, c. 798; 1975, cc. 14, 15; 1978, c. 130.

§ 18.2-257. Attempts

(a) Any person who attempts to commit any offense defined in this article or in the Drug Control Act (§ 54.1-3400 et seq.) which is a felony shall be imprisoned for not less than one nor more than ten years; provided, however, that any person convicted of attempting to commit a felony for which a lesser punishment may be imposed may be punished according to such lesser penalty.

(b) Any person who attempts to commit any offense defined in this article or in the Drug Control Act which is a misdemeanor shall be guilty of a Class 2 misdemeanor; provided, however, that any

person convicted of attempting to commit a misdemeanor for which a lesser punishment may be imposed may be punished according to such lesser penalty.

Code 1950, § 54-524.104:1; 1972, c. 798; 1973, c. 447; 1975, cc. 14, 15; 1979, c. 435.

§ 18.2-258. Certain premises deemed common nuisance; penalty

Any office, store, shop, restaurant, dance hall, theater, poolroom, clubhouse, storehouse, warehouse, dwelling house, apartment, building of any kind, vehicle, vessel, boat, or aircraft, which with the knowledge of the owner, lessor, agent of any such lessor, manager, chief executive officer, operator, or tenant thereof, is frequented by persons under the influence of illegally obtained controlled substances or marijuana, as defined in § 54.1-3401, or for the purpose of illegally obtaining possession of, manufacturing or distributing controlled substances or marijuana, or is used for the illegal possession, manufacture or distribution of controlled substances or marijuana shall be deemed a common nuisance. Any such owner, lessor, agent of any such lessor, manager, chief executive officer, operator, or tenant who knowingly permits, establishes, keeps or maintains such a common nuisance is guilty of a Class 1 misdemeanor and, for a second or subsequent offense, a Class 6 felony.

Code 1950, § 54-524.104:2; 1972, c. 736; 1973, c. 400; 1975, cc. 14, 15; 1979, c. 435; 1990, c. 948; 1992, cc. 248, 538; 2004, c. 462; 2011, cc. 384, 410; 2014, cc. 674, 719.

§ 18.2-258.01. Enjoining nuisances involving illegal drug transactions

The attorney for the Commonwealth, or any citizen of the county, city, or town, where such a nuisance as is described in § 18.2-258 exists, may, in addition to the remedies given in and punishment imposed by this chapter, maintain a suit in equity in the name of the Commonwealth to enjoin the same; provided, however, the attorney for the Commonwealth shall not be required to prosecute any suit brought by a citizen under this section. In every case where the bill charges, on the knowledge or belief of complainant, and is sworn to by two witnesses, that a nuisance exists as described in § 18.2-258, a temporary injunction may be granted as soon as the bill is presented to the court provided reasonable notice has been given. The injunction shall enjoin and restrain any owners, tenants, their agents, employees, and any other person from contributing to or maintaining the nuisance and may impose such other requirements as the court deems appropriate. If, after hearing, the court finds that the material allegations of the bill are true, although the premises complained of may not then be unlawfully used, it shall continue the injunction against such persons or premises for such period of time as it deems appropriate, with the right to dissolve the injunction upon a proper showing by the owner of the premises.

1990, c. 948 .

§ 18.2-258.02. Maintaining a fortified drug house; penalty

Any office, store, shop, restaurant, dance hall, theater, poolroom, clubhouse, storehouse, warehouse, dwelling house, apartment or building or structure of any kind which is (i) substantially altered from its original status by means of reinforcement with the intent to impede, deter or

delay lawful entry by a law-enforcement officer into such structure, (ii) being used for the purpose of manufacturing or distributing controlled substances or marijuana, and (iii) the object of a valid search warrant, shall be considered a fortified drug house. Any person who maintains or operates a fortified drug house is guilty of a Class 5 felony.

1996, c. 913; 2011, cc. 384, 410; 2014, cc. 674, 719.

§ 18.2-258.1. Obtaining drugs, procuring administration of controlled substances, etc., by fraud, deceit or forgery

A. It shall be unlawful for any person to obtain or attempt to obtain any drug or procure or attempt to procure the administration of any controlled substance or marijuana: (i) by fraud, deceit, misrepresentation, embezzlement, or subterfuge; (ii) by the forgery or alteration of a prescription or of any written order; (iii) by the concealment of a material fact; or (iv) by the use of a false name or the giving of a false address.

B. It shall be unlawful for any person to furnish false or fraudulent information in or omit any information from, or willfully make a false statement in, any prescription, order, report, record, or other document required by Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1.

C. It shall be unlawful for any person to use in the course of the manufacture or distribution of a controlled substance or marijuana a license number which is fictitious, revoked, suspended, or issued to another person.

D. It shall be unlawful for any person, for the purpose of obtaining any controlled substance or marijuana to falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian or other authorized person.

E. It shall be unlawful for any person to make or utter any false or forged prescription or false or forged written order.

F. It shall be unlawful for any person to affix any false or forged label to a package or receptacle containing any controlled substance.

G. This section shall not apply to officers and employees of the United States, of this Commonwealth or of a political subdivision of this Commonwealth acting in the course of their employment, who obtain such drugs for investigative, research or analytical purposes, or to the agents or duly authorized representatives of any pharmaceutical manufacturer who obtain such drugs for investigative, research or analytical purposes and who are acting in the course of their employment; provided that such manufacturer is licensed under the provisions of the Federal Food, Drug and Cosmetic Act; and provided further, that such pharmaceutical manufacturer, its agents and duly authorized representatives file with the Board such information as the Board may deem appropriate.

H. Except as otherwise provided in this subsection, any person who shall violate any provision herein shall be guilty of a Class 6 felony.

Whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of such an offense dismissed, or reduced as provided in this section, pleads guilty to or enters a plea of not guilty to the court for violating this section, upon such plea if the facts found by the court would justify a finding of guilt, the court may place him on probation upon terms and conditions.

As a term or condition, the court shall require the accused to be evaluated and enter a treatment and/or education program, if available, such as, in the opinion of the court, may be best suited to the needs of the accused. This program may be located in the judicial circuit in which the charge is brought or in any other judicial circuit as the court may provide. The services shall be provided by a program certified or licensed by the Department of Behavioral Health and Developmental Services. The court shall require the person entering such program under the provisions of this section to pay all or part of the costs of the program, including the costs of the screening, evaluation, testing and education, based upon the person's ability to pay unless the person is determined by the court to be indigent.

As a condition of supervised probation, the court shall require the accused to remain drug free during the period of probation and submit to such tests during that period as may be necessary and appropriate to determine if the accused is drug free. Such testing may be conducted by the personnel of any screening, evaluation, and education program to which the person is referred or by the supervising agency.

Unless the accused was fingerprinted at the time of arrest, the court shall order the accused to report to the original arresting law-enforcement agency to submit to fingerprinting.

Upon violation of a term or condition, the court may enter an adjudication of guilt upon the felony and proceed as otherwise provided. Upon fulfillment of the terms and conditions of probation, the court shall find the defendant guilty of a Class 1 misdemeanor.

1977, c. 558; 1979, c. 435; 1992, c. 76; 1997, c. 542; 2009, cc. 813, 840; 2011, cc. 384, 410; 2014, cc. 674, 719.

§ 18.2-258.2. Assisting individuals in unlawfully procuring prescription drugs; penalty

Unless otherwise specifically authorized by law, any person who, for compensation, knowingly assists another in unlawfully procuring prescription drugs from a pharmacy or other source he knows is not licensed, registered or permitted by the licensing authority of the Commonwealth, any other state or territory of the United States, or the United States, is guilty of a Class 1 misdemeanor and, upon a second or subsequent conviction, a Class 6 felony.

2004, c. 620.

§ 18.2-259. Penalties to be in addition to civil or administrative sanctions

Any penalty imposed for violation of this article or of the Drug Control Act (§ 54.1-3400 et seq.) shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

Code 1950, § 54-524.105; 1970, c. 650; 1975, cc. 14, 15.

§ 18.2-259.1. Forfeiture of driver's license for violations of article

A. In addition to any other sanction or penalty imposed for a violation of this article, the (i) judgment of conviction under this article or (ii) placement on probation following deferral of further proceedings under § 18.2-251 or subsection H of § 18.2-258.1 for any such offense shall of itself operate to deprive the person so convicted or placed on probation after deferral of proceedings under § 18.2-251 or subsection H of § 18.2-258.1 of the privilege to drive or operate a motor vehicle, engine, or train in the Commonwealth for a period of six months from the date of such judgment or placement on probation. Such license forfeiture shall be in addition to and shall run consecutively with any other license suspension, revocation or forfeiture in effect or imposed upon the person so convicted or placed on probation. However, a juvenile who has had his license suspended or denied pursuant to § 16.1-278.9 shall not have his license forfeited pursuant to this section for the same offense.

B. The court trying the case shall order any person so convicted or placed on probation to surrender his driver's license to be disposed of in accordance with the provisions of § 46.2-398 and shall notify the Department of Motor Vehicles of any such conviction entered and of the license forfeiture to be imposed.

C. In those cases where the court determines there are compelling circumstances warranting an exception, the court may provide that any individual be issued a restricted license to operate a motor vehicle for any of the purposes set forth in subsection E of § 18.2-271.1. No restricted license issued pursuant to this subsection shall permit any person to operate a commercial motor vehicle as defined in the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). The court shall order the surrender of such person's license in accordance with the provisions of subsection B and shall forward to the Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant to this subsection. This order shall specifically enumerate the restrictions imposed and contain such information regarding the person to whom such a permit is issued as is reasonably necessary to identify such person. The court shall also provide a copy of its order to such person who may operate a motor vehicle on the order until receipt from the Commissioner of the Department of Motor Vehicles of a restricted license, but only if the order provides for a restricted license for that period. A copy of the order and, after receipt thereof, the restricted license shall be carried at all times by such person while operating a motor vehicle. The court may require a person issued a restricted permit under the provisions of this subsection to be monitored by an alcohol safety action program during the period of license suspension. Any violation of the terms of the restricted license or of any condition set forth by the court related thereto, or any failure to remain drug-free during such period shall be reported forthwith to the court by such program. Any

person who operates a motor vehicle in violation of any restriction imposed pursuant to this section shall be guilty of a violation of § 46.2-301.

1992, cc. 58, 833; 1993, c. 920; 1994, cc. 403, 545; 1999, c. 45; 2000, c. 325; 2001, cc. 645, 779.

§ 18.2-260. Prescribing, dispensing, etc., drug except as authorized in article and Drug Control Act; violations for which no penalty provided

It shall be unlawful for any person to prescribe, administer or dispense any drug except as authorized in the Drug Control Act (§ 54.1-3400 et seq.) or in this article. Any person who violates any provision of the Drug Control Act or of this article, for which no penalty is elsewhere specified in this article or in Article 7 (§ 54.1-3466 et seq.) of the Drug Control Act, shall be guilty of a Class 1 misdemeanor.

Code 1950, § 54-524.106; 1970, c. 650; 1973, c. 548; 1975, cc. 14, 15.

§ 18.2-260.1. Falsifying patient records

Any person who, with the intent to defraud, falsifies any patient record shall be guilty of a Class 1 misdemeanor.

1997, c. 619; 2011, c. 204.

§ 18.2-261. Monetary penalty

Any person licensed by the State Board of Pharmacy who violates any of the provisions of the Drug Control Act (§ 54.1-3400 et seq.) or of this article, and who is not criminally prosecuted, shall be subject to the monetary penalty provided in this section. If, by a majority vote, the Board shall determine that the respondent is guilty of the violation complained of, the Board shall proceed to determine the amount of the monetary penalty for such violation, which shall not exceed the sum of $1,000 for each violation. Such penalty may be sued for and recovered in the name of the Commonwealth.

Code 1950, § 54-524.107; 1970, c. 650; 1975, cc. 14, 15; 1980, c. 678.

§ 18.2-262. Witnesses not excused from testifying or producing evidence because of self-incrimination

No person shall be excused from testifying or from producing books, papers, correspondence, memoranda or other records for the Commonwealth as to any offense alleged to have been committed by another under this article or under the Drug Control Act (§ 54.1-3400 et seq.) by reason of his testimony or other evidence tending to incriminate himself, but the testimony given and evidence so produced by such person on behalf of the Commonwealth when called for by the trial judge or court trying the case, or by the attorney for the Commonwealth, or when summoned by the Commonwealth and sworn as a witness by the court or the clerk and sent before the grand jury, shall be in no case used against him nor shall he be prosecuted as to the offense as to which he testifies. Any person who refuses to testify or produce books, papers, correspondence, memoranda or other records, shall be guilty of a Class 2 misdemeanor.

Code 1950, § 54-524.107:1; 1971, Ex. Sess., c. 170; 1975, cc. 14, 15; 1984, c. 667.

§ 18.2-263. Unnecessary to negative exception, etc.; burden of proof of exception, etc
In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of this article or of the Drug Control Act (§ 54.1-3400 et seq.), it shall not be necessary to negative any exception, excuse, proviso, or exemption contained in this article or in the Drug Control Act, and the burden of proof of any such exception, excuse, proviso, or exemption shall be upon the defendant.

Code 1950, § 54-524.108; 1970, c. 650; 1975, cc. 14, 15.

§ 18.2-264. Inhaling drugs or other noxious chemical substances or causing, etc., others to do so
A. It shall be unlawful, except under the direction of a practitioner as defined in § 54.1-3401, for any person deliberately to smell or inhale any drugs or any other noxious chemical substances including but not limited to fingernail polish or model airplane glue, containing any ketones, aldehydes, organic acetates, ether, chlorinated hydrocarbons or vapors, with the intent to become intoxicated, inebriated, excited, stupefied or to dull the brain or nervous system.

Any person violating the provisions of this subsection shall be guilty of a Class 1 misdemeanor.

B. It shall be unlawful for any person, other than one duly licensed, deliberately to cause, invite or induce any person to smell or inhale any drugs or any other noxious substances or chemicals containing any ketone, aldehydes, organic acetates, ether, chlorinated hydrocarbons or vapors with the intent to intoxicate, inebriate, excite, stupefy or to dull the brain or nervous system of such person.

Any person violating the provisions of this subsection shall be guilty of a Class 2 misdemeanor.

Code 1950, § 18.1-70.1; 1968, c. 391; 1969, Ex. Sess., c. 19; 1973, c. 27; 1975, cc. 14, 15; 1993, c. 416 .

§ 18.2-264.01. Repealed
Repealed by Acts 2002, c. 831, cl. 2, effective July 1, 2003.

§ 18.2-264.1. Repealed
Repealed by Acts 1994, c. 432.

§ 18.2-265. Repealed
Repealed by Acts 1979, c. 638.

Article 1.1 - DRUG PARAPHERNALIA

§ 18.2-265.1. Definition
As used in this article, the term "drug paraphernalia" means all equipment, products, and materials of any kind which are either designed for use or which are intended by the person charged with violating § 18.2-265.3 for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, strength testing,

analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body marijuana or a controlled substance. It includes, but is not limited to:

1. Kits intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of marijuana or any species of plant which is a controlled substance or from which a controlled substance can be derived;

2. Kits intended for use or designed for use in manufacturing, compounding, converting, producing, processing, or preparing marijuana or controlled substances;

3. Isomerization devices intended for use or designed for use in increasing the potency of marijuana or any species of plant which is a controlled substance;

4. Testing equipment intended for use or designed for use in identifying or in analyzing the strength or effectiveness of marijuana or controlled substances;

5. Scales and balances intended for use or designed for use in weighing or measuring marijuana or controlled substances;

6. Diluents and adulterants, such as quinine hydrochloride, mannitol, or mannite, intended for use or designed for use in cutting controlled substances;

7. Separation gins and sifters intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

8. Blenders, bowls, containers, spoons, and mixing devices intended for use or designed for use in compounding controlled substances;

9. Capsules, balloons, envelopes, and other containers intended for use or designed for use in packaging small quantities of marijuana or controlled substances;

10. Containers and other objects intended for use or designed for use in storing or concealing marijuana or controlled substances;

11. Hypodermic syringes, needles, and other objects intended for use or designed for use in parenterally injecting controlled substances into the human body;

12. Objects intended for use or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

b. Water pipes;

c. Carburetion tubes and devices;

d. Smoking and carburetion masks;

e. Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

f. Miniature cocaine spoons, and cocaine vials;

g. Chamber pipes;

h. Carburetor pipes;

i. Electric pipes;

j. Air-driven pipes;

k. Chillums;

l. Bongs;

m. Ice pipes or chillers.

1981, c. 598; 1983, c. 535.

§ 18.2-265.2. Evidence to be considered in cases under this article

In determining whether an object is drug paraphernalia, the court may consider, in addition to all other relevant evidence, the following:

1. Constitutionally admissible statements by the accused concerning the use of the object;

2. The proximity of the object to marijuana or controlled substances, which proximity is actually known to the accused;

3. Instructions, oral or written, provided with the object concerning its use;

4. Descriptive materials accompanying the object which explain or depict its use;

5. National and local advertising within the actual knowledge of the accused concerning its use;

6. The manner in which the object is displayed for sale;

7. Whether the accused is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

8. Evidence of the ratio of sales of the objects defined in § 18.2-265.1 to the total sales of the business enterprise;

9. The existence and scope of legitimate uses for the object in the community;

10. Expert testimony concerning its use or the purpose for which it was designed;

11. Relevant evidence of the intent of the accused to deliver it to persons who he knows, or should reasonably know, intend to use the object with an illegal drug. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this article shall not prevent a finding that the object is intended for use or designed for use as drug paraphernalia.

1981, c. 598; 1983, c. 535.

§ 18.2-265.3. Penalties for sale, etc., of drug paraphernalia

A. Any person who sells or possesses with intent to sell drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it is either designed for use or intended by such person for use to illegally plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body marijuana or a controlled substance, shall be guilty of a Class 1 misdemeanor.

B. Any person eighteen years of age or older who violates subsection A hereof by selling drug paraphernalia to a minor who is at least three years junior to the accused in age shall be guilty of a Class 6 felony.

C. Any person eighteen years of age or older who distributes drug paraphernalia to a minor shall be guilty of a Class 1 misdemeanor.

1981, c. 598; 1983, c. 535; 1984, c. 31.

§ 18.2-265.4. Repealed

Repealed by Acts 2004, c. 995.

§ 18.2-265.5. Advertisement of drug paraphernalia prohibited; penalty

It shall be unlawful for any person to place in any newspaper, magazine, handbill or other publication any advertisement, knowing or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended by such person for use as drug paraphernalia. A violation of this section shall be punishable as a Class 1 misdemeanor.

1983, c. 535.

Article 1.2 - SALE OF EPHEDRINE OR RELATED COMPOUNDS

§ 18.2-265.6. Definitions

As used in this article, unless the context requires a different meaning:

"Department" means the Department of State Police.

"Ephedrine or related compounds" means ephedrine and pseudoephedrine base or their salts, isomers, or salts of isomers.

"Pharmacy" means any establishment or institution from which drugs, medicines, or medicinal chemicals are dispensed or offered for sale or on which a sign is displayed bearing the words "apothecary," "druggist," "drugs," "drug store," "drug sundries," "medicine store," "pharmacist," "pharmacy," or "prescriptions filled" or any similar words intended to indicate that the practice of pharmacy is being conducted pursuant to a license issued under Chapter 33 (§ 54.1-3300 et seq.) of Title 54.1.

"Retail distributor" means an entity licensed to conduct business in the Commonwealth that offers for sale to the public at a retail outlet any nonprescription compound, mixture, or preparation containing ephedrine or related compounds.

"System" or "electronic system" means a real-time electronic recordkeeping and monitoring system for the sale of ephedrine or related compounds.

2012, cc. 160, 252.

§ 18.2-265.7. Sale of the methamphetamine precursors ephedrine or related compounds; penalty

A. The sale of any product containing ephedrine or related compounds sold by a pharmacy or retail distributor shall be limited to no more than 3.6 grams per day and 9 grams per 30-day period per individual customer. The limits shall apply to the total amount of base ephedrine or related compounds contained in the products and not to the overall weight of the products.

B. Ephedrine or related compounds shall only be displayed for sale behind a store counter that is not accessible to consumers or in a locked case that requires assistance by a store employee for customer access.

C. Any person purchasing, receiving, or otherwise acquiring ephedrine or related compounds shall, prior to taking possession, present photo identification issued by a government or an educational institution.

D. The pharmacy or retail distributor shall maintain a written log or electronic system with the purchaser's name and address, birth date, and signature; the product name and quantity sold; and the date and time of the transaction. Unless exempt under subsection B of § 18.2-265.8 or § 18.2-265.11, the pharmacy or retail distributor shall use the electronic recordkeeping and monitoring system to report all nonprescription sales of any product containing ephedrine or related compounds.

E. The purchaser shall sign the record acknowledging an understanding of the applicable sales limit and that providing false statements or misrepresentations may subject the purchaser to criminal penalties under § 1001 of Title 18 of the United States Code.

F. The pharmacy or retail distributor shall maintain records of all sales required to be entered into the electronic system or written log for a period of two years from the date of the last entry.

G. The provisions of this article do not apply to sales of ephedrine or related compounds pursuant to a valid prescription.

H. Any person who willfully violates this section is guilty of a Class 1 misdemeanor.

2012, cc. 160, 252.

§ 18.2-265.8. Real-time electronic recording of sales of ephedrine or related compounds; memorandum of understanding

A. The Department shall enter into a memorandum of understanding with an appropriate entity to establish the Commonwealth's participation in a real-time electronic recordkeeping and monitoring system for the sale of ephedrine or related compounds. The memorandum of understanding shall include the following:

1. A real-time electronic recordkeeping and monitoring system shall be provided at no charge to the Commonwealth or to participating pharmacies and retail distributors and shall be approved by the Department.

2. The system shall provide, at no charge to participating pharmacies and retail distributors, appropriate training, 24-hour online support, and a toll-free telephone help line that is staffed 24 hours a day.

3. The system shall be able to communicate in real time with similar systems operated in other states and the District of Columbia and similar systems containing information submitted by more than one state.

4. The system shall comply with information exchange standards adopted by the National Information Exchange Model.

5. The system shall include a stop sales alert, which shall be a notification that completion of the sale would result in the seller or purchaser violating the quantity limits set forth in § 18.2-265.7, with an override function that may be used by a pharmacy or retail distributor under the circumstances set forth in § 18.2-265.9 and shall record each instance in which the override function is utilized.

6. The system shall provide for the recording of the following:

a. The date and time of the transaction;

b. The name, address, date of birth, and photo identification number of the purchaser; the type of identification; and the government or educational institution of issuance;

c. The number of packages purchased; the total number of grams of ephedrine or related compounds per package; and the name of the compound, mixture, or preparation containing ephedrine or related compounds; and

d. The signature of the purchaser or unique number connecting the transaction to a paper signature maintained at the retail premises.

7. The system shall ensure that submitted data is retained within the system for at least two years from the date of submission.

B. The Department shall provide a process for a pharmacy or retail distributor to apply for, obtain, and periodically renew an exemption from the requirement to report transactions to the electronic system if the pharmacy or retail distributor lacks broadband access or maintains a sales volume of less than 72 grams of ephedrine or related compounds in a 30-day period.

C. The Superintendent of State Police shall promulgate regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) for the implementation of this section. Regulations adopted under this section shall be deemed a customary police function for purposes of subdivision B 6 of § 2.2-4002.

2012, cc. 160, 252.

§ 18.2-265.9. Stop sales alerts; interruption of electronic system

A. A pharmacy or retail distributor shall not complete the sale if the system generates a stop sales alert unless the individual distributing the ephedrine or related compound has a reasonable fear of imminent bodily harm if the sale is not completed.

B. In the event of a mechanical or electronic interruption of the system, the pharmacy or retail establishment shall maintain a written log of sales of ephedrine or related compounds until the system is restored. The information written in the log shall be transmitted to the system as soon as practicable after the system is restored.

2012, cc. 160, 252.

§ 18.2-265.10. Exemption from participation in electronic system; requirement to maintain log

Any pharmacy or retail distributor that has been granted an exemption from participation in the system pursuant to subsection B of § 18.2-265.8 shall forward to the Department every seven days by fax or electronic means a legible copy of the log required by § 18.2-265.7.

2012, cc. 160, 252.

§ 18.2-265.11. Exemption from participation in electronic system and maintenance of a written log

A. The following entities shall not be required to participate in the electronic system and shall not be required to maintain a written log:

1. Licensed manufacturers that manufacture and lawfully distribute products in the channels of commerce.

2. Wholesalers that lawfully distribute products in the channels of commerce.

3. Inpatient pharmacies of health care facilities licensed in the Commonwealth.

4. Licensed long-term health care facilities.

5. Government-operated health care clinics or departments or centers.

6. Physicians who dispense drugs pursuant to § 54.1-3304.

7. Pharmacies located in correctional facilities.

8. Government-operated or industry-operated medical facilities serving the employees of the Commonwealth or local or federal government.

B. Purchases of ephedrine or related compounds pursuant to a valid prescription are not required to be reported to the system or entered into a written log.

C. The sale of a single package containing no more than 60 milligrams of ephedrine or related compounds to an individual is not required to be reported to the system or entered into a log provided it is an isolated sale.

2012, cc. 160, 252.

§ 18.2-265.12. Authority to access data, records, and reports

The Department or other law-enforcement agency of the Commonwealth or any federal agency conducting a criminal investigation involving the manufacture of methamphetamine consistent with state or federal law may access data, records, and reports regarding the sale of ephedrine or related compounds. In addition, such information may be accessed if relevant to proceedings in any court, investigatory grand jury, or special grand jury that has been impaneled in accordance with the provisions of Chapter 13 (§ 19.2-191 et seq.) of Title 19.2.

The Superintendent of State Police shall promulgate regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for the implementation of this section. Regulations adopted under this section shall be deemed a customary police function for purposes of subdivision B 6 of § 2.2-4002.

2012, cc. 160, 252.

§ 18.2-265.13. Confidentiality of data in possession of Department

All data, records, and reports related to the sale of ephedrine or related compounds to retail customers and any abstracts of such data, records, and reports that are in the possession of the Department pursuant to this article shall be confidential and exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) and the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.).

2012, cc. 160, 252.

§ 18.2-265.14. Prohibition on disclosure of information by entity operating the system

The entity operating the system pursuant to the memorandum of understanding with the Department shall not use or disclose the information collected on behalf of the Department from a pharmacy or retail distributor for any purpose other than (i) to ensure compliance with this article or the federal Combat Methamphetamine Epidemic Act of 2005, (ii) to comply with the United States government or a political subdivision thereof for law-enforcement purposes pursuant to state or federal law, or (iii) to facilitate a product recall necessary to protect public health and safety.

2012, cc. 160, 252.

§ 18.2-265.15. Prohibition on disclosure of information by pharmacy or retail distributor; civil immunity

A pharmacy or retail distributor that sells any product containing ephedrine or related compounds shall not use or disclose the information in the system or a written log for any purpose other than (i) to ensure compliance with this article or the federal Combat Methamphetamine Epidemic Act of 2005, (ii) to comply with the United States government or a political subdivision thereof for law-enforcement purposes pursuant to state or federal law, or (iii) to facilitate a product recall necessary to protect public health and safety. A pharmacy or retail distributor shall report information in the written log or electronic system to law-enforcement personnel upon request, and any pharmacy or retail distributor that in good faith releases such information to federal, state, or local law-enforcement officers, or to any person acting on behalf of such officers, shall be immune from civil liability for the release unless the release constitutes gross negligence or intentional, wanton, or willful misconduct.

2012, cc. 160, 252.

§ 18.2-265.16. Compliance with statutory provisions; civil immunity

Absent gross negligence, recklessness, or willful misconduct, any pharmacy or retail distributor utilizing the system or written log in compliance with this article shall be immune from civil liability as a result of actions or omissions in carrying out such statutory duties.

2012, cc. 160, 252.

§ 18.2-265.17. Exemption of information systems from provisions related to the Virginia Information Technologies Agency

The provisions of Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2 shall not apply to this article.

2012, cc. 160, 252.

§ 18.2-265.18. Failure to report certain sales; penalty

Any person subject to the recordkeeping and reporting requirements set forth in this article that willfully fails to report nonprescription sales of ephedrine or related compounds is guilty of a Class 1 misdemeanor.

2012, cc. 160, 252.

Article 1.3 - DEXTROMETHORPHAN DISTRIBUTION ACT

§ 18.2-265.19. Definitions

As used in this article, unless the context requires a different meaning:

"Dextromethorphan" means the dextrorotatory isomer of 3-methoxy-N-methylmorphinan and its salts.

"Pharmacy" means any establishment or institution from which drugs, medicines, or medicinal chemicals are dispensed or offered for sale or on which a sign is displayed bearing the words "apothecary," "druggist," "drugs," "drug store," "drug sundries," "medicine store," "pharmacist," "pharmacy," "prescriptions filled," or any similar words intended to indicate that the practice of

pharmacy is being conducted pursuant to a license issued under Chapter 33 (§ 54.1-3300 et seq.) of Title 54.1.

"Retail distributor" means an entity licensed to conduct business in the Commonwealth that offers for sale to the public at a retail outlet any nonprescription compound, mixture, or preparation containing dextromethorphan.

"Unfinished dextromethorphan" means dextromethorphan in the form of a "bulk drug substance" as defined in § 54.1-3401.

2014, cc. 101, 362.

§ 18.2-265.20. Sale or distribution of dextromethorphan to minors; purchase by minors; civil penalty

A. It is unlawful for any pharmacy or retail distributor knowingly or intentionally to sell or distribute any product containing dextromethorphan to a minor.

B. A pharmacy or retail distributor, or its employee or agent, shall not sell or distribute a product containing dextromethorphan unless the purchaser presents a federal, state, or local government-issued document that contains a photograph and the birth date of the purchaser that shows that the purchaser is at least 18 years of age or unless from the purchaser's outward appearance the pharmacy or retail distributor would reasonably presume the purchaser to be 25 years of age or older.

C. It is unlawful for any minor knowingly or intentionally to purchase any product containing dextromethorphan.

D. Any pharmacy or retail distributor, or its employee or agent, that violates subsection A or any minor who violates subsection C is subject to a civil penalty of $25. Any pharmacy or retail distributor, or its employee or agent, that violates subsection B shall receive a notice of noncompliance and, upon any subsequent violation of subsection B, shall be subject to a civil penalty of $25. Such penalty shall be collected by the attorney for the Commonwealth for the locality where the violation occurred, and the proceeds shall be deposited into the Literary Fund.

E. The provisions of this section shall not apply if the product 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 otherwise authorized by the Drug Control Act (§ 54.1-3400 et seq.).

2014, cc. 101, 362.

§ 18.2-265.21. Possession or distribution of unfinished dextromethorphan; penalty

Any person who distributes or possesses with the intent to distribute unfinished dextromethorphan who is not registered under § 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 321 et seq.) or otherwise authorized by the Drug Control Act (§ 54.1-3400 et seq.) to distribute or possess unfinished dextromethorphan is guilty of a Class 1 misdemeanor. This section does not apply to a common carrier that receives or possesses unfinished dextromethorphan for

the purpose of distributing such unfinished dextromethorphan between persons registered under § 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 321 et seq.) or otherwise authorized by the Drug Control Act (§ 54.1-3400 et seq.) to distribute or possess unfinished dextromethorphan.

2014, cc. 101, 362.

Article 2 - DRIVING MOTOR VEHICLE, ETC., WHILE INTOXICATED

§ 18.2-266. Driving motor vehicle, engine, etc., while intoxicated, etc

It shall be unlawful for any person to drive or operate any motor vehicle, engine or train (i) while such person has a blood alcohol concentration of 0.08 percent or more by weight by volume or 0.08 grams or more per 210 liters of breath as indicated by a chemical test administered as provided in this article, (ii) while such person is under the influence of alcohol, (iii) while such person is under the influence of any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature, or any combination of such drugs, to a degree which impairs his ability to drive or operate any motor vehicle, engine or train safely, (iv) while such person is under the combined influence of alcohol and any drug or drugs to a degree which impairs his ability to drive or operate any motor vehicle, engine or train safely, or (v) while such person has a blood concentration of any of the following substances at a level that is equal to or greater than: (a) 0.02 milligrams of cocaine per liter of blood, (b) 0.1 milligrams of methamphetamine per liter of blood, (c) 0.01 milligrams of phencyclidine per liter of blood, or (d) 0.1 milligrams of 3,4-methylenedioxymethamphetamine per liter of blood. A charge alleging a violation of this section shall support a conviction under clauses (i), (ii), (iii), (iv), or (v).

For the purposes of this article, the term "motor vehicle" includes mopeds, while operated on the public highways of this Commonwealth.

Code 1950, § 18.1-54; 1960, c. 358; 1975, cc. 14, 15; 1977, c. 637; 1984, c. 666; 1986, c. 635; 1987, c. 661; 1992, c. 830; 1994, cc. 359, 363; 1996, c. 439; 2005, cc. 616, 845.

§ 18.2-266.1. Persons under age 21 driving after illegally consuming alcohol; penalty

A. It shall be unlawful for any person under the age of 21 to operate any motor vehicle after illegally consuming alcohol. Any such person with a blood alcohol concentration of 0.02 percent or more by weight by volume or 0.02 grams or more per 210 liters of breath but less than 0.08 by weight by volume or less than 0.08 grams per 210 liters of breath as indicated by a chemical test administered as provided in this article shall be in violation of this section.

B. A violation of this section is a Class 1 misdemeanor. Punishment shall include (i) forfeiture of such person's license to operate a motor vehicle for a period of one year from the date of conviction and (ii) a mandatory minimum fine of $500 or performance of a mandatory minimum of 50 hours of community service. This suspension period shall be in addition to the suspension period provided under § 46.2-391.2. The penalties and license forfeiture provisions set forth in §§ 16.1-278.9, 18.2-270 and 18.2-271 shall not apply to a violation of this section. Any person

convicted of a violation of this section shall be eligible to attend an Alcohol Safety Action Program under the provisions of § 18.2-271.1 and may, in the discretion of the court, be issued a restricted license during the term of license suspension.

C. Notwithstanding §§ 16.1-278.8 and 16.1-278.9, upon adjudicating a juvenile delinquent based upon a violation of this section, the juvenile and domestic relations district court shall order disposition as provided in subsection B.

1994, cc. 359, 363; 1995, c. 31; 2003, c. 605; 2008, c. 729; 2009, c. 660; 2011, cc. 134, 683.

§ 18.2-267. Preliminary analysis of breath to determine alcoholic content of blood

A. Any person who is suspected of a violation of § 18.2-266, 18.2-266.1, subsection B of § 18.2-272, or a similar ordinance shall be entitled, if such equipment is available, to have his breath analyzed to determine the probable alcoholic content of his blood. The person shall also be entitled, upon request, to observe the process of analysis and to see the blood-alcohol reading on the equipment used to perform the breath test. His breath may be analyzed by any police officer of the Commonwealth, or of any county, city or town, or by any member of a sheriff's department in the normal discharge of his duties.

B. The Department of Forensic Science shall determine the proper method and equipment to be used in analyzing breath samples taken pursuant to this section and shall advise the respective police and sheriff's departments of the same.

C. Any person who has been stopped by a police officer of the Commonwealth, or of any county, city or town, or by any member of a sheriff's department and is suspected by such officer to be guilty of an offense listed in subsection A, shall have the right to refuse to permit his breath to be so analyzed, and his failure to permit such analysis shall not be evidence in any prosecution for an offense listed in subsection A.

D. Whenever the breath sample analysis indicates that alcohol is present in the person's blood, the officer may charge the person with a violation of an offense listed in subsection A. The person so charged shall then be subject to the provisions of §§ 18.2-268.1 through 18.2-268.12, or of a similar ordinance.

E. The results of the breath analysis shall not be admitted into evidence in any prosecution for an offense listed in subsection A, the purpose of this section being to permit a preliminary analysis of the alcoholic content of the blood of a person suspected of having committed an offense listed in subsection A.

F. Police officers or members of any sheriff's department shall, upon stopping any person suspected of having committed an offense listed in subsection A, advise the person of his rights under the provisions of this section.

G. Nothing in this section shall be construed as limiting the provisions of §§ 18.2-268.1 through 18.2-268.12.

Code 1950, § 18.1-54.1; 1970, c. 511; 1975, cc. 14, 15; 1979, c. 717; 1985, cc. 355, 609; 1990, c. 825; 1992, c. 830; 1994, cc. 359, 363; 1996, cc. 154, 952; 2004, c. 1013; 2005, cc. 757, 840, 868, 881.

§ 18.2-268. Repealed

Repealed by Acts 1992, c. 830 .

§ 18.2-268.1. Chemical testing to determine alcohol or drug content of blood; definitions

As used in §§ 18.2-268.2 through 18.2-268.12, unless the context clearly indicates otherwise:

The phrase "alcohol or drug" means alcohol, a drug or drugs, or any combination of alcohol and a drug or drugs.

The phrase "blood or breath" means either or both.

"Chief police officer" means the sheriff in any county not having a chief of police, the chief of police of any county having a chief of police, the chief of police of the city, or the sergeant or chief of police of the town in which the charge will be heard, or their authorized representatives.

"Department" means the Department of Forensic Science.

"Director" means the Director of the Department of Forensic Science.

"License" means any driver's license, temporary driver's license, or instruction permit authorizing the operation of a motor vehicle upon the highways.

"Ordinance" means a county, city or town ordinance.

1992, c. 830; 2005, cc. 868, 881.

§ 18.2-268.2. Implied consent to post-arrest testing to determine drug or alcohol content of blood

A. Any person, whether licensed by Virginia or not, who operates a motor vehicle upon a highway, as defined in § 46.2-100, in the Commonwealth shall be deemed thereby, as a condition of such operation, to have consented to have samples of his blood, breath, or both blood and breath taken for a chemical test to determine the alcohol, drug, or both alcohol and drug content of his blood, if he is arrested for violation of § 18.2-266, 18.2-266.1, or subsection B of § 18.2-272 or of a similar ordinance within three hours of the alleged offense.

B. Any person so arrested for a violation of clause (i) or (ii) of § 18.2-266 or both, § 18.2-266.1 or subsection B of § 18.2-272 or of a similar ordinance shall submit to a breath test. If the breath test is unavailable or the person is physically unable to submit to the breath test, a blood test shall be given. The accused shall, prior to administration of the test, be advised by the person administering the test that he has the right to observe the process of analysis and to see the blood-alcohol reading on the equipment used to perform the breath test. If the equipment automatically produces a written printout of the breath test result, the printout, or a copy, shall be given to the accused.

C. A person, after having been arrested for a violation of clause (iii), (iv), or (v) of § 18.2-266 or § 18.2-266.1 or subsection B of § 18.2-272 or of a similar ordinance, may be required to submit to a blood test to determine the drug or both drug and alcohol content of his blood. When a person, after having been arrested for a violation of § 18.2-266 (i) or (ii) or both, submits to a breath test in accordance with subsection B or refuses to take or is incapable of taking such a breath test, he may be required to submit to tests to determine the drug or both drug and alcohol content of his blood if the law-enforcement officer has reasonable cause to believe the person was driving under the influence of any drug or combination of drugs, or the combined influence of alcohol and drugs.

1992, c. 830; 1993, c. 746; 1994, cc. 359, 363; 1995, c. 23; 2002, c. 748; 2004, c. 1013; 2005, cc. 616, 757, 840.

§ 18.2-268.3. Refusal of tests; penalties; procedures

A. It shall be unlawful for a person who is arrested for a violation of § 18.2-266, 18.2-266.1, or subsection B of § 18.2-272 or of a similar ordinance to unreasonably refuse to have samples of his blood or breath or both blood and breath taken for chemical tests to determine the alcohol or drug content of his blood as required by § 18.2-268.2 and any person who so unreasonably refuses is guilty of a violation of this section.

B. When a person is arrested for a violation of § 18.2-51.4, 18.2-266, 18.2-266.1 or, subsection B of § 18.2-272 or of a similar ordinance and such person refuses to permit blood or breath or both blood and breath samples to be taken for testing as required by § 18.2-268.2, the arresting officer shall advise the person, from a form provided by the Office of the Executive Secretary of the Supreme Court, that (i) a person who operates a motor vehicle upon a highway in the Commonwealth is deemed thereby, as a condition of such operation, to have consented to have samples of his blood and breath taken for chemical tests to determine the alcohol or drug content of his blood, (ii) a finding of unreasonable refusal to consent may be admitted as evidence at a criminal trial, (iii) the unreasonable refusal to do so constitutes grounds for the revocation of the privilege of operating a motor vehicle upon the highways of the Commonwealth, (iv) the criminal penalty for unreasonable refusal within 10 years of a prior conviction for driving while intoxicated or unreasonable refusal is a Class 2 misdemeanor, and (v) the criminal penalty for unreasonable refusal within 10 years of any two prior convictions for driving while intoxicated or unreasonable refusal is a Class 1 misdemeanor. The form from which the arresting officer shall advise the person arrested shall contain a brief statement of the law requiring the taking of blood or breath samples, a statement that a finding of unreasonable refusal to consent may be admitted as evidence at a criminal trial, and the penalties for refusal. The Office of the Executive Secretary of the Supreme Court shall make the form available on the Internet and the form shall be considered an official publication of the Commonwealth for the purposes of § 8.01-388.

C. The arresting officer shall, under oath before the magistrate, execute the form and certify, (i) that the defendant has refused to permit blood or breath or both blood and breath samples to be taken for testing; (ii) that the officer has read the portion of the form described in subsection B to

the arrested person; (iii) that the arrested person, after having had the portion of the form described in subsection B read to him, has refused to permit such sample or samples to be taken; and (iv) how many, if any, violations of this section, § 18.2-266, or any offense described in subsection E of § 18.2-270 the arrested person has been convicted of within the last 10 years. Such sworn certification shall constitute probable cause for the magistrate to issue a warrant or summons charging the person with unreasonable refusal. The magistrate shall attach the executed and sworn advisement form to the warrant or summons. The warrant or summons for a first offense under this section shall be executed in the same manner as a criminal warrant or summons. If the person arrested has been taken to a medical facility for treatment or evaluation of his medical condition, the arresting officer may read the advisement form to the person at the medical facility, and issue, on the premises of the medical facility, a summons for a violation of this section in lieu of securing a warrant or summons from the magistrate. The magistrate or arresting officer, as the case may be, shall forward the executed advisement form and warrant or summons to the appropriate court.

D. A first violation of this section is a civil offense and subsequent violations are criminal offenses. For a first offense the court shall suspend the defendant's privilege to drive for a period of one year. This suspension period is in addition to the suspension period provided under § 46.2-391.2.

If a person is found to have violated this section and within 10 years prior to the date of the refusal he was found guilty of any of the following: a violation of this section, a violation of § 18.2-266, or a violation of any offense listed in subsection E of § 18.2-270, arising out of separate occurrences or incidents, he is guilty of a Class 2 misdemeanor and the court shall suspend the defendant's privilege to drive for a period of three years. This suspension period is in addition to the suspension period provided under § 46.2-391.2.

If a person is found guilty of a violation of this section and within 10 years prior to the date of the refusal he was found guilty of any two of the following: a violation of this section, a violation of § 18.2-266, or a violation of any offense listed in subsection E of § 18.2-270 arising out of separate occurrences or incidents, he is guilty of a Class 1 misdemeanor and the court shall suspend the defendant's privilege to drive for a period of three years. This suspension period is in addition to the suspension period provided under § 46.2-391.2.

1992, c. 830; 1994, cc. 359, 363; 1997, c. 691; 2001, cc. 654, 779; 2004, cc. 985, 1013, 1022; 2004, Sp. Sess. I, c. 2; 2005, cc. 757, 840; 2009, c. 239.

§ 18.2-268.4. Trial and appeal for refusal

A. Venue for the trial of the warrant or summons shall lie in the court of the county or city in which the offense of driving under the influence of intoxicants or other offense listed in subsection A of § 18.2-268.3 is to be tried.

B. The procedure for appeal and trial of a first offense of § 18.2-268.3 shall be the same as provided by law for misdemeanors; if requested by either party on appeal to the circuit court, trial by jury shall be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of Title 19.2, and the Commonwealth shall be required to prove its case beyond a reasonable doubt.

C. If the defendant pleads guilty to a violation of § 18.2-266, 18.2-266.1, or subsection B of § 18.2-272 or of a similar ordinance, the court may dismiss the warrant or summons.

The court shall dispose of the defendant's license in accordance with the provisions of § 46.2-398; however, the defendant's license shall not be returned during any period of suspension imposed under § 46.2-391.2.

1992, c. 830; 1994, cc. 151, 359, 363; 2004, cc. 985, 1013; 2005, cc. 757, 840, 943.

§ 18.2-268.5. Qualifications and liability of persons authorized to take blood sample; procedure for taking samples

For purposes of this article, only a physician, registered nurse, licensed practical nurse, phlebotomist, graduate laboratory technician or a technician or nurse designated by order of a circuit court acting upon the recommendation of a licensed physician, using soap and water, polyvinylpyrrolidone iodine, pvp iodine, povidone iodine or benzalkonium chloride to cleanse the part of the body from which the blood is taken and using instruments sterilized by the accepted steam sterilizer or some other sterilizer which will not affect the accuracy of the test, or using chemically clean sterile disposable syringes, shall withdraw blood for the purpose of determining its alcohol or drug or both alcohol and drug content. It is a Class 3 misdemeanor to reuse single-use-only needles or syringes. No civil liability shall attach to any person authorized to withdraw blood as a result of the act of withdrawing blood as provided in this section from any person submitting thereto, provided the blood was withdrawn according to recognized medical procedures. However, the person shall not be relieved from liability for negligence in the withdrawing of any blood sample.

No person arrested for a violation of § 18.2-266, 18.2-266.1, or subsection B of § 18.2-272, or a similar ordinance shall be required to execute in favor of any person or corporation a waiver or release of liability in connection with the withdrawal of blood and as a condition precedent to the withdrawal of blood as provided for in this section.

1992, c. 830; 1994, cc. 359, 363; 2004, cc. 150, 440, 1013; 2005, cc. 757, 840.

§ 18.2-268.6. Transmission of blood samples

The blood sample withdrawn pursuant to § 18.2-268.5 shall be placed in vials provided or approved by the Department of Forensic Science. The vials shall be sealed by the person taking the sample or at his direction. The person who seals the vials shall complete the prenumbered certificate of blood withdrawal forms and attach one form to each vial. The completed withdrawal certificate for each vial shall show the name of the accused, the name of the person taking the blood sample, the date and time the blood sample was taken and information identifying the arresting

or accompanying officer. The vials shall be placed in a container provided by the Department, and the container shall be sealed to prevent tampering with the vials. The arresting or accompanying officer shall take possession of the container as soon as the vials are placed in the container and sealed, and shall promptly transport or mail the container to the Department.

1992, c. 830; 2001, c. 561; 2003, cc. 933, 936; 2005, cc. 868, 881.

§ 18.2-268.7. Transmission of blood test samples; use as evidence

A. Upon receipt of a blood sample forwarded to the Department for analysis pursuant to § 18.2-268.6, the Department shall have it examined for its alcohol or drug or both alcohol and drug content and the Director shall execute a certificate of analysis indicating the name of the accused; the date, time and by whom the blood sample was received and examined; a statement that the seal on the vial had not been broken or otherwise tampered with; a statement that the container and vial were provided or approved by the Department and that the vial was one to which the completed withdrawal certificate was attached; and a statement of the sample's alcohol or drug or both alcohol and drug content. The Director shall remove the withdrawal certificate from the vial and either (i) attach it to the certificate of analysis and state in the certificate of analysis that it was so removed and attached or (ii) electronically scan it into the Department's Laboratory Information Management System and place the original withdrawal certificate in its case-specific file. The certificate of analysis and the withdrawal certificate shall be returned or electronically transmitted to the clerk of the court in which the charge will be heard.

B. After completion of the analysis, the Department shall preserve the remainder of the blood until at least 90 days have lapsed from the date the blood was drawn. During this 90-day period, the accused may, by motion filed before the court in which the charge will be heard, with notice to the Department, request an order directing the Department to transmit the remainder of the blood sample to an independent laboratory retained by the accused for analysis. The Department shall destroy the remainder of the blood sample if no notice of a motion to transmit the remaining blood sample is received during the 90-day period.

C. When a blood sample taken in accordance with the provisions of §§ 18.2-268.2 through 18.2-268.6 is forwarded for analysis to the Department, a report of the test results shall be filed in that office. Upon proper identification of the certificate of withdrawal, the certificate of analysis, with the withdrawal certificate attached, shall, when attested by the Director, be admissible in any court as evidence of the facts therein stated and of the results of such analysis (i) in any criminal proceeding, provided the requirements of subsection A of § 19.2-187.1 have been satisfied and the accused has not objected to the admission of the certificate pursuant to subsection B of § 19.2-187.1, or (ii) in any civil proceeding. On motion of the accused, the report of analysis prepared for the remaining blood sample shall be admissible in evidence provided the report is duly attested by a person performing such analysis and the independent laboratory that performed the analysis is accredited or certified to conduct forensic blood alcohol/drug testing by one or more of the following bodies: American Society of Crime Laboratory Directors/Laboratory Accreditation Board

(ASCLD/LAB); College of American Pathologists (CAP); United States Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA); or American Board of Forensic Toxicology (ABFT).

Upon request of the person whose blood was analyzed, the test results shall be made available to him.

The Director may delegate or assign these duties to an employee of the Department.

1992, c. 830; 1993, c. 688; 1994, cc. 337, 359, 363; 2003, cc. 933, 936; 2005, cc. 868, 881; 2009, Sp. Sess. I, cc. 1, 4; 2014, c. 328.

§ 18.2-268.8. Fees

Payment for withdrawing blood shall not exceed $25, which shall be paid out of the appropriation for criminal charges. If the person whose blood sample was withdrawn is subsequently convicted for a violation of § 18.2-266, 18.2-266.1, or subsection B of § 18.2-272 or of a similar ordinance, or is placed under the purview of a probational, educational, or rehabilitational program as set forth in § 18.2-271.1, the amount charged by the person withdrawing the sample shall be taxed as part of the costs of the criminal case and shall be paid into the general fund of the state treasury.

If the person whose blood sample was withdrawn is subsequently convicted for violation of § 18.2-266, 18.2-266.1, or subsection B of § 18.2-272 or a similar ordinance, a fee of $25 for testing the first blood sample by the Department shall be taxed as part of the costs of the criminal case and shall be paid into the general fund of the state treasury.

1992, c. 830; 1994, cc. 359, 363; 2001, c. 561; 2003, cc. 933, 936; 2004, c. 1013; 2005, cc. 757, 840, 868, 881.

§ 18.2-268.9. Assurance of breath-test validity; use of breath-test results as evidence

A. To be capable of being considered valid as evidence in a prosecution under § 18.2-266, 18.2-266.1, or subsection B of § 18.2-272, or a similar ordinance, chemical analysis of a person's breath shall be performed by an individual possessing a valid license to conduct such tests, with a type of equipment and in accordance with methods approved by the Department.

B. The Department shall establish a training program for all individuals who are to administer the breath tests. Upon a person's successful completion of the training program, the Department may license him to conduct breath-test analyses. Such license shall identify the specific types of breath test equipment upon which the individual has successfully completed training. Any individual conducting a breath test under the provisions of § 18.2-268.2 shall issue a certificate which will indicate that the test was conducted in accordance with the Department's specifications, the name of the accused, that prior to administration of the test the accused was advised of his right to observe the process and see the blood alcohol reading on the equipment used to perform the breath test, the date and time the sample was taken from the accused, the sample's alcohol content, and the name of the person who examined the sample. This certificate, when attested by the individual conducting the breath test on equipment maintained by the Department, shall be admissible in

any court as evidence of the facts therein stated and of the results of such analysis (i) in any criminal proceeding, provided that the requirements of subsection A of § 19.2-187.1 have been satisfied and the accused has not objected to the admission of the certificate pursuant to subsection B of § 19.2-187.1, or (ii) in any civil proceeding. Any such certificate of analysis purporting to be signed by a person authorized by the Department shall be admissible in evidence without proof of seal or signature of the person whose name is signed to it. A copy of the certificate shall be promptly delivered to the accused. Copies of Department records relating to any breath test conducted pursuant to this section shall be admissible provided such copies are authenticated as true copies either by the custodian thereof or by the person to whom the custodian reports.

The officer making the arrest, or anyone with him at the time of the arrest, or anyone participating in the arrest of the accused, if otherwise qualified to conduct such test as provided by this section, may administer the breath test and analyze the results.

1992, c. 830; 1994, cc. 359, 363; 1996, cc. 154, 952; 1997, c. 256; 1999, c. 273; 2004, c. 1013; 2005, cc. 757, 840, 868, 881; 2006, c. 101; 2009, Sp. Sess. I, cc. 1, 4.

§ 18.2-268.10. Evidence of violation of driving under the influence offenses

A. In any trial for a violation of § 18.2-266, 18.2-266.1, or subsection B of § 18.2-272 or a similar ordinance, the admission of the blood or breath test results shall not limit the introduction of any other relevant evidence bearing upon any question at issue before the court, and the court shall, regardless of the result of any blood or breath tests, consider other relevant admissible evidence of the condition of the accused. If the test results indicate the presence of any drug other than alcohol, the test results shall be admissible, except in a prosecution under clause (v) of § 18.2-266, only if other competent evidence has been presented to relate the presence of the drug or drugs to the impairment of the accused's ability to drive or operate any motor vehicle, engine or train safely.

B. The failure of an accused to permit a blood or breath sample to be taken to determine the alcohol or drug content of his blood is not evidence and shall not be subject to comment by the Commonwealth at the trial of the case, except in rebuttal or pursuant to subsection C; nor shall the fact that a blood or breath test had been offered the accused be evidence or the subject of comment by the Commonwealth, except in rebuttal or pursuant to subsection C.

C. Evidence of a finding against the defendant under § 18.2-268.3 for his unreasonable refusal to permit a blood or breath sample to be taken to determine the alcohol or drug content of his blood shall be admissible into evidence, upon the motion of the Commonwealth or the defendant, for the sole purpose of explaining the absence at trial of a chemical test of such sample. When admitted pursuant to this subsection such evidence shall not be considered evidence of the accused's guilt.

D. The court or jury trying the case involving a violation of clause (ii), (iii) or (iv) of § 18.2-266 or § 18.2-266.1, or a similar ordinance shall determine the innocence or guilt of the defendant from all the evidence concerning his condition at the time of the alleged offense.

1992, c. 830; 1994, cc. 359, 363; 2001, c. 654; 2004, c. 1013; 2005, cc. 616, 757, 840.

§ 18.2-268.11. Substantial compliance

The steps set forth in §§ 18.2-268.2 through 18.2-268.9 relating to taking, handling, identifying, and disposing of blood or breath samples are procedural and not substantive. Substantial compliance shall be sufficient. Failure to comply with any steps or portions thereof shall not of itself be grounds for finding the defendant not guilty, but shall go to the weight of the evidence and shall be considered with all the evidence in the case; however, the defendant shall have the right to introduce evidence on his own behalf to show noncompliance with the aforesaid procedures or any part thereof, and that as a result his rights were prejudiced.

1992, c. 830; 2003, cc. 933, 936.

§ 18.2-268.12. Ordinances

The governing bodies of counties, cities and towns are authorized to adopt ordinances paralleling the provisions of §§ 18.2-268.1 through 18.2-268.11.

1992, c. 830 .

§ 18.2-269. Presumptions from alcohol or drug content of blood

A. In any prosecution for a violation of § 18.2-36.1 or clause (ii), (iii) or (iv) of § 18.2-266, or any similar ordinance, the amount of alcohol or drugs in the blood of the accused at the time of the alleged offense as indicated by a chemical analysis of a sample of the accused's blood or breath to determine the alcohol or drug content of his blood in accordance with the provisions of §§ 18.2-268.1 through 18.2-268.12 shall give rise to the following rebuttable presumptions:

(1) If there was at that time 0.05 percent or less by weight by volume of alcohol in the accused's blood or 0.05 grams or less per 210 liters of the accused's breath, it shall be presumed that the accused was not under the influence of alcohol intoxicants at the time of the alleged offense;

(2) If there was at that time in excess of 0.05 percent but less than 0.08 percent by weight by volume of alcohol in the accused's blood or 0.05 grams but less than 0.08 grams per 210 liters of the accused's breath, such facts shall not give rise to any presumption that the accused was or was not under the influence of alcohol intoxicants at the time of the alleged offense, but such facts may be considered with other competent evidence in determining the guilt or innocence of the accused;

(3) If there was at that time 0.08 percent or more by weight by volume of alcohol in the accused's blood or 0.08 grams or more per 210 liters of the accused's breath, it shall be presumed that the accused was under the influence of alcohol intoxicants at the time of the alleged offense; or

(4) If there was at that time an amount of the following substances at a level that is equal to or greater than: (a) 0.02 milligrams of cocaine per liter of blood, (b) 0.1 milligrams of methamphetamine per liter of blood, (c) 0.01 milligrams of phencyclidine per liter of blood, or (d) 0.1 milligrams of 3,4-methylenedioxymethamphetamine per liter of blood, it shall be presumed that the accused was under the influence of drugs at the time of the alleged offense to a degree which impairs his ability to drive or operate any motor vehicle, engine or train safely.

B. The provisions of this section shall not apply to and shall not affect any prosecution for a violation of § 46.2-341.24.

Code 1950, § 18.1-57; 1960, c. 358; 1964, c. 240; 1966, c. 636; 1972, c. 757; 1973, c. 459; 1975, cc. 14, 15; 1977, c. 638; 1983, c. 504; 1986, c. 635; 1989, cc. 554, 574, 705; 1992, c. 830; 1994, cc. 359, 363; 2005, c. 616.

§ 18.2-270. Penalty for driving while intoxicated; subsequent offense; prior conviction

A. Except as otherwise provided herein, any person violating any provision of § 18.2-266 shall be guilty of a Class 1 misdemeanor with a mandatory minimum fine of $250. If the person's blood alcohol level as indicated by the chemical test administered as provided in this article or by any other scientifically reliable chemical test performed on whole blood under circumstances reliably establishing the identity of the person who is the source of the blood and the accuracy of the results (i) was at least 0.15, but not more than 0.20, he shall be confined in jail for an additional mandatory minimum period of five days or, (ii) if the level was more than 0.20, for an additional mandatory minimum period of 10 days.

B. 1. Any person convicted of a second offense committed within less than five years after a prior offense under § 18.2-266 shall upon conviction of the second offense be punished by a mandatory minimum fine of $500 and by confinement in jail for not less than one month nor more than one year. Twenty days of such confinement shall be a mandatory minimum sentence.

2. Any person convicted of a second offense committed within a period of five to 10 years of a prior offense under § 18.2-266 shall upon conviction of the second offense be punished by a mandatory minimum fine of $500 and by confinement in jail for not less than one month. Ten days of such confinement shall be a mandatory minimum sentence.

3. Upon conviction of a second offense within 10 years of a prior offense, if the person's blood alcohol level as indicated by the chemical test administered as provided in this article or by any other scientifically reliable chemical test performed on whole blood under circumstances reliably establishing the identity of the person who is the source of the blood and the accuracy of the results (i) was at least 0.15, but not more than 0.20, he shall be confined in jail for an additional mandatory minimum period of 10 days or, (ii) if the level was more than 0.20, for an additional mandatory minimum period of 20 days. In addition, such person shall be fined a mandatory minimum fine of $500.

C. 1. Any person convicted of three offenses of § 18.2-266 committed within a 10-year period shall upon conviction of the third offense be guilty of a Class 6 felony. The sentence of any person convicted of three offenses of § 18.2-266 committed within a 10-year period shall include a mandatory minimum sentence of 90 days, unless the three offenses were committed within a five-year period, in which case the sentence shall include a mandatory minimum sentence of confinement for six months. In addition, such person shall be fined a mandatory minimum fine of $1,000.

2. A person who has been convicted of § 18.2-36.1, 18.2-36.2, 18.2-51.4, 18.2-51.5, or a felony violation of § 18.2-266 shall upon conviction of a subsequent violation of § 18.2-266 be guilty of a Class 6 felony. The punishment of any person convicted of such a subsequent violation of § 18.2-266 shall include a mandatory minimum term of imprisonment of one year and a mandatory minimum fine of $1,000.

3. The punishment of any person convicted of a fourth or subsequent offense of § 18.2-266 committed within a 10-year period shall, upon conviction, include a mandatory minimum term of imprisonment of one year. In addition, such person shall be fined a mandatory minimum fine of $1,000.

4. The vehicle solely owned and operated by the accused during the commission of a felony violation of § 18.2-266 shall be subject to seizure and forfeiture. After an arrest for a felony violation of § 18.2-266, the Commonwealth may file an information in accordance with § 19.2-386.34.

D. In addition to the penalty otherwise authorized by this section or § 16.1-278.9, any person convicted of a violation of § 18.2-266 committed while transporting a person 17 years of age or younger shall be (i) fined an additional minimum of $500 and not more than $1,000 and (ii) sentenced to a mandatory minimum period of confinement of five days.

E. For the purpose of determining the number of offenses committed by, and the punishment appropriate for, a person under this section, an adult conviction of any person, or finding of guilty in the case of a juvenile, under the following shall be considered a conviction of § 18.2-266: (i) the provisions of § 18.2-36.1 or the substantially similar laws of any other state or of the United States, (ii) the provisions of §§ 18.2-51.4, 18.2-266, former § 18.1-54 (formerly § 18-75), the ordinance of any county, city or town in this Commonwealth or the laws of any other state or of the United States substantially similar to the provisions of § 18.2-51.4, or § 18.2-266, or (iii) the provisions of subsection A of § 46.2-341.24 or the substantially similar laws of any other state or of the United States.

F. Mandatory minimum punishments imposed pursuant to this section shall be cumulative, and mandatory minimum terms of confinement shall be served consecutively. However, in no case shall punishment imposed hereunder exceed the applicable statutory maximum Class 1 misdemeanor term of confinement or fine upon conviction of a first or second offense, or Class 6 felony term of confinement or fine upon conviction of a third or subsequent offense.

Code 1950, § 18.1-58; 1960, c. 358; 1962, c. 302; 1975, cc. 14, 15; 1982, c. 301; 1983, c. 504; 1989, c. 705; 1991, cc. 370, 710; 1992, c. 891; 1993, c. 972; 1997, c. 691; 1999, cc. 743, 945, 949, 987; 2000, cc. 784, 956, 958, 980, 982; 2002, c. 759; 2003, cc. 573, 591; 2004, cc. 461, 937, 946, 950, 957, 958, 962; 2006, cc. 82, 314; 2009, c. 229; 2012, cc. 283, 756; 2013, cc. 415, 655; 2014, c. 707.

§ 18.2-270.01. Multiple offenders; payment to Trauma Center Fund

A. The court shall order any person convicted of a violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266, 18.2-266.1 or § 46.2-341.24 who has been convicted previously of one or more violations of any of those sections or any ordinance, any law of another state, or any law of the United States substantially similar to the provisions of those sections within 10 years of the date of the current offense to pay $50 to the Trauma Center Fund for the purpose of defraying the costs of providing emergency medical care to victims of automobile accidents attributable to alcohol or drug use.

B. There is hereby established in the state treasury a special nonreverting fund to be known as the Trauma Center Fund. The Fund shall consist of any moneys paid into it by virtue of operation of subsection A hereof and any moneys appropriated thereto by the General Assembly and designated for the Fund. Any moneys deposited to or remaining in the Fund during or at the end of each fiscal year or biennium, including interest thereon, shall not revert to the general fund but shall remain in the Fund and be available for allocation in ensuing fiscal years. The Department of Health shall award and administer grants from the Trauma Center Fund to appropriate trauma centers based on the cost to provide emergency medical care to victims of automobile accidents. The Department of Health shall develop, on or before October 1, 2004, written criteria for the awarding of such grants that shall be evaluated and, if necessary, revised on an annual basis.

2004, c. 999.

§ 18.2-270.1. Ignition interlock systems; penalty

A. For purposes of this section and § 18.2-270.2:

"Commission" means the Commission on VASAP.

"Department" means the Department of Motor Vehicles.

"Ignition interlock system" means a device that (i) connects a motor vehicle ignition system to an analyzer that measures a driver's blood alcohol content; (ii) prevents a motor vehicle ignition from starting if a driver's blood alcohol content exceeds 0.02 percent; and (iii) is equipped with the ability to perform a rolling retest and to electronically log the blood alcohol content during ignition, attempted ignition and rolling retest.

"Rolling retest" means a test of the vehicle operator's blood alcohol content required at random intervals during operation of the vehicle, which triggers the sounding of the horn and flashing of lights if (i) the test indicates that the operator has a blood alcohol content which exceeds 0.02 percent or (ii) the operator fails to take the test.

B. In addition to any penalty provided by law for a conviction under § 18.2-51.4 or 18.2-266 or a substantially similar ordinance of any county, city or town, any court of proper jurisdiction shall, as a condition of a restricted license, prohibit an offender from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system for any period of time not to exceed the period of license suspension and restriction, not less than six consecutive months without alcohol-related violations of the interlock requirements. The court shall, for a conviction under § 18.2-51.4, a second or subsequent offense of § 18.2-266 or a substantially similar ordinance of any county, city or town, or as a condition of license restoration pursuant to subsection C of § 18.2-271.1 or § 46.2-391, require that such a system be installed on each motor vehicle, as defined in § 46.2-100, owned by or registered to the offender, in whole or in part, for such period of time. Such condition shall be in addition to any purposes for which a restricted license may be issued pursuant to § 18.2-271.1. The court may order the installation of an ignition interlock system to commence immediately upon conviction. A fee of $20 to cover court and administrative costs related to the ignition interlock system shall be paid by any such offender to the clerk of the court. The court shall require the offender to install an electronic log device with the ignition interlock system on a vehicle designated by the court to measure the blood alcohol content at each attempted ignition and random rolling retest during operation of the vehicle. The offender shall be enrolled in and supervised by an alcohol safety action program pursuant to § 18.2-271.1 and to conditions established by regulation under § 18.2-270.2 by the Commission during the period for which the court has ordered installation of the ignition interlock system. The offender shall be further required to provide to such program, at least quarterly during the period of court ordered ignition interlock installation, a printout from such electronic log indicating the offender's blood alcohol content during such ignitions, attempted ignitions, and rolling retests, and showing attempts to circumvent or tamper with the equipment.

C. In any case in which the court requires the installation of an ignition interlock system, the court shall order the offender not to operate any motor vehicle that is not equipped with such a system for the period of time that the interlock restriction is in effect. The clerk of the court shall file with the Department of Motor Vehicles a copy of the order, which shall become a part of the offender's operator's license record maintained by the Department. The Department shall issue to the offender for the period during which the interlock restriction is imposed a restricted license which shall appropriately set forth the restrictions required by the court under this subsection and any other restrictions imposed upon the offender's driving privilege, and shall also set forth any exception granted by the court under subsection F.

D. The offender shall be ordered to provide the appropriate ASAP program, within 30 days of the effective date of the order of court, proof of the installation of the ignition interlock system. The Program shall require the offender to have the system monitored and calibrated for proper operation at least every 30 days by an entity approved by the Commission under the provisions of § 18.2-270.2 and to demonstrate proof thereof. The offender shall pay the cost of leasing or buying

and monitoring and maintaining the ignition interlock system. Absent good cause shown, the court may revoke the offender's driving privilege for failing to (i) timely install such system or (ii) have the system properly monitored and calibrated.

E. No person shall start or attempt to start a motor vehicle equipped with an ignition interlock system for the purpose of providing an operable motor vehicle to a person who is prohibited under this section from operating a motor vehicle that is not equipped with an ignition interlock system. No person shall tamper with, or in any way attempt to circumvent the operation of, an ignition interlock system that has been installed in the motor vehicle of a person under this section. Except as authorized in subsection F, no person shall knowingly furnish a motor vehicle not equipped with a functioning ignition interlock system to any person prohibited under subsection B from operating any motor vehicle which is not equipped with such system. A violation of this subsection is punishable as a Class 1 misdemeanor.

F. Any person prohibited from operating a motor vehicle under subsection B may, solely in the course of his employment, operate a motor vehicle which is owned or provided by his employer without installation of an ignition interlock system, if the court expressly permits such operation as a condition of a restricted license at the request of the employer, but such person may not operate a school bus, school vehicle, or a commercial motor vehicle as defined in § 46.2-341.4. This subsection shall not apply if such employer is an entity wholly or partially owned or controlled by the person otherwise prohibited from operating a vehicle without an ignition interlock system.

G. The Commission shall promulgate such regulations and forms as are necessary to implement the procedures outlined in this section.

1995, c. 486; 1996, c. 841; 1997, c. 691; 1998, cc. 783, 840; 1999, c. 734; 2000, cc. 958, 980; 2004, c. 961; 2007, c. 686; 2008, c. 862; 2012, cc. 141, 570; 2014, c. 707.

§ 18.2-270.2. Ignition interlock system; certification by Commission on VASAP; regulations; sale or lease; monitoring use; reports

A. The Executive Director of the Commission on VASAP or his designee shall, pursuant to approval by the Commission, certify ignition interlock systems for use in this Commonwealth and adopt regulations and forms for the installation, maintenance and certification of such ignition interlock systems.

The regulations adopted shall include requirements that ignition interlock systems:

1. Do not impede the safe operation of the vehicle;

2. Minimize opportunities to be bypassed, circumvented or tampered with, and provide evidence thereof;

3. Correlate accurately with established measures of blood alcohol content and be calibrated according to the manufacturer's specifications;

4. Work accurately and reliably in an unsupervised environment;

5. Have the capability to provide an accurate written measure of blood alcohol content for each ignition, attempted ignition, and rolling retest, and record each attempt to circumvent or tamper with the equipment;

6. Minimize inconvenience to other users;

7. Be manufactured or distributed by an entity responsible for installation, user training, service, and maintenance, and meet the safety and operational requirements promulgated by the National Highway Transportation Safety Administration;

8. Operate reliably over the range of motor vehicle environments or motor vehicle manufacturing standards;

9. Be manufactured by an entity which is adequately insured against liability, in an amount established by the Commission, including product liability and installation and maintenance errors;

10. Provide for an electronic log of the driver's experience with the system with an information management system capable of electronically delivering information to the agency supervising the interlock user within twenty-four hours of the collection of such information from the datalogger; and

11. Provide for a rolling retest of the operator's blood alcohol content.

Such regulations shall also provide for the establishment of a fund, using a percentage of fees received by the manufacturer or distributor providing ignition interlock services, to afford persons found by the court to be indigent all or part of the costs of an ignition interlock system.

The Commission shall design and adopt a warning label to be affixed to an ignition interlock system upon installation. The warning label shall state that a person tampering with, or attempting to circumvent the ignition interlock system shall be guilty of a Class 1 misdemeanor and, upon conviction, shall be subject to a fine or incarceration or both.

The Commission shall publish a list of certified ignition interlock systems and shall ensure that such systems are available throughout the Commonwealth. The local alcohol safety action program shall make the list available to eligible offenders, who shall have the responsibility and authority to choose which certified ignition interlock company will supply the offender's equipment. A manufacturer or distributor of an ignition interlock system that seeks to sell or lease the ignition interlock system to persons subject to the provisions of § 18.2-270.1 shall pay the reasonable costs of obtaining the required certification, as set forth by the Commission.

B. A person may not sell or lease or offer to sell or lease an ignition interlock system to any person subject to the provisions of § 18.2-270.1 unless:

1. The system has been certified by the Commission; and

2. The warning label adopted by the Commission is affixed to the system.

C. A manufacturer or distributor of an ignition interlock system shall provide such services as may be required at no cost to the Commonwealth. Such services shall include a toll free, twenty-four-hour telephone number for the users of ignition interlock systems.

1995, c. 486; 2000, cc. 341, 362.

§ 18.2-271. Forfeiture of driver's license for driving while intoxicated

A. Except as provided in § 18.2-271.1, the judgment of conviction if for a first offense under § 18.2-266 or for a similar offense under any county, city, or town ordinance, or for a first offense under subsection A of § 46.2-341.24, shall of itself operate to deprive the person so convicted of the privilege to drive or operate any motor vehicle, engine or train in the Commonwealth for a period of one year from the date of such judgment. This suspension period shall be in addition to the suspension period provided under § 46.2-391.2.

B. If a person (i) is tried on a process alleging a second offense of violating § 18.2-266 or subsection A of § 46.2-341.24, or any substantially similar local ordinance, or law of any other jurisdiction, within ten years of a first offense for which the person was convicted, or found guilty in the case of a juvenile, under § 18.2-266 or subsection A of § 46.2-341.24 or any valid local ordinance or any law of any other jurisdiction substantially similar to § 18.2-266 or subsection A of § 46.2-341.24 and (ii) is convicted thereof, such conviction shall of itself operate to deprive the person so convicted of the privilege to drive or operate any motor vehicle, engine or train in the Commonwealth for a period of three years from the date of the judgment of conviction and such person shall have his license revoked as provided in subsection A of § 46.2-391. The court trying such case shall order the surrender of the person's driver's license, to be disposed of in accordance with § 46.2-398, and shall notify such person that his license has been revoked for a period of three years and that the penalty for violating that revocation is as set out in § 46.2-391. This suspension period shall be in addition to the suspension period provided under § 46.2-391.2. Any period of license suspension or revocation imposed pursuant to this section, in any case, shall run consecutively with any period of suspension for failure to permit a blood or breath sample to be taken as required by §§ 18.2-268.1 through 18.2-268.12 or §§ 46.2-341.26:1 through 46.2-341.26:11 or any period of suspension for a previous violation of § 18.2-266, 18.2-266.1, or 46.2-341.24.

C. If a person (i) is tried on a process alleging (a) a felony conviction of § 18.2-266 or (b) a third or subsequent offense of violating § 18.2-266 or subsection A of § 46.2-341.24, or any substantially similar local ordinance, or law of any other jurisdiction, within 10 years of two other offenses for which the person was convicted, or found not innocent in the case of a juvenile, under § 18.2-266 or subsection A of § 46.2-341.24 or any valid local ordinance or any law of any other jurisdiction substantially similar to § 18.2-266 or subsection A of § 46.2-341.24 and (ii) is convicted thereof, such conviction shall of itself operate to deprive the person so convicted of the privilege to drive or operate any motor vehicle, engine or train in the Commonwealth and such person shall not be eligible for participation in a program pursuant to § 18.2-271.1 and shall, upon such conviction,

have his license revoked as provided in subsection B of § 46.2-391. The court trying such case shall order the surrender of the person's driver's license, to be disposed of in accordance with § 46.2-398, and shall notify such person that his license has been revoked indefinitely and that the penalty for violating that revocation is as set out in § 46.2-391.

D. Notwithstanding any other provision of this section, the period of license revocation or suspension shall not begin to expire until the person convicted has surrendered his license to the court or to the Department of Motor Vehicles.

E. The provisions of this section shall not apply to, and shall have no effect upon, any disqualification from operating a commercial motor vehicle imposed under the provisions of the Commercial Driver's License Act (§ 46.2-341.1 et seq.).

Code 1950, § 18.1-59; 1960, c. 358; 1962, c. 625; 1964, c. 240; 1972, c. 757; 1975, cc. 14, 15; 1982, c. 301; 1983, c. 504; 1984, cc. 623, 673; 1989, c. 705; 1990, c. 949; 1992, cc. 722, 830, 891; 1994, cc. 359, 363; 2000, cc. 956, 982; 2001, c. 739; 2002, c. 873; 2010, c. 521; 2013, cc. 415, 655.

§ 18.2-271.1. Probation, education, and rehabilitation of person charged or convicted; person convicted under law of another state or federal law

A. Any person convicted of a first or second offense of § 18.2-266, or any ordinance of a county, city, or town similar to the provisions thereof, or provisions of subsection A of § 46.2-341.24, shall be required by court order, as a condition of probation or otherwise, to enter into and successfully complete an alcohol safety action program in the judicial district in which such charge is brought or in any other judicial district upon such terms and conditions as the court may set forth. However, upon motion of a person convicted of any such offense following an assessment of the person conducted by an alcohol safety action program, the court, for good cause, may decline to order participation in such a program if the assessment by the alcohol safety action program indicates that intervention is not appropriate for such person. In no event shall such persons be permitted to enter any such program which is not certified as meeting minimum standards and criteria established by the Commission on the Virginia Alcohol Safety Action Program (VASAP) pursuant to this section and to § 18.2-271.2. However, any person charged with a violation of a first or second offense of § 18.2-266, or any ordinance of a county, city, or town similar to the provisions thereof, or provisions of subsection A of § 46.2-341.24, may, at any time prior to trial, enter into an alcohol safety action program in the judicial district in which such charge is brought or in any other judicial district. Any person who enters into such program prior to trial may prequalify with the program to have an ignition interlock system installed on any motor vehicle owned or operated by him. However, no ignition interlock company shall install an ignition interlock system on any such vehicle until a court issues to the person a restricted license with the ignition interlock restriction.

B. The court shall require the person entering such program under the provisions of this section to pay a fee of no less than $250 but no more than $300. A reasonable portion of such fee, as may be determined by the Commission on VASAP, but not to exceed 10 percent, shall be forwarded monthly to be deposited with the State Treasurer for expenditure by the Commission on VASAP, and the balance shall be held in a separate fund for local administration of driver alcohol rehabilitation programs. Upon a positive finding that the defendant is indigent, the court may reduce or waive the fee. In addition to the costs of the proceeding, fees as may reasonably be required of defendants referred for intervention under any such program may be charged.

C. Upon conviction of a violation of § 18.2-266 or any ordinance of a county, city or town similar to the provisions thereof, or subsection A of § 46.2-341.24, the court shall impose the sentence authorized by § 18.2-270 or 46.2-341.28 and the license revocation as authorized by § 18.2-271. In addition, if the conviction was for a second offense committed within less than 10 years after a first such offense, the court shall order that restoration of the person's license to drive be conditioned upon the installation of an ignition interlock system on each motor vehicle, as defined in § 46.2-100, owned by or registered to the person, in whole or in part, for a period of six months beginning at the end of the three year license revocation, unless such a system has already been installed for six months prior to that time pursuant to a restricted license order under subsection E of this section. Upon a finding that a person so convicted is required to participate in the program described herein, the court shall enter the conviction on the warrant, and shall note that the person so convicted has been referred to such program. The court may then proceed to issue an order in accordance with subsection E of this section, if the court finds that the person so convicted is eligible for a restricted license. If the court finds good cause for a person not to participate in such program or subsequently that such person has violated, without good cause, any of the conditions set forth by the court in entering the program, the court shall dispose of the case as if no program had been entered, in which event the revocation provisions of § 46.2-389 and subsection A of § 46.2-391 shall be applicable to the conviction. The court shall, upon final disposition of the case, send a copy of its order to the Commissioner of the Department of Motor Vehicles. If such order provides for the issuance of a restricted license, the Commissioner of the Department of Motor Vehicles, upon receipt thereof, shall issue a restricted license. Appeals from any such disposition shall be allowed as provided by law. The time within which an appeal may be taken shall be calculated from the date of the final disposition of the case or any motion for rehearing, whichever is later.

D. Any person who has been convicted under the law of another state or the United States of an offense substantially similar to the provisions of § 18.2-266 or subsection A of § 46.2-341.24, and whose privilege to operate a motor vehicle in this Commonwealth is subject to revocation under the provisions of § 46.2-389 and subsection A of § 46.2-391, may petition the general district court of the county or city in which he resides that he be given probation and assigned to a program as provided in subsection A of this section and that, upon entry into such program, he be

issued an order in accordance with subsection E of this section. If the court finds that such person would have qualified therefor if he had been convicted in this Commonwealth of a violation of § 18.2-266 or subsection A of § 46.2-341.24, the court may grant the petition and may issue an order in accordance with subsection E of this section as to the period of license suspension or revocation imposed pursuant to § 46.2-389 or subsection A of § 46.2-391. The court shall, as a condition of a restricted license, prohibit such person from operating a motor vehicle that is not equipped with a functioning certified ignition interlock system for a period of time not to exceed the period of license suspension and restriction, not less than six consecutive months without alcohol-related violations of interlock requirements. Such order shall be conditioned upon the successful completion of a program by the petitioner. If the court subsequently finds that such person has violated any of the conditions set forth by the court, the court shall dispose of the case as if no program had been entered and shall notify the Commissioner, who shall revoke the person's license in accordance with the provisions of § 46.2-389 or subsection A of § 46.2-391. A copy of the order granting the petition or subsequently revoking or suspending such person's license to operate a motor vehicle shall be forthwith sent to the Commissioner of the Department of Motor Vehicles.

No period of license suspension or revocation shall be imposed pursuant to this subsection which, when considered together with any period of license suspension or revocation previously imposed for the same offense under the law of another state or the United States, results in such person's license being suspended for a period in excess of the maximum periods specified in this subsection.

E. Except as otherwise provided herein, whenever a person enters a certified program pursuant to this section, and such person's license to operate a motor vehicle, engine or train in the Commonwealth has been suspended or revoked, the court may, in its discretion and for good cause shown, provide that such person be issued a restricted permit to operate a motor vehicle for any of the following purposes: (i) travel to and from his place of employment; (ii) travel to and from an alcohol rehabilitation or safety action program; (iii) travel during the hours of such person's employment if the operation of a motor vehicle is a necessary incident of such employment; (iv) travel to and from school if such person is a student, upon proper written verification to the court that such person is enrolled in a continuing program of education; (v) travel for health care services, including medically necessary transportation of an elderly parent or, as designated by the court, any person residing in the person's household with a serious medical problem upon written verification of need by a licensed health professional; (vi) travel necessary to transport a minor child under the care of such person to and from school, day care, and facilities housing medical service providers; (vii) travel to and from court-ordered visitation with a child of such person; (viii) travel to a screening, evaluation and education program entered pursuant to § 18.2-251 or subsection H of § 18.2-258.1; (ix) travel to and from court appearances in which he is a subpoenaed witness or a party and appointments with his probation officer and to and from any programs

required by the court or as a condition of probation; (x) travel to and from a place of religious worship one day per week at a specified time and place; (xi) travel to and from appointments approved by the Division of Child Support Enforcement of the Department of Social Services as a requirement of participation in an administrative or court-ordered intensive case monitoring program for child support for which the participant maintains written proof of the appointment, including written proof of the date and time of the appointment, on his person; (xii) travel to and from jail to serve a sentence when such person has been convicted and sentenced to confinement in jail and pursuant to § 53.1-131.1 the time to be served is on weekends or nonconsecutive days; or (xiii) travel to and from the facility that installed or monitors the ignition interlock in the person's vehicle. No restricted license issued pursuant to this subsection shall permit any person to operate a commercial motor vehicle as defined in the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). The court shall order the surrender of such person's license to operate a motor vehicle to be disposed of in accordance with the provisions of § 46.2-398 and shall forward to the Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant to this subsection, which shall specifically enumerate the restrictions imposed and contain such information regarding the person to whom such a permit is issued as is reasonably necessary to identify such person. The court shall also provide a copy of its order to the person so convicted who may operate a motor vehicle on the order until receipt from the Commissioner of the Department of Motor Vehicles of a restricted license, if the order provides for a restricted license for that time period. A copy of such order and, after receipt thereof, the restricted license shall be carried at all times while operating a motor vehicle. Any person who operates a motor vehicle in violation of any restrictions imposed pursuant to this section shall be guilty of a violation of § 18.2-272. Such restricted license shall be conditioned upon enrollment within 15 days in, and successful completion of, a program as described in subsection A of this section. No restricted license shall be issued during the first four months of a revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391 for a second offense of the type described therein committed within 10 years of a first such offense. No restricted license shall be issued during the first year of a revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391 for a second offense of the type described therein committed within five years of a first such offense. No restricted license shall be issued during any revocation period imposed pursuant to subsection C of § 18.2-271 or subsection B of § 46.2-391. Notwithstanding the provisions of § 46.2-411, the fee charged pursuant to § 46.2-411 for reinstatement of the driver's license of any person whose privilege or license has been suspended or revoked as a result of a violation of § 18.2-266, subsection A of § 46.2-341.24 or of any ordinance of a county, city or town, or of any federal law or the laws of any other state similar to the provisions of § 18.2-266 or subsection A of § 46.2-341.24 shall be $105. Forty dollars of such reinstatement fee shall be retained by the Department of Motor Vehicles as provided in § 46.2-411, $40 shall be transferred to the Commission on VASAP, and $25 shall be transferred to the Commonwealth Neurotrauma Initiative Trust Fund.

F. The court shall have jurisdiction over any person entering such program under any provision of this section until such time as the case has been disposed of by either successful completion of the program, or revocation due to ineligibility or violation of a condition or conditions imposed by the court, whichever shall first occur. Revocation proceedings shall be commenced by notice to show cause why the court should not revoke the privilege afforded by this section. Such notice shall be made by first-class mail to the last known address of such person, and shall direct such person to appear before the court in response thereto on a date contained in such notice, which shall not be less than 10 days from the date of mailing of the notice. Failure to appear in response to such notice shall of itself be grounds for revocation of such privilege. Notice of revocation under this subsection shall be sent forthwith to the Commissioner of the Department of Motor Vehicles.

G. For the purposes of this section, any court which has convicted a person of a violation of § 18.2-266, subsection A of § 46.2-341.24 or any ordinance of a county, city or town similar to the provisions of § 18.2-266 shall have continuing jurisdiction over such person during any period of license revocation related to that conviction, for the limited purposes of (i) referring such person to a certified alcohol safety action program, (ii) providing for a restricted permit for such person in accordance with the provisions of subsection E, and (iii) imposing terms, conditions and limitations for actions taken pursuant to clauses (i) and (ii), whether or not it took either such action at the time of the conviction. This continuing jurisdiction is subject to the limitations of subsection E that provide that no restricted license shall be issued during a revocation imposed pursuant to subsection C of § 18.2-271 or subsection B of § 46.2-391 or during the first four months or first year, whichever is applicable, of the revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391. The provisions of this subsection shall apply to a person convicted of a violation of § 18.2-266, subsection A of § 46.2-341.24 or any ordinance of a county, city or town similar to the provisions of § 18.2-266 on, after and at any time prior to July 1, 2003.

H. The State Treasurer, the Commission on VASAP or any city or county is authorized to accept any gifts or bequests of money or property, and any grant, loan, service, payment or property from any source, including the federal government, for the purpose of driver alcohol education. Any such gifts, bequests, grants, loans or payments shall be deposited in the separate fund provided in subsection B.

I. The Commission on VASAP, or any county, city, town, or any combination thereof may establish and, if established, shall operate, in accordance with the standards and criteria required by this subsection, alcohol safety action programs in connection with highway safety. Each such program shall operate under the direction of a local independent policy board chosen in accordance with procedures approved and promulgated by the Commission on VASAP. Local sitting or retired district court judges who regularly hear or heard cases involving driving under the influence and are familiar with their local alcohol safety action programs may serve on such boards. The Commission on VASAP shall establish minimum standards and criteria for the implementation and operation of such programs and shall establish procedures to certify all such programs to ensure

that they meet the minimum standards and criteria stipulated by the Commission. The Commission shall also establish criteria for the administration of such programs for public information activities, for accounting procedures, for the auditing requirements of such programs and for the allocation of funds. Funds paid to the Commonwealth hereunder shall be utilized in the discretion of the Commission on VASAP to offset the costs of state programs and local programs run in conjunction with any county, city or town and costs incurred by the Commission. The Commission shall submit an annual report as to actions taken at the close of each calendar year to the Governor and the General Assembly.

J. Notwithstanding any other provisions of this section or of § 18.2-271, nothing in this section shall permit the court to suspend, reduce, limit, or otherwise modify any disqualification from operating a commercial motor vehicle imposed under the provisions of the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.).

1975, c. 601; 1976, cc. 612, 691; 1977, c. 240; 1978, c. 352; 1979, c. 353; 1980, c. 589; 1981, c. 195; 1982, c. 301; 1983, c. 504; 1984, c. 778; 1986, cc. 552, 590; 1987, cc. 465, 663; 1988, cc. 781, 858, 859, 888; 1989, c. 705; 1990, c. 949; 1991, cc. 131, 491; 1992, c. 559; 1993, cc. 527, 919; 1994, cc. 359, 363, 870; 1996, c. 984; 1997, cc. 472, 508; 1998, c. 703; 1999, c. 743; 2000, cc. 958, 970, 980; 2001, cc. 182, 645, 779; 2002, c. 806; 2003, c. 290; 2004, c. 720; 2007, cc. 194, 553; 2009, c. 295; 2010, cc. 446, 682; 2011, c. 592; 2012, cc. 141, 570; 2014, c. 707; 2015, cc. 506, 729.

§ 18.2-271.2. Commission on VASAP; purpose; membership; terms; meetings; staffing; compensation and expenses; chairman's executive summary

A. There is hereby established in the legislative branch of state government the Commission on the Virginia Alcohol Safety Action Program (VASAP). The Commission shall administer and supervise the state system of local alcohol and safety action programs, develop and maintain operation and performance standards for local alcohol and safety action programs, and allocate funding to such programs. The Commission shall have a total membership of 15 members that shall consist of six legislative members and nine nonlegislative citizen members. Members shall be appointed as follows: four current or former members of the House Committee for Courts of Justice, to be appointed by the Speaker of the House of Delegates; two members of the Senate Committee for Courts of Justice, to be appointed by the Senate Committee on Rules; three sitting or retired judges, one each from the circuit, general district and juvenile and domestic relations district courts, who regularly hear or heard cases involving driving under the influence and are familiar with their local alcohol safety action programs, to be appointed by the Chairman of the Committee on District Courts; two directors of local alcohol safety action programs, to be appointed by the legislative members of the Commission; one representative from the law-enforcement profession, to be appointed by the Speaker of the House and one nonlegislative citizen at large, to be appointed by the Senate Committee on Rules; one representative from the Virginia Department of Motor Vehicles whose duties are substantially related to matters to be addressed by the Commission to

be appointed by the Commissioner of the Department of Motor Vehicles, and one representative from the Department of Behavioral Health and Developmental Services whose duties also substantially involve such matters, to be appointed by the Commissioner of Behavioral Health and Developmental Services. Legislative members shall serve terms coincident with their terms of office. In accordance with the staggered terms previously established, nonlegislative citizen members shall serve two-year terms. All members may be reappointed. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Any appointment to fill a vacancy shall be made in the same manner as the original appointment.

B. The Commission shall meet at least four times each year at such places as it may from time to time designate. A majority of the members shall constitute a quorum. The Commission shall elect a chairman and vice-chairman from among its membership.

The Commission shall be empowered to establish and ensure the maintenance of minimum standards and criteria for program operations and performance, accounting, auditing, public information and administrative procedures for the various local alcohol safety action programs and shall be responsible for overseeing the administration of the statewide VASAP system. Such programs shall be certified by the Commission in accordance with procedures set forth in the Commission on VASAP Certification Manual. The Commission shall also oversee program plans, operations and performance and a system for allocating funds to cover deficits that may occur in the budgets of local programs.

C. The Commission shall appoint and employ and, at its pleasure, remove an executive director and such other persons as it may deem necessary, and determine their duties and fix their salaries or compensation.

D. The Commission shall appoint a Virginia Alcohol Safety Action Program Advisory Board to make recommendations to the Commission regarding its duties and administrative functions. The membership of such Board shall be appointed in the discretion of the Commission and include personnel from (i) local safety action programs, (ii) the State Board of Behavioral Health and Developmental Services, community services boards, or behavioral health authorities and (iii) other community mental health services organizations. An assistant attorney general who provides counsel in matters relating to driving under the influence shall also be appointed to the Board.

E. Legislative members of the Commission shall receive compensation as provided in § 30-19.12. Funding for the costs of compensation of legislative members shall be provided by the Commission. All members shall be reimbursed for all reasonable and necessary expenses as provided in §§ 2.2-2813 and 2.2-2825 to be paid out of that portion of moneys paid in VASAP defendant entry fees which is forwarded to the Virginia Alcohol Safety Action Program.

F. The chairman of the Commission shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Commission no later than the first day of each regular session of the General Assembly. The executive summary shall be

submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

1986, c. 580; 1988, cc. 781, 859, 888; 1990, cc. 1, 317; 1992, c. 560; 1993, c. 757; 2003, c. 885; 2005, c. 758; 2009, cc. 813, 840.

§ 18.2-271.3. Repealed

Repealed by Acts 1999, c. 734.

§ 18.2-271.4. Oath of office

Every case manager, and any other employee who is designated by the director of any VASAP-certified local alcohol safety action program operated pursuant to this article to provide probation and related services, shall take an oath of office as prescribed in § 49-1, by a person authorized to administer oaths pursuant to § 49-3, before entering the duties of his office.

2001, cc. 380, 396.

§ 18.2-272. Driving after forfeiture of license

A. Any person who drives or operates any motor vehicle, engine or train in the Commonwealth during the time for which he was deprived of the right to do so (i) upon conviction of a violation of § 18.2-268.3 or of an offense set forth in subsection E of § 18.2-270, (ii) by § 18.2-271 or 46.2-391.2, (iii) after his license has been revoked pursuant to § 46.2-389 or 46.2-391, or (iv) in violation of the terms of a restricted license issued pursuant to subsection E of § 18.2-271.1, is guilty of a Class 1 misdemeanor except as otherwise provided in § 46.2-391, and is subject to administrative revocation of his driver's license pursuant to §§ 46.2-389 and 46.2-391. Any person convicted of three violations of this section committed within a 10-year period is guilty of a Class 6 felony.

Nothing in this section or § 18.2-266, 18.2-270 or 18.2-271, shall be construed as conflicting with or repealing any ordinance or resolution of any city, town or county which restricts still further the right of such persons to drive or operate any such vehicle or conveyance.

B. Regardless of compliance with any other restrictions on his privilege to drive or operate a motor vehicle, it shall be a violation of this section for any person whose privilege to drive or operate a motor vehicle has been restricted, suspended or revoked because of a violation of § 18.2-36.1, 18.2-51.4, 18.2-266, 18.2-268.3, 46.2-341.24, or a similar ordinance or law of another state or the United States to drive or operate a motor vehicle while he has a blood alcohol content of 0.02 percent or more.

Any person suspected of a violation of this subsection shall be entitled to a preliminary breath test in accordance with the provisions of § 18.2-267, shall be deemed to have given his implied consent to have samples of his blood, breath or both taken for analysis pursuant to the provisions of § 18.2-268.2, and, when charged with a violation of this subsection, shall be subject to the provisions of §§ 18.2-268.1 through 18.2-268.12.

C. Any person who drives or operates a motor vehicle without a certified ignition interlock system as required by § 46.2-391.01 is guilty of a Class 1 misdemeanor and is subject to administrative revocation of his driver's license pursuant to §§ 46.2-389 and 46.2-391.

Code 1950, § 18.1-60; 1960, c. 358; 1975, cc. 14, 15; 1988, c. 859; 1991, c. 64; 2004, cc. 948, 1013; 2005, cc. 757, 840; 2006, c. 390; 2007, c. 258; 2009, cc. 71, 255.

§ 18.2-273. Report of conviction to Department of Motor Vehicles

The clerk of every court of record and the judge of every court not of record shall, within thirty days after final conviction of any person in his court under the provisions of this article, report the fact thereof and the name, post-office address and street address of such person, together with the license plate number on the vehicle operated by such person to the Commissioner of the Department of Motor Vehicles who shall preserve a record thereof in his office.

Code 1950, § 18.1-61; 1960, c. 358; 1975, cc. 14, 15.

Article 3 - TRANSPORTING DANGEROUS ARTICLES

§§ 18.2-274 through 18.2-278. Repealed

Repealed by Acts 1980, c. 759.

Article 3.1 - TRANSPORTATION OF HAZARDOUS MATERIALS

§§ 18.2-278.1 through 18.2-278.7. Repealed

Repealed by Acts 1986, c. 492.

Article 4 - DANGEROUS USE OF FIREARMS OR OTHER WEAPONS

§ 18.2-279. Discharging firearms or missiles within or at building or dwelling house; penalty

If any person maliciously discharges a firearm within any building when occupied by one or more persons in such a manner as to endanger the life or lives of such person or persons, or maliciously shoots at, or maliciously throws any missile at or against any dwelling house or other building when occupied by one or more persons, whereby the life or lives of any such person or persons may be put in peril, the person so offending is guilty of a Class 4 felony. In the event of the death of any person, resulting from such malicious shooting or throwing, the person so offending is guilty of murder in the second degree. However, if the homicide is willful, deliberate and premeditated, he is guilty of murder in the first degree.

If any such act be done unlawfully, but not maliciously, the person so offending is guilty of a Class 6 felony; and, in the event of the death of any person resulting from such unlawful shooting or throwing, the person so offending is guilty of involuntary manslaughter. If any person willfully discharges a firearm within or shoots at any school building whether occupied or not, he is guilty of a Class 4 felony.

Code 1950, §§ 18.1-66, 18.1-152; 1960, c. 358; 1975, cc. 14, 15; 1992, c. 738; 2005, c. 143.

§ 18.2-280. Willfully discharging firearms in public places

A. If any person willfully discharges or causes to be discharged any firearm in any street in a city or town, or in any place of public business or place of public gathering, and such conduct results in bodily injury to another person, he shall be guilty of a Class 6 felony. If such conduct does not result in bodily injury to another person, he shall be guilty of a Class 1 misdemeanor.

B. If any person willfully discharges or causes to be discharged any firearm upon the buildings and grounds of any public, private or religious elementary, middle or high school, he shall be guilty of a Class 4 felony, unless he is engaged in a program or curriculum sponsored by or conducted with permission of a public, private or religious school.

C. If any person willfully discharges or causes to be discharged any firearm upon any public property within 1,000 feet of the property line of any public, private or religious elementary, middle or high school property he shall be guilty of a Class 4 felony, unless he is engaged in lawful hunting.

D. This section shall not apply to any law-enforcement officer in the performance of his official duties nor to any other person whose said willful act is otherwise justifiable or excusable at law in the protection of his life or property, or is otherwise specifically authorized by law.

E. Nothing in this statute shall preclude the Commonwealth from electing to prosecute under any other applicable provision of law instead of this section.

Code 1950, § 18.1-69; 1960, c. 358; 1975, cc. 14, 15; 1992, c. 735; 1999, c. 996; 2001, c. 712; 2005, c. 928.

§ 18.2-281. Setting spring gun or other deadly weapon

It shall be unlawful for any person to set or fix in any manner any firearm or other deadly weapon so that it may be discharged or activated by a person coming in contact therewith or with any string, wire, spring, or any other contrivance attached thereto or designed to activate such weapon remotely. Any person violating this section shall be guilty of a Class 6 felony.

Code 1950, § 18.1-69.1; 1966, c. 422; 1975, cc. 14, 15.

§ 18.2-282. Pointing, holding, or brandishing firearm, air or gas operated weapon or object similar in appearance; penalty

A. It shall be unlawful for any person to point, hold or brandish any firearm or any air or gas operated weapon or any object similar in appearance, whether capable of being fired or not, in such manner as to reasonably induce fear in the mind of another or hold a firearm or any air or gas operated weapon in a public place in such a manner as to reasonably induce fear in the mind of another of being shot or injured. However, this section shall not apply to any person engaged in excusable or justifiable self-defense. Persons violating the provisions of this section shall be guilty of a Class 1 misdemeanor or, if the violation occurs upon any public, private or religious elementary, middle or high school, including buildings and grounds or upon public property within 1,000 feet of such school property, he shall be guilty of a Class 6 felony.

B. Any police officer in the performance of his duty, in making an arrest under the provisions of this section, shall not be civilly liable in damages for injuries or death resulting to the person being arrested if he had reason to believe that the person being arrested was pointing, holding, or brandishing such firearm or air or gas operated weapon, or object that was similar in appearance, with intent to induce fear in the mind of another.

C. For purposes of this section, the word "firearm" means any weapon that will or is designed to or may readily be converted to expel single or multiple projectiles by the action of an explosion of a combustible material. The word "ammunition," as used herein, shall mean a cartridge, pellet, ball, missile or projectile adapted for use in a firearm.

Code 1950, § 18.1-69.2; 1968, c. 513; 1975, cc. 14, 15; 1990, cc. 588, 599; 1992, c. 735; 2003, c. 976; 2005, c. 928.

§ 18.2-282.1. Brandishing a machete or other bladed weapon with intent to intimidate; penalty

It shall be unlawful for any person to point, hold, or brandish a machete or any weapon, with an exposed blade 12 inches or longer, with the intent of intimidating any person or group of persons and in a manner that reasonably demonstrates that intent. This section shall not apply to any person engaged in excusable or justifiable self-defense. A person who violates this section is guilty of a Class 1 misdemeanor or, if the violation occurs upon any public, private, or religious elementary, middle, or high school, including buildings and grounds or upon public property within 1,000 feet of such school property, he is guilty of a Class 6 felony.

2006, cc. 844, 895.

§ 18.2-283. Carrying dangerous weapon to place of religious worship

If any person carry any gun, pistol, bowie knife, dagger or other dangerous weapon, without good and sufficient reason, to a place of worship while a meeting for religious purposes is being held at such place he shall be guilty of a Class 4 misdemeanor.

Code 1950, § 18.1-241; 1960, c. 358; 1962, c. 411; 1975, cc. 14, 15.

§ 18.2-283.1. Carrying weapon into courthouse

It shall be unlawful for any person to possess in or transport into any courthouse in this Commonwealth any (i) gun or other weapon designed or intended to propel a missile or projectile of any kind, (ii) frame, receiver, muffler, silencer, missile, projectile or ammunition designed for use with a dangerous weapon and (iii) any other dangerous weapon, including explosives, stun weapons as defined in § 18.2-308.1, and those weapons specified in subsection A of § 18.2-308. Any such weapon shall be subject to seizure by a law-enforcement officer. A violation of this section is punishable as a Class 1 misdemeanor.

The provisions of this section shall not apply to any police officer, sheriff, law-enforcement agent or official, conservation police officer, conservator of the peace, magistrate, court officer, judge, or city or county treasurer while in the conduct of such person's official duties.

1988, c. 615; 2004, c. 995; 2007, cc. 87, 519; 2012, c. 295.

§ 18.2-284. Selling or giving toy firearms

No person shall sell, barter, exchange, furnish, or dispose of by purchase, gift or in any other manner any toy gun, pistol, rifle or other toy firearm, if the same shall, by action of an explosion of a combustible material, discharge blank or ball charges. Any person violating the provisions of this section shall be guilty of a Class 4 misdemeanor. Each sale of any of the articles hereinbefore specified to any person shall constitute a separate offense.

Nothing in this section shall be construed as preventing the sale of what are commonly known as cap pistols.

Code 1950, § 18.1-347; 1960, c. 348; 1975, cc. 14, 15; 2003, c. 976.

§ 18.2-285. Hunting with firearms while under influence of intoxicant or narcotic drug; penalty

It shall be unlawful for any person to hunt wildlife with a firearm, bow and arrow, or crossbow in the Commonwealth of Virginia while he is (i) under the influence of alcohol; (ii) under the influence of any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature, or any combination of such drugs, to a degree that impairs his ability to hunt with a firearm, bow and arrow, or crossbow safely; or (iii) under the combined influence of alcohol and any drug or drugs to a degree that impairs his ability to hunt with a firearm, bow and arrow, or crossbow safely. Any person who violates the provisions of this section is guilty of a Class 1 misdemeanor. Conservation police officers, sheriffs and all other law-enforcement officers shall enforce the provisions of this section.

Code 1950, § 29-140.1; 1952, c. 96; 1962, c. 469; 1975, cc. 14, 15; 1999, c. 543; 2005, c. 507.

§ 18.2-286. Shooting in or across road or in street

If any person discharges a firearm, crossbow or bow and arrow in or across any road, or within the right-of-way thereof, or in a street of any city or town, he shall, for each offense, be guilty of a Class 4 misdemeanor.

The provisions of this section shall not apply to firing ranges or shooting matches maintained, and supervised or approved, by law-enforcement officers and military personnel in performance of their lawful duties.

Code 1950, § 33.1-349; 1970, c. 322; 1975, cc. 14, 15; 1993, c. 322; 1994, c. 18.

§ 18.2-286.1. Shooting from vehicles so as to endanger persons; penalty

Any person who, while in or on a motor vehicle, intentionally discharges a firearm so as to create the risk of injury or death to another person or thereby cause another person to have a reasonable apprehension of injury or death shall be guilty of a Class 5 felony. Nothing in this section shall apply to a law-enforcement officer in the performance of his duties.

1990, c. 951 .

§ 18.2-287. Repealed

Repealed by Acts 2004, c. 462.

§ 18.2-287.01. Carrying weapon in air carrier airport terminal

It shall be unlawful for any person to possess or transport into any air carrier airport terminal in the Commonwealth any (i) gun or other weapon designed or intended to propel a missile or projectile of any kind, (ii) frame, receiver, muffler, silencer, missile, projectile or ammunition designed for use with a dangerous weapon, and (iii) any other dangerous weapon, including explosives, stun weapons as defined in § 18.2-308.1, and those weapons specified in subsection A of § 18.2-308. Any such weapon shall be subject to seizure by a law-enforcement officer. A violation of this section is punishable as a Class 1 misdemeanor. Any weapon possessed or transported in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 19.2-386.28.

The provisions of this section shall not apply to any police officer, sheriff, law-enforcement agent or official, conservation police officer, conservator of the peace employed by the air carrier airport, or retired law-enforcement officer qualified pursuant to subsection C of § 18.2-308.016, nor shall the provisions of this section apply to any passenger of an airline who, to the extent otherwise permitted by law, transports a lawful firearm, weapon, or ammunition into or out of an air carrier airport terminal for the sole purposes, respectively, of (i) presenting such firearm, weapon, or ammunition to U.S. Customs agents in advance of an international flight, in order to comply with federal law, (ii) checking such firearm, weapon, or ammunition with his luggage, or (iii) retrieving such firearm, weapon, or ammunition from the baggage claim area.

Any other statute, rule, regulation, or ordinance specifically addressing the possession or transportation of weapons in any airport in the Commonwealth shall be invalid, and this section shall control.

2004, c. 894; 2007, cc. 87, 519; 2013, c. 746; 2016, c. 257.

§ 18.2-287.1. Repealed

Repealed by Acts 2004, c. 462.

§ 18.2-287.2. Wearing of body armor while committing a crime; penalty

Any person who, while committing a crime of violence as defined in § 18.2-288 (2) or a felony violation of § 18.2-248 or subdivision (a) 2 or 3 of § 18.2-248.1, has in his possession a firearm or knife and is wearing body armor designed to diminish the effect of the impact of a bullet or projectile shall be guilty of a Class 4 felony.

1990, c. 936; 1997, c. 311.

§ 18.2-287.3. Repealed

Repealed by Acts 1993, cc. 467, 494 .

§ 18.2-287.4. Carrying loaded firearms in public areas prohibited; penalty

It shall be unlawful for any person to carry a loaded (a) semi-automatic center-fire rifle or pistol that expels single or multiple projectiles by action of an explosion of a combustible material and is equipped at the time of the offense with a magazine that will hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock or (b) shotgun with a magazine that will hold more than seven rounds of the longest ammunition for which it is chambered on or about his person on any public street, road, alley, sidewalk, public right-of-way, or in any public park or any other place of whatever nature that is open to the public in the Cities of Alexandria, Chesapeake, Fairfax, Falls Church, Newport News, Norfolk, Richmond, or Virginia Beach or in the Counties of Arlington, Fairfax, Henrico, Loudoun, or Prince William.

The provisions of this section shall not apply to law-enforcement officers, licensed security guards, military personnel in the performance of their lawful duties, or any person having a valid concealed handgun permit or to any person actually engaged in lawful hunting or lawful recreational shooting activities at an established shooting range or shooting contest. Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

The exemptions set forth in §§ 18.2-308 and 18.2-308.016 shall apply, mutatis mutandis, to the provisions of this section.

1991, c. 570; 1992, c. 790; 2003, c. 976; 2004, c. 995; 2005, c. 160; 2007, c. 813; 2016, c. 257.

Article 5 - UNIFORM MACHINE GUN ACT

§ 18.2-288. Definitions

When used in this article:

(1) "Machine gun" applies to any weapon which shoots or is designed to shoot automatically more than one shot, without manual reloading, by a single function of the trigger.

(2) "Crime of violence" applies to and includes any of the following crimes or an attempt to commit any of the same, namely, murder, manslaughter, kidnapping, rape, mayhem, assault with intent to maim, disable, disfigure or kill, robbery, burglary, housebreaking, breaking and entering and larceny.

(3) "Person" applies to and includes firm, partnership, association or corporation.

Code 1950, § 18.1-258; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-289. Use of machine gun for crime of violence

Possession or use of a machine gun in the perpetration or attempted perpetration of a crime of violence is hereby declared to be a Class 2 felony.

Code 1950, § 18.1-259; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-290. Use of machine gun for aggressive purpose

Unlawful possession or use of a machine gun for an offensive or aggressive purpose is hereby declared to be a Class 4 felony.

Code 1950, § 18.1-260; 1960, c. 358; 1968, c. 229; 1975, cc. 14, 15.

§ 18.2-291. What constitutes aggressive purpose

Possession or use of a machine gun shall be presumed to be for an offensive or aggressive purpose:

(1) When the machine gun is on premises not owned or rented for bona fide permanent residence or business occupancy by the person in whose possession the machine gun may be found;

(2) When the machine gun is in the possession of, or used by, a person who has been convicted of a crime of violence in any court of record, state or federal, of the United States of America, its territories or insular possessions;

(3) When the machine gun has not been registered as required in § 18.2-295; or

(4) When empty or loaded shells which have been or are susceptible of use in the machine gun are found in the immediate vicinity thereof.

Code 1950, § 18.1-261; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-292. Presence prima facie evidence of use

The presence of a machine gun in any room, boat or vehicle shall be prima facie evidence of the possession or use of the machine gun by each person occupying the room, boat, or vehicle where the weapon is found.

Code 1950, § 18.1-262; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-293. What article does not apply to

The provisions of this article shall not be applicable to:

(1) The manufacture for, and sale of, machine guns to the armed forces or law-enforcement officers of the United States or of any state or of any political subdivision thereof, or the transportation required for that purpose; and

(2) Machine guns and automatic arms issued to the national guard of Virginia by the United States or such arms used by the United States army or navy or in the hands of troops of the national guards of other states or territories of the United States passing through Virginia, or such arms as may be provided for the officers of the State Police or officers of penal institutions.

Code 1950, § 18.1-263; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-293.1. What article does not prohibit

Nothing contained in this article shall prohibit or interfere with:

(1) The possession of a machine gun for scientific purposes, or the possession of a machine gun not usable as a weapon and possessed as a curiosity, ornament, or keepsake; and

(2) The possession of a machine gun for a purpose manifestly not aggressive or offensive.

Provided, however, that possession of such machine guns shall be subject to the provisions of § 18.2-295.

Code 1950, § 18.1-263; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-294. Manufacturer's and dealer's register; inspection of stock

Every manufacturer or dealer shall keep a register of all machine guns manufactured or handled by him. This register shall show the model and serial number, date of manufacture, sale, loan, gift, delivery or receipt of every machine gun, the name, address, and occupation of the person to whom the machine gun was sold, loaned, given or delivered, or from whom it was received. Upon demand every manufacturer or dealer shall permit any marshal, sheriff or police officer to inspect his entire stock of machine guns, parts, and supplies therefor, and shall produce the register, herein required, for inspection. A violation of any provisions of this section shall be punishable as a Class 3 misdemeanor.

Code 1950, § 18.1-264; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-295. Registration of machine guns

Every machine gun in this Commonwealth shall be registered with the Department of State Police within twenty-four hours after its acquisition or, in the case of semi-automatic weapons which are converted, modified or otherwise altered to become machine guns, within twenty-four hours of the conversion, modification or alteration. Blanks for registration shall be prepared by the Superintendent of State Police, and furnished upon application. To comply with this section the application as filed shall be notarized and shall show the model and serial number of the gun, the name, address and occupation of the person in possession, and from whom and the purpose for which, the gun was acquired or altered. The Superintendent of State Police shall upon registration required in this section forthwith furnish the registrant with a certificate of registration, which shall be valid as long as the registrant remains the same. Certificates of registration shall be retained by the registrant and produced by him upon demand by any peace officer. Failure to keep or produce such certificate for inspection shall be a Class 3 misdemeanor, and any peace officer, may without warrant, seize the machine gun and apply for its confiscation as provided in § 18.2-296. Upon transferring a registered machine gun, the transferor shall forthwith notify the Superintendent in writing, setting forth the date of transfer and name and address of the transferee. Failure to give the required notification shall constitute a Class 3 misdemeanor. Registration data shall not be subject to inspection by the public.

Code 1950, § 18.1-265; 1960, c. 358; 1972, c. 199; 1975, cc. 14, 15; 1978, c. 618; 1988, c. 460.

§ 18.2-296. Search warrants for machine guns

Warrant to search any house or place and seize any machine gun possessed in violation of this article may issue in the same manner and under the same restrictions as provided by law for stolen property, and any court of record, upon application of the attorney for the Commonwealth, a police officer or conservator of the peace, may order any machine gun, thus or otherwise legally

seized, to be confiscated and either destroyed or delivered to a peace officer of the Commonwealth or a political subdivision thereof.

Code 1950, § 18.1-266; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-297. How article construed

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Code 1950, § 18.1-267; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-298. Short title of article

This article may be cited as the "Uniform Machine Gun Act."

Code 1950, § 18.1-268; 1960, c. 358; 1975, cc. 14, 15.

Article 6 - "SAWED-OFF" SHOTGUN AND "SAWED-OFF" RIFLE ACT

§ 18.2-299. Definitions

When used in this article:

"Sawed-off shotgun" means any weapon, loaded or unloaded, originally designed as a shoulder weapon, utilizing a self-contained cartridge from which a number of ball shot pellets or projectiles may be fired simultaneously from a smooth or rifled bore by a single function of the firing device and which has a barrel length of less than 18 inches for smooth bore weapons and 16 inches for rifled weapons. Weapons of less than .225 caliber shall not be included.

"Sawed-off rifle" means a rifle of any caliber, loaded or unloaded, which expels a projectile by action of an explosion of a combustible material and is designed as a shoulder weapon with a barrel or barrels length of less than 16 inches or which has been modified to an overall length of less than 26 inches.

"Crime of violence" applies to and includes any of the following crimes or an attempt to commit any of the same, namely, murder, manslaughter, kidnapping, rape, mayhem, assault with intent to maim, disable, disfigure or kill, robbery, burglary, housebreaking, breaking and entering and larceny.

"Person" applies to and includes firm, partnership, association or corporation.

Code 1950, § 18.1-268.1; 1968, c. 661; 1975, cc. 14, 15; 1992, c. 580; 2004, c. 930.

§ 18.2-300. Possession or use of "sawed-off" shotgun or rifle

A. Possession or use of a "sawed-off" shotgun or "sawed-off" rifle in the perpetration or attempted perpetration of a crime of violence is a Class 2 felony.

B. Possession or use of a "sawed-off" shotgun or "sawed-off" rifle for any other purpose, except as permitted by this article and official use by those persons permitted possession by § 18.2-303, is a Class 4 felony.

Code 1950, § 18.1-268.2; 1968, c. 661; 1975, cc. 14, 15; 1978, c. 710; 1992, c. 580 .

§§ 18.2-301, 18.2-302. Repealed

Repealed by Acts 1978, c. 710.

§ 18.2-303. What article does not apply to

The provisions of this article shall not be applicable to:

(1) The manufacture for, and sale of, "sawed-off" shotguns or "sawed-off" rifles to the armed forces or law-enforcement officers of the United States or of any state or of any political subdivision thereof, or the transportation required for that purpose; and

(2) "Sawed-off" shotguns, "sawed-off" rifles and automatic arms issued to the National Guard of Virginia by the United States or such arms used by the United States Army or Navy or in the hands of troops of the national guards of other states or territories of the United States passing through Virginia, or such arms as may be provided for the officers of the State Police or officers of penal institutions.

Code 1950, § 18.1-268.5; 1968, c. 661; 1975, cc. 14, 15; 1992, c. 580 .

§ 18.2-303.1. What article does not prohibit

Nothing contained in this article shall prohibit or interfere with the possession of a "sawed-off" shotgun or "sawed-off" rifle for scientific purposes, the possession of a "sawed-off" shotgun or "sawed-off" rifle possessed in compliance with federal law or the possession of a "sawed-off" shotgun or "sawed-off" rifle not usable as a firing weapon and possessed as a curiosity, ornament, or keepsake.

Code 1950, § 18.1-268.5; 1968, c. 661; 1975, cc. 14, 15; 1976, c. 351; 1992, c. 580; 1993, c. 449 .

§ 18.2-304. Manufacturer's and dealer's register; inspection of stock

Every manufacturer or dealer shall keep a register of all "sawed-off" shotguns and "sawed-off" rifles manufactured or handled by him. This register shall show the model and serial number, date of manufacture, sale, loan, gift, delivery or receipt of every "sawed-off" shotgun and "sawed-off" rifle, the name, address, and occupation of the person to whom the "sawed-off" shotgun or "sawed-off" rifle was sold, loaned, given or delivered, or from whom it was received. Upon demand every manufacturer or dealer shall permit any marshal, sheriff or police officer to inspect his entire stock of "sawed-off" shotguns and "sawed-off" rifles, and "sawed-off" shotgun or "sawed-off" rifle barrels, and shall produce the register, herein required, for inspection. A violation of any provision of this section shall be punishable as a Class 3 misdemeanor.

Code 1950, § 18.1-268.6; 1968, c. 661; 1975, cc. 14, 15; 1992, c. 580 .

§ 18.2-305. Repealed

Repealed by Acts 1976, c. 351.

§ 18.2-306. Search warrants for "sawed-off" shotguns and rifles; confiscation and destruction

Warrant to search any house or place and seize any "sawed-off" shotgun or "sawed-off" rifle possessed in violation of this article may issue in the same manner and under the same restrictions as provided by law for stolen property, and any court of record, upon application of the attorney for the Commonwealth, a police officer or conservator of the peace, may order any "sawed-off" shotgun or "sawed-off" rifle thus or otherwise legally seized, to be confiscated and either destroyed or delivered to a peace officer of the Commonwealth or a political subdivision thereof.

Code 1950, § 18.1-268.8; 1968, c. 661; 1975, cc. 14, 15; 1992, c. 580 .

§ 18.2-307. Short title of article

This article may be cited as the "Sawed-Off Shotgun and Sawed-Off Rifle Act."

Code 1950, § 18.1-268.9; 1968, c. 661; 1975, cc. 14, 15; 1992, c. 580 .

Article 6.1 - CONCEALED WEAPONS AND CONCEALED HANDGUN PERMITS

§ 18.2-307.1. Definitions

As used in this article, unless the context requires a different meaning:

"Ballistic knife" means any knife with a detachable blade that is propelled by a spring-operated mechanism.

"Handgun" means any pistol or revolver or other firearm, except a machine gun, originally designed, made, and intended to fire a projectile by means of an explosion of a combustible material from one or more barrels when held in one hand.

"Law-enforcement officer" means those individuals defined as a law-enforcement officer in § 9.1-101, law-enforcement agents of the armed forces of the United States and the Naval Criminal Investigative Service, and federal agents who are otherwise authorized to carry weapons by federal law. "Law-enforcement officer" also means any sworn full-time law-enforcement officer employed by a law-enforcement agency of the United States or any state or political subdivision thereof, whose duties are substantially similar to those set forth in § 9.1-101.

"Lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

"Personal knowledge" means knowledge of a fact that a person has himself gained through his own senses, or knowledge that was gained by a law-enforcement officer or prosecutor through the performance of his official duties.

"Spring stick" means a spring-loaded metal stick activated by pushing a button that rapidly and forcefully telescopes the weapon to several times its original length.

2013, c. 746.

§ 18.2-308. Carrying concealed weapons; exceptions; penalty

A. If any person carries about his person, hidden from common observation, (i) any pistol, revolver, or other weapon designed or intended to propel a missile of any kind by action of an explosion of any combustible material; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, machete, razor, slingshot, spring stick, metal knucks, or blackjack; (iii) any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain; (iv) any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart; or (v) any weapon of like kind as those enumerated in this subsection, he is guilty of a Class 1 misdemeanor. A second violation of this section or a conviction under this section subsequent to any conviction under any substantially similar ordinance of any county, city, or town shall be punishable as a Class 6 felony, and a third or subsequent such violation shall be punishable as a Class 5 felony. For the purpose of this section, a weapon shall be deemed to be hidden from common observation when it is observable but is of such deceptive appearance as to disguise the weapon's true nature. It shall be an affirmative defense to a violation of clause (i) regarding a handgun, that a person had been issued, at the time of the offense, a valid concealed handgun permit.

B. This section shall not apply to any person while in his own place of abode or the curtilage thereof.

C. Except as provided in subsection A of § 18.2-308.012, this section shall not apply to:

1. Any person while in his own place of business;

2. Any law-enforcement officer, or retired law-enforcement officer pursuant to § 18.2-308.016, wherever such law-enforcement officer may travel in the Commonwealth;

3. Any person who is at, or going to or from, an established shooting range, provided that the weapons are unloaded and securely wrapped while being transported;

4. Any regularly enrolled member of a weapons collecting organization who is at, or going to or from, a bona fide weapons exhibition, provided that the weapons are unloaded and securely wrapped while being transported;

5. Any person carrying such weapons between his place of abode and a place of purchase or repair, provided the weapons are unloaded and securely wrapped while being transported;

6. Any person actually engaged in lawful hunting, as authorized by the Board of Game and Inland Fisheries, under inclement weather conditions necessitating temporary protection of his firearm from those conditions, provided that possession of a handgun while engaged in lawful hunting shall not be construed as hunting with a handgun if the person hunting is carrying a valid concealed handgun permit;

7. Any attorney for the Commonwealth or assistant attorney for the Commonwealth, wherever such attorney may travel in the Commonwealth;

8. Any person who may lawfully possess a firearm and is carrying a handgun while in a personal, private motor vehicle or vessel and such handgun is secured in a container or compartment in the vehicle or vessel;

9. Any enrolled participant of a firearms training course who is at, or going to or from, a training location, provided that the weapons are unloaded and securely wrapped while being transported; and

10. Any judge or justice of the Commonwealth, wherever such judge or justice may travel in the Commonwealth.

D. This section shall also not apply to any of the following individuals while in the discharge of their official duties, or while in transit to or from such duties:

1. Carriers of the United States mail;

2. Officers or guards of any state correctional institution;

3. Conservators of the peace, except that a judge or justice of the Commonwealth, an attorney for the Commonwealth, or an assistant attorney for the Commonwealth may carry a concealed handgun pursuant to subdivisions C 7 and 10. However, the following conservators of the peace shall not be permitted to carry a concealed handgun without obtaining a permit as provided in this article: (i) notaries public; (ii) registrars; (iii) drivers, operators, or other persons in charge of any motor vehicle carrier of passengers for hire; or (iv) commissioners in chancery;

4. Noncustodial employees of the Department of Corrections designated to carry weapons by the Director of the Department of Corrections pursuant to § 53.1-29; and

5. Harbormaster of the City of Hopewell.

Code 1950, § 18.1-269; 1960, c. 358; 1964, c. 130; 1975, cc. 14, 15, 594; 1976, c. 302; 1978, c. 715; 1979, c. 642; 1980, c. 238; 1981, c. 376; 1982, cc. 71, 553; 1983, c. 529; 1984, cc. 360, 720; 1985, c. 427; 1986, cc. 57, 451, 625, 641; 1987, cc. 592, 707; 1988, cc. 359, 793; 1989, cc. 538, 542; 1990, cc. 640, 648, 825; 1991, c. 637; 1992, cc. 510, 705; 1993, cc. 748, 861; 1994, cc. 375, 697; 1995, c. 829; 1997, cc. 916, 921, 922; 1998, cc. 662, 670, 846, 847; 1999, cc. 628, 666, 679; 2001, cc. 25, 384, 657; 2002, cc. 699, 728, 826; 2004, cc. 355, 423, 462, 876, 885, 900, 901, 903, 905, 926, 995, 1012; 2005, cc. 344, 420, 424, 441, 839; 2006, c. 886; 2007, cc. 87, 272, 408, 455; 2008, cc. 69, 75, 80, 309, 464, 742; 2009, cc. 235, 779, 780; 2010, cc. 387, 433, 576, 586, 602, 677, 700, 709, 740, 741, 754, 841, 863; 2011, cc. 231, 234, 384, 410; 2012, cc. 132, 175, 291, 557, 776; 2013, cc. 559, 746; 2014, cc. 45, 225, 450; 2015, cc. 38, 221, 730; 2016, cc. 257, 589, 672.

§ 18.2-308.01. Carrying a concealed handgun with a permit

A. The prohibition against carrying a concealed handgun in clause (i) of subsection A of § 18.2-308 shall not apply to a person who has a valid concealed handgun permit issued pursuant to this article. The person issued the permit shall have such permit on his person at all times during which

he is carrying a concealed handgun and shall display the permit and a photo identification issued by a government agency of the Commonwealth or by the U.S. Department of Defense or U.S. State Department (passport) upon demand by a law-enforcement officer. A person to whom a non-resident permit is issued shall have such permit on his person at all times when he is carrying a concealed handgun in the Commonwealth and shall display the permit on demand by a law-enforcement officer. A person whose permit is extended due to deployment shall carry with him and display, upon request of a law-enforcement officer, a copy of the documents required by sub-section B of § 18.2-308.010.

B. Failure to display the permit and a photo identification upon demand by a law-enforcement officer shall be punishable by a $25 civil penalty, which shall be paid into the state treasury. Any attorney for the Commonwealth of the county or city in which the alleged violation occurred may bring an action to recover the civil penalty. A court may waive such penalty upon presentation to the court of a valid permit and a government-issued photo identification. Any law-enforcement officer may issue a summons for the civil violation of failure to display the concealed handgun permit and photo identification upon demand.

C. The granting of a concealed handgun permit pursuant to this article shall not thereby authorize the possession of any handgun or other weapon on property or in places where such possession is otherwise prohibited by law or is prohibited by the owner of private property.

2013, c. 746.

§ 18.2-308.02. Application for a concealed handgun permit; Virginia resident or domiciliary

A. Any person 21 years of age or older may apply in writing to the clerk of the circuit court of the county or city in which he resides, or if he is a member of the United States armed forces, the county or city in which he is domiciled, for a five-year permit to carry a concealed handgun. There shall be no requirement regarding the length of time an applicant has been a resident or domiciliary of the county or city. The application shall be made under oath before a notary or other person qualified to take oaths and shall be made only on a form prescribed by the Department of State Police, in consultation with the Supreme Court, requiring only that information necessary to determine eligibility for the permit. No information or documentation other than that which is allowed on the application in accordance with this section may be requested or required by the clerk or the court.

B. The court shall require proof that the applicant has demonstrated competence with a handgun and the applicant may demonstrate such competence by one of the following, but no applicant shall be required to submit to any additional demonstration of competence, nor shall any proof of demonstrated competence expire:

1. Completing any hunter education or hunter safety course approved by the Department of Game and Inland Fisheries or a similar agency of another state;

2. Completing any National Rifle Association firearms safety or training course;

3. Completing any firearms safety or training course or class available to the general public offered by a law-enforcement agency, junior college, college, or private or public institution or organization or firearms training school utilizing instructors certified by the National Rifle Association or the Department of Criminal Justice Services;

4. Completing any law-enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of law enforcement or security enforcement;

5. Presenting evidence of equivalent experience with a firearm through participation in organized shooting competition or current military service or proof of an honorable discharge from any branch of the armed services;

6. Obtaining or previously having held a license to carry a firearm in the Commonwealth or a locality thereof, unless such license has been revoked for cause;

7. Completing any firearms training or safety course or class, including an electronic, video, or online course, conducted by a state-certified or National Rifle Association-certified firearms instructor;

8. Completing any governmental police agency firearms training course and qualifying to carry a firearm in the course of normal police duties; or

9. Completing any other firearms training which the court deems adequate.

A photocopy of a certificate of completion of any of the courses or classes; an affidavit from the instructor, school, club, organization, or group that conducted or taught such course or class attesting to the completion of the course or class by the applicant; or a copy of any document that shows completion of the course or class or evidences participation in firearms competition shall constitute evidence of qualification under this subsection.

C. The making of a materially false statement in an application under this article shall constitute perjury, punishable as provided in § 18.2-434.

D. The clerk of court shall withhold from public disclosure the applicant's name and any other information contained in a permit application or any order issuing a concealed handgun permit, except that such information shall not be withheld from any law-enforcement officer acting in the performance of his official duties or from the applicant with respect to his own information. The prohibition on public disclosure of information under this subsection shall not apply to any reference to the issuance of a concealed handgun permit in any order book before July 1, 2008; however, any other concealed handgun records maintained by the clerk shall be withheld from public disclosure.

E. An application is deemed complete when all information required to be furnished by the applicant, including the fee for a concealed handgun permit as set forth in § 18.2-308.03, is delivered to

and received by the clerk of court before or concomitant with the conduct of a state or national criminal history records check.

2013, cc. 659, 746; 2014, cc. 16, 401, 549.

§ 18.2-308.03. Fees for concealed handgun permits

A. The clerk shall charge a fee of $10 for the processing of an application or issuing of a permit, including his costs associated with the consultation with law-enforcement agencies. The local law-enforcement agency conducting the background investigation may charge a fee not to exceed $35 to cover the cost of conducting an investigation pursuant to this article. The $35 fee shall include any amount assessed by the U.S. Federal Bureau of Investigation for providing criminal history record information, and the local law-enforcement agency shall forward the amount assessed by the U.S. Federal Bureau of Investigation to the State Police with the fingerprints taken from any nonresident applicant. The State Police may charge a fee not to exceed $5 to cover its costs associated with processing the application. The total amount assessed for processing an application for a permit shall not exceed $50, with such fees to be paid in one sum to the person who receives the application. Payment may be made by any method accepted by that court for payment of other fees or penalties. No payment shall be required until the application is received by the court as a complete application.

B. (Effective until July 1, 2018) No fee shall be charged for the issuance of such permit to a person who has retired from service (i) as a magistrate in the Commonwealth; (ii) as a special agent with the Alcoholic Beverage Control Board or as a law-enforcement officer with the Department of State Police, the Department of Game and Inland Fisheries, or a sheriff or police department, bureau, or force of any political subdivision of the Commonwealth, after completing 15 years of service or after reaching age 55; (iii) as a law-enforcement officer with the U.S. Federal Bureau of Investigation, Bureau of Alcohol, Tobacco and Firearms, Secret Service Agency, Drug Enforcement Administration, United States Citizenship and Immigration Services, U.S. Customs and Border Protection, Department of State Diplomatic Security Service, U.S. Marshals Service, or Naval Criminal Investigative Service, after completing 15 years of service or after reaching age 55; (iv) as a law-enforcement officer with any police or sheriff's department within the United States, the District of Columbia, or any of the territories of the United States, after completing 15 years of service; (v) as a law-enforcement officer with any combination of the agencies listed in clauses (ii) through (iv), after completing 15 years of service; (vi) as a designated boarding team member or boarding officer of the United States Coast Guard, after completing 15 years of service or after reaching age 55; or (vii) as a correctional officer as defined in § 53.1-1 after completing 15 years of service.

B. (Effective July 1, 2018) No fee shall be charged for the issuance of such permit to a person who has retired from service (i) as a magistrate in the Commonwealth; (ii) as a special agent with the Virginia Alcoholic Beverage Control Authority or as a law-enforcement officer with the Department of State Police, the Department of Game and Inland Fisheries, or a sheriff or police department, bureau, or force of any political subdivision of the Commonwealth, after completing 15

years of service or after reaching age 55; (iii) as a law-enforcement officer with the U.S. Federal Bureau of Investigation, Bureau of Alcohol, Tobacco and Firearms, Secret Service Agency, Drug Enforcement Administration, United States Citizenship and Immigration Services, U.S. Customs and Border Protection, Department of State Diplomatic Security Service, U.S. Marshals Service, or Naval Criminal Investigative Service, after completing 15 years of service or after reaching age 55; (iv) as a law-enforcement officer with any police or sheriff's department within the United States, the District of Columbia, or any of the territories of the United States, after completing 15 years of service; (v) as a law-enforcement officer with any combination of the agencies listed in clauses (ii) through (iv), after completing 15 years of service; (vi) as a designated boarding team member or boarding officer of the United States Coast Guard, after completing 15 years of service or after reaching age 55; or (vii) as a correctional officer as defined in § 53.1-1 after completing 15 years of service.

2013, cc. 135, 559, 746; 2015, cc. 38, 730.

§ 18.2-308.04. Processing of the application and issuance of a concealed handgun permit

A. The clerk of court shall enter on the application the date on which the application and all other information required to be submitted by the applicant is received.

B. Upon receipt of the completed application, the court shall consult with either the sheriff or police department of the county or city and receive a report from the Central Criminal Records Exchange.

C. The court shall issue the permit via United States mail and notify the State Police of the issuance of the permit within 45 days of receipt of the completed application unless it is determined that the applicant is disqualified. Any order denying issuance of the permit shall be in accordance with § 18.2-308.08. If the applicant is later found by the court to be disqualified after a five-year permit has been issued, the permit shall be revoked.

D. A court may authorize the clerk to issue concealed handgun permits, without judicial review, to applicants who have submitted complete applications, for whom the criminal history records check does not indicate a disqualification and, after consulting with either the sheriff or police department of the county or city, about which application there are no outstanding questions or issues. The court clerk shall be immune from suit arising from any acts or omissions relating to the issuance of concealed handgun permits without judicial review pursuant to this section unless the clerk was grossly negligent or engaged in willful misconduct. This section shall not be construed to limit, withdraw, or overturn any defense or immunity already existing in statutory or common law, or to affect any cause of action accruing prior to July 1, 2010.

E. The permit to carry a concealed handgun shall specify only the following information: name, address, date of birth, gender, height, weight, color of hair, color of eyes, and signature of the permittee; the signature of the judge issuing the permit, of the clerk of court who has been authorized to sign such permits by the issuing judge, or of the clerk of court who has been authorized to issue

such permits pursuant to subsection D; the date of issuance; and the expiration date. The permit to carry a concealed handgun shall be no larger than two inches wide by three and one-fourth inches long and shall be of a uniform style prescribed by the Department of State Police.

2013, c. 746.

§ 18.2-308.05. Issuance of a de facto permit

If the court has not issued the permit or determined that the applicant is disqualified within 45 days of the date of receipt noted on the application, the clerk shall certify on the application that the 45-day period has expired, and mail or send via electronic mail a copy of the certified application to the applicant within five business days of the expiration of the 45-day period. The certified application shall serve as a de facto permit, which shall expire 90 days after issuance, and shall be recognized as a valid concealed handgun permit when presented with a valid government-issued photo identification pursuant to subsection A of § 18.2-308.01, until the court issues a five-year permit or finds the applicant to be disqualified. If the applicant is found to be disqualified after the de facto permit is issued, the applicant shall surrender the de facto permit to the court and the disqualification shall be deemed a denial of the permit and a revocation of the de facto permit.

2013, c. 746.

§ 18.2-308.06. Nonresident concealed handgun permits

A. Nonresidents of the Commonwealth 21 years of age or older may apply in writing to the Virginia Department of State Police for a five-year permit to carry a concealed handgun. Every applicant for a nonresident concealed handgun permit shall submit two photographs of a type and kind specified by the Department of State Police for inclusion on the permit and shall submit fingerprints on a card provided by the Department of State Police for the purpose of obtaining the applicant's state or national criminal history record. As a condition for issuance of a concealed handgun permit, the applicant shall submit to fingerprinting by his local or state law-enforcement agency and provide personal descriptive information to be forwarded with the fingerprints through the Central Criminal Records Exchange to the U.S. Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding the applicant and obtaining fingerprint identification information from federal records pursuant to criminal investigations by state and local law-enforcement agencies. The application shall be made under oath before a notary or other person qualified to take oaths on a form provided by the Department of State Police, requiring only that information necessary to determine eligibility for the permit. If the permittee is later found by the Department of State Police to be disqualified, the permit shall be revoked and the person shall return the permit after being so notified by the Department of State Police. The permit requirement and restriction provisions of subsection C of § 18.2-308.02 and § 18.2-308.09 shall apply, mutatis mutandis, to the provisions of this subsection.

B. The applicant shall demonstrate competence with a handgun by one of the following:

1. Completing a hunter education or hunter safety course approved by the Virginia Department of Game and Inland Fisheries or a similar agency of another state;

2. Completing any National Rifle Association firearms safety or training course;

3. Completing any firearms safety or training course or class available to the general public offered by a law-enforcement agency, junior college, college, or private or public institution or organization or firearms training school utilizing instructors certified by the National Rifle Association or the Department of Criminal Justice Services or a similar agency of another state;

4. Completing any law-enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of law enforcement or security enforcement;

5. Presenting evidence of equivalent experience with a firearm through participation in organized shooting competition approved by the Department of State Police or current military service or proof of an honorable discharge from any branch of the armed services;

6. Obtaining or previously having held a license to carry a firearm in the Commonwealth or a locality thereof, unless such license has been revoked for cause;

7. Completing any firearms training or safety course or class, including an electronic, video, or online course, conducted by a state-certified or National Rifle Association-certified firearms instructor;

8. Completing any governmental police agency firearms training course and qualifying to carry a firearm in the course of normal police duties; or

9. Completing any other firearms training that the Virginia Department of State Police deems adequate.

A photocopy of a certificate of completion of any such course or class; an affidavit from the instructor, school, club, organization, or group that conducted or taught such course or class attesting to the completion of the course or class by the applicant; or a copy of any document that shows completion of the course or class or evidences participation in firearms competition shall satisfy the requirement for demonstration of competence with a handgun.

C. The Department of State Police may charge a fee not to exceed $100 to cover the cost of the background check and issuance of the permit. Any fees collected shall be deposited in a special account to be used to offset the costs of administering the nonresident concealed handgun permit program.

D. The permit to carry a concealed handgun shall contain only the following information: name, address, date of birth, gender, height, weight, color of hair, color of eyes, and photograph of the permittee; the signature of the Superintendent of the Virginia Department of State Police or his designee; the date of issuance; and the expiration date.

E. The Superintendent of the State Police shall promulgate regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for the implementation of an application process for obtaining a nonresident concealed handgun permit.

2013, c. 746.

§ 18.2-308.07. Entry of information into the Virginia Criminal Information Network

A. An order issuing a concealed handgun permit pursuant to § 18.2-308.04, or the copy of the permit application certified by the clerk as a de facto permit pursuant to § 18.2-308.05, shall be provided to the State Police and the law-enforcement agencies of the county or city by the clerk of the court. The State Police shall enter the permittee's name and description in the Virginia Criminal Information Network so that the permit's existence and current status will be made known to law-enforcement personnel accessing the Network for investigative purposes.

B. The Department of State Police shall enter the name and description of a person issued a nonresident permit pursuant to § 18.2-308.06 in the Virginia Criminal Information Network so that the permit's existence and current status are known to law-enforcement personnel accessing the Network for investigative purposes.

C. The State Police shall withhold from public disclosure permittee information submitted to the State Police for purposes of entry into the Virginia Criminal Information Network, except that such information shall not be withheld from any law-enforcement agency, officer, or authorized agent thereof acting in the performance of official law-enforcement duties, nor shall such information be withheld from an entity that has a valid contract with any local, state, or federal law-enforcement agency for the purpose of performing official duties of the law-enforcement agency. However, nothing in this subsection shall be construed to prohibit the release of (i) records by the State Police concerning permits issued to nonresidents of the Commonwealth pursuant to § 18.2-308.06 or (ii) statistical summaries, abstracts, or other records containing information in an aggregate form that does not identify any individual permittees.

2013, c. 746.

§ 18.2-308.08. Denial of a concealed handgun permit; appeal

A. Only a circuit court judge may deny issuance of a concealed handgun permit to a Virginia resident or domiciliary who has applied for a permit pursuant to § 18.2-308.04. Any order denying issuance of a concealed handgun permit shall state the basis for the denial of the permit, including, if applicable, any reason under § 18.2-308.09 that is the basis of the denial, and the clerk shall provide notice, in writing, upon denial of the application, of the applicant's right to an ore tenus hearing and the requirements for perfecting an appeal of such order.

B. Upon request of the applicant made within 21 days, the court shall place the matter on the docket for an ore tenus hearing. The applicant may be represented by counsel, but counsel shall not be appointed, and the rules of evidence shall apply. The final order of the court shall include the court's findings of fact and conclusions of law.

C. Any person denied a permit to carry a concealed handgun by the circuit court may present a petition for review to the Court of Appeals. The petition for review shall be filed within 60 days of the expiration of the time for requesting an ore tenus hearing, or if an ore tenus hearing is requested, within 60 days of the entry of the final order of the circuit court following the hearing. The petition shall be accompanied by a copy of the original papers filed in the circuit court, including a copy of the order of the circuit court denying the permit. Subject to the provisions of subsection B of § 17.1-410, the decision of the Court of Appeals or judge shall be final. Notwithstanding any other provision of law, if the decision to deny the permit is reversed upon appeal, taxable costs incurred by the person shall be paid by the Commonwealth.

2013, c. 746.

§ 18.2-308.09. Disqualifications for a concealed handgun permit

The following persons shall be deemed disqualified from obtaining a permit:

1. An individual who is ineligible to possess a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, or 18.2-308.1:3 or the substantially similar law of any other state or of the United States.

2. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:1 and who was discharged from the custody of the Commissioner pursuant to § 19.2-182.7 less than five years before the date of his application for a concealed handgun permit.

3. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:2 and whose competency or capacity was restored pursuant to § 64.2-2012 less than five years before the date of his application for a concealed handgun permit.

4. An individual who was ineligible to possess a firearm under § 18.2-308.1:3 and who was released from commitment less than five years before the date of this application for a concealed handgun permit.

5. An individual who is subject to a restraining order, or to a protective order and prohibited by § 18.2-308.1:4 from purchasing, possessing, or transporting a firearm.

6. An individual who is prohibited by § 18.2-308.2 from possessing or transporting a firearm, except that a permit may be obtained in accordance with subsection C of that section.

7. An individual who has been convicted of two or more misdemeanors within the five-year period immediately preceding the application, if one of the misdemeanors was a Class 1 misdemeanor, but the judge shall have the discretion to deny a permit for two or more misdemeanors that are not Class 1. Traffic infractions and misdemeanors set forth in Title 46.2 shall not be considered for purposes of this disqualification.

8. An individual who is addicted to, or is an unlawful user or distributor of, marijuana, synthetic cannabinoids, or any controlled substance.

9. An individual who has been convicted of a violation of § 18.2-266 or a substantially similar local ordinance, or of public drunkenness, or of a substantially similar offense under the laws of any other state, the District of Columbia, the United States, or its territories within the three-year period immediately preceding the application, or who is a habitual drunkard as determined pursuant to § 4.1-333.

10. An alien other than an alien lawfully admitted for permanent residence in the United States.

11. An individual who has been discharged from the armed forces of the United States under dishonorable conditions.

12. An individual who is a fugitive from justice.

13. An individual who the court finds, by a preponderance of the evidence, based on specific acts by the applicant, is likely to use a weapon unlawfully or negligently to endanger others. The sheriff, chief of police, or attorney for the Commonwealth may submit to the court a sworn, written statement indicating that, in the opinion of such sheriff, chief of police, or attorney for the Commonwealth, based upon a disqualifying conviction or upon the specific acts set forth in the statement, the applicant is likely to use a weapon unlawfully or negligently to endanger others. The statement of the sheriff, chief of police, or the attorney for the Commonwealth shall be based upon personal knowledge of such individual or of a deputy sheriff, police officer, or assistant attorney for the Commonwealth of the specific acts, or upon a written statement made under oath before a notary public of a competent person having personal knowledge of the specific acts.

14. An individual who has been convicted of any assault, assault and battery, sexual battery, discharging of a firearm in violation of § 18.2-280 or 18.2-286.1 or brandishing of a firearm in violation of § 18.2-282 within the three-year period immediately preceding the application.

15. An individual who has been convicted of stalking.

16. An individual whose previous convictions or adjudications of delinquency were based on an offense that would have been at the time of conviction a felony if committed by an adult under the laws of any state, the District of Columbia, the United States or its territories. For purposes of this disqualifier, only convictions occurring within 16 years following the later of the date of (i) the conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or adjudication shall be deemed to be "previous convictions." Disqualification under this subdivision shall not apply to an individual with previous adjudications of delinquency who has completed a term of service of no less than two years in the Armed Forces of the United States and, if such person has been discharged from the Armed Forces of the United States, received an honorable discharge.

17. An individual who has a felony charge pending or a charge pending for an offense listed in subdivision 14 or 15.

18. An individual who has received mental health treatment or substance abuse treatment in a residential setting within five years prior to the date of his application for a concealed handgun permit.

19. An individual not otherwise ineligible pursuant to this article, who, within the three-year period immediately preceding the application for the permit, was found guilty of any criminal offense set forth in Article 1 (§ 18.2-247 et seq.) or former § 18.2-248.1:1 or of a criminal offense of illegal possession or distribution of marijuana, synthetic cannabinoids, or any controlled substance, under the laws of any state, the District of Columbia, or the United States or its territories.

20. An individual, not otherwise ineligible pursuant to this article, with respect to whom, within the three-year period immediately preceding the application, upon a charge of any criminal offense set forth in Article 1 (§ 18.2-247 et seq.) or former § 18.2-248.1:1 or upon a charge of illegal possession or distribution of marijuana, synthetic cannabinoids, or any controlled substance under the laws of any state, the District of Columbia, or the United States or its territories, the trial court found that the facts of the case were sufficient for a finding of guilt and disposed of the case pursuant to § 18.2-251 or the substantially similar law of any other state, the District of Columbia, or the United States or its territories.

2013, c. 746; 2014, cc. 674, 719; 2016, cc. 48, 49, 337.

§ 18.2-308.010. Renewal of concealed handgun permit

A.1. Persons who previously have held a concealed handgun permit shall be issued, upon application as provided in § 18.2-308.02, a new five-year permit unless it is found that the applicant is subject to any of the disqualifications set forth in § 18.2-308.09. Persons who previously have been issued a concealed handgun permit pursuant to this article shall not be required to appear in person to apply for a new five-year permit pursuant to this section, and the application for the new permit may be submitted via the United States mail. The circuit court that receives the application shall promptly notify an applicant if the application is incomplete or if the fee submitted for the permit pursuant to § 18.2-308.03 is incorrect.

2. If a new five-year permit is issued while an existing permit remains valid, the new five-year permit shall become effective upon the expiration date of the existing permit, provided that the application is received by the court at least 90 days but no more than 180 days prior to the expiration of the existing permit.

3. Any order denying issuance of the new permit shall be in accordance with subsection A of § 18.2-308.08.

B. If a permit holder is a member of the Virginia National Guard, armed forces of the United States, or the Armed Forces Reserves of the United States, and his five-year permit expires during an active-duty military deployment outside of the permittee's county or city of residence, such permit shall remain valid for 90 days after the end date of the deployment. In order to establish proof of continued validity of the permit, such a permittee shall carry with him and display, upon

request of a law-enforcement officer, a copy of the permittee's deployment orders or other documentation from the permittee's commanding officer that order the permittee to travel outside of his county or city of residence and that indicate the start and end date of such deployment.

2013, c. 746.

§ 18.2-308.011. Replacement permits

A. The clerk of a circuit court that issued a valid concealed handgun permit shall, upon presentation of the valid permit and proof of a new address of residence by the permit holder, issue a replacement permit specifying the permit holder's new address. The clerk of court shall forward the permit holder's new address of residence to the State Police. The State Police may charge a fee not to exceed $5, and the clerk of court issuing the replacement permit may charge a fee not to exceed $5. The total amount assessed for processing a replacement permit pursuant to this subsection shall not exceed $10, with such fees to be paid in one sum to the person who receives the information for the replacement permit.

B. The clerk of a circuit court that issued a valid concealed handgun permit shall, upon submission of a notarized statement by the permit holder that the permit was lost or destroyed or that the permit holder has undergone a legal name change, issue a replacement permit. The replacement permit shall have the same expiration date as the permit that was lost, destroyed, or issued to the permit holder under a previous name. The clerk shall issue the replacement permit within 10 business days of receiving the notarized statement and may charge a fee not to exceed $5.

2013, c. 746; 2014, cc. 16, 549.

§ 18.2-308.012. Prohibited conduct

A. Any person permitted to carry a concealed handgun who is under the influence of alcohol or illegal drugs while carrying such handgun in a public place is guilty of a Class 1 misdemeanor. Conviction of any of the following offenses shall be prima facie evidence, subject to rebuttal, that the person is "under the influence" for purposes of this section: manslaughter in violation of § 18.2-36.1, maiming in violation of § 18.2-51.4, driving while intoxicated in violation of § 18.2-266, public intoxication in violation of § 18.2-388, or driving while intoxicated in violation of § 46.2-341.24. Upon such conviction that court shall revoke the person's permit for a concealed handgun and promptly notify the issuing circuit court. A person convicted of a violation of this subsection shall be ineligible to apply for a concealed handgun permit for a period of five years.

B. (Effective until July 1, 2018) No person who carries a concealed handgun onto the premises of any restaurant or club as defined in § 4.1-100 for which a license to sell and serve alcoholic beverages for on-premises consumption has been granted by the Virginia Alcoholic Beverage Control Board under Title 4.1 may consume an alcoholic beverage while on the premises. A person who carries a concealed handgun onto the premises of such a restaurant or club and consumes alcoholic beverages is guilty of a Class 2 misdemeanor. However, nothing in this subsection shall apply to a federal, state, or local law-enforcement officer.

B. (Effective July 1, 2018) No person who carries a concealed handgun onto the premises of any restaurant or club as defined in § 4.1-100 for which a license to sell and serve alcoholic beverages for on-premises consumption has been granted by the Virginia Alcoholic Beverage Control Authority under Title 4.1 may consume an alcoholic beverage while on the premises. A person who carries a concealed handgun onto the premises of such a restaurant or club and consumes alcoholic beverages is guilty of a Class 2 misdemeanor. However, nothing in this subsection shall apply to a federal, state, or local law-enforcement officer.

2013, c. 746; 2015, cc. 38, 730.

§ 18.2-308.013. Suspension or revocation of permit

A. Any person convicted of an offense that would disqualify that person from obtaining a permit under § 18.2-308.09 or who violates subsection C of § 18.2-308.02 shall forfeit his permit for a concealed handgun and surrender it to the court. Upon receipt by the Central Criminal Records Exchange of a record of the arrest, conviction, or occurrence of any other event that would disqualify a person from obtaining a concealed handgun permit under § 18.2-308.09, the Central Criminal Records Exchange shall notify the court having issued the permit of such disqualifying arrest, conviction, or other event. Upon receipt of such notice of a conviction, the court shall revoke the permit of a person disqualified pursuant to this subsection, and shall promptly notify the State Police and the person whose permit was revoked of the revocation.

B. An individual who has a felony charge pending or a charge pending for an offense listed in subdivision 14 or 15 of § 18.2-308.09, holding a permit for a concealed handgun, may have the permit suspended by the court before which such charge is pending or by the court that issued the permit.

C. The court shall revoke the permit of any individual for whom it would be unlawful to purchase, possess, or transport a firearm under § 18.2-308.1:2 or 18.2-308.1:3, and shall promptly notify the State Police and the person whose permit was revoked of the revocation.

2013, c. 746.

§ 18.2-308.014. Reciprocity

A. A valid concealed handgun or concealed weapon permit or license issued by another state shall authorize the holder of such permit or license who is at least 21 years of age to carry a concealed handgun in the Commonwealth, provided (i) the issuing authority provides the means for instantaneous verification of the validity of all such permits or licenses issued within that state, accessible 24 hours a day if available; (ii) the permit or license holder carries a photo identification issued by a government agency of any state or by the U.S. Department of Defense or U.S. Department of State and displays the permit or license and such identification upon demand by a law-enforcement officer; and (iii) the permit or license holder has not previously had a Virginia concealed handgun permit revoked. The Superintendent of State Police shall enter into agreements for reciprocal recognition with such other states that require an agreement to be in place before

such state will recognize a Virginia concealed handgun permit as valid in such state. The Attorney General shall provide the Superintendent with any legal assistance or advice necessary for the Superintendent to perform his duties set forth in this subsection. If the Superintendent determines that another state requires that an agreement for reciprocal recognition be executed by the Attorney General or otherwise formally approved by the Attorney General as a condition of such other state's entering into an agreement for reciprocal recognition, the Attorney General shall (a) execute such agreement or otherwise formally approve such agreement and (b) return to the Superintendent the executed agreement or, in a form deemed acceptable by such other state, documentation of his formal approval of such agreement within 30 days after the Superintendent notifies the Attorney General, in writing, that he is required to execute or otherwise formally approve such agreement.

B. For the purposes of participation in concealed handgun reciprocity agreements with other jurisdictions, the official government-issued law-enforcement identification card issued to an active-duty law-enforcement officer in the Commonwealth who is exempt from obtaining a concealed handgun permit under this article shall be deemed a concealed handgun permit.

2013, c. 746; 2016, cc. 46, 47.

§ 18.2-308.015. Inclusion of Supreme Court website on application

For the purposes of understanding the law relating to the use of deadly and lethal force, the Department of State Police, in consultation with the Supreme Court on the development of the application for a concealed handgun permit under this article, shall include a reference to the Virginia Supreme Court website address or the Virginia Reports on the application.

2013, c. 746.

§ 18.2-308.016. (Effective until October 1, 2016) Retired law-enforcement officers; carrying a concealed handgun

A. Except as provided in subsection A of § 18.2-308.012, § 18.2-308 shall not apply to:

1. Any State Police officer retired from the Department of State Police, any officer retired from the Division of Capitol Police, any local law-enforcement officer, auxiliary police officer or animal control officer retired from a police department or sheriff's office within the Commonwealth, any special agent retired from the State Corporation Commission or the Virginia Alcoholic Beverage Control Board, any employee with internal investigations authority designated by the Department of Corrections pursuant to subdivision 11 of § 53.1-10 retired from the Department of Corrections, any conservation police officer retired from the Department of Game and Inland Fisheries, any Virginia Marine Police officer retired from the Law Enforcement Division of the Virginia Marine Resources Commission, any campus police officer appointed under Chapter 17 (§ 23-232 et seq.) of Title 23 retired from a campus police department, any retired member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217, and any retired investigator of the security division of the Virginia Lottery, other than an officer or agent terminated for

cause, (i) with a service-related disability; (ii) following at least 10 years of service with any such law-enforcement agency, commission, board, or any combination thereof; (iii) who has reached 55 years of age; or (iv) who is on long-term leave from such law-enforcement agency or board due to a service-related injury, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the last such agency from which the officer retired or the agency that employs the officer or, in the case of special agents, issued by the State Corporation Commission or the Virginia Alcoholic Beverage Control Board. A copy of the proof of consultation and favorable review shall be forwarded by the chief, Commission, or Board to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the retired law-enforcement officer otherwise meets the requirements of this section. An officer set forth in clause (iv) who receives written proof of consultation to carry a concealed handgun shall surrender such proof of consultation upon return to work or upon termination of employment with the law-enforcement agency. Notice of the surrender shall be forwarded to the Department of State Police for entry into the Virginia Criminal Information Network. However, if such officer retires on disability because of the service-related injury, and would be eligible under clause (i) for written proof of consultation to carry a concealed handgun, he may retain the previously issued written proof of consultation.

2. Any person who is eligible for retirement with at least 20 years of service with a law-enforcement agency, commission, or board mentioned in subdivision 1 who has resigned in good standing from such law-enforcement agency, commission, or board to accept a position covered by a retirement system that is authorized under Title 51.1, provided such person carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the agency from which he resigned or, in the case of special agents, issued by the State Corporation Commission or the Virginia Alcoholic Beverage Control Board. A copy of the proof of consultation and favorable review shall be forwarded by the chief, Commission, or Board to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the law-enforcement officer otherwise meets the requirements of this section.

3. Any State Police officer who is a member of the organized reserve forces of any of the Armed Services of the United States or National Guard, while such officer is called to active military duty, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the Superintendent of State Police. The proof of consultation and favorable review shall be valid as long as the officer is on active military duty and shall expire when the officer returns to active law-enforcement duty. The issuance of the proof of consultation and favorable review shall be entered into the Virginia Criminal Information Network. The Superintendent of State Police shall not without cause withhold such written proof if

the officer is in good standing and is qualified to carry a weapon while on active law-enforcement duty.

B. For purposes of complying with the federal Law Enforcement Officers Safety Act of 2004, a retired or resigned law-enforcement officer who receives proof of consultation and review pursuant to this section shall have the opportunity to annually participate, at the retired or resigned law-enforcement officer's expense, in the same training and testing to carry firearms as is required of active law-enforcement officers in the Commonwealth. If such retired or resigned law-enforcement officer meets the training and qualification standards, the chief law-enforcement officer shall issue the retired or resigned officer certification, valid one year from the date of issuance, indicating that the retired or resigned officer has met the standards of the agency to carry a firearm.

C. A retired or resigned law-enforcement officer who receives proof of consultation and review pursuant to this section may annually participate and meet the training and qualification standards to carry firearms as is required of active law-enforcement officers in the Commonwealth. If such retired or resigned law-enforcement officer meets the training and qualification standards, the chief law-enforcement officer shall issue the retired or resigned officer certification, valid one year from the date of issuance, indicating that the retired or resigned officer has met the standards of the Commonwealth to carry a firearm. A copy of the certification indicating that the retired or resigned officer has met the standards of the Commonwealth to carry a firearm shall be forwarded by the chief, Commission, or Board to the Department of State Police for entry into the Virginia Criminal Information Network.

D. For all purposes, including for the purpose of applying the reciprocity provisions of § 18.2-308.014, any person granted the privilege to carry a concealed handgun pursuant to this section, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit.

2016, cc. 209, 257, 421.

§ 18.2-308.016. (Effective October 1, 2016, until July 1, 2018) Retired law-enforcement officers; carrying a concealed handgun

A. Except as provided in subsection A of § 18.2-308.012, § 18.2-308 shall not apply to:

1. Any State Police officer retired from the Department of State Police, any officer retired from the Division of Capitol Police, any local law-enforcement officer, auxiliary police officer or animal control officer retired from a police department or sheriff's office within the Commonwealth, any special agent retired from the State Corporation Commission or the Virginia Alcoholic Beverage Control Board, any employee with internal investigations authority designated by the Department of Corrections pursuant to subdivision 11 of § 53.1-10 retired from the Department of Corrections, any conservation police officer retired from the Department of Game and Inland Fisheries, any Virginia Marine Police officer retired from the Law Enforcement Division of the Virginia Marine Resources Commission, any campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of

Chapter 8 of Title 23.1 retired from a campus police department, any retired member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217, and any retired investigator of the security division of the Virginia Lottery, other than an officer or agent terminated for cause, (i) with a service-related disability; (ii) following at least 10 years of service with any such law-enforcement agency, commission, board, or any combination thereof; (iii) who has reached 55 years of age; or (iv) who is on long-term leave from such law-enforcement agency or board due to a service-related injury, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the last such agency from which the officer retired or the agency that employs the officer or, in the case of special agents, issued by the State Corporation Commission or the Virginia Alcoholic Beverage Control Board. A copy of the proof of consultation and favorable review shall be forwarded by the chief, Commission, or Board to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the retired law-enforcement officer otherwise meets the requirements of this section. An officer set forth in clause (iv) who receives written proof of consultation to carry a concealed handgun shall surrender such proof of consultation upon return to work or upon termination of employment with the law-enforcement agency. Notice of the surrender shall be forwarded to the Department of State Police for entry into the Virginia Criminal Information Network. However, if such officer retires on disability because of the service-related injury, and would be eligible under clause (i) for written proof of consultation to carry a concealed handgun, he may retain the previously issued written proof of consultation.

2. Any person who is eligible for retirement with at least 20 years of service with a law-enforcement agency, commission, or board mentioned in subdivision 1 who has resigned in good standing from such law-enforcement agency, commission, or board to accept a position covered by a retirement system that is authorized under Title 51.1, provided such person carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the agency from which he resigned or, in the case of special agents, issued by the State Corporation Commission or the Virginia Alcoholic Beverage Control Board. A copy of the proof of consultation and favorable review shall be forwarded by the chief, Commission, or Board to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the law-enforcement officer otherwise meets the requirements of this section.

3. Any State Police officer who is a member of the organized reserve forces of any of the Armed Services of the United States or National Guard, while such officer is called to active military duty, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the Superintendent of State Police. The proof of consultation and favorable review shall be valid as long as the officer is on active military duty and shall expire when the officer returns to active law-enforcement duty. The issuance of the proof

of consultation and favorable review shall be entered into the Virginia Criminal Information Network. The Superintendent of State Police shall not without cause withhold such written proof if the officer is in good standing and is qualified to carry a weapon while on active law-enforcement duty.

B. For purposes of complying with the federal Law Enforcement Officers Safety Act of 2004, a retired or resigned law-enforcement officer who receives proof of consultation and review pursuant to this section shall have the opportunity to annually participate, at the retired or resigned law-enforcement officer's expense, in the same training and testing to carry firearms as is required of active law-enforcement officers in the Commonwealth. If such retired or resigned law-enforcement officer meets the training and qualification standards, the chief law-enforcement officer shall issue the retired or resigned officer certification, valid one year from the date of issuance, indicating that the retired or resigned officer has met the standards of the agency to carry a firearm.

C. A retired or resigned law-enforcement officer who receives proof of consultation and review pursuant to this section may annually participate and meet the training and qualification standards to carry firearms as is required of active law-enforcement officers in the Commonwealth. If such retired or resigned law-enforcement officer meets the training and qualification standards, the chief law-enforcement officer shall issue the retired or resigned officer certification, valid one year from the date of issuance, indicating that the retired or resigned officer has met the standards of the Commonwealth to carry a firearm. A copy of the certification indicating that the retired or resigned officer has met the standards of the Commonwealth to carry a firearm shall be forwarded by the chief, Commission, or Board to the Department of State Police for entry into the Virginia Criminal Information Network.

D. For all purposes, including for the purpose of applying the reciprocity provisions of § 18.2-308.014, any person granted the privilege to carry a concealed handgun pursuant to this section, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit.

2016, cc. 209, 257, 421.

§ 18.2-308.016. (Effective July 1, 2018) Retired law-enforcement officers; carrying a concealed handgun

A. Except as provided in subsection A of § 18.2-308.012, § 18.2-308 shall not apply to:

1. Any State Police officer retired from the Department of State Police, any officer retired from the Division of Capitol Police, any local law-enforcement officer, auxiliary police officer or animal control officer retired from a police department or sheriff's office within the Commonwealth, any special agent retired from the State Corporation Commission or the Virginia Alcoholic Beverage Control Authority, any employee with internal investigations authority designated by the Department of Corrections pursuant to subdivision 11 of § 53.1-10 retired from the Department of Corrections, any conservation police officer retired from the Department of Game and Inland

Fisheries, any Virginia Marine Police officer retired from the Law Enforcement Division of the Virginia Marine Resources Commission, any campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1 retired from a campus police department, any retired member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217, and any retired investigator of the security division of the Virginia Lottery, other than an officer or agent terminated for cause, (i) with a service-related disability; (ii) following at least 10 years of service with any such law-enforcement agency, commission, board, or any combination thereof; (iii) who has reached 55 years of age; or (iv) who is on long-term leave from such law-enforcement agency or board due to a service-related injury, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the last such agency from which the officer retired or the agency that employs the officer or, in the case of special agents, issued by the State Corporation Commission or the Virginia Alcoholic Beverage Control Authority. A copy of the proof of consultation and favorable review shall be forwarded by the chief, Commission, or Board to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the retired law-enforcement officer otherwise meets the requirements of this section. An officer set forth in clause (iv) who receives written proof of consultation to carry a concealed handgun shall surrender such proof of consultation upon return to work or upon termination of employment with the law-enforcement agency. Notice of the surrender shall be forwarded to the Department of State Police for entry into the Virginia Criminal Information Network. However, if such officer retires on disability because of the service-related injury, and would be eligible under clause (i) for written proof of consultation to carry a concealed handgun, he may retain the previously issued written proof of consultation.

2. Any person who is eligible for retirement with at least 20 years of service with a law-enforcement agency, commission, or board mentioned in subdivision 1 who has resigned in good standing from such law-enforcement agency, commission, or board to accept a position covered by a retirement system that is authorized under Title 51.1, provided such person carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the agency from which he resigned or, in the case of special agents, issued by the State Corporation Commission or the Virginia Alcoholic Beverage Control Authority. A copy of the proof of consultation and favorable review shall be forwarded by the chief, Commission, or Board to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the law-enforcement officer otherwise meets the requirements of this section.

3. Any State Police officer who is a member of the organized reserve forces of any of the Armed Services of the United States or National Guard, while such officer is called to active military duty, provided such officer carries with him written proof of consultation with and favorable review of

the need to carry a concealed handgun issued by the Superintendent of State Police. The proof of consultation and favorable review shall be valid as long as the officer is on active military duty and shall expire when the officer returns to active law-enforcement duty. The issuance of the proof of consultation and favorable review shall be entered into the Virginia Criminal Information Network. The Superintendent of State Police shall not without cause withhold such written proof if the officer is in good standing and is qualified to carry a weapon while on active law-enforcement duty.

B. For purposes of complying with the federal Law Enforcement Officers Safety Act of 2004, a retired or resigned law-enforcement officer who receives proof of consultation and review pursuant to this section shall have the opportunity to annually participate, at the retired or resigned law-enforcement officer's expense, in the same training and testing to carry firearms as is required of active law-enforcement officers in the Commonwealth. If such retired or resigned law-enforcement officer meets the training and qualification standards, the chief law-enforcement officer shall issue the retired or resigned officer certification, valid one year from the date of issuance, indicating that the retired or resigned officer has met the standards of the agency to carry a firearm.

C. A retired or resigned law-enforcement officer who receives proof of consultation and review pursuant to this section may annually participate and meet the training and qualification standards to carry firearms as is required of active law-enforcement officers in the Commonwealth. If such retired or resigned law-enforcement officer meets the training and qualification standards, the chief law-enforcement officer shall issue the retired or resigned officer certification, valid one year from the date of issuance, indicating that the retired or resigned officer has met the standards of the Commonwealth to carry a firearm. A copy of the certification indicating that the retired or resigned officer has met the standards of the Commonwealth to carry a firearm shall be forwarded by the chief, Commission, or Board to the Department of State Police for entry into the Virginia Criminal Information Network.

D. For all purposes, including for the purpose of applying the reciprocity provisions of § 18.2-308.014, any person granted the privilege to carry a concealed handgun pursuant to this section, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit.

2016, cc. 209, 257, 421.

Article 7 - OTHER ILLEGAL WEAPONS

§ 18.2-308.1. Possession of firearm, stun weapon, or other weapon on school property prohibited; penalty

A. If any person knowingly possesses any (i) stun weapon as defined in this section; (ii) knife, except a pocket knife having a folding metal blade of less than three inches; or (iii) weapon, including a weapon of like kind, designated in subsection A of § 18.2-308, other than a firearm; upon (a) the property of any public, private or religious elementary, middle or high school, including

buildings and grounds; (b) that portion of any property open to the public and then exclusively used for school-sponsored functions or extracurricular activities while such functions or activities are taking place; or (c) any school bus owned or operated by any such school, he shall be guilty of a Class 1 misdemeanor.

B. If any person knowingly possesses any firearm designed or intended to expel a projectile by action of an explosion of a combustible material while such person is upon (i) any public, private or religious elementary, middle or high school, including buildings and grounds; (ii) that portion of any property open to the public and then exclusively used for school-sponsored functions or extracurricular activities while such functions or activities are taking place; or (iii) any school bus owned or operated by any such school, he shall be guilty of a Class 6 felony.

C. If any person knowingly possesses any firearm designed or intended to expel a projectile by action of an explosion of a combustible material within a public, private or religious elementary, middle or high school building and intends to use, or attempts to use, such firearm, or displays such weapon in a threatening manner, such person shall be guilty of a Class 6 felony and sentenced to a mandatory minimum term of imprisonment of five years to be served consecutively with any other sentence.

The exemptions set out in §§ 18.2-308 and 18.2-308.016 shall apply, mutatis mutandis, to the provisions of this section. The provisions of this section shall not apply to (i) persons who possess such weapon or weapons as a part of the school's curriculum or activities; (ii) a person possessing a knife customarily used for food preparation or service and using it for such purpose; (iii) persons who possess such weapon or weapons as a part of any program sponsored or facilitated by either the school or any organization authorized by the school to conduct its programs either on or off the school premises; (iv) any law-enforcement officer, or retired law-enforcement officer qualified pursuant to subsection C of § 18.2-308.016; (v) any person who possesses a knife or blade which he uses customarily in his trade; (vi) a person who possesses an unloaded firearm that is in a closed container, or a knife having a metal blade, in or upon a motor vehicle, or an unloaded shotgun or rifle in a firearms rack in or upon a motor vehicle; (vii) a person who has a valid concealed handgun permit and possesses a concealed handgun while in a motor vehicle in a parking lot, traffic circle, or other means of vehicular ingress or egress to the school; or (viii) an armed security officer, licensed pursuant to Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1, hired by a private or religious school for the protection of students and employees as authorized by such school. For the purposes of this paragraph, "weapon" includes a knife having a metal blade of three inches or longer and "closed container" includes a locked vehicle trunk.

As used in this section:

"Stun weapon" means any device that emits a momentary or pulsed output, which is electrical, audible, optical or electromagnetic in nature and which is designed to temporarily incapacitate a person.

1979, c. 467; 1988, c. 493; 1990, cc. 635, 744; 1991, c. 579; 1992, cc. 727, 735; 1995, c. 511; 1999, cc. 587, 829, 846; 2001, c. 403; 2003, cc. 619, 976; 2004, cc. 128, 461; 2005, cc. 830, 928; 2007, c. 519; 2011, c. 282; 2013, c. 416; 2015, c. 289; 2016, c. 257.

§ 18.2-308.1:1. Purchase, possession or transportation of firearms by persons acquitted by reason of insanity; penalty

A. It shall be unlawful for any person acquitted by reason of insanity and committed to the custody of the Commissioner of Behavioral Health and Developmental Services, pursuant to Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2, on a charge of treason, any felony or any offense punishable as a misdemeanor under Title 54.1 or a Class 1 or Class 2 misdemeanor under this title, except those misdemeanor violations of (i) Article 2 (§ 18.2-266 et seq.) of Chapter 7 of this title, (ii) Article 2 (§ 18.2-415 et seq.) of Chapter 9 of this title, or (iii) § 18.2-119, or (iv) an ordinance of any county, city, or town similar to the offenses specified in (i), (ii), or (iii), to knowingly and intentionally purchase, possess, or transport any firearm. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

B. Any person so acquitted may, upon discharge from the custody of the Commissioner, petition the general district court in the city or county in which he resides to restore his right to purchase, possess or transport a firearm. A copy of the petition shall be mailed or delivered to the attorney for the Commonwealth for the jurisdiction where the petition was filed who shall be entitled to respond and represent the interests of the Commonwealth. The court shall conduct a hearing if requested by either party. If the court determines, after receiving and considering evidence concerning the circumstances regarding the disability referred to in subsection A and the person's criminal history, treatment record, and reputation as developed through character witness statements, testimony, or other character evidence, that the person will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest, the court shall grant the petition. Any person denied relief by the general district court may petition the circuit court for a de novo review of the denial. Upon a grant of relief in any court, the court shall enter a written order granting the petition, in which event the provisions of subsection A do not apply. The clerk of court shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any such order.

C. As used in this section, "treatment record" shall include copies of health records detailing the petitioner's psychiatric history, which shall include the records pertaining to the commitment or adjudication that is the subject of the request for relief pursuant to this section.

1990, c. 692; 2008, cc. 788, 854, 869; 2009, cc. 813, 840; 2010, c. 781; 2011, c. 775.

§ 18.2-308.1:2. Purchase, possession or transportation of firearm by persons adjudicated legally incompetent or mentally incapacitated; penalty

A. It shall be unlawful for any person who has been adjudicated (i) legally incompetent pursuant to former § 37.1-128.02 or former § 37.1-134, (ii) mentally incapacitated pursuant to former § 37.1-128.1 or former § 37.1-132 or (iii) incapacitated pursuant to Chapter 20 (§ 64.2-2000 et seq.)

of Title 64.2 to purchase, possess, or transport any firearm. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

B. Any person whose competency or capacity has been restored pursuant to former § 37.1-134.1, former § 37.2-1012, or § 64.2-2012 may petition the general district court in the city or county in which he resides to restore his right to purchase, possess or transport a firearm. A copy of the petition shall be mailed or delivered to the attorney for the Commonwealth for the jurisdiction where the petition was filed who shall be entitled to respond and represent the interests of the Commonwealth. The court shall conduct a hearing if requested by either party. If the court determines, after receiving and considering evidence concerning the circumstances regarding the disability referred to in subsection A and the person's criminal history, treatment record, and reputation as developed through character witness statements, testimony, or other character evidence, that the person will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest, the court shall grant the petition. Any person denied relief by the general district court may petition the circuit court for a de novo review of the denial. Upon a grant of relief in any court, the court shall enter a written order granting the petition, in which event the provisions of subsection A do not apply. The clerk of court shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any such order.

C. As used in this section, "treatment record" shall include copies of health records detailing the petitioner's psychiatric history, which shall include the records pertaining to the commitment or adjudication that is the subject of the request for relief pursuant to this section.

1994, c. 907; 1997, c. 921; 2004, c. 995; 2011, c. 775.

§ 18.2-308.1:3. Purchase, possession or transportation of firearm by persons involuntarily admitted or ordered to outpatient treatment; penalty

A. It shall be unlawful for any person involuntarily admitted to a facility or ordered to mandatory outpatient treatment pursuant to § 19.2-169.2, involuntarily admitted to a facility or ordered to mandatory outpatient treatment as the result of a commitment hearing pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, or who was the subject of a temporary detention order pursuant to § 37.2-809 and subsequently agreed to voluntary admission pursuant to § 37.2-805 to purchase, possess or transport a firearm. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

B. Any person prohibited from purchasing, possessing or transporting firearms under this section may, at any time following his release from involuntary admission to a facility, his release from an order of mandatory outpatient treatment, or his release from voluntary admission pursuant to § 37.2-805 following the issuance of a temporary detention order, petition the general district court in the city or county in which he resides to restore his right to purchase, possess or transport a firearm. A copy of the petition shall be mailed or delivered to the attorney for the Commonwealth for

the jurisdiction where the petition was filed who shall be entitled to respond and represent the interests of the Commonwealth. The court shall conduct a hearing if requested by either party. If the court determines, after receiving and considering evidence concerning the circumstances regarding the disabilities referred to in subsection A and the person's criminal history, treatment record, and reputation as developed through character witness statements, testimony, or other character evidence, that the person will not likely act in a manner dangerous to public safety and that granting the relief would not be contrary to the public interest, the court shall grant the petition. Any person denied relief by the general district court may petition the circuit court for a de novo review of the denial. Upon a grant of relief in any court, the court shall enter a written order granting the petition, in which event the provisions of subsection A do not apply. The clerk of court shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any such order.

C. As used in this section, "treatment record" shall include copies of health records detailing the petitioner's psychiatric history, which shall include the records pertaining to the commitment or adjudication that is the subject of the request for relief pursuant to this section.

1994, c. 907; 2004, c. 995; 2008, cc. 751, 788; 2010, c. 781; 2011, c. 775.

§ 18.2-308.1:4. Purchase or transportation of firearm by persons subject to protective orders; penalties

A. It is unlawful for any person who is subject to (i) a protective order entered pursuant to § 16.1-253.1, 16.1-253.4, 16.1-278.2, 16.1-279.1, 19.2-152.8, 19.2-152.9, or 19.2-152.10; (ii) an order issued pursuant to subsection B of § 20-103; (iii) an order entered pursuant to subsection E of § 18.2-60.3; (iv) a preliminary protective order entered pursuant to subsection F of § 16.1-253 where a petition alleging abuse or neglect has been filed; or (v) an order issued by a tribunal of another state, the United States or any of its territories, possessions, or commonwealths, or the District of Columbia pursuant to a statute that is substantially similar to those cited in clauses (i), (ii), (iii), or (iv) to purchase or transport any firearm while the order is in effect. Any person with a concealed handgun permit shall be prohibited from carrying any concealed firearm, and shall surrender his permit to the court entering the order, for the duration of any protective order referred to herein. A violation of this subsection is a Class 1 misdemeanor.

B. In addition to the prohibition set forth in subsection A, it is unlawful for any person who is subject to a protective order entered pursuant to § 16.1-279.1 or an order issued by a tribunal of another state, the United States or any of its territories, possessions, or commonwealths, or the District of Columbia pursuant to a statute that is substantially similar to § 16.1-279.1 to knowingly possess any firearm while the order is in effect, provided that for a period of 24 hours after being served with a protective order in accordance with subsection C of § 16.1-279.1 such person may continue to possess and, notwithstanding the provisions of subsection A, transport any firearm possessed by such person at the time of service for the purposes of selling or transferring any

such firearm to any person who is not otherwise prohibited by law from possessing such firearm. A violation of this subsection is a Class 6 felony.

1994, c. 907; 1996, c. 866; 1998, c. 569; 2001, c. 357; 2002, cc. 783, 865; 2004, c. 995; 2011, cc. 373, 402; 2013, c. 759; 2016, cc. 48, 49.

§ 18.2-308.1:5. Purchase or transportation of firearm by persons convicted of certain drug offenses prohibited

Any person who, within a 36-consecutive-month period, has been convicted of two misdemeanor offenses under subsection B of former § 18.2-248.1:1, § 18.2-250 or 18.2-250.1 shall be ineligible to purchase or transport a handgun. However, upon expiration of a period of five years from the date of the second conviction and provided the person has not been convicted of any such offense within that period, the ineligibility shall be removed.

1995, c. 577; 2011, cc. 384, 410; 2014, cc. 674, 719.

§ 18.2-308.2. Possession or transportation of firearms, firearms ammunition, stun weapons, explosives or concealed weapons by convicted felons; penalties; petition for permit; when issued

A. It shall be unlawful for (i) any person who has been convicted of a felony; (ii) any person adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of murder in violation of § 18.2-31 or 18.2-32, kidnapping in violation of § 18.2-47, robbery by the threat or presentation of firearms in violation of § 18.2-58, or rape in violation of § 18.2-61; or (iii) any person under the age of 29 who was adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of a delinquent act which would be a felony if committed by an adult, other than those felonies set forth in clause (ii), whether such conviction or adjudication occurred under the laws of the Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof, to knowingly and intentionally possess or transport any firearm or ammunition for a firearm, any stun weapon as defined by § 18.2-308.1, or any explosive material, or to knowingly and intentionally carry about his person, hidden from common observation, any weapon described in subsection A of § 18.2-308. However, such person may possess in his residence or the curtilage thereof a stun weapon as defined by § 18.2-308.1. Any person who violates this section shall be guilty of a Class 6 felony. However, any person who violates this section by knowingly and intentionally possessing or transporting any firearm and who was previously convicted of a violent felony as defined in § 17.1-805 shall be sentenced to a mandatory minimum term of imprisonment of five years. Any person who violates this section by knowingly and intentionally possessing or transporting any firearm and who was previously convicted of any other felony within the prior 10 years shall be sentenced to a mandatory minimum term of imprisonment of two years. The mandatory minimum terms of imprisonment prescribed for violations of this section shall be served consecutively with any other sentence.

B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm, ammunition for a firearm, explosive material or other weapon while carrying out his duties as a

member of the Armed Forces of the United States or of the National Guard of Virginia or of any other state, (ii) any law-enforcement officer in the performance of his duties, (iii) any person who has been pardoned or whose political disabilities have been removed pursuant to Article V, Section 12 of the Constitution of Virginia provided the Governor, in the document granting the pardon or removing the person's political disabilities, may expressly place conditions upon the reinstatement of the person's right to ship, transport, possess or receive firearms, (iv) any person whose right to possess firearms or ammunition has been restored under the law of another state subject to conditions placed upon the reinstatement of the person's right to ship, transport, possess, or receive firearms by such state, or (v) any person adjudicated delinquent as a juvenile who has completed a term of service of no less than two years in the Armed Forces of the United States and, if such person has been discharged from the Armed Forces of the United States, received an honorable discharge and who is not otherwise prohibited under clause (i) or (ii) of subsection A.

C. Any person prohibited from possessing, transporting, or carrying a firearm, ammunition for a firearm, or a stun weapon under subsection A may petition the circuit court of the jurisdiction in which he resides or, if the person is not a resident of the Commonwealth, the circuit court of any county or city where such person was last convicted of a felony or adjudicated delinquent of a disqualifying offense pursuant to subsection A, for a permit to possess or carry a firearm, ammunition for a firearm, or a stun weapon; however, no person who has been convicted of a felony shall be qualified to petition for such a permit unless his civil rights have been restored by the Governor or other appropriate authority. A copy of the petition shall be mailed or delivered to the attorney for the Commonwealth for the jurisdiction where the petition was filed who shall be entitled to respond and represent the interests of the Commonwealth. The court shall conduct a hearing if requested by either party. The court may, in its discretion and for good cause shown, grant such petition and issue a permit. The provisions of this section relating to firearms, ammunition for a firearm, and stun weapons shall not apply to any person who has been granted a permit pursuant to this subsection.

C1. Any person who was prohibited from possessing, transporting or carrying explosive material under subsection A may possess, transport or carry such explosive material if his right to possess, transport or carry explosive material has been restored pursuant to federal law.

D. For the purpose of this section:

"Ammunition for a firearm" means the combination of a cartridge, projectile, primer, or propellant designed for use in a firearm other than an antique firearm as defined in § 18.2-308.2:2.

"Explosive material" means any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, smokeless gun powder, detonators, blasting caps and detonating cord but shall not include fireworks or permissible fireworks as defined in § 27-95.

1979, c. 474; 1982, c. 515; 1983, c. 233; 1986, cc. 409, 641; 1987, c. 108; 1988, c. 237; 1989, cc. 514, 531; 1993, cc. 468, 926; 1994, cc. 859, 949; 1999, cc. 829, 846; 2001, cc. 811, 854; 2002, c. 362; 2003, c. 110; 2004, cc. 429, 461, 995; 2005, cc. 600, 833; 2007, c. 519; 2008, c. 752; 2009, c. 236; 2010, c. 781; 2015, cc. 200, 767; 2016, c. 337.

§ 18.2-308.2:01. Possession or transportation of certain firearms by certain persons

A. It shall be unlawful for any person who is not a citizen of the United States or who is not a person lawfully admitted for permanent residence to knowingly and intentionally possess or transport any assault firearm or to knowingly and intentionally carry about his person, hidden from common observation, an assault firearm.

B. It shall be unlawful for any person who is not a citizen of the United States and who is not lawfully present in the United States to knowingly and intentionally possess or transport any firearm or to knowingly and intentionally carry about his person, hidden from common observation, any firearm. A violation of this section shall be punishable as a Class 6 felony.

C. For purposes of this section, "assault firearm" means any semi-automatic center-fire rifle or pistol that expels single or multiple projectiles by action of an explosion of a combustible material and is equipped at the time of the offense with a magazine which will hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock.

1993, c. 674; 2003, c. 976; 2004, cc. 347, 995; 2008, c. 408.

§ 18.2-308.2:1. Prohibiting the selling, etc., of firearms to certain persons

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 prohibited from possessing or transporting a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, 18.2-308.1:3, 18.2-308.2, subsection B of § 18.2-308.2:01, or § 18.2-308.7 shall be guilty of a Class 4 felony. However, this prohibition shall not be applicable when the person convicted of the felony, adjudicated delinquent or acquitted by reason of insanity has (i) been issued a permit pursuant to subsection C of § 18.2-308.2 or been granted relief pursuant to subsection B of § 18.2-308.1:1, or § 18.2-308.1:2 or 18.2-308.1:3 (ii) been pardoned or had his political disabilities removed in accordance with subsection B of § 18.2-308.2 or (iii) obtained a permit to ship, transport, possess or receive firearms pursuant to the laws of the United States.

1988, c. 327; 1990, c. 692; 1993, cc. 467, 494, 882, 926; 2004, c. 995; 2008, c. 408; 2011, c. 775; 2013, c. 797.

§ 18.2-308.2:2. Criminal history record information check required for the transfer of certain firearms

A. Any person purchasing from a dealer a firearm as herein defined shall consent in writing, on a form to be provided by the Department of State Police, to have the dealer obtain criminal history record information. Such form shall include only the written consent; the name, birth date,

gender, race, citizenship, and social security number and/or any other identification number; the number of firearms by category intended to be sold, rented, traded, or transferred; and answers by the applicant to the following questions: (i) has the applicant been convicted of a felony offense or found guilty or adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of a delinquent act that would be a felony if committed by an adult; (ii) is the applicant subject to a court order restraining the applicant from harassing, stalking, or threatening the applicant's child or intimate partner, or a child of such partner, or is the applicant subject to a protective order; and (iii) has the applicant ever been acquitted by reason of insanity and prohibited from purchasing, possessing or transporting a firearm pursuant to § 18.2-308.1:1 or any substantially similar law of any other jurisdiction, been adjudicated legally incompetent, mentally incapacitated or adjudicated an incapacitated person and prohibited from purchasing a firearm pursuant to § 18.2-308.1:2 or any substantially similar law of any other jurisdiction, or been involuntarily admitted to an inpatient facility or involuntarily ordered to outpatient mental health treatment and prohibited from purchasing a firearm pursuant to § 18.2-308.1:3 or any substantially similar law of any other jurisdiction.

B. 1. No dealer shall sell, rent, trade or transfer from his inventory any such firearm to any other person who is a resident of Virginia until he has (i) obtained written consent and the other information on the consent form specified in subsection A, and provided the Department of State Police with the name, birth date, gender, race, citizenship, and social security and/or any other identification number and the number of firearms by category intended to be sold, rented, traded or transferred and (ii) requested criminal history record information by a telephone call to or other communication authorized by the State Police and is authorized by subdivision 2 to complete the sale or other such transfer. To establish personal identification and residence in Virginia for purposes of this section, a dealer must require any prospective purchaser to present one photo-identification form issued by a governmental agency of the Commonwealth or by the United States Department of Defense that demonstrates that the prospective purchaser resides in Virginia. For the purposes of this section and establishment of residency for firearm purchase, residency of a member of the armed forces shall include both the state in which the member's permanent duty post is located and any nearby state in which the member resides and from which he commutes to the permanent duty post. A member of the armed forces whose photo identification issued by the Department of Defense does not have a Virginia address may establish his Virginia residency with such photo identification and either permanent orders assigning the purchaser to a duty post, including the Pentagon, in Virginia or the purchaser's Leave and Earnings Statement. When the photo identification presented to a dealer by the prospective purchaser is a driver's license or other photo identification issued by the Department of Motor Vehicles, and such identification form contains a date of issue, the dealer shall not, except for a renewed driver's license or other photo identification issued by the Department of Motor Vehicles, sell or otherwise transfer a firearm to the prospective purchaser until 30 days after the date of issue of an original or duplicate driver's license unless the prospective purchaser also presents a copy of his Virginia Department of

Motor Vehicles driver's record showing that the original date of issue of the driver's license was more than 30 days prior to the attempted purchase.

In addition, no dealer shall sell, rent, trade, or transfer from his inventory any assault firearm to any person who is not a citizen of the United States or who is not a person lawfully admitted for permanent residence.

Upon receipt of the request for a criminal history record information check, the State Police shall (a) review its criminal history record information to determine if the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law, (b) inform the dealer if its record indicates that the buyer or transferee is so prohibited, and (c) provide the dealer with a unique reference number for that inquiry.

2. The State Police shall provide its response to the requesting dealer during the dealer's request, or by return call without delay. If the criminal history record information check indicates the prospective purchaser or transferee has a disqualifying criminal record or has been acquitted by reason of insanity and committed to the custody of the Commissioner of Behavioral Health and Developmental Services, the State Police shall have until the end of the dealer's next business day to advise the dealer if its records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law. If not so advised by the end of the dealer's next business day, a dealer who has fulfilled the requirements of subdivision 1 may immediately complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer. In case of electronic failure or other circumstances beyond the control of the State Police, the dealer shall be advised immediately of the reason for such delay and be given an estimate of the length of such delay. After such notification, the State Police shall, as soon as possible but in no event later than the end of the dealer's next business day, inform the requesting dealer if its records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law. A dealer who fulfills the requirements of subdivision 1 and is told by the State Police that a response will not be available by the end of the dealer's next business day may immediately complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer.

3. Except as required by subsection D of § 9.1-132, the State Police shall not maintain records longer than 30 days, except for multiple handgun transactions for which records shall be maintained for 12 months, from any dealer's request for a criminal history record information check pertaining to a buyer or transferee who is not found to be prohibited from possessing and transporting a firearm under state or federal law. However, the log on requests made may be maintained for a period of 12 months, and such log shall consist of the name of the purchaser, the dealer identification number, the unique approval number and the transaction date.

4. On the last day of the week following the sale or transfer of any firearm, the dealer shall mail or deliver the written consent form required by subsection A to the Department of State Police. The

State Police shall immediately initiate a search of all available criminal history record information to determine if the purchaser is prohibited from possessing or transporting a firearm under state or federal law. If the search discloses information indicating that the buyer or transferee is so prohibited from possessing or transporting a firearm, the State Police shall inform the chief law-enforcement officer in the jurisdiction where the sale or transfer occurred and the dealer without delay.

5. Notwithstanding any other provisions of this section, rifles and shotguns may be purchased by persons who are citizens of the United States or persons lawfully admitted for permanent residence but residents of other states under the terms of subsections A and B upon furnishing the dealer with one photo-identification form issued by a governmental agency of the person's state of residence and one other form of identification determined to be acceptable by the Department of Criminal Justice Services.

6. For the purposes of this subsection, the phrase "dealer's next business day" shall not include December 25.

C. No dealer shall sell, rent, trade or transfer from his inventory any firearm, except when the transaction involves a rifle or a shotgun and can be accomplished pursuant to the provisions of subdivision B 5 to any person who is not a resident of Virginia unless he has first obtained from the Department of State Police a report indicating that a search of all available criminal history record information has not disclosed that the person is prohibited from possessing or transporting a firearm under state or federal law. The dealer shall obtain the required report by mailing or delivering the written consent form required under subsection A to the State Police within 24 hours of its execution. If the dealer has complied with the provisions of this subsection and has not received the required report from the State Police within 10 days from the date the written consent form was mailed to the Department of State Police, he shall not be deemed in violation of this section for thereafter completing the sale or transfer.

D. Nothing herein shall prevent a resident of the Commonwealth, at his option, from buying, renting or receiving a firearm from a dealer in Virginia by obtaining a criminal history record information check through the dealer as provided in subsection C.

E. If any buyer or transferee is denied the right to purchase a firearm under this section, he may exercise his right of access to and review and correction of criminal history record information under § 9.1-132 or institute a civil action as provided in § 9.1-135, provided any such action is initiated within 30 days of such denial.

F. Any dealer who willfully and intentionally requests, obtains, or seeks to obtain criminal history record information under false pretenses, or who willfully and intentionally disseminates or seeks to disseminate criminal history record information except as authorized in this section shall be guilty of a Class 2 misdemeanor.

G. For purposes of this section:

"Actual buyer" means a person who executes the consent form required in subsection B or C, or other such firearm transaction records as may be required by federal law.

"Antique firearm" means:

1. Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898;

2. Any replica of any firearm described in subdivision 1 of this definition if such replica (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or (ii) uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is not readily available in the ordinary channels of commercial trade;

3. Any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol that is designed to use black powder, or a black powder substitute, and that cannot use fixed ammunition. For purposes of this subdivision, the term "antique firearm" shall not include any weapon that incorporates a firearm frame or receiver, any firearm that is converted into a muzzle-loading weapon, or any muzzle-loading weapon that can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breech-block, or any combination thereof; or

4. Any curio or relic as defined in this subsection.

"Assault firearm" means any semi-automatic center-fire rifle or pistol which expels single or multiple projectiles by action of an explosion of a combustible material and is equipped at the time of the offense with a magazine which will hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock.

"Curios or relics" means firearms that are of special interest to collectors by reason of some quality other than is associated with firearms intended for sporting use or as offensive or defensive weapons. To be recognized as curios or relics, firearms must fall within one of the following categories:

1. Firearms that were manufactured at least 50 years prior to the current date, which use rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is not readily available in the ordinary channels of commercial trade, but not including replicas thereof;

2. Firearms that are certified by the curator of a municipal, state, or federal museum that exhibits firearms to be curios or relics of museum interest; and

3. Any other firearms that derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or because of their association with some historical figure, period, or event. Proof of qualification of a particular firearm under this category may be established by evidence of present value and evidence that like firearms are not available except as collectors' items, or that the value of like firearms available in ordinary commercial channels is substantially less.

"Dealer" means any person licensed as a dealer pursuant to 18 U.S.C. § 921 et seq.

"Firearm" means any handgun, shotgun, or rifle that will or is designed to or may readily be converted to expel single or multiple projectiles by action of an explosion of a combustible material.

"Handgun" means any pistol or revolver or other firearm originally designed, made and intended to fire single or multiple projectiles by means of an explosion of a combustible material from one or more barrels when held in one hand.

"Lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

H. The Department of Criminal Justice Services shall promulgate regulations to ensure the identity, confidentiality and security of all records and data provided by the Department of State Police pursuant to this section.

I. (Effective until October 1, 2016) The provisions of this section shall not apply to (i) transactions between persons who are licensed as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et seq.; (ii) purchases by or sales to any law-enforcement officer or agent of the United States, the Commonwealth or any local government, or any campus police officer appointed under Chapter 17 (§ 23-232 et seq.) of Title 23; or (iii) antique firearms, curios or relics.

I. (Effective October 1, 2016) The provisions of this section shall not apply to (i) transactions between persons who are licensed as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et seq.; (ii) purchases by or sales to any law-enforcement officer or agent of the United States, the Commonwealth or any local government, or any campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1; or (iii) antique firearms, curios or relics.

J. The provisions of this section shall not apply to restrict purchase, trade or transfer of firearms by a resident of Virginia when the resident of Virginia makes such purchase, trade or transfer in another state, in which case the laws and regulations of that state and the United States governing the purchase, trade or transfer of firearms shall apply. A National Instant Criminal Background Check System (NICS) check shall be performed prior to such purchase, trade or transfer of firearms.

J1. All licensed firearms dealers shall collect a fee of $2 for every transaction for which a criminal history record information check is required pursuant to this section, except that a fee of $5 shall be collected for every transaction involving an out-of-state resident. Such fee shall be transmitted to the Department of State Police by the last day of the month following the sale for deposit in a special fund for use by the State Police to offset the cost of conducting criminal history record information checks under the provisions of this section.

K. Any person willfully and intentionally making a materially false statement on the consent form required in subsection B or C or on such firearm transaction records as may be required by federal law, shall be guilty of a Class 5 felony.

L. Except as provided in § 18.2-308.2:1, any dealer who willfully and intentionally sells, rents, trades or transfers a firearm in violation of this section shall be guilty of a Class 6 felony.

L1. Any person who attempts to solicit, persuade, encourage, or entice any dealer to transfer or otherwise convey a firearm other than to the actual buyer, as well as any other person who willfully and intentionally aids or abets such person, shall be guilty of a Class 6 felony. This subsection shall not apply to a federal law-enforcement officer or a law-enforcement officer as defined in § 9.1-101, in the performance of his official duties, or other person under his direct supervision.

M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the Commonwealth to be resold or otherwise provided to another person who the transferor knows is ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 4 felony and sentenced to a mandatory minimum term of imprisonment of one year. However, if the violation of this subsection involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory minimum term of imprisonment of five years. The prohibitions of this subsection shall not apply to the purchase of a firearm by a person for the lawful use, possession, or transport thereof, pursuant to § 18.2-308.7, by his child, grandchild, or individual for whom he is the legal guardian if such child, grandchild, or individual is ineligible, solely because of his age, to purchase a firearm.

N. Any person who is ineligible to purchase or otherwise receive or possess a firearm in the Commonwealth who solicits, employs or assists any person in violating subsection M shall be guilty of a Class 4 felony and shall be sentenced to a mandatory minimum term of imprisonment of five years.

O. Any mandatory minimum sentence imposed under this section shall be served consecutively with any other sentence.

P. All driver's licenses issued on or after July 1, 1994, shall carry a letter designation indicating whether the driver's license is an original, duplicate or renewed driver's license.

Q. Prior to selling, renting, trading, or transferring any firearm owned by the dealer but not in his inventory to any other person, a dealer may require such other person to consent to have the dealer obtain criminal history record information to determine if such other person is prohibited from possessing or transporting a firearm by state or federal law. The Department of State Police shall establish policies and procedures in accordance with 28 C.F.R. § 25.6 to permit such determinations to be made by the Department of State Police, and the processes established for making such determinations shall conform to the provisions of this section.

1989, c. 745; 1990, cc. 594, 692; 1991, cc. 515, 525, 716; 1992, cc. 637, 872; 1993, cc. 451, 461, 486, 493, 674; 1994, c. 624; 1997, c. 341; 1998, c. 844; 2002, c. 695; 2003, cc. 833, 976; 2004, cc.

354, 461, 837, 904, 922; 2005, cc. 578, 859; 2007, c. 509; 2008, cc. 854, 869; 2009, cc. 813, 840; 2011, c. 235; 2012, cc. 37, 257, 776; 2013, cc. 450, 662, 761, 774, 797; 2015, c. 759; 2016, cc. 697, 727.

§ 18.2-308.2:3. Criminal background check required for employees of a gun dealer to transfer firearms; exemptions; penalties

A. No person, corporation, or proprietorship licensed as a firearms dealer pursuant to 18 U.S.C. § 921 et seq. shall employ any person to act as a seller, whether full-time or part-time, permanent, temporary, paid or unpaid, for the transfer of firearms under § 18.2-308.2:2, if such employee would be prohibited from possessing a firearm under § 18.2-308.1:1, 18.2-308.1:2, or 18.2-308.1:3, subsection B of § 18.2-308.1:4, or § 18.2-308.2 or 18.2-308.2:01 or is an illegal alien, or is prohibited from purchasing or transporting a firearm pursuant to subsection A of § 18.2-308.1:4 or § 18.2-308.1:5.

B. Prior to permitting an applicant to begin employment, the dealer shall obtain a written statement or affirmation from the applicant that he is not disqualified from possessing a firearm and shall submit the applicant's fingerprints and personal descriptive information to the Central Criminal Records Exchange to be forwarded to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant.

C. Prior to August 1, 2000, the dealer shall obtain written statements or affirmations from persons employed before July 1, 2000, to act as a seller under § 18.2-308.2:2 that they are not disqualified from possessing a firearm. Within five working days of the employee's next birthday, after August 1, 2000, the dealer shall submit the employee's fingerprints and personal descriptive information to the Central Criminal Records Exchange to be forwarded to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the request.

C1. In lieu of submitting fingerprints pursuant to this section, any dealer holding a valid federal firearms license (FFL) issued by the Bureau of Alcohol, Tobacco and Firearms (ATF) may submit a sworn and notarized affidavit to the Department of State Police on a form provided by the Department, stating that the dealer has been subjected to a record check prior to the issuance and that the FFL was issued by the ATF. The affidavit may also contain the names of any employees that have been subjected to a record check and approved by the ATF. This exemption shall apply regardless of whether the FFL was issued in the name of the dealer or in the name of the business. The affidavit shall contain the valid FFL number, state the name of each person requesting the exemption, together with each person's identifying information, including their social security number and the following statement: "I hereby swear, under the penalty of perjury, that as a condition of obtaining a federal firearms license, each person requesting an exemption in this affidavit has been subjected to a fingerprint identification check by the Bureau of Alcohol, Tobacco and Firearms and the Bureau of Alcohol, Tobacco and Firearms subsequently determined that each person satisfied the requirements of 18 U.S.C. § 921 et seq. I understand that any person convicted of

making a false statement in this affidavit is guilty of a Class 5 felony and that in addition to any other penalties imposed by law, a conviction under this section shall result in the forfeiture of my federal firearms license."

D. The Department of State Police, upon receipt of an individual's record or notification that no record exists, shall submit an eligibility report to the requesting dealer within 30 days of the applicant beginning his duties for new employees or within 30 days of the applicant's birthday for a person employed prior to July 1, 2000.

E. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the Federal Bureau of Investigation. The information provided to the dealer shall not be disseminated except as provided in this section.

F. The applicant shall bear the cost of obtaining the criminal history record unless the dealer, at his option, decides to pay such cost.

G. Upon receipt of the request for a criminal history record information check, the State Police shall establish a unique number for that firearm seller. Beginning September 1, 2001, the firearm seller's signature, firearm seller's number and the dealer's identification number shall be on all firearm transaction forms. The State Police shall void the firearm seller's number when a disqualifying record is discovered. The State Police may suspend a firearm seller's identification number upon the arrest of the firearm seller for a potentially disqualifying crime.

H. This section shall not restrict the transfer of a firearm at any place other than at a dealership or at any event required to be registered as a gun show.

I. Any person who willfully and intentionally requests, obtains, or seeks to obtain criminal history record information under false pretenses, or who willfully and intentionally disseminates or seeks to disseminate criminal history record information except as authorized by this section and § 18.2-308.2:2, shall be guilty of a Class 2 misdemeanor.

J. Any person willfully and intentionally making a materially false statement on the personal descriptive information required in this section shall be guilty of a Class 5 felony. Any person who offers for transfer any firearm in violation of this section shall be guilty of a Class 1 misdemeanor. Any dealer who willfully and knowingly employs or permits a person to act as a firearm seller in violation of this section shall be guilty of a Class 1 misdemeanor.

K. There is no civil liability for any seller for the actions of any purchaser or subsequent transferee of a firearm lawfully transferred pursuant to this section.

L. The provisions of this section requiring a seller's background check shall not apply to a licensed dealer.

M. Any person who willfully and intentionally makes a false statement in the affidavit as set out in subdivision C 1 shall be guilty of a Class 5 felony.

N. For purposes of this section:

"Dealer" means any person, corporation or proprietorship licensed as a dealer pursuant to 18 U.S.C. § 921 et seq.

"Firearm" means any handgun, shotgun, or rifle that will or is designed to or may readily be converted to expel single or multiple projectiles by action of an explosion of a combustible material.

"Place of business" means any place or premises where a dealer may lawfully transfer firearms.

"Seller" means for the purpose of any single sale of a firearm any person who is a dealer or an agent of a dealer, who may lawfully transfer firearms and who actually performs the criminal background check in accordance with the provisions of § 18.2-308.2:2.

"Transfer" means any act performed with intent to sell, rent, barter, trade or otherwise transfer ownership or permanent possession of a firearm at the place of business of a dealer.

2000, c. 794; 2002, c. 880; 2003, c. 976; 2016, cc. 48, 49.

§ 18.2-308.2:4. Firearm verification check; penalty

A. For the purposes of this section:

"Dealer" means any person licensed as a dealer pursuant to 18 U.S.C. § 921 et seq.

"Department" means the Department of State Police.

"Firearm" means any handgun, shotgun, or rifle that will or is designed to or may readily be converted to expel single or multiple projectiles by action of an explosion of a combustible material.

B. A dealer who is receiving by sale, transfer, or trade a firearm from a person who is not a dealer may choose to obtain a verification check from the Department to determine if the firearm has been reported to a law-enforcement agency as lost or stolen. If a dealer chooses to obtain a verification check, the procedures in this section shall be followed.

C. The person selling, transferring, or trading the firearm to the dealer shall present a valid photo identification issued by a state or federal governmental agency and shall consent in writing, on a form to be provided by the Department, to have the dealer obtain a verification check to determine if the firearm has been reported to a law-enforcement agency as lost or stolen. Such form shall include only the written consent; the name, address, birth date, gender, race, and verifiable government identification number on the photo identification presented by the person selling, transferring, or trading the firearm; and the serial number, caliber, make, and, if available, model of the firearm.

D. A dealer shall (i) obtain written consent and identifying information on the consent form specified in subsection C; (ii) provide the Department with the serial number, caliber, make, and, if

available, model of the firearm intended to be sold, traded, or transferred to the dealer; (iii) request a verification check by telephone or other manner authorized by the Department; and (iv) receive information from the Department as to whether the firearm has been reported to a law-enforcement agency as lost or stolen.

To establish personal identification and residence for purposes of this section, a dealer shall require a prospective transferee to present one photo-identification form containing a verifiable identification number issued by a governmental agency of the Commonwealth, a similar photo-identification form from another state government or by the U.S. Department of Defense, or other documentation of residence determined acceptable by the Department.

E. Upon receipt of the request for a verification check, the Department shall (i) query firearms databases to determine if the firearm has been reported to a law-enforcement agency as lost or stolen, (ii) inform the dealer if the firearm has been reported to a law-enforcement agency as lost or stolen, and (iii) provide the dealer with a unique response for that inquiry.

The Department shall provide its response to the requesting dealer electronically or by return call without delay. If the verification check discloses that the firearm cannot be lawfully sold, transferred, or traded, the Department shall have until the end of the dealer's next business day to advise the dealer that its records indicate the firearm cannot be lawfully sold, transferred, or traded pursuant to state or federal law.

In the case of electronic failure or other circumstances beyond the control of the Department, the dealer shall be advised immediately of the reason for such delay and be given an estimate of the length of such delay. After such notification, the Department shall, as soon as possible but in no event later than the end of the dealer's next business day, inform the requesting dealer if the firearm cannot be lawfully sold, transferred, or traded pursuant to state or federal law.

F. The Department shall maintain a log of requests made for a period of 12 months from the date the request was made, consisting of the serial number, caliber, make, and, if available, model of the firearm; the dealer identification number; and the transaction date.

G. The dealer shall maintain the consent form for a period of 12 months from the date of the transaction if the firearm is determined to be lost or stolen. If the firearm is determined not to be lost or stolen, the consent form shall be destroyed by the dealer within two weeks from the date of such determination.

H. The Superintendent of State Police shall promulgate regulations to ensure the identity, confidentiality, and security of all records and data provided pursuant to this section.

I. The provisions of this section shall not apply to transactions between persons who are licensed as firearms importers, manufacturers, or dealers pursuant to 18 U.S.C. § 921 et seq.

J. Any person who willfully and intentionally makes a material false statement on the consent form is guilty of a Class 1 misdemeanor.

2014, c. 821.

§ 18.2-308.3. Use or attempted use of restricted ammunition in commission or attempted commission of crimes prohibited; penalty

A. When used in this section:

"Restricted firearm ammunition" applies to bullets, projectiles or other types of ammunition that are: (i) coated with or contain, in whole or in part, polytetrafluorethylene or a similar product, (ii) commonly known as "KTW" bullets or "French Arcanes," or (iii) any cartridges containing bullets coated with a plastic substance with other than lead or lead alloy cores, jacketed bullets with other than lead or lead alloy cores, or cartridges of which the bullet itself is wholly comprised of a metal or metal alloy other than lead. This definition shall not be construed to include shotgun shells or solid plastic bullets.

B. It shall be unlawful for any person to knowingly use or attempt to use restricted firearm ammunition while committing or attempting to commit a crime. Violation of this section shall constitute a separate and distinct felony and any person found guilty thereof shall be guilty of a Class 5 felony.

1983, c. 602; 1988, c. 530.

§ 18.2-308.4. Possession of firearms while in possession of certain substances

A. It shall be unlawful for any person unlawfully in possession of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) of Title 54.1 to simultaneously with knowledge and intent possess any firearm. A violation of this subsection is a Class 6 felony and constitutes a separate and distinct felony.

B. It shall be unlawful for any person unlawfully in possession of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) to simultaneously with knowledge and intent possess any firearm on or about his person. A violation of this subsection is a Class 6 felony and constitutes a separate and distinct felony and any person convicted hereunder shall be sentenced to a mandatory minimum term of imprisonment of two years. Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.

C. It shall be unlawful for any person to possess, use, or attempt to use any pistol, shotgun, rifle, or other firearm or display such weapon in a threatening manner while committing or attempting to commit the illegal manufacture, sale, distribution, or the possession with the intent to manufacture, sell, or distribute a controlled substance classified in Schedule I or Schedule II of the Drug Control Act (§ 54.1-3400 et seq.) or more than one pound of marijuana. A violation of this subsection is a Class 6 felony, and constitutes a separate and distinct felony and any person convicted hereunder shall be sentenced to a mandatory minimum term of imprisonment of five years. Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.

1987, c. 285; 1990, c. 625; 1992, c. 707; 1993, c. 831; 1999, cc. 829, 846; 2003, c. 949; 2004, cc. 461, 995; 2011, cc. 384, 410; 2014, cc. 674, 719.

§ 18.2-308.5. Manufacture, import, sale, transfer or possession of plastic firearm prohibited

It shall be unlawful for any person to manufacture, import, sell, transfer or possess any plastic firearm. As used in this section, "plastic firearm" means any firearm, including machine guns and sawed-off shotguns as defined in this chapter, containing less than 3.7 ounces of electromagnetically detectable metal in the barrel, slide, cylinder, frame or receiver of which, when subjected to inspection by X-ray machines commonly used at airports, does not generate an image that accurately depicts its shape. A violation of this section shall be punishable as a Class 5 felony.

1989, c. 663; 2004, c. 995.

§ 18.2-308.6. Repealed

Repealed by Acts 2009, c. 288, cl. 1.

§ 18.2-308.7. Possession or transportation of certain firearms by persons under the age of 18; penalty

It shall be unlawful for any person under 18 years of age to knowingly and intentionally possess or transport a handgun or assault firearm anywhere in the Commonwealth. For the purposes of this section, "handgun" means any pistol or revolver or other firearm originally designed, made and intended to fire single or multiple projectiles by means of an explosion of a combustible material from one or more barrels when held in one hand and "assault firearm" means any (i) semi-automatic centerfire rifle or pistol which expels single or multiple projectiles by action of an explosion of a combustible material and is equipped at the time of the offense with a magazine which will hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock or (ii) shotgun with a magazine which will hold more than seven rounds of the longest ammunition for which it is chambered. A violation of this section shall be a Class 1 misdemeanor.

This section shall not apply to:

1. Any person (i) while in his home or on his property; (ii) while in the home or on the property of his parent, grandparent, or legal guardian; or (iii) while on the property of another who has provided prior permission, and with the prior permission of his parent or legal guardian if the person has the landowner's written permission on his person while on such property;

2. Any person who, while accompanied by an adult, is at, or going to and from, a lawful shooting range or firearms educational class, provided that the weapons are unloaded while being transported;

3. Any person actually engaged in lawful hunting or going to and from a hunting area or preserve, provided that the weapons are unloaded while being transported; and

4. Any person while carrying out his duties in the Armed Forces of the United States or the National Guard of this Commonwealth or any other state.

1993, cc. 467, 494; 2003, c. 976; 2004, c. 995.

§ 18.2-308.8. Importation, sale, possession or transfer of Striker 12's prohibited; penalty
It shall be unlawful for any person to import, sell, possess or transfer the following firearms: the Striker 12, commonly called a "streetsweeper," or any semi-automatic folding stock shotgun of like kind with a spring tension drum magazine capable of holding twelve shotgun shells. A violation of this section shall be punishable as a Class 6 felony.

1993, c. 888 .

§ 18.2-309. Furnishing certain weapons to minors; penalty
A. If any person sells, barters, gives or furnishes, or causes to be sold, bartered, given or furnished, to any minor a dirk, switchblade knife or bowie knife, having good cause to believe him to be a minor, such person shall be guilty of a Class 1 misdemeanor.

B. If any person sells, barters, gives or furnishes, or causes to be sold, bartered, given or furnished, to any minor a handgun, having good cause to believe him to be a minor, such person shall be guilty of a Class 6 felony. This subsection shall not apply to any transfer made between family members or for the purpose of engaging in a sporting event or activity.

Code 1950, § 18.1-344; 1960, c. 358; 1975, cc. 14, 15; 1992, c. 487; 1993, c. 855 .

§ 18.2-310. Repealed
Repealed by Acts 2004, c. 995.

§ 18.2-311. Prohibiting the selling or having in possession blackjacks, etc
If any person sells or barters, or exhibits for sale or for barter, or gives or furnishes, or causes to be sold, bartered, given or furnished, or has in his possession, or under his control, with the intent of selling, bartering, giving or furnishing, any blackjack, brass or metal knucks, any disc of whatever configuration having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart, switchblade knife, ballistic knife as defined in § 18.2-307.1, or like weapons, such person is guilty of a Class 4 misdemeanor. The having in one's possession of any such weapon shall be prima facie evidence, except in the case of a conservator of the peace, of his intent to sell, barter, give or furnish the same.

Code 1950, § 18.1-271; 1960, c. 358; 1975, cc. 14, 15; 1985, c. 394; 1988, c. 359; 2013, c. 746.

§ 18.2-311.1. Removing, altering, etc., serial number or other identification on firearm
Any person, firm, association or corporation who or which intentionally removes, defaces, alters, changes, destroys or obliterates in any manner or way or who or which causes to be removed, defaced, altered, changed, destroyed or obliterated in any manner or way the name of the maker,

model, manufacturer's or serial number, or any other mark or identification on any pistol, shotgun, rifle, machine gun or any other firearm shall be guilty of a Class 1 misdemeanor.

1975, c. 590.

§ 18.2-311.2. Third conviction of firearm offenses; penalty

On a third or subsequent conviction of any offense contained in Article 4, 5, 6, or 7 of Chapter 7 (§ 18.2-247 et seq.) of Title 18.2, which would ordinarily be punished as a Class 1 misdemeanor, where it is alleged in the information or indictment on which the person is convicted, that (i) such person has been twice previously convicted of a violation of any Class 1 misdemeanor or felony offense contained in either Article 4, 5, 6, or 7 of Chapter 7 of Title 18.2 or § 18.2-53.1, or of a substantially similar offense under the law of any other jurisdiction of the United States, and (ii) each such violation occurred on a different date, such person shall be guilty of a Class 6 felony.

1994, c. 731.

Article 8 - MISCELLANEOUS DANGEROUS CONDUCT

§ 18.2-312. Illegal use of tear gas, phosgene and other gases

If any person maliciously release or cause or procure to be released in any private home, place of business or place of public gathering any tear gas, mustard gas, phosgene gas or other noxious or nauseating gases or mixtures of chemicals designed to, and capable of, producing vile or injurious or nauseating odors or gases, and bodily injury results to any person from such gas or odor, the offending person shall be guilty of a Class 3 felony.

If such act be done unlawfully, but not maliciously, the offending person shall be guilty of a Class 6 felony.

Nothing herein contained shall prevent the use of tear gas or other gases by police officers or other peace officers in the proper performance of their duties, or by any person or persons in the protection of person, life or property.

Code 1950, § 18.1-70; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-313. Handling or using snakes so as to endanger human life or health

It shall be unlawful for any person, or persons, to display, exhibit, handle or use any poisonous or dangerous snake or reptile in such a manner as to endanger the life or health of any person.

Any person violating the provisions of this section shall be guilty of a Class 4 misdemeanor.

Code 1950, § 18.1-72; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-313.1. Withholding information about possibly rabid animal; penalty

It shall be unlawful for any person to (i) knowingly withhold information from, or knowingly give false information to, any lawfully authorized governmental agent which would reasonably lead to the discovery or location and capture of any animal reasonably identifiable as one that has potentially exposed a human being to rabies; (ii) upon the request of an animal control officer, a law-

enforcement officer, or an official of the Department of Health, willfully fail to grant access to any animal owned, harbored, or kept by that person that is suspected of having caused a rabies exposure to a human being; or (iii) upon notice by an animal control officer, a law-enforcement officer, or an official of the Department of Health, willfully fail to comply with a confinement, isolation, or quarantine order.

Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

1989, c. 491; 2010, c. 834.

§ 18.2-313.2. Introduction of snakehead fish or zebra mussel; penalty

Any person who knowingly introduces into the Commonwealth any snakehead fish of the family Channidae, or knowingly places or causes to be placed into state waters any zebra mussel (Dreissena polymorpha) or the larvae thereof, without a permit from the Director of Game and Inland Fisheries issued pursuant to § 29.1-575 is guilty of a Class 1 misdemeanor.

2005, c. 916.

§ 18.2-314. Failing to secure medical attention for injured child

Any parent or other person having custody of a minor child which child shows evidence of need for medical attention as the result of physical injury inflicted by an act of any member of the household, whether the injury was intentional or unintentional, who knowingly fails or refuses to secure prompt and adequate medical attention, or who conspires to prevent the securing of such attention, for such minor child, shall be guilty of a Class 1 misdemeanor; provided, however, that any parent or other person having custody of a minor child that is being furnished Christian Science treatment by a duly accredited Christian Science practitioner shall not, for that reason alone, be considered in violation of this section.

Code 1950, § 18.1-74.2; 1966, c. 578; 1975, cc. 14, 15.

§ 18.2-315. Repealed

Repealed by Acts 1980, c. 173.

§ 18.2-316. Duty of persons causing well or pit to be dug to fill it before abandonment

Any person who has caused to be dug on his own land or the land of another any well or pit, shall fill such well or pit with earth so that the same shall not be dangerous to human beings, animals or fowls before such well or such pit is abandoned; and any person owning land whereon any such well or pit is located shall in the same manner fill with earth any such well or pit which has been abandoned, provided such person has knowledge of the existence of such well or pit.

But in the case of mining operations in lieu of filling the shaft or pit the owner or operator thereof on ceasing operations in such shaft or pit shall securely fence the same and keep the same at all times thereafter securely fenced.

Any person violating any provision of this section shall be deemed guilty of a Class 3 misdemeanor.

Code 1950, § 18.1-73; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-317. Covers to be kept on certain wells

Every person owning or occupying any land on which there is a well having a diameter greater than six inches and which is more than ten feet deep shall at all times keep the same covered in such a manner as not to be dangerous to human beings, animals or fowls.

Any person violating the provisions of this section shall be guilty of a Class 3 misdemeanor.

Code 1950, § 18.1-74; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-318. Authority of counties, cities and towns to require and regulate well covers

Notwithstanding the provisions of § 18.2-317, the governing body of any county, city or town may adopt ordinances requiring persons owning or occupying any land within such county, city or town on which there is a well having a diameter greater than six inches and which is more than ten feet deep to keep the same covered in such a manner as not to be dangerous to human beings, animals or fowls.

Any such ordinance may specify and require reasonable minimum standards for the construction, installation and maintenance of such covers, including the manner in which any concrete used in connection therewith shall be reinforced, and may prescribe punishment for violations not inconsistent with general law.

Code 1950, § 18.1-74.1; 1962, c. 525; 1975, cc. 14, 15.

§ 18.2-319. Discarding or abandoning iceboxes, etc.; precautions required

It shall be unlawful for any person, firm or corporation to discard, abandon, leave or allow to remain in any place any icebox, refrigerator or other container, device or equipment of any kind with an interior storage area of more than two cubic feet of clear space which is airtight, without first removing the door or doors or hinges from such icebox, refrigerator, container, device or equipment.

This section shall not apply to any icebox, refrigerator, container, device or equipment which is being used for the purpose for which it was originally designed, or is being used for display purposes by any retail or wholesale merchant, or is crated, strapped or locked to such an extent that it is impossible for a child to obtain access to any airtight compartment thereof.

Any violation of the provisions of this section shall be punishable as a Class 3 misdemeanor.

Code 1950, § 18.1-415; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-320. Sale, etc., of plastic bags; warning required

(a) No person shall sell, offer for sale, or deliver, or offer for delivery, or give away any plastic bag or partial plastic bag intended to enclose freshly cleaned clothing, the length of which totals twenty-five inches or more and the material of which is less than one mil (1/1000 inch) in thickness; unless such plastic bag bears the following warning statement, or a warning statement which the Commissioner of Health has approved as the equivalent thereof:

"WARNING: To avoid danger of suffocation, keep this plastic bag away from babies and children. Do not use this bag in cribs, beds, carriages or playpens."

(b) Such warning statement shall be imprinted in a prominent place on the plastic bag or shall appear on a label securely attached to the bag in a prominent place, and shall be printed in legible type of at least thirty-six point type.

(c) Violators of this section shall be guilty of a Class 3 misdemeanor.

Code 1950, § 18.1-415.1; 1968, c. 340; 1975, cc. 14, 15.

§ 18.2-321. Using X ray, fluoroscope, etc., in the fitting of footwear

It shall be unlawful for any person to use any X ray, fluoroscope, or other equipment or apparatus employing roentgen rays, in the fitting of shoes or other footwear. This section shall not apply to any licensed physician or surgeon in the practice of his profession. Any person violating the provisions of this section shall be guilty of a Class 3 misdemeanor.

Code 1950, § 18.1-416; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-322. Expectorating in public places

No person shall spit, expectorate, or deposit any sputum, saliva, mucus, or any form of saliva or sputum upon the floor, stairways, or upon any part of any public building or place where the public assemble, or upon the floor of any part of any public conveyance, or upon any sidewalk abutting on any public street, alley or lane of any town or city.

Any person violating any provision of this section shall be guilty of a Class 4 misdemeanor.

Code 1950, § 32-69; 1975, cc. 14, 15.

§ 18.2-322.1. Repealed

Repealed by Acts 1997, c. 391.

§ 18.2-323. Leaving disabled or dead animal in road, or allowing dead animal to remain unburied

If any person cast any dead animal into a road or knowingly permit any dead animal to remain unburied upon his property when offensive to the public or, having in custody any maimed, diseased, disabled or infirm animal, leave it to lie or be in a street, road or public place, he shall be guilty of a Class 3 misdemeanor.

Code 1950, § 32-70.1; 1958, c. 548; 1970, c. 72; 1975, cc. 14, 15.

§ 18.2-323.01. Prohibition against disposal of dead body; penalty

It shall be unlawful for any person to dispose of a dead body as defined in § 32.1-249 (i) on private property without the written permission of the landowner or (ii) on public property.

A violation of this section shall be punishable as a Class 1 misdemeanor.

1992, c. 883 .

§ 18.2-323.02. Prohibition against concealment of dead body; penalty

Any person who transports, secretes, conceals or alters a dead body, as defined in § 32.1-249, with malicious intent and to prevent detection of an unlawful act or to prevent the detection of the death or the manner or cause of death is guilty of a Class 6 felony.

2007, c. 436.

§ 18.2-323.1. Drinking while operating a motor vehicle; possession of open container while operating a motor vehicle and presumption; penalty

A. It shall be unlawful for any person to consume an alcoholic beverage while driving a motor vehicle upon a public highway of this Commonwealth.

B. A rebuttable presumption that the driver has consumed an alcoholic beverage in violation of this section shall be created if (i) an open container is located within the passenger area of the motor vehicle, (ii) the alcoholic beverage in the open container has been at least partially removed and (iii) the appearance, conduct, odor of alcohol, speech or other physical characteristic of the driver of the motor vehicle may be reasonably associated with the consumption of an alcoholic beverage.

For the purposes of this section:

"Open container" means any vessel containing an alcoholic beverage, except the originally sealed manufacturer's container.

"Passenger area" means the area designed to seat the driver of any motor vehicle, any area within the reach of the driver, including an unlocked glove compartment, and the area designed to seat passengers. This term shall not include the trunk of any passenger vehicle, the area behind the last upright seat of a passenger van, station wagon, hatchback, sport utility vehicle or any similar vehicle, the living quarters of a motor home, or the passenger area of a motor vehicle designed, maintained or used primarily for the transportation of persons for compensation, including a bus, taxi, or limousine, while engaged in the transportation of such persons.

C. A violation of this section is punishable as a Class 4 misdemeanor.

1989, c. 343; 2002, c. 890.

§ 18.2-324. Throwing or depositing certain substances upon highway; removal of such substances

No person shall throw or deposit or cause to be deposited upon any highway any glass bottle, glass, nail, tack, wire, can, or any other substance likely to injure any person or animal, or damage any vehicle upon such highway, nor shall any person throw or deposit or cause to be deposited upon any highway any soil, sand, mud, gravel or other substances so as to create a hazard to the traveling public. Any person who drops, or permits to be dropped or thrown, upon any highway any destructive, hazardous or injurious material shall immediately remove the same or cause it to be removed. Any person removing a wrecked or damaged vehicle from a highway shall remove any

glass or other injurious substance dropped upon the highway from such vehicle. Any persons violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

This section shall not apply to the use, by a law-enforcement officer while in the discharge of official duties, of any device designed to deflate tires. The Division of Purchase and Supply shall, pursuant to § 2.2-1112, set minimum standards for such devices and shall give notice of such standards to law-enforcement offices in the Commonwealth. No such device shall be used which does not meet or exceed the standards.

Code 1950, § 33.1-350; 1970, c. 322; 1975, cc. 14, 15; 1997, c. 136.

§ 18.2-324.1. Punishment for violation of §§ 55-298.1 through 55-298.5, relating to electric fences

The violation of any provision of §§ 55-298.1 through 55-298.5 shall constitute a Class 1 misdemeanor.

Code 1950, § 8-868.2; 1960, c. 384; 1977, c. 624.

Chapter 8 - CRIMES INVOLVING MORALS AND DECENCY

Article 1 - GAMBLING

§ 18.2-325. Definitions

1. "Illegal gambling" means the making, placing or receipt of any bet or wager in the Commonwealth of money or other thing of value, made in exchange for a chance to win a prize, stake or other consideration or thing of value, dependent upon the result of any game, contest or any other event the outcome of which is uncertain or a matter of chance, whether such game, contest or event occurs or is to occur inside or outside the limits of the Commonwealth.

For the purposes of this subdivision and notwithstanding any provision in this section to the contrary, the making, placing, or receipt of any bet or wager of money or other thing of value shall include the purchase of a product, Internet access, or other thing, which purchase credits the purchaser with free points or other measurable units that may be (i) risked by the purchaser for an opportunity to win additional points or other measurable units that are redeemable by the purchaser for money or (ii) redeemed by the purchaser for money, and but for the free points or other measurable units, with regard to clauses (i) and (ii), the purchase of the product, Internet access, or other thing (a) would be of insufficient value in and of itself to justify the purchase or (b) is merely incidental to the chance to win money.

2. "Interstate gambling" means the conduct of an enterprise for profit which engages in the purchase or sale within the Commonwealth of any interest in a lottery of another state or country whether or not such interest is an actual lottery ticket, receipt, contingent promise to pay, order to purchase, or other record of such interest.

3. "Gambling device" includes:

a. Any device, machine, paraphernalia, equipment, or other thing, including books, records and other papers, which are actually used in an illegal gambling operation or activity, and

b. Any machine, apparatus, implement, instrument, contrivance, board or other thing, or electronic or video versions thereof, including but not limited to those dependent upon the insertion of a coin or other object for their operation, which operates, either completely automatically or with the aid of some physical act by the player or operator, in such a manner that, depending upon elements of chance, it may eject something of value or determine the prize or other thing of value to which the player is entitled; provided, however, that the return to the user of nothing more than additional chances or the right to use such machine is not deemed something of value within the meaning of this subsection; and provided further, that machines that only sell, or entitle the user to, items of merchandise of equivalent value that may differ from each other in composition, size, shape or color, shall not be deemed gambling devices within the meaning of this subsection.

Such devices are no less gambling devices if they indicate beforehand the definite result of one or more operations but not all the operations. Nor are they any less a gambling device because, apart from their use or adaptability as such, they may also sell or deliver something of value on a basis other than chance.

4. "Operator" includes any person, firm or association of persons, who conducts, finances, manages, supervises, directs or owns all or part of an illegal gambling enterprise, activity or operation.

1975, cc. 14, 15; 1992, c. 423; 2010, c. 877; 2011, cc. 879, 887.

§ 18.2-325.1. Repealed

Repealed by Acts 2011, cc. 879 and 887, cl. 2.

§ 18.2-326. Penalty for illegal gambling

Except as otherwise provided in this article, any person who illegally gambles or engages in interstate gambling as defined in § 18.2-325 shall be guilty of a Class 3 misdemeanor. If an association or pool of persons illegally gamble, each person therein shall be guilty of illegal gambling.

However, if any person makes, places, or receives any bet or wager of money or other thing of value on a horse race in the Commonwealth, whether the race is inside or outside the limits of the Commonwealth at any place or through any means other than (i) at a racetrack licensed by the Virginia Racing Commission pursuant to Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 or (ii) at a satellite facility or through advance deposit account wagering, as those terms are defined in § 59.1-365, licensed by the Virginia Racing Commission pursuant to Chapter 29 (§ 59.1-364 et seq.) of Title 59.1, such person shall be guilty of a Class 1 misdemeanor. For the purposes of this paragraph, venue shall be in any county or city in which any act was performed in furtherance of any course of conduct constituting illegal gambling.

Code 1950, § 18.1-316; 1960, c. 358; 1973, c. 463; 1975, cc. 14, 15; 1992, c. 423; 2011, c. 732.

§ 18.2-327. Winning by fraud; penalty

If any person while gambling cheats or by fraudulent means wins or acquires for himself or another money or any other valuable thing, he shall be fined not less than five nor more than ten times the value of such winnings. This penalty shall be in addition to any other penalty imposed under this article.

Code 1950, § 18.1-318; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-328. Conducting illegal gambling operation; penalties

The operator of an illegal gambling enterprise, activity or operation shall be guilty of a Class 6 felony. However, any such operator who engages in an illegal gambling operation which (i) has been or remains in substantially continuous operation for a period in excess of thirty days or (ii) has gross revenue of $2,000 or more in any single day shall be fined not more than $20,000 and imprisoned not less than one year nor more than ten years.

As used in this section, the term "gross revenue" means the total amount of illegal gambling transactions handled, dealt with, received by or placed with such operation, as distinguished from any net figure or amount from which deductions are taken, without regard to whether money or any other thing of value actually changes hands.

Code 1950, § 18.1-318.1; 1972, c. 364; 1975, cc. 14, 15; 1983, c. 331.

§ 18.2-329. Owners, etc., of gambling place permitting its continuance; penalty

If the owner, lessee, tenant, occupant or other person in control of any place or conveyance, knows, or reasonably should know, that it is being used for illegal gambling, and permits such gambling to continue without having notified a law-enforcement officer of the presence of such illegal gambling activity, he shall be guilty of a Class 1 misdemeanor.

Code 1950, §§ 18.1-319, 18.1-324, 18.1-337, 18.1-339; 1960, c. 358; 1968, c. 401; 1975, cc. 14, 15.

§ 18.2-330. Accessories to gambling activity; penalty

Any person, firm or association of persons, other than those persons specified in other sections of this article, who knowingly aids, abets or assists in the operation of an illegal gambling enterprise, activity or operation, shall be guilty of a Class 1 misdemeanor.

Code 1950, §§ 18.1-319, 18.1-325; 1960, c. 358; 1968, c. 401; 1975, cc. 14, 15; 1984, c. 625.

§ 18.2-331. Illegal possession, etc., of gambling device; penalty

A person is guilty of illegal possession of a gambling device when he manufactures, sells, transports, rents, gives away, places or possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody or use of any gambling device, believing or having reason to believe that the same is to be used in the advancement of unlawful gambling activity. Violation of any provision of this section shall constitute a Class 1 misdemeanor.

Code 1950, §§ 18.1-323, 18.1-329, 18.1-330; 1960, c. 358; 1962, c. 633; 1964, c. 371; 1975, cc. 14, 15.

§ 18.2-332. Certain acts not deemed "consideration" in prosecution under this article
In any prosecution under this article, no consideration shall be deemed to have passed or been given because of any person's attendance upon the premises of another; his execution, mailing or delivery of an entry blank; his answering of questions, verbally or in writing; his witnessing of a demonstration or other proceeding; or any one or more thereof, where no charge is made to, paid by, or any purchase required of him in connection therewith.

Code 1950, § 18.1-340.1; 1960, c. 226; 1975, cc. 14, 15.

§ 18.2-333. Exceptions to article; certain sporting events
Nothing in this article shall be construed to prevent any contest of speed or skill between men, animals, fowl or vehicles, where participants may receive prizes or different percentages of a purse, stake or premium dependent upon whether they win or lose or dependent upon their position or score at the end of such contest.

Any participant who, for the purpose of competing for any such purse, stake or premium offered in any such contest, knowingly and fraudulently enters any contestant other than the contestant purported to be entered or knowingly and fraudulently enters a contestant in a class in which it does not belong, shall be guilty of a Class 3 misdemeanor.

Code 1950, §§ 18.1-319, 18.1-322; 1960, c. 358; 1968, c. 401; 1975, cc. 14, 15.

§ 18.2-334. Exception to article; private residences
Nothing in this article shall be construed to make it illegal to participate in a game of chance conducted in a private residence, provided such private residence is not commonly used for such games of chance and there is no operator as defined in subsection 4 of § 18.2-325.

Code 1950, § 18.1-327; 1960, c. 358; 1975, cc. 14, 15; 1992, c. 423 .

§ 18.2-334.1. Defeated at referendum
Defeated at referendum.

§ 18.2-334.2. Same; bingo games, raffles and duck races conducted by certain organizations
Nothing in this article shall apply to any bingo game, instant bingo, network bingo, raffle, or duck race conducted solely by organizations as defined in § 18.2-340.16 which have received a permit as set forth in § 18.2-340.25, or which are exempt from the permit requirement under § 18.2-340.23.

1979, c. 420; 1993, c. 513; 1995, c. 837; 2013, cc. 36, 350.

§ 18.2-334.3. Exemptions to article; state lottery
Nothing in this article shall apply to any lottery conducted by the Commonwealth of Virginia pursuant to Chapter 40 of Title 58.1.

1987, c. 531.

§ 18.2-334.4. Exemptions to article; pari-mutuel wagering

Nothing in this article shall be construed to make it illegal to participate in any race meeting or pari-mutuel wagering conducted in accordance with Chapter 29 (§ 59.1-364 et seq.) of Title 59.1.

1988, c. 855.

§ 18.2-335. Repealed

Repealed by Acts 1979, c. 420.

§ 18.2-336. Repealed

Repealed by Acts 2004, c. 995.

§ 18.2-337. Immunity of witnesses from prosecution

No witness called by the Commonwealth or by the court, giving evidence either before the grand jury or in any prosecution under this article, shall ever be prosecuted for the offense being prosecuted concerning which he testifies. Such witness shall be compelled to testify and for refusing to do so may be punished for contempt.

Code 1950, § 19.1-266; 1960, c. 366; 1975, cc. 14, 15.

§ 18.2-338. Enforcement of § 18.2-331 by Governor and Attorney General

If it shall come to the knowledge of the Governor that § 18.2-331 is not being enforced in any county, city or town, the Governor may call upon the Attorney General to direct its enforcement in such county, city or town, and thereupon the Attorney General may instruct the attorney for the Commonwealth, sheriff and chief of police, if any, of such county, or the attorney for the Commonwealth and chief of police of such city, or the attorney for the Commonwealth of the county in which such town is located and the chief of police or sergeant of such town, to take such steps as may be necessary to insure the enforcement of such section in such county, city or town, and if any such officers, after receiving such instructions, shall thereafter fail or refuse to exercise diligence in the enforcement of § 18.2-331, the Attorney General shall make report thereof in writing to the Governor and to the judge of the circuit court having jurisdiction over the acts thereby prohibited, and thereupon the Attorney General upon being directed so to do by the Governor, shall take such steps as he may deem proper in directing the institution and prosecution of criminal proceedings, to secure the enforcement of § 18.2-331.

Code 1950, § 18.1-334; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-339. Enjoining offenses relating to gambling

Whenever any person shall be engaged in committing, or in permitting to be committed, or shall be about to commit, or permit, any act prohibited by any one or more of the sections in this article, the attorney for the Commonwealth of the county or city in which such act is being, or is about to be, committed or permitted, or the Attorney General of the Commonwealth, may institute and maintain a suit in equity in the appropriate court, in the name of the Commonwealth, upon the relation of such attorney for the Commonwealth, or the Attorney General, to enjoin and restrain such person from committing, or permitting, such prohibited act or acts. The procedure in

any such suit shall be similar to the procedure in other suits for injunctions, except that no bond shall be required upon the granting of either a temporary or permanent injunction therein.

Code 1950, § 18.1-343; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-340. County ordinances prohibiting illegal gambling

The governing body of any county may adopt ordinances prohibiting illegal gambling, including a provision for forfeiture proceedings in accordance with Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2. Such ordinances shall not conflict with the provisions of this article or with other state laws and any penalties provided for violation of such ordinances shall not exceed a fine of $2,500 or confinement in jail for 12 months, either or both.

Code 1950, § 18.1-344; 1960, c. 358; 1975, cc. 14, 15; 1991, c. 710; 2012, cc. 283, 756.

Article 1.1 - BINGO AND RAFFLES [Repealed]

§§ 18.2-340.1 through 18.2-340.14. Repealed

Repealed by Acts 1995, c. 837, effective July 1, 1996.

Article 1.1:1 - CHARITABLE GAMING

§ 18.2-340.15. State control of charitable gaming

A. Charitable gaming as authorized herein shall be permitted in the Commonwealth as a means of funding qualified organizations but shall be conducted only in strict compliance with the provisions of this article. The Department of Agriculture and Consumer Services is vested with control of all charitable gaming in the Commonwealth. The Charitable Gaming Board shall have the power to prescribe regulations and conditions under which such gaming shall be conducted to ensure that it is conducted in a manner consistent with the purpose for which it is permitted.

B. The conduct of any charitable gaming is a privilege that may be granted or denied by the Department of Agriculture and Consumer Services or its duly authorized representatives in its discretion in order to effectuate the purposes set forth in this article.

1995, c. 837; 2003, c. 884; 2006, c. 644; 2008, cc. 387, 689.

§ 18.2-340.16. Definitions

As used in this article, unless the context requires a different meaning:

"Bingo" means a specific game of chance played with (i) individual cards having randomly numbered squares ranging from one to 75, (ii) Department-approved electronic devices that display facsimiles of bingo cards and are used for the purpose of marking and monitoring players' cards as numbers are called, or (iii) Department-approved cards, in which prizes are awarded on the basis of designated numbers on such cards conforming to a predetermined pattern of numbers selected at random.

"Board" means the Charitable Gaming Board created pursuant to § 2.2-2455.

"Bona fide member" means an individual who participates in activities of a qualified organization other than such organization's charitable gaming activities.

"Charitable gaming" or "charitable games" means those raffles and games of chance explicitly authorized by this article.

"Charitable gaming supplies" includes bingo cards or sheets, devices for selecting bingo numbers, instant bingo cards, pull-tab cards and seal cards, and any other equipment or product manufactured for or intended to be used in the conduct of charitable games. However, for the purposes of this article, charitable gaming supplies shall not include items incidental to the conduct of charitable gaming such as markers, wands, or tape.

"Commissioner" means the Commissioner of the Department of Agriculture and Consumer Services.

"Conduct" means the actions associated with the provision of a gaming operation during and immediately before or after the permitted activity, which may include, but not be limited to, (i) selling bingo cards or packs, electronic devices, instant bingo or pull-tab cards, or raffle tickets, (ii) calling bingo games, (iii) distributing prizes, and (iv) any other services provided by volunteer workers.

"Department" means the Department of Agriculture and Consumer Services.

"Fair market rental value" means the rent that a rental property will bring when offered for lease by a lessor who desires to lease the property but is not obligated to do so and leased by a lessee under no necessity of leasing.

"Gaming expenses" means prizes, supplies, costs of publicizing gaming activities, audit and administration or permit fees, and a portion of the rent, utilities, accounting and legal fees and such other reasonable and proper expenses as are directly incurred for the conduct of charitable gaming.

"Gross receipts" means the total amount of money generated by an organization from charitable gaming before the deduction of expenses, including prizes.

"Instant bingo,""pull tabs," or "seal cards" means specific games of chance played by the random selection of one or more individually prepacked cards, including Department-approved electronic versions thereof, with winners being determined by the preprinted or predetermined appearance of concealed letters, numbers or symbols that must be exposed by the player to determine wins and losses and may include the use of a seal card which conceals one or more numbers or symbols that have been designated in advance as prize winners. Such cards may be dispensed by electronic or mechanical equipment.

"Jackpot" means a bingo game that the organization has designated on its game program as a jackpot game in which the prize amount is greater than $100.

"Landlord" means any person or his agent, firm, association, organization, partnership, or corporation, employee, or immediate family member thereof, which owns and leases, or leases any premises devoted in whole or in part to the conduct of bingo games, and any person residing in the same household as a landlord.

"Management" means the provision of oversight of a gaming operation, which may include, but is not limited to, the responsibilities of applying for and maintaining a permit or authorization, compiling, submitting and maintaining required records and financial reports, and ensuring that all aspects of the operation are in compliance with all applicable statutes and regulations.

"Network bingo" means a specific bingo game in which pari-mutuel play is permitted.

"Network bingo provider" means a person licensed by the Department to operate network bingo.

"Operation" means the activities associated with production of a charitable gaming activity, which may include, but not be limited to (i) the direct on-site supervision of the conduct of charitable gaming; (ii) coordination of volunteers; and (iii) all responsibilities of charitable gaming designated by the organization's management.

"Organization" means any one of the following:

1. A volunteer fire department or volunteer emergency medical services agency or auxiliary unit thereof that has been recognized in accordance with § 15.2-955 by an ordinance or resolution of the political subdivision where the volunteer fire department or volunteer emergency medical services agency is located as being a part of the safety program of such political subdivision;

2. An organization operated exclusively for religious, charitable, community or educational purposes;

3. An athletic association or booster club or a band booster club established solely to raise funds for school-sponsored athletic or band activities for a public school or private school accredited pursuant to § 22.1-19 or to provide scholarships to students attending such school;

4. An association of war veterans or auxiliary units thereof organized in the United States;

5. A fraternal association or corporation operating under the lodge system;

6. A local chamber of commerce; or

7. Any other nonprofit organization that raises funds by conducting raffles that generate annual gross receipts of $40,000 or less, provided such gross receipts from the raffle, less expenses and prizes, are used exclusively for charitable, educational, religious or community purposes.

"Pari-mutuel play" means an integrated network operated by a licensee of the Department comprised of participating charitable organizations for the conduct of network bingo games in which the purchase of a network bingo card by a player automatically includes the player in a pool with all other players in the network, and where the prize to the winning player is awarded based on a percentage of the total amount of network bingo cards sold in a particular network.

"Qualified organization" means any organization to which a valid permit has been issued by the Department to conduct charitable gaming or any organization that is exempt pursuant to § 18.2-340.23.

"Raffle" means a lottery in which the prize is won by (i) a random drawing of the name or prearranged number of one or more persons purchasing chances or (ii) a random contest in which the winning name or preassigned number of one or more persons purchasing chances is determined by a race involving inanimate objects floating on a body of water, commonly referred to as a "duck race."

"Reasonable and proper business expenses" means business expenses actually incurred by a qualified organization in the conduct of charitable gaming and not otherwise allowed under this article or under Board regulations on real estate and personal property tax payments, travel expenses, payments of utilities and trash collection services, legal and accounting fees, costs of business furniture, fixtures and office equipment and costs of acquisition, maintenance, repair or construction of an organization's real property. For the purpose of this definition, salaries and wages of employees whose primary responsibility is to provide services for the principal benefit of an organization's members shall not qualify as a business expense. However, payments made pursuant to § 51.1-1204 to the Volunteer Firefighters' and Rescue Squad Workers' Service Award Fund shall be deemed a reasonable and proper business expense.

"Supplier" means any person who offers to sell, sells or otherwise provides charitable gaming supplies to any qualified organization.

1995, c. 837; 1996, c. 919; 1997, cc. 777, 838; 1998, cc. 57, 398; 1999, c. 534; 2002, cc. 282, 340; 2003, c. 884; 2006, c. 644; 2007, cc. 160, 264; 2008, cc. 387, 689; 2009, c. 121; 2010, c. 429; 2013, cc. 36, 350; 2015, cc. 502, 503.

§ 18.2-340.17. Repealed

Repealed by Acts 2003, c. 884, cl. 2.

§ 18.2-340.18. Powers and duties of the Department

The Department shall have all powers and duties necessary to carry out the provisions of this article and to exercise the control of charitable gaming as set forth in § 18.2-340.15. Such powers and duties shall include but not be limited to the following:

1. The Department is vested with jurisdiction and supervision over all charitable gaming authorized under the provisions of this article and including all persons that conduct or provide goods, services or premises used in the conduct of charitable gaming. It may employ such persons as are necessary to ensure that charitable gaming is conducted in conformity with the provisions of this article and the regulations of the Board. The Department shall designate such agents and employees as it deems necessary and appropriate who shall be sworn to enforce the provisions of this article and the criminal laws of the Commonwealth and who shall be law-enforcement officers as defined in § 9.1-101.

2. The Department, its agents and employees and any law-enforcement officers charged with the enforcement of charitable gaming laws shall have free access to the offices, facilities or any other place of business of any organization, including any premises devoted in whole or in part to the conduct of charitable gaming. These individuals may enter such places or premises for the purpose of carrying out any duty imposed by this article, securing records required to be maintained by an organization, investigating complaints, or conducting audits.

3. The Department may compel the production of any books, documents, records, or memoranda of any organizations or supplier involved in the conduct of charitable gaming for the purpose of satisfying itself that this article and its regulations are strictly complied with. In addition, the Department may require the production of an annual balance sheet and operating statement of any person granted a permit pursuant to the provisions of this article and may require the production of any contract to which such person is or may be a party.

4. The Department may issue subpoenas for the attendance of witnesses before it, administer oaths, and compel production of records or other documents and testimony of such witnesses whenever, in the judgment of the Department, it is necessary to do so for the effectual discharge of its duties.

5. The Department may compel any person conducting charitable gaming to file with the Department such documents, information or data as shall appear to the Department to be necessary for the performance of its duties.

6. The Department may enter into arrangements with any governmental agency of this or any other state or any locality in the Commonwealth or any agency of the federal government for the purposes of exchanging information or performing any other act to better ensure the proper conduct of charitable gaming.

7. The Department may issue a charitable gaming permit while the permittee's tax-exempt status is pending approval by the Internal Revenue Service.

8. The Department shall report annually to the Governor and the General Assembly, which report shall include a financial statement of the operation of the Department and any recommendations for legislation applicable to charitable gaming in the Commonwealth.

9. The Department, its agents and employees may conduct such audits, in addition to those required by § 18.2-340.31, as they deem necessary and desirable.

10. The Department may limit the number of organizations for which a person may manage, operate or conduct charitable games.

11. The Department may report any alleged criminal violation of this article to the appropriate attorney for the Commonwealth for appropriate action.

1995, c. 837; 1997, cc. 777, 838; 2003, c. 884; 2006, c. 644; 2014, c. 208.

§ 18.2-340.19. Regulations of the Board

A. The Board shall adopt regulations that:

1. Require, as a condition of receiving a permit, that the applicant use a predetermined percentage of its gross receipts for (i) those lawful religious, charitable, community or educational purposes for which the organization is specifically chartered or organized or (ii) those expenses relating to the acquisition, construction, maintenance or repair of any interest in real property involved in the operation of the organization and used for lawful religious, charitable, community or educational purposes. The regulation may provide for a graduated scale of percentages of gross receipts to be used in the foregoing manner based upon factors the Board finds appropriate to and consistent with the purpose of charitable gaming.

2. Specify the conditions under which a complete list of the organization's members who participate in the management, operation or conduct of charitable gaming may be required in order for the Board to ascertain the percentage of Virginia residents in accordance with subdivision A 3 of § 18.2-340.24.

Membership lists furnished to the Board or Department in accordance with this subdivision shall not be a matter of public record and shall be exempt from disclosure under the provisions of the Freedom of Information Act (§ 2.2-3700 et seq.).

3. Prescribe fees for processing applications for charitable gaming permits. Such fees may reflect the nature and extent of the charitable gaming activity proposed to be conducted.

4. Establish requirements for the audit of all reports required in accordance with § 18.2-340.30.

5. Define electronic and mechanical equipment used in the conduct of charitable gaming. Board regulations shall include capacity for such equipment to provide full automatic daubing as numbers are called. For the purposes of this subdivision, electronic or mechanical equipment for instant bingo, pull tabs, or seal cards shall include such equipment that displays facsimiles of instant bingo, pull tabs, or seal cards and are used solely for the purpose of dispensing or opening such paper or electronic cards, or both; but shall not include (i) devices operated by dropping one or more coins or tokens into a slot and pulling a handle or pushing a button or touchpoint on a touchscreen to activate one to three or more reels marked into horizontal segments by varying symbols, where the predetermined prize amount depends on how and how many of the symbols line up when the rotating reels come to rest, or (ii) other similar devices that display flashing lights or illuminations, or bells, whistles, or other sounds, solely intended to entice players to play.

6. Prescribe the conditions under which a qualified organization may (i) provide food and nonalcoholic beverages to its members who participate in the management, operation or conduct of bingo; (ii) permit members who participate in the management, operation or conduct of bingo to play bingo; and (iii) subject to the provisions of subdivision 13 of § 18.2-340.33, permit nonmembers to participate in the conduct of bingo so long as the nonmembers are under the direct supervision of a bona fide member of the organization during the bingo game.

7. Prescribe the conditions under which a qualified organization may sell raffle tickets for a raffle drawing that will be held outside the Commonwealth pursuant to subsection B of § 18.2-340.26.

8. Prescribe the conditions under which persons who are bona fide members of a qualified organization or a child, above the age of 13 years, of a bona fide member of such organization may participate in the conduct or operation of bingo games.

9. Prescribe the conditions under which a person below the age of 18 years may play bingo, provided such person is accompanied by his parent or legal guardian.

10. Require all qualified organizations that are subject to Board regulations to post in a conspicuous place in every place where charitable gaming is conducted a sign which bears a toll-free telephone number for "Gamblers Anonymous" or other organization which provides assistance to compulsive gamblers.

11. Prescribe the conditions under which a qualified organization may sell network bingo cards in accordance with § 18.2-340.28:1 and establish a percentage of proceeds derived from network bingo sales to be allocated to (i) prize pools, (ii) the organization conducting the network bingo, and (iii) the network bingo provider. The regulations shall also establish procedures for the retainage and ultimate distribution of any unclaimed prize.

B. In addition to the powers and duties granted pursuant to § 2.2-2456 and this article, the Board may, by regulation, approve variations to the card formats for bingo games provided such variations result in bingo games that are conducted in a manner consistent with the provisions of this article. Board-approved variations may include, but are not limited to, bingo games commonly referred to as player selection games and 90-number bingo.

1995, c. 837; 1996, c. 919; 1997, cc. 777, 838; 1998, c. 845; 2001, c. 833; 2003, c. 884; 2006, c. 644; 2010, cc. 429, 572; 2013, cc. 36, 350.

§ 18.2-340.20. Denial, suspension or revocation of permit; hearings and appeals

A. The Department may deny, suspend or revoke the permit of any organization found not to be in strict compliance with the provisions of this article and the regulations of the Board only after the proposed action by the Department has been reviewed and approved by the Board. The action of the Department in denying, suspending or revoking any permit shall be subject to the Administrative Process Act (§ 2.2-4000 et seq.).

B. Except as provided in §§ 18.2-340.25, 18.2-340.30 and 18.2-340.36, no permit to conduct charitable gaming shall be denied, suspended or revoked except upon notice stating the proposed basis for such action and the time and place for the hearing. At the discretion of the Department, hearings may be conducted by hearing officers who shall be selected from the list prepared by the Executive Secretary of the Supreme Court. After a hearing on the issues, the Department may refuse to issue or may suspend or revoke any such permit if it determines that the organization has not complied with the provisions of this article or the regulations of the Board.

C. Any person aggrieved by a refusal of the Department to issue any permit, the suspension or revocation of a permit, or any other action of the Department may seek review of such action in accordance with Article 4 (§ 2.2-4025 et seq.) of the Administrative Process Act.

1995, c. 837; 1996, c. 573; 1997, cc. 777, 838; 2000, c. 1000; 2001, c. 813; 2002, c. 282; 2003, c. 884; 2004, c. 213; 2006, c. 644; 2010, c. 711.

§ 18.2-340.21. Repealed

Repealed by Acts 2003, c. 884, cl. 2.

§ 18.2-340.22. Only raffles, bingo, network bingo, and instant bingo games permitted; prizes not gaming contracts

A. This article permits qualified organizations to conduct raffles, bingo, network bingo, and instant bingo games. All games not explicitly authorized by this article or Board regulations adopted in accordance with § 18.2-340.18 are prohibited.

B. The award of any prize money for any charitable game shall not be deemed to be part of any gaming contract within the purview of § 11-14.

C. Nothing in this article shall prohibit an organization from using the Virginia Lottery's Pick-3 number or any number or other designation selected by the Virginia Lottery in connection with any lottery, as the basis for determining the winner of a raffle.

1995, c. 837; 1997, cc. 777, 838; 2003, c. 884; 2013, cc. 36, 350; 2014, c. 225.

§ 18.2-340.23. Organizations exempt from certain permits and fees

A. No organization that reasonably expects, based on prior charitable gaming annual results or any other quantifiable method, to realize gross receipts of $40,000 or less in any 12-month period shall be required to (i) notify the Department of its intention to conduct charitable gaming or (ii) comply with Board regulations. If any organization's actual gross receipts for the 12-month period exceed $40,000, the Department may require the organization to file by a specified date the report required by § 18.2-340.30.

B. Any volunteer fire department or volunteer emergency medical services agency or auxiliary unit thereof that has been recognized in accordance with § 15.2-955 by an ordinance or resolution of the political subdivision where the volunteer fire department or volunteer emergency medical services agency is located as being part of the safety program of such political subdivision shall be exempt from the payment of application fees required by § 18.2-340.25 and the payment of audit fees required by § 18.2-340.31. Nothing in this subsection shall be construed as exempting volunteer fire departments and volunteer emergency medical services agencies from any other provisions of this article or other Board regulations.

C. Nothing in this section shall prevent the Department from conducting any investigation or audit it deems appropriate to ensure an organization's compliance with the provisions of this article and, to the extent applicable, Board regulations.

1995, c. 837; 1997, cc. 777, 838; 2003, c. 884; 2006, c. 644; 2009, c. 121; 2015, cc. 502, 503.

§ 18.2-340.24. Eligibility for permit; exceptions; where valid

A. To be eligible for a permit to conduct charitable gaming, an organization shall:

1. Have been in existence and met on a regular basis in the Commonwealth for a period of at least three years immediately prior to applying for a permit.

The three-year residency requirement shall not apply (i) to any lodge or chapter of a national or international fraternal order or of a national or international civic organization which is exempt under § 501(c) of the United States Internal Revenue Code and which has a lodge or chapter holding a charitable gaming permit issued under the provisions of this article anywhere within the Commonwealth; (ii) to booster clubs which have been operating for less than three years and which have been established solely to raise funds for school-sponsored activities in public schools or private schools accredited pursuant to § 22.1-19; (iii) to recently established volunteer fire and rescue companies or departments, after county, city or town approval; or (iv) to an organization which relocates its meeting place on a permanent basis from one jurisdiction to another, complies with the requirements of subdivision 2 of this section, and was the holder of a valid permit at the time of its relocation.

2. Be operating currently and have always been operated as a nonprofit organization.

3. Have at least 50 percent of its membership consist of residents of the Commonwealth; however, if an organization (i) does not consist of bona fide members and (ii) is exempt under § 501(c)(3) of the United States Internal Revenue Code, the Board shall exempt such organizations from the requirements of this subdivision.

B. Any organization whose gross receipts from all charitable gaming exceeds or can be expected to exceed $40,000 in any calendar year shall have been granted tax-exempt status pursuant to § 501 (c) of the United States Internal Revenue Code . At the same time tax-exempt status is sought from the Internal Revenue Service, the same documentation may be filed with the Department in conjunction with an application for a charitable gaming permit. If such documentation is filed, the Department may, after reviewing such documentation it deems necessary, issue a charitable gaming permit.

C. A permit shall be valid only for the locations, dates, and times designated in the permit.

1995, c. 837; 1996, c. 919; 2003, c. 884; 2006, c. 644; 2009, c. 121; 2014, c. 208.

§ 18.2-340.25. Permit required; application fee; form of application

A. Except as provided for in § 18.2-340.23, prior to the commencement of any charitable game, an organization shall obtain a permit from the Department.

B. All complete applications for a permit shall be acted upon by the Department within 45 days from the filing thereof. Upon compliance by the applicant with the provisions of this article, and at the discretion of the Department, a permit may be issued. All permits when issued shall be

valid for the period specified in the permit unless it is sooner suspended or revoked. No permit shall be valid for longer than two years. The application shall be a matter of public record.

All permits shall be subject to regulation by the Department to ensure the public safety and welfare in the operation of charitable games. The permit shall only be granted after a reasonable investigation has been conducted by the Department. The Department may require any prospective employee, permit holder or applicant to submit to fingerprinting and to provide personal descriptive information to be forwarded along with employee's, licensee's or applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purposes of obtaining criminal history record information regarding such prospective employee, permit holder or applicant. The Central Criminal Records Exchange upon receipt of a prospective employee, licensee or applicant record or notification that no record exists, shall forward the report to the Commissioner of the Department or his designee, who shall belong to a governmental entity. However, nothing in this subsection shall be construed to require the routine fingerprinting of volunteer bingo workers.

C. In no case shall an organization receive more than one permit allowing it to conduct charitable gaming; however, nothing in this section shall be construed to prohibit granting special permits pursuant to § 18.2-340.27.

D. Application for a charitable gaming permit shall be made on forms prescribed by the Department and shall be accompanied by payment of the fee for processing the application.

E. Applications for renewal of permits shall be made in accordance with Board Regulations. If a complete renewal application is received 45 days or more prior to the expiration of the permit, the permit shall continue to be effective until such time as the Department has taken final action. Otherwise, the permit shall expire at the end of its term.

F. The failure to meet any of the requirements of § 18.2-340.24 shall cause the automatic denial of the permit, and no organization shall conduct any charitable gaming until the requirements are met and a permit is obtained.

1995, c. 837; 1997, cc. 777, 838; 1999, c. 361; 2003, c. 884; 2006, cc. 211, 644; 2008, cc. 387, 689.

§ 18.2-340.26. Sale of raffle tickets; drawings

A. Except as provided in subsection B, a qualified organization may sell raffle tickets both in and out of the jurisdiction designated in its permit and shall conduct the drawing within the Commonwealth.

B. A qualified organization may sell raffle tickets for a raffle drawing which will be held outside the Commonwealth, provided the raffle is conducted in accordance with (i) the regulations of the Board and (ii) the laws and regulations of the jurisdiction in which the raffle drawing will be held.

C. Before a prize drawing, each stub or other detachable section of each ticket sold or won through some other authorized charitable game conducted by the same organization holding the raffle, shall be placed into a receptacle from which the winning tickets are drawn. The receptacle shall be designed so that each ticket placed in it has an equal chance of being drawn.

1995, c. 837; 1997, cc. 777, 838; 2001, c. 833; 2003, c. 884; 2006, c. 644; 2008, c. 573.

§ 18.2-340.26:1. Sale of instant bingo, pull tabs or seal cards; proceeds not counted as gross receipts

A. Instant bingo, pull tabs or seal cards may be sold only upon the premises owned or exclusively leased by the organization and at such times as the portion of the premises in which the instant bingo, pull tabs or seal cards are sold is open only to members and their guests. Nothing in this article shall be construed to prohibit the conduct of games of chance involving the sale of pull tabs or seal cards, commonly known as last sale games, conducted in accordance with this section.

B. The proceeds from instant bingo, pull tabs or seal cards shall not be included in determining the gross receipts for a qualified organization provided the gaming (i) is limited exclusively to members of the organization and their guests, (ii) is not open to the general public, and (iii) there is no public solicitation or advertisement made regarding such gaming.

2001, c. 833; 2006, c. 644; 2007, c. 196.

§ 18.2-340.26:2. Sale of instant bingo, pull tabs, or seal cards by certain booster clubs

As a part of its annual fund-raising event, any qualified organization that is an athletic association or booster club or a band booster club may sell instant bingo, pull tabs, or seal cards provided that (i) the sale is limited to a single event in a calendar year and (ii) the event is open to the public. The Department may require organizations authorized under this section to make such financial reporting as it deems necessary.

Nothing in this section shall be construed as exempting organizations authorized to sell instant bingo, pull tabs, or seal cards under this section from any other provisions of this article or other Board regulations.

2007, c. 160.

§ 18.2-340.27. Conduct of bingo games; special permits

A. A qualified organization shall accept only cash or, at its option, checks or debit cards in payment of any charges or assessments for players to participate in bingo games. However, no such organization shall accept postdated checks in payment of any charges or assessments for players to participate in bingo games.

B. No qualified organization or any person on the premises shall extend lines of credit or accept any credit or other electronic fund transfer other than debit cards in payment of any charges or assessments for players to participate in bingo games.

C. Bingo games may be held by qualified organizations no more frequently than two calendar days in any calendar week, except in accordance with subsection E.

D. No more than two sessions of bingo games may be held by qualified organizations in any calendar day, nor shall there be more than 55 bingo games per session.

E. A special permit may be granted a qualified organization which entitles it to conduct more frequent operations of bingo games during carnivals, fairs and state, federal or religious holidays, which shall be designated in the permit.

F. Any organization may conduct bingo games only in the county, city or town or in any adjoining county, city or town in which they regularly have been in existence or met. The Department may approve exceptions to this requirement where there is a special circumstance or documented need.

1995, c. 837; 2006, c. 644; 2010, c. 429.

§ 18.2-340.28. Conduct of instant bingo, network bingo, pull tabs and seal cards

A. Any organization qualified to conduct bingo games pursuant to the provisions of this article may play instant bingo, network bingo, pull tabs, or seal cards as a part of such bingo game and, if a permit is required pursuant to § 18.2-340.25, such games shall be played only at such location and at such times as designated in the permit for regular bingo games.

B. Any organization conducting instant bingo, network bingo, pull tabs, or seal cards shall maintain a record of the date, quantity and card value of instant bingo supplies purchased as well as the name and address of the supplier of such supplies. The organization shall also maintain a written invoice or receipt from a nonmember of the organization verifying any information required by this subsection. Such supplies shall be paid for only by check drawn on the gaming account of the organization. A complete inventory of all such gaming supplies shall be maintained by the organization on the premises where the gaming is being conducted.

C. No qualified organization shall sell any instant bingo, network bingo, pull tabs, or seal cards to any individual younger than 18 years of age. No individual younger than 18 years of age shall play or redeem any instant bingo, network bingo, pull tabs, or seal cards.

1995, c. 837; 1997, cc. 777, 838; 2006, c. 644; 2013, cc. 36, 350.

§ 18.2-340.28:1. Conduct of network bingo

A. Any organization qualified to conduct bingo games pursuant to the provisions of this article may sell network bingo cards as a part of a regular bingo game and, if a permit is required pursuant to § 18.2-340.25, network bingo shall be sold only at such location and at such times as designated in the permit for regular bingo games.

B. Any organization selling network bingo cards shall maintain a record of the date and quantity of network bingo cards purchased from a licensed network bingo provider. The organization shall also maintain a written invoice or receipt from a licensed supplier verifying any information required by this subsection. Such supplies shall be paid for only by check drawn on the gaming

account of the organization or by electronic fund transfer. A complete inventory of all such gaming supplies shall be maintained by the organization on the premises where network bingo cards are sold.

C. No qualified organization shall sell any network bingo cards to any individual younger than 18 years of age. No individual younger than 18 years of age shall play or redeem any network bingo cards.

D. A qualified organization shall accept only cash or, at its option, checks or debit cards in payment of any charges or assessments for players to participate in any network bingo game. However, no such organization shall accept postdated checks in payment of any charges or assessments for players to participate in network bingo games.

E. No qualified organization or any person on the premises shall extend lines of credit or accept any credit or other electronic fund transfer other than debit cards in payment of any charges or assessments for players to participate in network bingo games.

F. No qualified organization shall conduct network bingo more frequently than one day in any calendar week, which shall not be the same day of each week.

G. No network bingo games shall be permitted in the social quarters of an organization that are open only to the organization's members and their guests.

H. No qualified organization shall sell network bingo cards on the Internet or other online service or allow the play of network bingo on the Internet or other online service. However, the location where network bingo games are conducted shall be equipped with a video monitor, television, or video screen, or any other similar means of visually displaying a broadcast or signal, that relays live, real-time video of the numbers as they are called by a live caller. The Internet or other online service may be used to relay information about winning players.

I. Qualified organizations may award network bingo prizes on a graduated scale; however, no single network bingo prize shall exceed $25,000.

J. Nothing in this section shall be construed to prohibit an organization from participating in more than one network bingo network.

2013, cc. 36, 350.

§ 18.2-340.29. Joint operation of bingo games; written reports; joint permit required

A. Any two or more qualified organizations may jointly organize and conduct bingo games provided both have fully complied with all other provisions of this article.

B. Any two or more qualified organizations jointly conducting such games shall be (i) subject to the same restrictions and prohibitions contained in this article that would apply to a single organization conducting bingo games and (ii) required to furnish to the Department a written report set-

ting forth the location where such games will be held, the division of manpower, costs, and proceeds for each game to be jointly conducted.

Upon a finding that the division of manpower and costs for each game bears a reasonable relationship to the division of proceeds, the Department shall issue a joint permit.

C. No bingo game shall be jointly conducted until the joint permit issued pursuant to subsection B is obtained by the organizations.

1995, c. 837; 2003, c. 884; 2006, c. 644.

§ 18.2-340.30. Reports of gross receipts and disbursements required; form of reports; failure to file

A. Each qualified organization shall keep a complete record of all inventory of charitable gaming supplies purchased, all receipts from its charitable gaming operation, and all disbursements related to such operation. Except as provided in § 18.2-340.23, each qualified organization shall file at least annually, on a form prescribed by the Department, a report of all such receipts and disbursements, the amount of money on hand attributable to charitable gaming as of the end of the period covered by the report and any other information related to its charitable gaming operation that the Department may require. In addition, the Board, by regulation, may require any qualified organization whose net receipts exceed a specified amount during any three-month period to file a report of its receipts and disbursements for such period. All reports filed pursuant to this section shall be a matter of public record.

B. All reports required by this section shall be filed on or before the date prescribed by the Department. The Board, by regulation, shall establish a schedule of late fees to be assessed for any organization that fails to submit required reports by the due date.

C. Except as provided in § 18.2-340.23, each qualified organization shall designate or compensate an outside individual or group who shall be responsible for filing an annual, and, if required, quarterly, financial report if the organization goes out of business or otherwise ceases to conduct charitable gaming activities. The Department shall require such reports as it deems necessary until all proceeds of any charitable gaming have been used for the purposes specified in § 18.2-340.19 or have been disbursed in a manner approved by the Department.

D. Each qualified organization shall maintain for three years a complete written record of (i) all charitable gaming sessions using Department prescribed forms or reasonable facsimiles thereof approved by the Department; (ii) the name and address of each individual to whom is awarded any charitable gaming prize or jackpot that meets or exceeds the requirements of Internal Revenue Service Publication 3079, as well as the amount of the award; and (iii) an itemized record of all receipts and disbursements, including operating costs and use of proceeds incurred in operating bingo games.

E. The failure to file reports within 30 days of the time such reports are due shall cause the automatic revocation of the permit, and no organization shall conduct any bingo game or raffle thereafter until the report is properly filed and a new permit is obtained. However, the Department may grant an extension of time for filing such reports for a period not to exceed 45 days if requested by an organization, provided the organization requests an extension within 15 days of the time such reports are due and all projected fees are paid. For the term of any such extension, the organization's permit shall not be automatically revoked, such organization may continue to conduct charitable gaming, and no new permit shall be required.

1995, c. 837; 1997, cc. 777, 838; 1999, c. 360; 2003, c. 884; 2006, c. 644; 2007, c. 541; 2014, c. 208.

§ 18.2-340.30:1. Repealed

Repealed by Acts 2010, c. 429, cl. 2.

§ 18.2-340.31. Audit of reports; exemption; audit and administration fee

A. All reports filed pursuant to § 18.2-340.30 shall be subject to audit by the Department in accordance with Board regulations. The Department may engage the services of independent certified public accountants to perform any audits deemed necessary to fulfill the Department's responsibilities under this article.

B. The Department shall prescribe a reasonable audit and administration fee to be paid by any organization conducting charitable gaming under a permit issued by the Department unless the organization is exempt from such fee pursuant to § 18.2-340.23. Such fee shall not exceed one and one-quarter percent of the gross receipts which an organization reports pursuant to § 18.2-340.30. The audit and administration fee shall accompany each report for each calendar quarter.

C. The audit and administration fee shall be payable to the Treasurer of Virginia. All such fees received by the Treasurer of Virginia shall be separately accounted for and shall be used only by the Department for the purposes of auditing and regulating charitable gaming.

1995, c. 837; 1997, cc. 777, 838; 2003, c. 884; 2006, c. 644.

§ 18.2-340.32. Repealed

Repealed by Acts 2004, c. 462.

§ 18.2-340.33. Prohibited practices

In addition to those other practices prohibited by this article, the following acts or practices are prohibited:

1. No part of the gross receipts derived by a qualified organization may be used for any purpose other than (i) reasonable and proper gaming expenses, (ii) reasonable and proper business expenses, (iii) those lawful religious, charitable, community or educational purposes for which the organization is specifically chartered or organized, and (iv) expenses relating to the acquisition, construction, maintenance, or repair of any interest in the real property involved in the operation

of the organization and used for lawful religious, charitable, community or educational purposes. For the purposes of clause (iv), such expenses may include the expenses of a corporation formed for the purpose of serving as the real estate holding entity of a qualified organization, provided (a) such holding entity is qualified as a tax exempt organization under § 501(c) of the Internal Revenue Code and (b) the membership of the qualified organization is identical to such holding entity.

2. Except as provided in § 18.2-340.34:1, no qualified organization shall enter into a contract with or otherwise employ for compensation any person for the purpose of organizing, managing, or conducting any charitable games. However, organizations composed of or for deaf or blind persons may use a part of their gross receipts for costs associated with providing clerical assistance in the management and operation but not the conduct of charitable gaming.

The provisions of this subdivision shall not prohibit the joint operation of bingo games held in accordance with § 18.2-340.29.

3. No person shall pay or receive for use of any premises devoted, in whole or in part, to the conduct of any charitable games, any consideration in excess of the current fair market rental value of such property. Fair market rental value consideration shall not be based upon or determined by reference to a percentage of the proceeds derived from the operation of any charitable games or to the number of people in attendance at such charitable games.

4. No building or other premises shall be utilized in whole or in part for the purpose of conducting charitable gaming more frequently than two calendar days in any one calendar week. However, no building or other premises owned by (i) a qualified organization which is exempt from taxation pursuant to § 501(c) of the Internal Revenue Code or (ii) any county, city or town shall be utilized in whole or in part for the purpose of conducting bingo games more frequently than four calendar days in any one calendar week.

The provisions of this subdivision shall not apply to the playing of bingo games pursuant to a special permit issued in accordance with § 18.2-340.27.

5. No person shall participate in the management or operation of any charitable game unless such person is and, for a period of at least 30 days immediately preceding such participation, has been a bona fide member of the organization. For any organization that is not composed of members, a person who is not a bona fide member may volunteer in the conduct of a charitable game as long as that person is directly supervised by a bona fide official member of the organization.

The provisions of this subdivision shall not apply to (i) persons employed as clerical assistants by qualified organizations composed of or for deaf or blind persons; (ii) employees of a corporate sponsor of a qualified organization, provided such employees' participation is limited to the management, operation or conduct of no more than one raffle per year; (iii) the spouse or family member of any such bona fide member of a qualified organization provided at least one bona fide member is present; or (iv) persons employed by a qualified organization authorized to sell pull

tabs or seal cards in accordance with § 18.2-340.16, provided (a) such sales are conducted by no more than two on-duty employees, (b) such employees receive no compensation for or based on the sale of the pull tabs or seal cards, and (c) such sales are conducted in the private social quarters of the organization.

6. No person shall receive any remuneration for participating in the management, operation or conduct of any charitable game, except that:

a. Persons employed by organizations composed of or for deaf or blind persons may receive remuneration not to exceed $30 per event for providing clerical assistance in the management and operation but not the conduct of charitable games only for such organizations;

b. Persons under the age of 19 who sell raffle tickets for a qualified organization to raise funds for youth activities in which they participate may receive nonmonetary incentive awards or prizes from the organization;

c. Remuneration may be paid to off-duty law-enforcement officers from the jurisdiction in which such bingo games are played for providing uniformed security for such bingo games even if such officer is a member of the sponsoring organization, provided the remuneration paid to such member is in accordance with off-duty law-enforcement personnel work policies approved by the local law-enforcement official and further provided that such member is not otherwise engaged in the management, operation or conduct of the bingo games of that organization, or to private security services businesses licensed pursuant to § 9.1-139 providing uniformed security for such bingo games, provided that employees of such businesses shall not otherwise be involved in the management, operation, or conduct of the bingo games of that organization;

d. A member of a qualified organization lawfully participating in the management, operation or conduct of a bingo game may be provided food and nonalcoholic beverages by such organization for on-premises consumption during the bingo game provided the food and beverages are provided in accordance with Board regulations; and

e. Remuneration may be paid to bingo managers or callers who have a current registration certificate issued by the Department in accordance with § 18.2-340.34:1, or who are exempt from such registration requirement. Such remuneration shall not exceed $100 per session.

7. No landlord shall, at bingo games conducted on the landlord's premises, (i) participate in the conduct, management, or operation of any bingo games; (ii) sell, lease or otherwise provide for consideration any bingo supplies, including, but not limited to, bingo cards, instant bingo cards, or other game pieces; or (iii) require as a condition of the lease or by contract that a particular manufacturer, distributor or supplier of bingo supplies or equipment be used by the organization.

The provisions of this subdivision shall not apply to any qualified organization conducting bingo games on its own behalf at premises owned by it.

8. No qualified organization shall enter into any contract with or otherwise employ or compensate any member of the organization on account of the sale of bingo supplies or equipment.

9. No organization shall award any bingo prize money or any merchandise valued in excess of the following amounts:

a. No bingo door prize shall exceed $50 for a single door prize or $250 in cumulative door prizes in any one session;

b. No regular bingo or special bingo game prize shall exceed $100;

c. No instant bingo, pull tab, or seal card prize for a single card shall exceed $1,000;

d. Except as provided in subdivision 9, no bingo jackpot of any nature whatsoever shall exceed $1,000, nor shall the total amount of bingo jackpot prizes awarded in any one session exceed $1,000. Proceeds from the sale of bingo cards and the sheets used for bingo jackpot games shall be accounted for separately from the bingo cards or sheets used for any other bingo games; and

e. No single network bingo prize shall exceed $25,000. Proceeds from the sale of network bingo cards shall be accounted for separately from bingo cards and sheets used for any other bingo game.

10. The provisions of subdivision 9 shall not apply to:

Any progressive bingo game, in which (a) a regular or special prize, not to exceed $100, is awarded on the basis of predetermined numbers or patterns selected at random and (b) a progressive prize, not to exceed $500 for the initial progressive prize and $5,000 for the maximum progressive prize, is awarded if the predetermined numbers or patterns are covered when a certain number of numbers is called, provided (i) there are no more than six such games per session per organization, (ii) the amount of increase of the progressive prize per session is no more than $100, (iii) the bingo cards or sheets used in such games are sold separately from the bingo cards or sheets used for any other bingo games, (iv) the organization separately accounts for the proceeds from such sale, and (v) such games are otherwise operated in accordance with the Department's rules of play.

11. No organization shall award any raffle prize valued at more than $100,000.

The provisions of this subdivision shall not apply to a raffle conducted no more than once per calendar year by a qualified organization qualified as a tax-exempt organization pursuant to § 501(c) of the Internal Revenue Code for a prize consisting of a lot improved by a residential dwelling where 100 percent of the moneys received from such a raffle, less deductions for the fair market value for the cost of acquisition of the land and materials, are donated to lawful religious, charitable, community, or educational organizations specifically chartered or organized under the laws of the Commonwealth and qualified as a § 501(c) tax-exempt organization.

12. No qualified organization composed of or for deaf or blind persons which employs a person not a member to provide clerical assistance in the management and operation but not the conduct

of any charitable games shall conduct such games unless it has in force fidelity insurance, as defined in § 38.2-120, written by an insurer licensed to do business in the Commonwealth.

13. No person shall participate in the management or operation of any charitable game if he has ever been convicted of any felony or if he has been convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years. No person shall participate in the conduct of any charitable game if, within the preceding 10 years, he has been convicted of any felony or if, within the preceding five years he has been convicted of any misdemeanor involving fraud, theft, or financial crimes. In addition, no person shall participate in the management, operation or conduct of any charitable game if that person, within the preceding five years, has participated in the management, operation, or conduct of any charitable game which was found by the Department or a court of competent jurisdiction to have been operated in violation of state law, local ordinance or Board regulation.

14. Qualified organizations jointly conducting bingo games pursuant to § 18.2-340.29 shall not circumvent any restrictions and prohibitions which would otherwise apply if a single organization were conducting such games. These restrictions and prohibitions shall include, but not be limited to, the frequency with which bingo games may be held, the value of merchandise or money awarded as prizes, or any other practice prohibited under this section.

15. A qualified organization shall not purchase any charitable gaming supplies for use in the Commonwealth from any person who is not currently registered with the Department as a supplier pursuant to § 18.2-340.34.

16. Unless otherwise permitted in this article, no part of an organization's charitable gaming gross receipts shall be used for an organization's social or recreational activities.

1995, c. 837; 1996, c. 919; 1997, cc. 777, 838; 1998, cc. 57, 398; 1999, c. 534; 2000, c. 1000; 2001, c. 754; 2002, c. 282; 2003, c. 884; 2004, c. 275; 2005, cc. 776, 826; 2006, c. 644; 2007, cc. 226, 790; 2008, c. 352; 2010, c. 429; 2013, cc. 36, 350.

§ 18.2-340.34. Suppliers of charitable gaming supplies; manufacturers of electronic games of chance systems; permit; qualification; suspension, revocation or refusal to renew certificate; maintenance, production, and release of records

A. No person shall offer to sell, sell or otherwise provide charitable gaming supplies to any qualified organization and no manufacturer shall distribute electronic games of chance systems for charitable gaming in the Commonwealth unless and until such person has made application for and has been issued a permit by the Department. An application for permit shall be made on forms prescribed by the Department and shall be accompanied by a fee in the amount of $1,000. Each permit shall remain valid for a period of one year from the date of issuance. Application for renewal of a permit shall be accompanied by a fee in the amount of $1,000 and shall be made on forms prescribed by the Department.

B. The Board shall have authority to prescribe by regulation reasonable criteria consistent with the provisions of this article for the registration of suppliers and manufacturers of electronic games of chance systems for charitable gaming. The Department may refuse to issue a permit to any supplier or manufacturer who has, or which has any officer, director, partner, or owner who has (i) been convicted of or pleaded nolo contendere to a felony in any state or federal court or has been convicted of any offense which, if committed in the Commonwealth, would be a felony; (ii) been convicted of or pleaded nolo contendere to a crime involving gambling; (iii) had any license, permit, certificate or other authority related to activities defined as charitable gaming in the Commonwealth suspended or revoked in the Commonwealth or in any other jurisdiction; (iv) failed to file or has been delinquent in excess of one year in the filing of any tax returns or the payment of any taxes due the Commonwealth; or (v) failed to establish a registered office or registered agent in the Commonwealth if so required by § 13.1-634 or 13.1-763.

C. The Department may suspend, revoke or refuse to renew the permit of any supplier or manufacturer for any conduct described in subsection B or for any violation of this article or regulation of the Board. Before taking any such action, the Department shall give the supplier or manufacturer a written statement of the grounds upon which it proposes to take such action and an opportunity to be heard. Every hearing in a contested case shall be conducted in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

D. Each supplier shall document each sale of charitable gaming supplies, including electronic games of chance systems, and other items incidental to the conduct of charitable gaming, such as markers, wands or tape, to a qualified organization on an invoice which clearly shows (i) the name and address of the qualified organization to which such supplies or items were sold; (ii) the date of the sale; (iii) the name or form and serial number of each deal of instant bingo cards and pull-tab raffle cards, the quantity of deals sold and the price per deal paid by the qualified organization; (iv) the serial number of the top sheet in each packet of bingo paper, the serial number for each series of uncollated bingo paper, and the cut, color and quantity of bingo paper sold; and (v) any other information with respect to charitable gaming supplies, including electronic games of chance systems, or other items incidental to the conduct of charitable gaming as the Board may prescribe by regulation. A legible copy of the invoice shall accompany the charitable gaming supplies when delivered to the qualified organization.

Each manufacturer of electronic games of chance systems shall document each distribution of such systems to a qualified organization or supplier on an invoice which clearly shows (i) the name and address of the qualified organization or supplier to which such systems were distributed; (ii) the date of distribution; (iii) the serial number of each such system; and (iv) any other information with respect to electronic games of chance systems as the Board may prescribe by regulation. A legible copy of the invoice shall accompany the electronic games of chance systems when delivered to the qualified organization or supplier.

E. Each supplier and manufacturer shall maintain a legible copy of each invoice required by subsection D for a period of three years from the date of sale. Each supplier and manufacturer shall make such documents immediately available for inspection and copying to any agent or employee of the Department upon request made during normal business hours. This subsection shall not limit the right of the Department to require the production of any other documents in the possession of the supplier or manufacturer which relate to its transactions with qualified organizations. All documents and other information of a proprietary nature furnished to the Department in accordance with this subsection shall not be a matter of public record and shall be exempt from disclosure under the provisions of the Freedom of Information Act (§ 2.2-3700 et seq.).

1995, c. 837; 1996, c. 919; 1997, cc. 777, 838; 1999, c. 534; 2003, c. 884; 2006, c. 644; 2007, c. 264.

§ 18.2-340.34:1. Bingo managers and callers; remuneration; registration; qualification; suspension, revocation or refusal to renew certificate; exceptions

A. No person shall receive remuneration as a bingo manager or caller from any qualified organization unless and until such person has made application for and has been issued a registration certificate by the Department. Application for registration shall be made on forms prescribed by the Department and shall be accompanied by a fee in the amount of $75. Each registration certificate shall remain valid for a period of one year from the date of issuance. Application for renewal of a registration certificate shall be accompanied by a fee in the amount of $75 and shall be made on forms prescribed by the Department.

B. As a condition of registration as a bingo manager, the applicant shall (i) have been a bona fide member of the qualified organization for at least 12 consecutive months prior to making application for registration and (ii) be required to complete a reasonable training course developed and conducted by the Department.

As a condition of registration as a bingo caller, the applicant shall be required to complete a reasonable training course developed and conducted by the Department.

The Department may refuse to register any bingo manager or caller who has (a) been convicted of or pleaded nolo contendere to a felony in any state or federal court or has been convicted of any offense which, if committed in the Commonwealth, would be a felony; (b) been convicted of or pleaded nolo contendere to a crime involving gambling; (c) had any license, permit, certificate, or other authority related to activities defined as charitable gaming in the Commonwealth suspended or revoked in the Commonwealth or in any other jurisdiction; or (d) failed to file or has been delinquent in excess of one year in the filing of any tax returns or the payment of any taxes due the Commonwealth.

C. The Department may suspend, revoke, or refuse to renew the registration certificate of any bingo manager or caller for any conduct described in subsection B or for any violation of this

article or regulations of the Board. Before taking any such action, the Department shall give the bingo manager or caller a written statement of the grounds upon which it proposes to take such action and an opportunity to be heard. Every hearing in a contested case shall be conducted in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

D. The provisions of subsection A requiring registration for bingo callers with the Department shall not apply to a bingo caller for a volunteer fire department or volunteer emergency medical services agency or auxiliary unit thereof that has been recognized in accordance with § 15.2-955 by an ordinance or resolution of the political subdivision where the volunteer fire department or volunteer emergency medical services agency is located as being a part of the safety program of such political subdivision.

2005, cc. 776, 826; 2007, cc. 226, 347; 2015, cc. 502, 503.

§ 18.2-340.34:2. Licensing of network bingo providers; qualification; suspension, revocation, or refusal to renew license; maintenance, production, and release of records

A. No person shall sell or offer to sell or otherwise provide access to a network bingo network to any qualified organization unless and until such person has made application for and has been issued a license by the Department. An application for license shall be made on forms prescribed by the Department and shall be accompanied by a fee in the amount of $500. Each license shall remain valid for a period of two years from the date of issuance. Application for renewal of a license shall be accompanied by a fee in the amount of $500 and shall be made on forms prescribed by the Department.

B. The Board shall have authority to prescribe by regulation reasonable criteria consistent with the provisions of this article for the licensure of network bingo providers. The Department may refuse to issue a license to any network bingo provider that has any officer, director, partner, or owner who has (i) been convicted of or pleaded nolo contendere to a felony in any state or federal court or has been convicted of any offense that, if committed in the Commonwealth, would be a felony; (ii) been convicted of or pleaded nolo contendere to a crime involving gambling; (iii) had any license, permit, certificate, or other authority related to activities defined as charitable gaming in the Commonwealth suspended or revoked in the Commonwealth or in any other jurisdiction; (iv) failed to file or been delinquent in excess of one year in the filing of any tax returns or the payment of any taxes due the Commonwealth; or (v) failed to establish a registered office or registered agent in the Commonwealth if so required by § 13.1-634 or 13.1-763.

C. The Department may suspend, revoke, or refuse to renew the license of any network bingo provider for any conduct described in subsection B or for any violation of this article or regulation of the Board. Before taking any such action, the Department shall give the network bingo provider a written statement of the grounds upon which it proposes to take such action and an opportunity to be heard. Every hearing in a contested case shall be conducted in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

D. The Department by regulation shall require network bingo providers to have onsite independent supervision of network bingo games as the numbers are called.

E. Each network bingo provider shall document each sale of network bingo supplies and other items incidental to the conduct of network bingo to a qualified organization on an invoice that clearly shows (i) the name and address of the qualified organization to which such supplies or items were sold; (ii) the date of the sale; (iii) the name or form and serial number of each network bingo card, the quantity of cards sold, and the price per card paid by the qualified organization; and (iv) any other information required by the Department. A legible copy of the invoice shall accompany the network bingo supplies when delivered to the qualified organization.

F. Each network bingo provider shall maintain a legible copy of each invoice required by subsection E for a period of three years from the date of sale. Each network bingo provider shall make such documents immediately available for inspection and copying to any agent or employee of the Department upon request made during normal business hours. This subsection shall not limit the right of the Department to require the production of any other documents in the possession of the network bingo provider that relate to its transactions with qualified organizations. All documents and other information of a proprietary nature furnished to the Department in accordance with this subsection shall be exempt from disclosure under the provisions of the Freedom of Information Act (§ 2.2-3700 et seq.).

2013, cc. 36, 350.

§ 18.2-340.35. Assistance from Department of State Police

The Department of the State Police, upon request of the Department, shall assist in the conduct of investigations by the Department.

1995, c. 837; 2003, c. 884.

§ 18.2-340.36. Suspension of permit

A. When any officer charged with the enforcement of the charitable gaming laws of the Commonwealth has reasonable cause to believe that the conduct of charitable gaming is being conducted by an organization in violation of this article or the regulations of the Board, he may apply to any judge, magistrate, or other person having authority to issue criminal warrants for the immediate suspension of the permit of the organization conducting the bingo game or raffle. If the judge, magistrate, or person to whom such application is presented is satisfied that probable cause exists to suspend the permit, he shall suspend the permit. Immediately upon such suspension, the officer shall notify the organization in writing of such suspension.

B. Written notice specifying the particular basis for the immediate suspension shall be provided by the officer to the organization within one business day of the suspension and a hearing held thereon by the Department or its designated hearing officer within 10 days of the suspension unless the organization consents to a later date. No charitable gaming shall be conducted by the

organization until the suspension has been lifted by the Department or a court of competent jurisdiction.

1995, c. 837; 2003, c. 884.

§ 18.2-340.37. Criminal penalties

A. Any person who violates the provisions of this article or who willfully and knowingly files, or causes to be filed, a false application, report or other document or who willfully and knowingly makes a false statement, or causes a false statement to be made, on any application, report or other document required to be filed with or made to the Department shall be guilty of a Class 1 misdemeanor.

B. Each day in violation shall constitute a separate offense.

C. Any person who converts funds derived from any charitable gaming to his own or another's use, when the amount of funds is less than $200, shall be guilty of petit larceny and, when the amount of funds is $200 or more, shall be guilty of grand larceny. The provisions of this section shall not preclude the applicability of any other provision of the criminal law of the Commonwealth that may apply to any course of conduct that violates this section.

1995, c. 837; 1996, c. 919; 2003, c. 884; 2006, c. 644.

§ 18.2-340.38. Repealed

Repealed by Acts 2001, c. 754, cl. 2.

Article 2 - SUNDAY OFFENSES [Repealed]

§§ 18.2-341 through 18.2-343. Repealed

Repealed by Acts 2004, c. 608.

Article 3 - COMMERCIAL SEX TRAFFICKING, PROSTITUTION, ETC.

§ 18.2-344. Fornication

Any person, not being married, who voluntarily shall have sexual intercourse with any other person, shall be guilty of fornication, punishable as a Class 4 misdemeanor.

Code 1950, §§ 18.1-188, 18.1-190; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-345. Repealed

Repealed by Acts 2013, c. 621.

§ 18.2-346. Prostitution; commercial sexual conduct; commercial exploitation of a minor; penalties

A. Any person who, for money or its equivalent, (i) commits adultery, fornication, or any act in violation of § 18.2-361, performs cunnilingus, fellatio, or anilingus upon or by another person, or engages in anal intercourse or (ii) offers to commit adultery, fornication, or any act in violation of § 18.2-361, perform cunnilingus, fellatio, or anilingus upon or by another person, or engage in

anal intercourse and thereafter does any substantial act in furtherance thereof is guilty of prostitution, which is punishable as a Class 1 misdemeanor.

B. Any person who offers money or its equivalent to another for the purpose of engaging in sexual acts as enumerated in subsection A and thereafter does any substantial act in furtherance thereof is guilty of solicitation of prostitution, which is punishable as a Class 1 misdemeanor. However, any person who solicits prostitution from a minor (i) 16 years of age or older is guilty of a Class 6 felony or (ii) younger than 16 years of age is guilty of a Class 5 felony.

Code 1950, § 18.1-194; 1960, c. 358; 1975, cc. 14, 15; 1980, c. 534; 1993, c. 609; 2013, cc. 417, 467; 2014, c. 794.

§ 18.2-346.1. Testing of convicted prostitutes and injection drug users for infection with human immunodeficiency viruses and hepatitis C; limited disclosure

A. As soon as practicable following conviction of any person for violation of § 18.2-346 or 18.2-361, or any violation of Article 1 (§ 18.2-247 et seq.) or 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 involving the possession, sale, or use of a controlled substance in a form amenable to intravenous use; or the possession, sale, or use of hypodermic syringes, needles, or other objects designed or intended for use in parenterally injecting controlled substances into the human body, such person shall be required to submit to testing for infection with human immunodeficiency viruses and hepatitis C. The convicted person shall receive counseling from personnel of the Department of Health concerning (i) the meaning of the test, (ii) acquired immunodeficiency syndrome and hepatitis C, and (iii) the transmission and prevention of infection with human immunodeficiency viruses and hepatitis C.

B. Tests for human immunodeficiency viruses shall be conducted to confirm any initial positive test results before any test result shall be determined to be positive for infection. The results of such test shall be confidential as provided in § 32.1-36.1 and shall be disclosed to the person who is the subject of the test and to the Department of Health as required by § 32.1-36. The Department shall conduct surveillance and investigation in accordance with the requirements of § 32.1-39.

C. Upon receiving a report of a positive test for hepatitis C, the State Health Commissioner may share protected health information relating to such positive test with relevant sheriffs' offices, the state police, local police departments, adult or youth correctional facilities, salaried or volunteer firefighters, paramedics or emergency medical technicians, officers of the court, and regional or local jails (i) to the extent necessary to advise exposed individuals of the risk of infection and to enable exposed individuals to seek appropriate testing and treatment, and (ii) as may be needed to prevent and control disease and is deemed necessary to prevent serious harm and serious threats to the health and safety of individuals and the public.

The disclosed protected health information shall be held confidential; no person to whom such information is disclosed shall redisclose or otherwise reveal the protected health information

without first obtaining the specific authorization from the individual who was the subject of the test for such redisclosure.

Such protected health information shall only be used to protect the health and safety of individuals and the public in conformance with the regulations concerning patient privacy promulgated by the federal Department of Health and Human Services, as such regulations may be amended.

D. The results of the tests shall not be admissible in any criminal proceeding related to prostitution or drug use.

The cost of the tests shall be paid by the Commonwealth and taxed as part of the cost of such criminal proceedings.

1990, c. 913; 2005, c. 438.

§ 18.2-347. Keeping, residing in or frequenting a bawdy place; "bawdy place" defined

It shall be unlawful for any person to keep any bawdy place, or to reside in or at or visit, for immoral purposes, any such bawdy place. Each and every day such bawdy place shall be kept, resided in or visited, shall constitute a separate offense. In a prosecution under this section the general reputation of the place may be proved.

As used in this Code, "bawdy place" shall mean any place within or without any building or structure which is used or is to be used for lewdness, assignation or prostitution.

Code 1950, §§ 18.1-195, 18.1-196; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-348. Aiding prostitution or illicit sexual intercourse, etc

It is unlawful for any person or any officer, employee, or agent of any firm, association, or corporation, with knowledge of, or good reason to believe, the immoral purpose of such visit, to take or transport or assist in taking or transporting, or offer to take or transport on foot or in any way, any person to a place, whether within or without any building or structure, used or to be used for the purpose of lewdness, assignation, or prostitution within the Commonwealth, or to procure or assist in procuring for the purpose of illicit sexual intercourse, anal intercourse, cunnilingus, fellatio, or anilingus or any act violative 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.

Code 1950, § 18.1-197; 1960, c. 358; 1975, cc. 14, 15; 1980, c. 534; 2014, c. 794.

§ 18.2-349. Using vehicles to promote prostitution or unlawful sexual intercourse

It shall be unlawful for any owner or chauffeur of any vehicle, with knowledge or reason to believe the same is to be used for such purpose, to use the same or to allow the same to be used for the purpose of prostitution or unlawful sexual intercourse, or to aid or promote such prostitution or unlawful sexual intercourse by the use of any such vehicle.

Code 1950, § 18.1-198; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-350. Confinement of convicted prostitutes and persons violating §§ 18.2-347 through 18.2-349

Every person convicted of being a prostitute and every person convicted of violating any of the provisions of §§ 18.2-347 through 18.2-349 shall be guilty of a Class 1 misdemeanor; provided, however, that in any case in which a city or county farm or hospital is available for the confinement of persons so convicted, confinement may be in such farm or hospital, in the discretion of the court or judge.

Code 1950, § 18.1-199; 1960, c. 358; 1975, cc. 14, 15.

§§ 18.2-351 through 18.2-353. Repealed

Repealed by Acts 2004, c. 459.

§ 18.2-354. Reserved

Reserved.

§ 18.2-355. Taking, detaining, etc., person for prostitution, etc., or consenting thereto; human trafficking

Any person who:

(1) For purposes of prostitution or unlawful sexual intercourse, takes any person into, or persuades, encourages or causes any person to enter, a bawdy place, or takes or causes such person to be taken to any place against his or her will for such purposes; or

(2) Takes or detains a person against his or her will with the intent to compel such person, by force, threats, persuasions, menace or duress, to marry him or her or to marry any other person, or to be defiled; or

(3) Being parent, guardian, legal custodian or one standing in loco parentis of a person, consents to such person being taken or detained by any person for the purpose of prostitution or unlawful sexual intercourse; or

(4) For purposes of prostitution, takes any minor into, or persuades, encourages, or causes any minor to enter, a bawdy place, or takes or causes such person to be taken to any place for such purposes; is guilty of pandering.

A violation of subdivision (1), (2), or (3) is punishable as a Class 4 felony. A violation of subdivision (4) is punishable as a Class 3 felony.

Code 1950, § 18.1-204; 1960, c. 358; 1975, cc. 14, 15; 1980, c. 534; 1997, c. 555; 2014, cc. 649, 706; 2015, c. 395.

§ 18.2-356. Receiving money for procuring person; penalties

Any person who receives any money or other valuable thing for or on account of (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 is guilty of a Class 4 felony. Any person who violates clause (i) or (ii) with a person under the age of 18 is guilty of a Class 3 felony.

Code 1950, § 18.1-206; 1960, c. 358; 1975, cc. 14, 15; 1980, c. 534; 2011, c. 785; 2014, c. 794; 2015, cc. 690, 691.

§ 18.2-357. Receiving money from earnings of male or female prostitute; penalties

Any person who shall knowingly receive any money or other valuable thing from the earnings of any male or female engaged in prostitution, except for a consideration deemed good and valuable in law, shall be guilty of pandering, punishable as a Class 4 felony. Any person who violates this section by receiving money or other valuable thing from a person under the age of 18 is guilty of a Class 3 felony.

Code 1950, § 18.1-208; 1960, c. 358; 1975, cc. 14, 15; 1980, c. 534; 2015, cc. 690, 691.

§ 18.2-357.1. Commercial sex trafficking; penalties

A. Any person who, with the intent to receive money or other valuable thing or to assist another in receiving money or other valuable thing from the earnings of a person from prostitution or unlawful sexual intercourse in violation of subsection A of § 18.2-346, solicits, invites, recruits, encourages, or otherwise causes or attempts to cause a person to violate subsection A of § 18.2-346 is guilty of a Class 5 felony.

B. Any person who violates subsection A through the use of force, intimidation, or deception is guilty of a Class 4 felony.

C. Any adult who violates subsection A with a person under the age of 18 is guilty of a Class 3 felony.

2015, cc. 690, 691.

§ 18.2-358. Repealed

Repealed by Acts 2004, c. 459.

§ 18.2-359. Venue for criminal sexual assault or where any person transported for criminal sexual assault, attempted criminal sexual assault, or purposes of unlawful sexual intercourse, crimes against nature, and indecent liberties with children; venue for such crimes when coupled with a violent felony

A. Any person transporting or attempting to transport through or across the Commonwealth any person for the purposes of unlawful sexual intercourse, anal intercourse, cunnilingus, fellatio, or anilingus or prostitution, or for the purpose of committing any crime specified in § 18.2-361, 18.2-370, or 18.2-370.1, or for the purposes of committing or attempting to commit criminal sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4, may be presented, indicted, tried, and convicted in any county or city in which any part of such transportation occurred.

B. Venue for the trial of any person charged with committing or attempting to commit any crime specified in § 18.2-361, 18.2-370, or 18.2-370.1, or sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 may be had in the county or city in which such crime is alleged to have occurred or, with the concurrence of the attorney for the Commonwealth in the county or city in which the crime is alleged to have occurred, in any county or city through which the victim was transported by the defendant prior to the commission of such offense.

C. Venue for the trial of any person charged with committing or attempting to commit criminal sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 against a person under 18 years of age may be had in the county or city in which such crime is alleged to have occurred or, when the county or city where the offense is alleged to have occurred cannot be determined, then in the county or city where the person under 18 years of age resided at the time of the offense.

D. Venue for the trial of any person charged with committing or attempting to commit (i) any crime specified in § 18.2-361, 18.2-370, or 18.2-370.1, or criminal sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 and (ii) any violent felony as defined in § 17.1-805 or any act of violence as defined in § 19.2-297.1 arising out of the same incident, occurrence, or transaction may be had in the county or city in which any such crime is alleged to have occurred or, with the concurrence of the attorney for the Commonwealth in the county or city in which the crime is alleged to have occurred, in any county or city through which the victim was transported by the defendant in the commission of such offense.

Code 1950, § 18.1-210; 1960, c. 358; 1975, cc. 14, 15; 1976, c. 54; 1978, c. 610; 1981, c. 397; 2004, c. 869; 2011, c. 763; 2014, c. 794; 2015, c. 555.

§ 18.2-360. Competency of persons to testify in prosecutions under §§ 18.2-355 through 18.2-361

Any male or female referred to in §§ 18.2-355 through 18.2-361 shall be a competent witness in any prosecution under such sections to testify to any and all matters, including conversations by or with the accused with third persons in his or her presence, notwithstanding he or she may have married the accused either before or after the violation of any of the provisions of this section; but such witness shall not be compelled to testify after such marriage.

Code 1950, § 18.1-211; 1960, c. 358; 1975, cc. 14, 15; 1980, c. 534.

§ 18.2-361. Crimes against nature; penalty

A. If any person carnally knows in any manner any brute animal or voluntarily submits to such carnal knowledge, he is guilty of a Class 6 felony.

B. Any person who performs or causes to be performed cunnilingus, fellatio, anilingus, or anal intercourse upon or by his daughter or granddaughter, son or grandson, brother or sister, or father or mother is guilty of a Class 5 felony. However, if a parent or grandparent commits any such act with his child or grandchild and such child or grandchild is at least 13 but less than 18 years of age at the time of the offense, such parent or grandparent is guilty of a Class 3 felony.

C. For the purposes of this section, parent includes step-parent, grandparent includes step-grandparent, child includes step-child, and grandchild includes step-grandchild.

Code 1950, § 18.1-212; 1960, c. 358; 1968, c. 427; 1975, cc. 14, 15; 1977, c. 285; 1981, c. 397; 1993, c. 450; 2005, c. 185; 2014, c. 794.

Article 4 - FAMILY OFFENSES; CRIMES AGAINST CHILDREN, ETC.

§ 18.2-362. Person marrying when husband or wife is living; penalty; venue

If any person, being married, shall, during the life of the husband or wife, marry another person in this Commonwealth, or if the marriage with such other person take place out of the Commonwealth, shall thereafter cohabit with such other person in this Commonwealth, he or she shall be guilty of a Class 4 felony. Venue for a violation of this section may be in the county or city where the subsequent marriage occurred or where the parties to the subsequent marriage cohabited.

Code 1950, § 20-41; 1975, cc. 14, 15; 2003, c. 99.

§ 18.2-363. Leaving Commonwealth to evade law against bigamy

If any persons, resident in this Commonwealth, one of whom has a husband or wife living, shall, with the intention of returning to reside in this Commonwealth, go into another state or country and there intermarry and return to and reside in this Commonwealth cohabiting as man and wife, such marriage shall be governed by the same law, in all respects, as if it had been solemnized in this Commonwealth.

Code 1950, § 20-44; 1975, cc. 14, 15.

§ 18.2-364. Exceptions to preceding sections

Sections 18.2-362 and 18.2-363 shall not extend to a person whose husband or wife shall have been continuously absent from such person for seven years next before marriage of such person to another, and shall not have been known by such person to be living within that time; nor to a person who can show that the second marriage was contracted in good faith under a reasonable belief that the former consort was dead; nor to a person who shall, at the time of the subsequent marriage, have been divorced from the bond of the former marriage; nor to a person whose former marriage was void.

Code 1950, § 20-42; 1975, cc. 14, 15.

§ 18.2-365. Adultery defined; penalty

Any person, being married, who voluntarily shall have sexual intercourse with any person not his or her spouse shall be guilty of adultery, punishable as a Class 4 misdemeanor.

Code 1950, §§18.1-187, 18.1-190; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-366. Adultery and fornication by persons forbidden to marry; incest

A. Any person who commits adultery or fornication with any person whom he or she is forbidden by law to marry shall be guilty of a Class 1 misdemeanor except as provided by subsection B.

B. Any person who commits adultery or fornication with his daughter or granddaughter, or with her son or grandson, or her father or his mother, shall be guilty of a Class 5 felony. However, if a parent or grandparent commits adultery or fornication with his or her child or grandchild, and such child or grandchild is at least thirteen years of age but less than eighteen years of age at the time of the offense, such parent or grandparent shall be guilty of a Class 3 felony.

C. For the purposes of this section, parent includes step-parent, grandparent includes step-grandparent, child includes a step-child, and grandchild includes a step-grandchild.

Code 1950, § 18.1-191; 1960, c. 358; 1975, cc. 14, 15; 1981, c. 397; 1993, c. 703; 2014, c. 542.

§ 18.2-367. Repealed

Repealed by Acts 2004, c. 459.

§ 18.2-368. Placing or leaving wife for prostitution; penalty

Any person who, by force, fraud, intimidation, or threats, places or leaves or procures any other person to place or leave his wife in a bawdy place for the purpose of prostitution or unlawful sexual intercourse, anal intercourse, cunnilingus, fellatio, or anilingus is guilty of pandering, punishable as a Class 4 felony.

Code 1950, § 18.1-207; 1960, c. 358; 1975, cc. 14, 15; 2014, c. 794.

§ 18.2-369. Abuse and neglect of incapacitated adults; penalty

A. It shall be unlawful for any responsible person to abuse or neglect any incapacitated adult as defined in this section. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect does not result in serious bodily injury or disease to the incapacitated adult is guilty of a Class 1 misdemeanor. Any responsible person who is convicted of a second or subsequent offense under this subsection is guilty of a Class 6 felony.

B. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect results in serious bodily injury or disease to the incapacitated adult is guilty of a Class 4 felony. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect results in the death of the incapacitated adult is guilty of a Class 3 felony.

C. For purposes of this section:

"Abuse" means (i) knowing and willful conduct that causes physical injury or pain or (ii) knowing and willful use of physical restraint, including confinement, as punishment, for convenience or as a substitute for treatment, except where such conduct or physical restraint, including confinement, is a part of care or treatment and is in furtherance of the health and safety of the incapacitated person.

"Incapacitated adult" means any person 18 years of age or older who is impaired by reason of mental illness, intellectual disability, physical illness or disability, advanced age or other causes to the extent the adult lacks sufficient understanding or capacity to make, communicate or carry out reasonable decisions concerning his well-being.

"Neglect" means the knowing and willful failure by a responsible person to provide treatment, care, goods or services which results in injury to the health or endangers the safety of an incapacitated adult.

"Responsible person" means a person who has responsibility for the care, custody or control of an incapacitated person by operation of law or who has assumed such responsibility voluntarily, by contract or in fact.

"Serious bodily injury or disease" shall include but not be limited to (i) disfigurement, (ii) a fracture, (iii) a severe burn or laceration, (iv) mutilation, (v) maiming, or (vi) life-threatening internal injuries or conditions, whether or not caused by trauma.

D. No responsible person shall be in violation of this section whose conduct was (i) in accordance with the informed consent of the incapacitated person or a person authorized to consent on his behalf; (ii) in accordance with a declaration by the incapacitated person under the Natural Death Act of Virginia (§ 54.1-2981 et seq.) or with the provisions of a valid medical power of attorney; (iii) in accordance with the wishes of the incapacitated person or a person authorized to consent on behalf of the incapacitated person and in accord with the tenets and practices of a church or religious denomination; (iv) incident to necessary movement of, placement of or protection from harm to the incapacitated person; or (v) a bona fide, recognized or approved practice to provide medical care.

1992, c. 551; 1994, c. 620; 2000, c. 796; 2001, c. 181; 2004, c. 863; 2007, cc. 562, 653; 2012, cc. 476, 507.

§ 18.2-370. Taking indecent liberties with children; penalties

A. Any person 18 years of age or over, who, with lascivious intent, knowingly and intentionally commits any of the following acts with any child under the age of 15 years is guilty of a Class 5 felony:

(1) Expose his or her sexual or genital parts to any child to whom such person is not legally married or propose that any such child expose his or her sexual or genital parts to such person; or

(2) [Repealed.]

(3) Propose that any such child feel or fondle his own sexual or genital parts or the sexual or genital parts of such person or propose that such person feel or fondle the sexual or genital parts of any such child; or

(4) Propose to such child the performance of an act of sexual intercourse, anal intercourse, cunnilingus, fellatio, or anilingus or any act constituting an offense under § 18.2-361; or

(5) Entice, allure, persuade, or invite any such child to enter any vehicle, room, house, or other place, for any of the purposes set forth in the preceding subdivisions of this subsection.

B. Any person 18 years of age or over who, with lascivious intent, knowingly and intentionally receives money, property, or any other remuneration for allowing, encouraging, or enticing any person under the age of 18 years to perform in or be a subject of sexually explicit visual material as defined in § 18.2-374.1 or who knowingly encourages such person to perform in or be a subject of sexually explicit material is guilty of a Class 5 felony.

C. Any person who is convicted of a second or subsequent violation of this section is guilty of a Class 4 felony, provided that (i) the offenses were not part of a common act, transaction or scheme; (ii) the accused was at liberty as defined in § 53.1-151 between each conviction; and (iii) it is admitted, or found by the jury or judge before whom the person is tried, that the accused was previously convicted of a violation of this section.

D. Any parent, step-parent, grandparent, or step-grandparent who commits a violation of either this section or clause (v) or (vi) of subsection A of § 18.2-370.1 (i) upon his child, step-child, grandchild, or step-grandchild who is at least 15 but less than 18 years of age is guilty of a Class 5 felony or (ii) upon his child, step-child, grandchild, or step-grandchild less than 15 years of age is guilty of a Class 4 felony.

Code 1950, §§ 18.1-213 through 18.1-215; 1960, c. 358; 1973, c. 131; 1975, cc. 14, 15; 1979, c. 348; 1981, c. 397; 1986, c. 503; 2000, c. 333; 2001, cc. 776, 840; 2005, cc. 185, 762; 2013, cc. 423, 470; 2014, c. 794.

§ 18.2-370.01. Indecent liberties by children; penalty

Any child over the age of thirteen years but under the age of eighteen who, with lascivious intent, knowingly and intentionally exposes his or her sexual or genital parts to any other child under the age of fourteen years who, measured by actual dates of birth, is five or more years the accused's junior, or proposes that any such child expose his or her sexual or genital parts to such person, shall be guilty of a Class 1 misdemeanor.

1998, c. 825.

§ 18.2-370.1. Taking indecent liberties with child by person in custodial or supervisory relationship; penalties

A. Any person 18 years of age or older who, except as provided in § 18.2-370, maintains a custodial or supervisory relationship over a child under the age of 18 and is not legally married to such child and such child is not emancipated who, with lascivious intent, knowingly and intentionally (i) proposes that any such child feel or fondle the sexual or genital parts of such person or that such person feel or handle the sexual or genital parts of the child; or (ii) proposes to such child the performance of an act of sexual intercourse, anal intercourse, cunnilingus, fellatio, or anilingus or any act constituting an offense under § 18.2-361; or (iii) exposes his or her sexual or genital parts to such child; or (iv) proposes that any such child expose his or her sexual or genital

parts to such person; or (v) proposes to the child that the child engage in sexual intercourse, sodomy or fondling of sexual or genital parts with another person; or (vi) sexually abuses the child as defined in subdivision 6 of § 18.2-67.10 is guilty of a Class 6 felony.

B. Any person who is convicted of a second or subsequent violation of this section is guilty of a Class 5 felony, provided that (i) the offenses were not part of a common act, transaction or scheme; (ii) the accused was at liberty as defined in § 53.1-151 between each conviction; and (iii) it is admitted, or found by the jury or judge before whom the person is tried, that the accused was previously convicted of a violation of this section.

1982, c. 521; 1986, c. 503; 1991, c. 517; 2001, c. 840; 2005, c. 185; 2014, c. 794.

§ 18.2-370.2. Sex offenses prohibiting proximity to children; penalty

A. "Offense prohibiting proximity to children" means a violation or an attempt to commit a violation of (i) subsection A of § 18.2-47, clause (ii) or (iii) of § 18.2-48, subsection B of § 18.2-361, or subsection B of § 18.2-366, where the victim of one of the foregoing offenses was a minor, or (ii) subsection A (iii) of § 18.2-61, §§ 18.2-63, 18.2-64.1, subdivision A 1 of § 18.2-67.1, subdivision A 1 of § 18.2-67.2, or subdivision A 1 or A 4 (a) of § 18.2-67.3, or §§ 18.2-370, 18.2-370.1, clause (ii) of § 18.2-371, §§ 18.2-374.1, 18.2-374.1:1 or § 18.2-379. As of July 1, 2006, "offense prohibiting proximity to children" shall include a violation of § 18.2-472.1, when the offense requiring registration was one of the foregoing offenses.

B. Every adult who is convicted of an offense prohibiting proximity to children when the offense occurred on or after July 1, 2000, shall as part of his sentence be forever prohibited from loitering within 100 feet of the premises of any place he knows or has reason to know is a primary, secondary or high school. In addition, every adult who is convicted of an offense prohibiting proximity to children when the offense occurred on or after July 1, 2006, shall as part of his sentence be forever prohibited from loitering within 100 feet of the premises of any place he knows or has reason to know is a child day program as defined in § 63.2-100.

C. Every adult who is convicted of an offense prohibiting proximity to children, when the offense occurred on or after July 1, 2008, shall as part of his sentence be forever prohibited from going, for the purpose of having any contact whatsoever with children that are not in his custody, within 100 feet of the premises of any place owned or operated by a locality that he knows or should know is a playground, athletic field or facility, or gymnasium.

A violation of this section is punishable as a Class 6 felony.

2000, c. 770; 2006, cc. 857, 914; 2008, c. 579.

§ 18.2-370.3. Sex offenses prohibiting residing in proximity to children; penalty

A. Every adult who is convicted of an offense occurring on or after July 1, 2006, where the offender is more than three years older than the victim, of one of the following qualifying offenses: (i) clause (iii) of subsection A of § 18.2-61, (ii) subdivision A 1 of § 18.2-67.1, or (iii) subdivision A 1 of § 18.2-67.2, shall be forever prohibited from residing within 500 feet of the premises of any

place he knows or has reason to know is a child day center as defined in § 63.2-100, or a primary, secondary, or high school. A violation of this section is a Class 6 felony. The provisions of this section shall only apply if the qualifying offense was done in the commission of, or as a part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89, 18.2-90, or 18.2-91, or (iii) § 18.2-51.2.

B. An adult who is convicted of an offense as specified in subsection A of this section and has established a lawful residence shall not be in violation of this section if a child day center or a primary, secondary, or high school is established within 500 feet of his residence subsequent to his conviction.

C. Every adult who is convicted of an offense occurring on or after July 1, 2008, where the offender is more than three years older than the victim, of one of the following qualifying offenses: (i) clause (iii) of subsection A of § 18.2-61, (ii) subdivision A 1 of § 18.2-67.1, or (iii) subdivision A 1 of § 18.2-67.2, shall be forever prohibited from residing within 500 feet of the boundary line of any place he knows is a public park when such park (i) is owned and operated by a county, city or town, (ii) shares a boundary line with a primary, secondary, or high school and (iii) is regularly used for school activities. A violation of this section is a Class 6 felony. The provisions of this section shall only apply if the qualifying offense was done in the commission of, or as a part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89, 18.2-90, or 18.2-91, or (iii) § 18.2-51.2.

D. An adult who is convicted of an offense as specified in subsection C and has established a lawful residence shall not be in violation of this section if a public park that (i) is owned and operated by a county, city or town, (ii) shares a boundary line with a primary, secondary, or high school, and (iii) is regularly used for school activities, is established within 500 feet of his residence subsequent to his conviction.

2006, cc. 857, 914; 2008, c. 726.

§ 18.2-370.4. Sex offenses prohibiting working on school property; penalty

A. Every adult who has been convicted of an offense occurring on or after July 1, 2006, where the offender is more than three years older than the victim, of one of the following qualifying offenses: (i) clause (iii) of subsection A of § 18.2-61, (ii) subdivision A 1 of § 18.2-67.1, or (iii) subdivision A 1 of § 18.2-67.2, shall be forever prohibited from working or engaging in any volunteer activity on property he knows or has reason to know is public or private elementary or secondary school or child day center property. A violation of this section is punishable as a Class 6 felony. The provisions of this section shall only apply if the qualifying offense was done in the commission of, or as a part of the same course of conduct of, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or 18.2-48, (ii) § 18.2-89, 18.2-90, or 18.2-91, or (iii) § 18.2-51.2.

B. An employer of a person who violates this section, or any person who procures volunteer activity by a person who violates this section, and the school or child day center where the violation of this section occurred, are immune from civil liability unless they had actual knowledge that such person had been convicted of an offense listed in subsection A.

2006, cc. 853, 857, 914.

§ 18.2-370.5. Sex offenses prohibiting entry onto school or other property; penalty

A. Every adult who is convicted of a sexually violent offense, as defined in § 9.1-902, shall be prohibited from entering or being present (i) during school hours, and during school-related or school-sponsored activities upon any property he knows or has reason to know is a public or private elementary or secondary school or child day center property; (ii) on any school bus as defined in § 46.2-100; or (iii) upon any property, public or private, during hours when such property is solely being used by a public or private elementary or secondary school for a school-related or school-sponsored activity.

B. The provisions of clauses (i) and (iii) of subsection A shall not apply to such adult if (i) he is a lawfully registered and qualified voter, and is coming upon such property solely for purposes of casting his vote; (ii) he is a student enrolled at the school; or (iii) he has obtained a court order pursuant to subsection C allowing him to enter and be present upon such property, has obtained the permission of the school board or of the owner of the private school or child day center or their designee for entry within all or part of the scope of the lifted ban, and is in compliance with such school board's, school's or center's terms and conditions and those of the court order.

C. Every adult who is prohibited from entering upon school or child day center property pursuant to subsection A may after notice to the attorney for the Commonwealth and either (i) the proprietor of the child day center, (ii) the Superintendent of Public Instruction and the chairman of the school board of the school division in which the school is located, or (iii) the chief administrator of the school if such school is not a public school, petition the circuit court in the county or city where the school or child day center is located for permission to enter such property. The court shall direct that the petitioner shall cause notice of the time and place of the hearing on his petition to be published once a week for two successive weeks in a newspaper meeting the requirements of § 8.01-324. The newspaper notice shall contain a provision stating that written comments regarding the petition may be submitted to the clerk of court at least five days prior to the hearing. For good cause shown, the court may issue an order permitting the petitioner to enter and be present on such property, subject to whatever restrictions of area, reasons for being present, or time limits the court deems appropriate.

D. A violation of this section is punishable as a Class 6 felony.

2007, cc. 284, 370; 2008, c. 781; 2010, c. 402; 2011, cc. 648, 796, 855; 2015, c. 688.

§ 18.2-370.6. Penetration of mouth of child with lascivious intent; penalty

Any person 18 years of age or older who, with lascivious intent, kisses a child under the age of 13 on the mouth while knowingly and intentionally penetrating the mouth of such child with his tongue is guilty of a Class 1 misdemeanor.

2008, c. 772.

§ 18.2-371. Causing or encouraging acts rendering children delinquent, abused, etc.; penalty; abandoned infant

Any person 18 years of age or older, including the parent of any child, who (i) willfully contributes to, encourages, or causes any act, omission, or condition that renders a child delinquent, in need of services, in need of supervision, or abused or neglected as defined in § 16.1-228 or (ii) engages in consensual sexual intercourse or anal intercourse with or performs cunnilingus, fellatio, or anilingus upon or by a child 15 or older not his spouse, child, or grandchild is guilty of a Class 1 misdemeanor. This section shall not be construed as repealing, modifying, or in any way affecting §§ 18.2-18, 18.2-19, 18.2-61, 18.2-63, and 18.2-347.

If the prosecution under this section is based solely on the accused parent having left the child at a hospital or emergency medical services agency, it shall be an affirmative defense to prosecution of a parent under this section that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended emergency medical services agency that employs emergency medical services personnel, within the first 14 days of the child's life. In order for the affirmative defense to apply, the child shall be delivered in a manner reasonably calculated to ensure the child's safety.

Code 1950, § 18.1-14; 1960, c. 358; 1975, cc. 14, 15; 1981, cc. 397, 568; 1990, c. 797; 1991, c. 295; 1993, c. 411; 2003, cc. 816, 822; 2006, c. 935; 2008, cc. 174, 206; 2014, c. 794; 2015, cc. 502, 503.

§ 18.2-371.1. Abuse and neglect of children; penalty; abandoned infant

A. Any parent, guardian, or other person responsible for the care of a child under the age of 18 who by willful act or willful omission or refusal to provide any necessary care for the child's health causes or permits serious injury to the life or health of such child is guilty of a Class 4 felony. For purposes of this subsection, "serious injury" includes but is not limited to (i) disfigurement, (ii) a fracture, (iii) a severe burn or laceration, (iv) mutilation, (v) maiming, (vi) forced ingestion of dangerous substances, and (vii) life-threatening internal injuries. For purposes of this subsection, "willful act or willful omission" includes operating or engaging in the conduct of a child welfare agency as defined in § 63.2-100 without first obtaining a license such person knows is required by Subtitle IV (§ 63.2-1700 et seq.) of Title 63.2 or after such license has been revoked or has expired and not been renewed.

B.1. Any parent, guardian, or other person responsible for the care of a child under the age of 18 whose willful act or omission in the care of such child was so gross, wanton, and culpable as to show a reckless disregard for human life is guilty of a Class 6 felony.

2. If a prosecution under this subsection is based solely on the accused parent having left the child at a hospital or emergency medical services agency, it shall be an affirmative defense to prosecution of a parent under this subsection that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended emergency medical services agency that employs emergency medical services personnel, within the first 14 days of the child's life. In order for the affirmative defense to apply, the child shall be delivered in a manner reasonably calculated to ensure the child's safety.

C. Any parent, guardian, or other person having care, custody, or control of a minor child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall not, for that reason alone, be considered in violation of this section.

1981, c. 568; 1988, c. 228; 1990, c. 638; 1993, c. 628; 2003, cc. 816, 822; 2006, c. 935; 2015, cc. 502, 503; 2016, c. 705.

§ 18.2-371.2. Prohibiting purchase or possession of tobacco products, nicotine vapor products, and alternative nicotine products by minors or sale of tobacco products, nicotine vapor products, and alternative nicotine products to minors

A. No person shall sell to, distribute to, purchase for, or knowingly permit the purchase by any person less than 18 years of age, knowing or having reason to believe that such person is less than 18 years of age, any tobacco product, nicotine vapor product, or alternative nicotine product.

Tobacco products may be sold from a vending machine only if the machine is (i) posted with a notice, in a conspicuous manner and place, indicating that the purchase or possession of tobacco products by minors is unlawful and (ii) located in a place which is not open to the general public and is not generally accessible to minors. An establishment which prohibits the presence of minors unless accompanied by an adult is not open to the general public.

B. No person less than 18 years of age shall attempt to purchase, purchase, or possess any tobacco product, nicotine vapor product, or alternative nicotine product. The provisions of this subsection shall not be applicable to the possession of tobacco products, nicotine vapor products, or alternative nicotine products by a person less than 18 years of age making a delivery of tobacco products, nicotine vapor products, or alternative nicotine products in pursuance of his employment. This subsection shall not apply to purchase, attempt to purchase, or possession by a law-enforcement officer or his agent when the same is necessary in the performance of his duties.

C. No person shall sell a tobacco product, nicotine vapor product, or alternative nicotine product to any individual who does not demonstrate, by producing a driver's license or similar photo identification issued by a government agency, that the individual is at least 18 years of age. Such identification is not required from an individual whom the person has reason to believe is at least 18 years of age or who the person knows is at least 18 years of age. Proof that the person demanded, was shown, and reasonably relied upon a photo identification stating that the individual was at

least 18 years of age shall be a defense to any action brought under this subsection. In determining whether a person had reason to believe an individual is at least 18 years of age, the trier of fact may consider, but is not limited to, proof of the general appearance, facial characteristics, behavior, and manner of the individual.

This subsection shall not apply to mail order or Internet sales, provided that the person offering the tobacco product, nicotine vapor product, or alternative nicotine product for sale through mail order or the Internet (i) prior to the sale of the tobacco product, nicotine vapor product, or alternative nicotine product verifies that the purchaser is at least 18 years of age through a commercially available database that is regularly used by businesses or governmental entities for the purpose of age and identity verification and (ii) uses a method of mailing, shipping, or delivery that requires the signature of a person at least 18 years of age before the tobacco product, nicotine vapor product, or alternative nicotine product will be released to the purchaser.

D. A violation of subsection A or C by an individual or by a separate retail establishment that involves a nicotine vapor product, alternative nicotine product, or tobacco product other than a bidi is punishable by a civil penalty not to exceed $100 for a first violation, a civil penalty not to exceed $200 for a second violation, and a civil penalty not to exceed $500 for a third or subsequent violation.

A violation of subsection A or C by an individual or by a separate retail establishment that involves the sale, distribution, or purchase of a bidi is punishable by a civil penalty in the amount of $500 for a first violation, a civil penalty in the amount of $1,000 for a second violation, and a civil penalty in the amount of $2,500 for a third or subsequent violation. Where a defendant retail establishment offers proof that it has trained its employees concerning the requirements of this section, the court shall suspend all of the penalties imposed hereunder. However, where the court finds that a retail establishment has failed to so train its employees, the court may impose a civil penalty not to exceed $1,000 in lieu of any penalties imposed hereunder for a violation of subsection A or C involving a nicotine vapor product, alternative nicotine product, or tobacco product other than a bidi.

A violation of subsection B is punishable by a civil penalty not to exceed $100 for a first violation and a civil penalty not to exceed $250 for a second or subsequent violation. A court may, as an alternative to the civil penalty, and upon motion of the defendant, prescribe the performance of up to 20 hours of community service for a first violation of subsection B and up to 40 hours of community service for a second or subsequent violation. If the defendant fails or refuses to complete the community service as prescribed, the court may impose the civil penalty. Upon a violation of subsection B, the judge may enter an order pursuant to subdivision A 9 of § 16.1-278.8.

Any attorney for the Commonwealth of the county or city in which an alleged violation occurred may bring an action to recover the civil penalty, which shall be paid into the state treasury. Any law-enforcement officer may issue a summons for a violation of subsection A, B, or C.

E. 1. Cigarettes shall be sold only in sealed packages provided by the manufacturer, with the required health warning. The proprietor of every retail establishment that offers for sale any tobacco product, nicotine vapor product, or alternative nicotine product shall post in a conspicuous manner and place a sign or signs indicating that the sale of tobacco products, nicotine vapor products, or alternative nicotine products to any person under 18 years of age is prohibited by law. Any attorney for the county, city, or town in which an alleged violation of this subsection occurred may enforce this subsection by civil action to recover a civil penalty not to exceed $50. The civil penalty shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to the county, city, or town which instituted the action.

2. For the purpose of compliance with regulations of the Substance Abuse and Mental Health Services Administration published at 61 Federal Register 1492, the Department of Agriculture and Consumer Services may promulgate regulations which allow the Department to undertake the activities necessary to comply with such regulations.

3. Any attorney for the county, city, or town in which an alleged violation of this subsection occurred may enforce this subsection by civil action to recover a civil penalty not to exceed $100. The civil penalty shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to the county, city, or town which instituted the action.

F. Nothing in this section shall be construed to create a private cause of action.

G. (Effective until July 1, 2018) Agents of the Virginia Alcoholic Beverage Control Board designated pursuant to § 4.1-105 may issue a summons for any violation of this section.

G. (Effective July 1, 2018) Agents of the Virginia Alcoholic Beverage Control Authority designated pursuant to § 4.1-105 may issue a summons for any violation of this section.

H. As used in this section:

"Alternative nicotine product" means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. "Alternative nicotine product" does not include any nicotine vapor product, tobacco product, or product regulated as a drug or device by the U.S. Food and Drug Administration (FDA) under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

"Bidi" means a product containing tobacco that is wrapped in temburni leaf (diospyros melanoxylon) or tendu leaf (diospyros exculpra), or any other product that is offered to, or purchased by, consumers as a bidi or beedie.

"Nicotine vapor product" means any noncombustible product containing nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form. "Nicotine vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any cartridge or other container

of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. "Nicotine vapor product" does not include any product regulated by the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

"Tobacco product" means any product made of tobacco and includes cigarettes, cigars, smokeless tobacco, pipe tobacco, bidis, and wrappings. "Tobacco product" does not include any nicotine vapor product, alternative nicotine product, or product that is regulated by the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

"Wrappings" includes papers made or sold for covering or rolling tobacco or other materials for smoking in a manner similar to a cigarette or cigar.

1986, c. 406; 1991, c. 558; 1993, c. 631; 1994, c. 305; 1995, c. 675; 1996, cc. 509, 517; 1997, cc. 812, 882; 1998, c. 363; 1999, c. 1020; 2000, c. 883; 2003, cc. 114, 615; 2014, cc. 357, 394; 2015, cc. 38, 730, 739, 756.

§ 18.2-371.3. Tattooing or body piercing of minors

No person shall tattoo or perform body piercing for hire or consideration on a person less than eighteen years of age, knowing or having reason to believe such person is less than eighteen years of age except (i) in the presence of the person's parent or guardian, or (ii) when done by or under the supervision of a medical doctor, registered nurse or other medical services personnel licensed pursuant to Title 54.1 in the performance of their duties.

In addition, no person shall tattoo or perform body piercing on any client unless he complies with the Centers for Disease Control and Prevention's guidelines for "Universal Blood and Body Fluid Precautions" and provides the client with the following disclosure:

1. Tattooing and body piercing are invasive procedures in which the skin is penetrated by a foreign object.

2. If proper sterilization and antiseptic procedures are not followed by tattoo artists and body piercers, there is a risk of transmission of bloodborne pathogens and other infections, including, but not limited to, human immunodeficiency viruses and hepatitis B or C viruses.

3. Tattooing and body piercing may cause allergic reactions in persons sensitive to dyes or the metals used in ornamentation.

4. Tattooing and body piercing may involve discomfort or pain for which appropriate anesthesia cannot be legally made available by the person performing the tattoo or body piercing unless such person holds the appropriate license from a Virginia health regulatory board.

A person who violates this section is guilty of a Class 1 misdemeanor.

For the purposes of this section:

"Body-piercing" means the act of penetrating the skin to make a hole, mark, or scar, generally permanent in nature. "Body piercing" does not include the use of a mechanized, presterilized ear-piercing system that penetrates the outer perimeter or lobe of the ear or both.

"Tattoo" means to place any design, letter, scroll, figure, symbol or any other mark upon or under the skin of any person with ink or any other substance resulting in the permanent coloration of the skin, including permanent make-up or permanent jewelry, by the aid of needles or any other instrument designed to touch or puncture the skin.

1997, c. 586; 2000, c. 842; 2001, c. 270; 2006, c. 692.

§ 18.2-371.4. Prohibiting the sale of novelty lighters to juveniles

A. "Novelty lighter" means a mechanical or electrical device containing a combustible fuel typically used for lighting cigarettes, cigars, or pipes that is (i) designed to resemble a cartoon character, toy, gun, watch, musical instrument, vehicle, animal, food, or beverage, or (ii) a fanciful article that plays musical notes, has flashing lights, or has other entertaining features that are appealing to or intended for use by juveniles. A novelty lighter may operate on any fuel, including butane, isobutene, or liquid fuel.

B. "Novelty lighter" does not include (i) a lighter without fuel and that is incapable of being fueled, (ii) a lighter lacking a device necessary to produce combustion or a flame, (iii) a mechanical or electrical device primarily used to ignite fuel for fireplaces or for charcoal or gas grills, (iv) a lighter manufactured prior to 1980, or (v) a standard disposable lighter that is printed or decorated with logos, labels, decals, or artwork, or heat shrinkable sleeves.

C. Novelty lighters that are available for purchase at a retail establishment shall be located in a place that is not open to the general public.

D. Any individual who sells a novelty lighter to a person he knows or has reason to know is a juvenile is subject to a civil penalty of no more than $100.

E. This section may be enforced by the State Fire Marshal's Office, local fire marshals appointed pursuant to § 27-34.2 or 27-34.2:1, or law-enforcement officers.

2009, c. 668.

Article 5 - OBSCENITY AND RELATED OFFENSES

§ 18.2-372. "Obscene" defined

The word "obscene" where it appears in this article shall mean that which, considered as a whole, has as its dominant theme or purpose an appeal to the prurient interest in sex, that is, a shameful or morbid interest in nudity, sexual conduct, sexual excitement, excretory functions or products thereof or sadomasochistic abuse, and which goes substantially beyond customary limits of candor in description or representation of such matters and which, taken as a whole, does not have serious literary, artistic, political or scientific value.

Code 1950, § 18.1-227; 1960, c. 233; 1975, cc. 14, 15.

§ 18.2-373. Obscene items enumerated
Obscene items shall include:

(1) Any obscene book;

(2) Any obscene leaflet, pamphlet, magazine, booklet, picture, painting, bumper sticker, drawing, photograph, film, negative, slide, motion picture, videotape recording;

(3) Any obscene figure, object, article, instrument, novelty device, or recording or transcription used or intended to be used in disseminating any obscene song, ballad, words, or sounds; or

(4) Any obscene writing, picture or similar visual representation, or sound recording, stored in an electronic or other medium retrievable in a perceivable form.

Code 1950, § 18.1-229; 1960, c. 233; 1975, cc. 14, 15; 1981, c. 293; 1989, c. 546; 2000, c. 1009.

§ 18.2-374. Production, publication, sale, possession, etc., of obscene items
It shall be unlawful for any person knowingly to:

(1) Prepare any obscene item for the purposes of sale or distribution; or

(2) Print, copy, manufacture, produce, or reproduce any obscene item for purposes of sale or distribution; or

(3) Publish, sell, rent, lend, transport in intrastate commerce, or distribute or exhibit any obscene item, or offer to do any of these things; or

(4) Have in his possession with intent to sell, rent, lend, transport, or distribute any obscene item. Possession in public or in a public place of any obscene item as defined in this article shall be deemed prima facie evidence of a violation of this section.

For the purposes of this section, "distribute" shall mean delivery in person, by mail, messenger or by any other means by which obscene items as defined in this article may pass from one person, firm or corporation to another.

Code 1950, § 18.1-228; 1960, c. 233; 1962, c. 289; 1970, c. 204; 1975, cc. 14, 15.

§ 18.2-374.1. Production, publication, sale, financing, etc., of child pornography; presumption as to age
A. For purposes of this article and Article 4 (§ 18.2-362 et seq.) of this chapter, "child pornography" means sexually explicit visual material which utilizes or has as a subject an identifiable minor. An identifiable minor is a person who was a minor at the time the visual depiction was created, adapted, or modified; or whose image as a minor was used in creating, adapting or modifying the visual depiction; and who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and shall not be construed to require proof of the actual identity of the identifiable minor.

For the purposes of this article and Article 4 (§ 18.2-362 et seq.) of this chapter, the term "sexually explicit visual material" means a picture, photograph, drawing, sculpture, motion picture film,

digital image, including such material stored in a computer's temporary Internet cache when three or more images or streaming videos are present, or similar visual representation which depicts sexual bestiality, a lewd exhibition of nudity, as nudity is defined in § 18.2-390, or sexual excitement, sexual conduct or sadomasochistic abuse, as also defined in § 18.2-390, or a book, magazine or pamphlet which contains such a visual representation. An undeveloped photograph or similar visual material may be sexually explicit material notwithstanding that processing or other acts may be required to make its sexually explicit content apparent.

B. A person shall be guilty of production of child pornography who:

1. Accosts, entices or solicits a person less than 18 years of age with intent to induce or force such person to perform in or be a subject of child pornography; or

2. Produces or makes or attempts or prepares to produce or make child pornography; or

3. Who knowingly takes part in or participates in the filming, photographing, or other production of child pornography by any means; or

4. Knowingly finances or attempts or prepares to finance child pornography.

5. [Repealed.]

B1. [Repealed.]

C1. Any person who violates this section, when the subject of the child pornography is a child less than 15 years of age, shall be punished by not less than five years nor more than 30 years in a state correctional facility. However, if the person is at least seven years older than the subject of the child pornography the person shall be punished by a term of imprisonment of not less than five years nor more than 30 years in a state correctional facility, five years of which shall be a mandatory minimum term of imprisonment. Any person who commits a second or subsequent violation of this section where the person is at least seven years older than the subject shall be punished by a term of imprisonment of not less than 15 years nor more than 40 years, 15 years of which shall be a mandatory minimum term of imprisonment.

C2. Any person who violates this section, when the subject of the child pornography is a person at least 15 but less than 18 years of age, shall be punished by not less than one year nor more than 20 years in a state correctional facility. However, if the person is at least seven years older than the subject of the child pornography the person shall be punished by term of imprisonment of not less than three years nor more than 30 years in a state correctional facility, three years of which shall be a mandatory minimum term of imprisonment. Any person who commits a second or subsequent violation of this section when he is at least seven years older than the subject shall be punished by a term of imprisonment of not less than 10 years nor more than 30 years, 10 years of which shall be a mandatory minimum term of imprisonment.

C3. The mandatory minimum terms of imprisonment prescribed for violations of this section shall be served consecutively with any other sentence.

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

E. Venue for a prosecution under this section may lie in the jurisdiction where the unlawful act occurs or where any sexually explicit visual material associated with a violation of this section is produced, reproduced, found, stored, or possessed.

1979, c. 348; 1983, c. 524; 1986, c. 585; 1992, c. 234; 1995, c. 839; 2007, cc. 418, 759, 823; 2013, cc. 761, 774; 2015, c. 709.

§ 18.2-374.1:1. Possession, reproduction, distribution, solicitation, and facilitation of child pornography; penalty

A. Any person who knowingly possesses child pornography is guilty of a Class 6 felony.

B. Any person who commits a second or subsequent violation of subsection A is guilty of a Class 5 felony.

C. Any person who knowingly (i) reproduces by any means, including by computer, sells, gives away, distributes, electronically transmits, displays, purchases, or possesses with intent to sell, give away, distribute, transmit, or display child pornography or (ii) commands, entreats, or otherwise attempts to persuade another person to send, submit, transfer or provide to him any child pornography in order to gain entry into a group, association, or assembly of persons engaged in trading or sharing child pornography shall be punished by not less than five years nor more than 20 years in a state correctional facility. Any person who commits a second or subsequent violation under this subsection shall be punished by a term of imprisonment of not less than five years nor more than 20 years in a state correctional facility, five years of which shall be a mandatory minimum term of imprisonment. The mandatory minimum terms of imprisonment prescribed for violations of this section shall be served consecutively with any other sentence.

D. Any person who intentionally operates an Internet website for the purpose of facilitating the payment for access to child pornography is guilty of a Class 4 felony.

E. All child pornography shall be subject to lawful seizure and forfeiture pursuant to § 19.2-386.31.

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

G. Venue for a prosecution under this section may lie in the jurisdiction where the unlawful act occurs or where any child pornography is produced, reproduced, found, stored, received, or possessed in violation of this section.

H. The provisions of this section shall not apply to any such material that is possessed for a bona fide medical, scientific, governmental, law-enforcement, or judicial purpose by a physician, psy-

chologist, scientist, attorney, employee of a law-enforcement agency, judge, or clerk who possesses such material in the course of conducting his professional duties as such.

1992, c. 745; 1993, c. 853; 1994, c. 511; 1999, c. 659; 2003, cc. 935, 938; 2004, c. 995; 2007, cc. 759, 823; 2009, c. 379; 2011, cc. 399, 416; 2012, c. 369; 2013, cc. 761, 774; 2014, c. 291; 2015, c. 428.

§ 18.2-374.1:2. Repealed

Repealed by Acts 2007, cc. 759 and 823, cl. 2.

§ 18.2-374.2. Repealed

Repealed by Acts 2004, c. 995.

§ 18.2-374.3. Use of communications systems to facilitate certain offenses involving children

A. As used in subsections C, D, and E, "use a communications system" means making personal contact or direct contact through any agent or agency, any print medium, the United States mail, any common carrier or communication common carrier, any electronic communications system, the Internet, or any telecommunications, wire, computer network, or radio communications system.

B. It is unlawful for any person to use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means for the purposes of procuring or promoting the use of a minor for any activity in violation of § 18.2-370 or 18.2-374.1. A violation of this subsection is a Class 6 felony.

C. It is unlawful for any person 18 years of age or older to use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means, for the purposes of soliciting, with lascivious intent, any person he knows or has reason to believe is a child younger than 15 years of age to knowingly and intentionally:

1. Expose his sexual or genital parts to any child to whom he is not legally married or propose that any such child expose his sexual or genital parts to such person;

2. Propose that any such child feel or fondle his own sexual or genital parts or the sexual or genital parts of such person or propose that such person feel or fondle the sexual or genital parts of any such child;

3. Propose to such child the performance of an act of sexual intercourse, anal intercourse, cunnilingus, fellatio, or anilingus or any act constituting an offense under § 18.2-361; or

4. Entice, allure, persuade, or invite any such child to enter any vehicle, room, house, or other place, for any purposes set forth in the preceding subdivisions.

Any person who violates this subsection is guilty of a Class 5 felony. However, if the person is at least seven years older than the child he knows or has reason to believe is less than 15 years of age, the person shall be punished by a term of imprisonment of not less than five years nor more than 30 years in a state correctional facility, five years of which shall be mandatory minimum term of imprisonment. Any person who commits a second or subsequent violation of this subsection

when the person is at least seven years older than the child he knows or has reason to believe is less than 15 years of age shall be punished by a term of imprisonment of not less than 10 years nor more than 40 years, 10 years of which shall be a mandatory minimum term of imprisonment.

D. Any person who uses a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means, for the purposes of soliciting, with lascivious intent, any child he knows or has reason to believe is at least 15 years of age but younger than 18 years of age to knowingly and intentionally commit any of the activities listed in subsection C if the person is at least seven years older than the child is guilty of a Class 5 felony. Any person who commits a second or subsequent violation of this subsection shall be punished by a term of imprisonment of not less than one nor more than 20 years, one year of which shall be a mandatory minimum term of imprisonment.

E. Any person 18 years of age or older who uses a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means, for the purposes of soliciting any person he knows or has reason to believe is a child younger than 18 years of age for (i) any activity in violation of § 18.2-355 or 18.2-361, (ii) any activity in violation of § 18.2-374.1, or (iii) a violation of § 18.2-374.1:1 is guilty of a Class 5 felony.

1992, c. 699; 1999, c. 659; 2003, cc. 935, 938; 2004, cc. 414, 444, 459, 864; 2007, cc. 759, 823; 2013, cc. 423, 470; 2014, c. 794.

§ 18.2-374.4. Display of child pornography or grooming video or materials to a child unlawful; penalty

A. Any person 18 years of age or older who displays child pornography or a grooming video or materials to a child under 13 years of age with the intent to entice, solicit, or encourage the child to engage in the fondling of the sexual or genital parts of another or the fondling of his sexual or genital parts by another, sexual intercourse, cunnilingus, fellatio, anilingus, anal intercourse, or object sexual penetration is guilty of a Class 6 felony.

B. "Grooming video or materials" means a cartoon, animation, image, or series of images depicting a child engaged in the fondling of the sexual or genital parts of another or the fondling of his sexual or genital parts by another, masturbation, sexual intercourse, cunnilingus, fellatio, anilingus, anal intercourse, or object sexual penetration.

2012, c. 624.

§ 18.2-375. Obscene exhibitions and performances

It shall be unlawful for any person knowingly to:

(1) Produce, promote, prepare, present, manage, direct, carry on or participate in, any obscene exhibitions or performances, including the exhibition or performance of any obscene motion picture, play, drama, show, entertainment, exposition, tableau or scene; provided, that no employee of any person or legal entity operating a theatre, garden, building, structure, room or place which presents such obscene exhibition or performance shall be subject to prosecution under this section

if the employee is not the manager of the theatre or an officer of such entity, and has no financial interest in such theatre other than receiving salary and wages; or

(2) Own, lease or manage any theatre, garden, building, structure, room or place and lease, let, lend or permit such theatre, garden, building, structure, room or place to be used for the purpose of presenting such obscene exhibition or performance or to fail to post prominently therein the name and address of a person resident in the locality who is the manager of such theatre, garden, building, structure, room or place.

Code 1950, § 18.1-230; 1960, c. 233; 1971, Ex. Sess., c. 191; 1975, cc. 14, 15.

§ 18.2-376. Advertising, etc., obscene items, exhibitions or performances

It shall be unlawful for any person knowingly to prepare, print, publish, or circulate, or cause to be prepared, printed, published or circulated, any notice or advertisement of any obscene item proscribed in § 18.2-373, or of any obscene performance or exhibition proscribed in § 18.2-375, stating or indicating where such obscene item, exhibition, or performance may be purchased, obtained, seen or heard.

Code 1950, § 18.1-231; 1960, c. 233; 1975, cc. 14, 15.

§ 18.2-376.1. Enhanced penalties for using a computer in certain violations

Any person who uses a computer in connection with a violation of §§ 18.2-374, 18.2-375, or § 18.2-376 is guilty of a separate and distinct Class 1 misdemeanor, and for a second or subsequent such offense within 10 years of a prior such offense is guilty of a Class 6 felony, the penalties to be imposed in addition to any other punishment otherwise prescribed for a violation of any of those sections.

2003, cc. 987, 1016.

§ 18.2-377. Placards, posters, bills, etc

It shall be unlawful for any person knowingly to expose, place, display, post up, exhibit, paint, print, or mark, or cause to be exposed, placed, displayed, posted, exhibited, painted, printed or marked, in or on any building, structure, billboard, wall or fence, or on any street, or in or upon any public place, any placard, poster, banner, bill, writing, or picture which is obscene, or which advertises or promotes any obscene item proscribed in § 18.2-373 or any obscene exhibition or performance proscribed in § 18.2-375, or knowingly to permit the same to be displayed on property belonging to or controlled by him.

Code 1950, § 18.1-232; 1960, c. 233; 1975, cc. 14, 15.

§ 18.2-378. Coercing acceptance of obscene articles or publications

It shall be unlawful for any person, firm, association or corporation, as a condition to any sale, allocation, consignment or delivery for resale of any paper, magazine, book, periodical or publication to require that the purchaser or consignee receive for resale any other article, book, or other publication which is obscene; nor shall any person, firm, association or corporation deny or

threaten to deny any franchise or impose or threaten to impose any penalty, financial or otherwise, by reason of the failure or refusal of any person to accept such articles, books, or publications, or by reason of the return thereof.

Code 1950, § 18.1-233; 1960, c. 233; 1975, cc. 14, 15.

§ 18.2-379. Employing or permitting minor to assist in offense under article

It shall be unlawful for any person knowingly to hire, employ, use or permit any minor to do or assist in doing any act or thing constituting an offense under this article.

Code 1950, § 18.1-234; 1960, c. 233; 1975, cc. 14, 15.

§ 18.2-380. Punishment for first offense

Any person, firm, association or corporation convicted for the first time of an offense under §§ 18.2-374, 18.2-375, 18.2-376, 18.2-377, 18.2-378 or § 18.2-379, shall be guilty of a Class 1 misdemeanor.

Code 1950, § 18.1-235.1; 1968, c. 662; 1975, cc. 14, 15; 1983, c. 412; 1985, c. 279.

§ 18.2-381. Punishment for subsequent offenses; additional penalty for owner

Any person, firm, association or corporation convicted of a second or other subsequent offense under § 18.2-374, 18.2-375, 18.2-376, 18.2-377, 18.2-378, or 18.2-379 is guilty of a Class 6 felony. However, if the person, firm, association or corporation convicted of such subsequent offense is the owner of the business establishment where each of the offenses occurred, a fine of not more than $10,000 shall be imposed in addition to the penalties otherwise prescribed by this section.

Code 1950, § 18.1-236.1; 1960, c. 233; 1968, c. 662; 1975, cc. 14, 15; 1983, c. 412; 2015, c. 428.

§ 18.2-382. Photographs, slides and motion pictures

Every person who knowingly:

(1) Photographs himself or any other person, for purposes of preparing an obscene film, photograph, negative, slide or motion picture for purposes of sale or distribution; or

(2) Models, poses, acts, or otherwise assists in the preparation of any obscene film, photograph, negative, slide or motion picture for purposes of sale or distribution;

shall be guilty of a Class 3 misdemeanor.

Code 1950, § 18.1-235; 1960, c. 233; 1970, c. 204; 1975, cc. 14, 15.

§ 18.2-383. Exceptions to application of article

Nothing contained in this article shall be construed to apply to:

(1) The purchase, distribution, exhibition, or loan of any book, magazine, or other printed or manuscript material by any library, school, or institution of higher learning, supported by public appropriation;

(2) The purchase, distribution, exhibition, or loan of any work of art by any museum of fine arts, school, or institution of higher learning, supported by public appropriation;

(3) The exhibition or performance of any play, drama, tableau, or motion picture by any theatre, museum of fine arts, school or institution of higher learning, supported by public appropriation.

Code 1950, § 18.1-236.2; 1960, c. 233; 1966, c. 516; 1975, cc. 14, 15.

§ 18.2-384. Proceeding against book alleged to be obscene

(1) Whenever he has reasonable cause to believe that any person is engaged in the sale or commercial distribution of any obscene book, any citizen or the attorney for the Commonwealth of any county or city, or city attorney, in which the sale or commercial distribution of such book occurs may institute a proceeding in the circuit court in said city or county for adjudication of the obscenity of the book.

(2) The proceeding shall be instituted by filing with the court a petition:

(a) Directed against the book by name or description;

(b) Alleging the obscene nature of the book; and

(c) Listing the names and addresses, if known, of the author, publisher, and all other persons interested in its sale or commercial distribution.

(3) Upon the filing of a petition pursuant to this article, the court in term or in vacation shall forthwith examine the book alleged to be obscene. If the court find no probable cause to believe the book obscene, the judge thereof shall dismiss the petition; but if the court find probable cause to believe the book obscene, the judge thereof shall issue an order to show cause why the book should not be adjudicated obscene.

(4) The order to show cause shall be:

(a) Directed against the book by name or description;

(b) Published once a week for two successive weeks in a newspaper of general circulation within the county or city in which the proceeding is filed;

(c) If their names and addresses are known, served by registered mail upon the author, publisher, and all other persons interested in the sale or commercial distribution of the book; and

(d) Returnable twenty-one days after its service by registered mail or the commencement of its publication, whichever is later.

(5) When an order to show cause is issued pursuant to this article, and upon four days' notice to be given to the persons and in the manner prescribed by the court, the court may issue a temporary restraining order against the sale or distribution of the book alleged to be obscene.

(6) On or before the return date specified in the order to show cause, the author, publisher, and any person interested in the sale or commercial distribution of the book may appear and file an

answer. The court may by order permit any other person to appear and file an answer amicus curiae.

(7) If no one appears and files an answer on or before the return date specified in the order to show cause, the court, upon being satisfied that the book is obscene, shall order the clerk of court to enter judgment that the book is obscene, but the court in its discretion may except from its judgment a restricted category of persons to whom the book is not obscene.

(8) If an appearance is entered and an answer filed, the court shall order the proceeding set on the calendar for a prompt hearing. The court shall conduct the hearing in accordance with the rules of civil procedure applicable to the trial of cases by the court without a jury. At the hearing, the court shall receive evidence, including the testimony of experts, if such evidence be offered, pertaining to:

(a) The artistic, literary, medical, scientific, cultural and educational values, if any, of the book considered as a whole;

(b) The degree of public acceptance of the book, or books of similar character, within the county or city in which the proceeding is brought;

(c) The intent of the author and publisher of the book;

(d) The reputation of the author and publisher;

(e) The advertising, promotion, and other circumstances relating to the sale of the book;

(f) The nature of classes of persons, including scholars, scientists, and physicians, for whom the book may not have prurient appeal, and who may be subject to exception pursuant to subsection (7).

(9) In making a decision on the obscenity of the book, the court shall consider, among other things, the evidence offered pursuant to subsection (8), if any, and shall make a written determination upon every such consideration relied upon in the proceeding in his findings of fact and conclusions of law or in a memorandum accompanying them.

(10) If he finds the book not obscene, the court shall order the clerk of court to enter judgment accordingly. If he finds the book obscene, the court shall order the clerk of court to enter judgment that the book is obscene, but the court, in its discretion, may except from its judgment a restricted category of persons to whom the book is not obscene.

(11) While a temporary restraining order made pursuant to subsection (5) is in effect, or after the entry of a judgment pursuant to subsection (7), or after the entry of judgment pursuant to subsection (10), any person who publishes, sells, rents, lends, transports in intrastate commerce, or commercially distributes or exhibits the book, or has the book in his possession with intent to publish, sell, rent, lend, transport in intrastate commerce, or commercially distribute or exhibit the

book, is presumed to have knowledge that the book is obscene under §§ 18.2-372 through 18.2-378 of this article.

(12) Any party to the proceeding, including the petitioner, may appeal from the judgment of the court to the Supreme Court of Virginia, as otherwise provided by law.

(13) It is expressly provided that the petition and proceeding authorized under this article, relating to books alleged to be obscene, shall be intended only to establish scienter in cases where the establishment of such scienter is thought to be useful or desirable by the petitioner; and the provisions of § 18.2-384 shall in nowise be construed to be a necessary prerequisite to the filing of criminal charges under this article.

Code 1950, § 18.1-236.3; 1960, c. 233; 1975, cc. 14, 15.

§ 18.2-385. Section 18.2-384 applicable to motion picture films

The provisions of § 18.2-384 shall apply mutatis mutandis in the case of motion picture film.

Code 1950, § 18.1-236.4; 1966, c. 516; 1975, cc. 14, 15.

§ 18.2-386. Showing previews of certain motion pictures

It shall be unlawful for any person to exhibit any trailer or preview of any motion picture which has a motion picture industry rating which would not permit persons in the audience viewing the feature motion picture to see the complete motion picture from which the trailer or preview is taken. Persons violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

Code 1950, § 18.1-246.1; 1970, c. 504; 1975, cc. 14, 15.

§ 18.2-386.1. Unlawful creation of image of another; penalty

A. It shall be unlawful for any person to knowingly and intentionally create any videographic or still image by any means whatsoever of any nonconsenting person if (i) that person is totally nude, clad in undergarments, or in a state of undress so as to expose the genitals, pubic area, buttocks or female breast in a restroom, dressing room, locker room, hotel room, motel room, tanning bed, tanning booth, bedroom or other location; or (ii) the videographic or still image is created by placing the lens or image-gathering component of the recording device in a position directly beneath or between a person's legs for the purpose of capturing an image of the person's intimate parts or undergarments covering those intimate parts when the intimate parts or undergarments would not otherwise be visible to the general public; and when the circumstances set forth in clause (i) or (ii) are otherwise such that the person being recorded would have a reasonable expectation of privacy.

B. The provisions of this section shall not apply to any videographic or still image created by any means whatsoever by (i) law-enforcement officers pursuant to a criminal investigation which is otherwise lawful or (ii) correctional officials and local or regional jail officials for security purposes or for investigations of alleged misconduct involving a person committed to the Department of

Corrections or to a local or regional jail, or to any sound recording of an oral conversation made as a result of any videotaping or filming pursuant to Chapter 6 (§ 19.2-61 et seq.) of Title 19.2.

C. A violation of subsection A shall be punishable as a Class 1 misdemeanor.

D. A violation of subsection A involving a nonconsenting person under the age of 18 shall be punishable as a Class 6 felony.

E. Where it is alleged in the warrant, information, or indictment on which the person is convicted and found by the court or jury trying the case that the person has previously been convicted within the 10-year period immediately preceding the offense charged of two or more of the offenses specified in this section, each such offense occurring on a different date, and when such offenses were not part of a common act, transaction, or scheme, and such person has been at liberty as defined in § 53.1-151 between each conviction, he shall be guilty of a Class 6 felony.

1994, c. 640; 2004, c. 844; 2005, c. 375; 2008, c. 732; 2014, c. 399.

§ 18.2-386.2. Unlawful dissemination or sale of images of another; penalty

A. Any person who, with the intent to coerce, harass, or intimidate, maliciously disseminates or sells any videographic or still image created by any means whatsoever that depicts another person who is totally nude, or in a state of undress so as to expose the genitals, pubic area, buttocks, or female breast, where such person knows or has reason to know that he is not licensed or authorized to disseminate or sell such videographic or still image is guilty of a Class 1 misdemeanor. However, if a person uses services of an Internet service provider, an electronic mail service provider, or any other information service, system, or access software provider that provides or enables computer access by multiple users to a computer server in committing acts prohibited under this section, such provider shall not be held responsible for violating this section for content provided by another person.

B. Venue for a prosecution under this section may lie in the jurisdiction where the unlawful act occurs or where any videographic or still image created by any means whatsoever is produced, reproduced, found, stored, received, or possessed in violation of this section.

C. The provisions of this section shall not preclude prosecution under any other statute.

2014, c. 399.

§ 18.2-387. Indecent exposure

Every person who intentionally makes an obscene display or exposure of his person, or the private parts thereof, in any public place, or in any place where others are present, or procures another to so expose himself, shall be guilty of a Class 1 misdemeanor. No person shall be deemed to be in violation of this section for breastfeeding a child in any public place or any place where others are present.

Code 1950, § 18.1-236; 1960, c. 233; 1975, cc. 14, 15; 1994, c. 398.

§ 18.2-387.1. Obscene sexual display; penalty

Any person who, while in any public place where others are present, intending that he be seen by others, intentionally and obscenely as defined in § 18.2-372, engages in actual or explicitly simulated acts of masturbation, is guilty of a Class 1 misdemeanor.

2005, c. 422.

§ 18.2-388. Profane swearing and intoxication in public; penalty; transportation of public inebriates to detoxification center

If any person profanely curses or swears or is intoxicated in public, whether such intoxication results from alcohol, narcotic drug or other intoxicant or drug of whatever nature, he shall be deemed guilty of a Class 4 misdemeanor. In any area in which there is located a court-approved detoxification center a law-enforcement officer may authorize the transportation, by police or otherwise, of public inebriates to such detoxification center in lieu of arrest; however, no person shall be involuntarily detained in such center.

Code 1950, § 18.1-237; 1960, c. 358; 1964, c. 434; 1975, cc. 14, 15; 1979, c. 654; 1982, c. 666; 1983, c. 187; 1990, c. 965 .

§ 18.2-389. Repealed

Repealed by Acts 2004, c. 462.

Article 6 - PROHIBITED SALES AND LOANS TO JUVENILES

§ 18.2-390. Definitions

As used in this article:

(1) "Juvenile" means a person less than 18 years of age.

(2) "Nudity" means a state of undress so as to expose the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered or uncovered male genitals in a discernibly turgid state.

(3) "Sexual conduct" means actual or explicitly simulated acts of masturbation, homosexuality, sexual intercourse, or physical contact in an act of apparent sexual stimulation or gratification with a person's clothed or unclothed genitals, pubic area, buttocks or, if such be female, breast.

(4) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(5) "Sadomasochistic abuse" means actual or explicitly simulated flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(6) "Harmful to juveniles"means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it (a) predominantly appeals to the prurient, shameful or morbid interest of juveniles, (b) is patently

offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for juveniles, and (c) is, when taken as a whole, lacking in serious literary, artistic, political or scientific value for juveniles.

(7) "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both (a) the character and content of any material described herein which is reasonably susceptible of examination by the defendant, and (b) the age of the juvenile, provided however, that an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such juvenile.

(8) "Video or computer game" means an object or device that stores recorded data or instructions, receives data or instructions generated by a person who uses it, and, by processing the data or instructions, creates an interactive game capable of being played, viewed, or experienced on or through a computer, television gaming system, console, or other technology.

Code 1950, § 18.1-236.6; 1970, c. 560; 1975, cc. 14, 15, 492; 1976, c. 504; 2006, c. 463.

§ 18.2-391. Unlawful acts; penalties

A. It shall be unlawful for any person to sell, rent or loan to a juvenile, knowing or having reason to know that such person is a juvenile, or to knowingly display for commercial purpose in a manner whereby juveniles may examine and peruse:

1. Any picture, photography, drawing, sculpture, motion picture in any format or medium, video or computer game, electronic file or message containing an image, or similar visual representation or image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct or sadomasochistic abuse and which is harmful to juveniles, or

2. Any book, pamphlet, magazine, printed matter however reproduced, electronic file or message containing words, or sound recording which contains any matter enumerated in subdivision 1 of this subsection, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sadomasochistic abuse and which, taken as a whole, is harmful to juveniles.

However, if a person uses services of an Internet service provider or an electronic mail service provider in committing acts prohibited under this subsection, such Internet service provider or electronic mail service provider shall not be held responsible for violating this subsection.

B. It shall be unlawful for any person knowingly to sell to a juvenile an admission ticket or pass, or knowingly to admit a juvenile to premises whereon there is exhibited a motion picture, show or other presentation which, in whole or in part, depicts sexually explicit nudity, sexual conduct or sadomasochistic abuse and which is harmful to juveniles or to exhibit any such motion picture at any such premises which are not designed to prevent viewing from any public way of such motion picture by juveniles not admitted to any such premises.

C. It shall be unlawful for any juvenile falsely to represent to any person mentioned in subsection A or subsection B hereof, or to his agent, that such juvenile is 18 years of age or older, with the intent to procure any material set forth in subsection A, or with the intent to procure such juvenile's admission to any motion picture, show or other presentation, as set forth in subsection B.

D. It shall be unlawful for any person knowingly to make a false representation to any person mentioned in subsection A or subsection B hereof or to his agent, that he is the parent or guardian of any juvenile, or that any juvenile is 18 years of age, with the intent to procure any material set forth in subsection A, or with the intent to procure such juvenile's admission to any motion picture, show or other presentation, as set forth in subsection B.

E. No person shall sell, rent, or loan any item described in subdivision A 1 or A 2 to any individual who does not demonstrate his age in accordance with the provisions of subsection C of § 18.2-371.2.

F. A violation of subsection A, B, C, or D is a Class 1 misdemeanor. A person or separate retail establishment who violates subsection E shall be liable for a civil penalty not to exceed $100 for a first violation, a civil penalty not to exceed $200 for a second violation, and a civil penalty not to exceed $500 for a third or subsequent violation.

Code 1950, § 18.1-236.7; 1970, c. 560; 1972, c. 421; 1975, cc. 14, 15; 1976, c. 504; 1985, c. 506; 1987, c. 356; 1999, c. 936; 2000, c. 1009; 2001, c. 451; 2006, c. 463.

§ 18.2-391.1. Exceptions to application of article

Nothing contained in this article shall be construed to apply to:

1. The purchase, distribution, exhibition, or loan of any work of art, book, magazine, or other printed or manuscript material by any accredited museum, library, school, or institution of higher learning.

2. The exhibition or performance of any play, drama, tableau, or motion picture by any theatre, museum, school or institution of higher learning, either supported by public appropriation or which is an accredited institution supported by private funds.

1977, c. 480.

Article 7 - CRUELTY TO ANIMALS [Repealed]

§§ 18.2-392 through 18.2-403. Repealed

Repealed by Acts 1984, c. 492.

Article 8 - OFFENSES INVOLVING ANIMALS

§ 18.2-403.1. Offenses involving animals -- Class 1 misdemeanors

The following unlawful acts and offenses against animals shall constitute and be punished as a Class 1 misdemeanor:

1. Violation of subsection A of § 3.2-6570 pertaining to cruelty to animals, except as provided for second or subsequent violations in that section.

2. Violation of § 3.2-6508 pertaining to transporting animals under certain conditions.

3. Making a false claim or receiving money on a false claim under § 3.2-6553 pertaining to compensation for livestock and poultry killed by dogs.

4. Violation of § 3.2-6518 pertaining to boarding establishments and groomers as defined in § 3.2-6500.

1984, c. 492; 1992, c. 177; 1993, c. 174; 1996, c. 249; 1999, c. 620.

§ 18.2-403.2. Offenses involving animals -- Class 3 misdemeanors

The following unlawful acts and offenses against animals shall constitute and be punished as a Class 3 misdemeanor:

1. Violation of § 3.2-6511 pertaining to the failure of a shopkeeper or pet dealer to provide adequate care to animals.

2. Violation of § 3.2-6509 pertaining to the misrepresentation of an animal's condition by the shopkeeper or pet dealer.

3. Violation of § 3.2-6504 pertaining to the abandonment of animals.

4. Violation of § 3.2-6510 pertaining to the sale of baby fowl.

5. Violation of clause (iii) of subsection A of § 3.2-6570 pertaining to soring horses.

6. Violation of § 3.2-6519 pertaining to notice of consumer remedies required to be supplied by boarding establishments.

1984, c. 492; 1992, c. 177; 1993, c. 174; 1999, c. 620; 2003, c. 787; 2008, cc. 543, 707.

§ 18.2-403.3. Offenses involving animals -- Class 4 misdemeanors

The following unlawful acts and offenses against animals shall constitute and be punished as a Class 4 misdemeanor:

1. Violation of § 3.2-6566 pertaining to interference of agents charged with preventing cruelty to animals.

2. Violation of § 3.2-6573 pertaining to shooting pigeons.

3. Violation of § 3.2-6554 pertaining to disposing of the body of a dead companion animal.

4. Violation of ordinances passed pursuant to §§ 3.2-6522 and 3.2-6525 pertaining to rabid dogs and preventing the spread of rabies and the running at large of vicious dogs.

5. Violation of an ordinance passed pursuant to § 3.2-6539 requiring dogs to be on a leash.

6. Failure by any person to secure and exhibit the permits required by § 29.1-422 pertaining to field trails, night trails and foxhounds.

7. Diseased dogs. -- For the owner of any dog with a contagious or infectious disease to permit such dog to stray from his premises if such disease is known to the owner.

8. License application. -- For any person to make a false statement in order to secure a dog or cat license to which he is not entitled.

9. License tax. -- For any dog or cat owner to fail to pay any license tax required by § 3.2-6530 before February 1 for the year in which it is due. In addition, the court may order confiscation and the proper disposition of the dog or cat.

10. Concealing a dog or cat. -- For any person to conceal or harbor any dog or cat on which any required license tax has not been paid.

11. Removing collar and tag. -- For any person, except the owner or custodian, to remove a legally acquired license tag from a dog or cat without the permission of the owner or custodian.

12. Violation of § 3.2-6503 pertaining to care of animals by owner.

1984, c. 492; 1993, cc. 174, 817 .

§ 18.2-403.4. Unauthorized release of animals; penalty

Any person who intentionally releases an animal, as defined in § 3.2-6500, lawfully confined for scientific, research, commercial, agricultural or educational purposes without the consent of the owner or custodian of the animal and with the intent to impede or obstruct any such lawful purpose shall be guilty of a Class 1 misdemeanor.

1992, c. 307 .

Chapter 9 - CRIMES AGAINST PEACE AND ORDER

Article 1 - RIOT AND UNLAWFUL ASSEMBLY

§ 18.2-404. Obstructing free passage of others

Any person or persons who in any public place or on any private property open to the public unreasonably or unnecessarily obstructs the free passage of other persons to and from or within such place or property and who shall fail or refuse to cease such obstruction or move on when requested to do so by the owner or lessee or agent or employee of such owner or lessee or by a duly authorized law-enforcement officer shall be guilty of a Class 1 misdemeanor. Nothing in this section shall be construed to prohibit lawful picketing.

Code 1950, § 18.1-254.01; 1968, c. 608; 1975, cc. 14, 15.

§ 18.2-405. What constitutes a riot; punishment

Any unlawful use, by three or more persons acting together, of force or violence which seriously jeopardizes the public safety, peace or order is riot.

Every person convicted of participating in any riot shall be guilty of a Class 1 misdemeanor.

If such person carried, at the time of such riot, any firearm or other deadly or dangerous weapon, he shall be guilty of a Class 5 felony.

Code 1950, §§ 18.1-254.1, 18.1-254.2; 1968, c. 460; 1971, Ex. Sess., c. 251; 1975, cc. 14, 15.

§ 18.2-406. What constitutes an unlawful assembly; punishment

Whenever three or more persons assembled share the common intent to advance some lawful or unlawful purpose by the commission of an act or acts of unlawful force or violence likely to jeopardize seriously public safety, peace or order, and the assembly actually tends to inspire persons of ordinary courage with well-grounded fear of serious and immediate breaches of public safety, peace or order, then such assembly is an unlawful assembly. Every person who participates in any unlawful assembly shall be guilty of a Class 1 misdemeanor. If any such person carried, at the time of his participation in an unlawful assembly, any firearm or other deadly or dangerous weapon, he shall be guilty of a Class 5 felony.

Code 1950, §§ 18.1-254.1, 18.1-254.3; 1968, c. 460; 1971, Ex. Sess., c. 251; 1975, cc. 14, 15.

§ 18.2-407. Remaining at place of riot or unlawful assembly after warning to disperse

Every person, except the owner or lessee of the premises, his family and nonrioting guests, and public officers and persons assisting them, who remains at the place of any riot or unlawful assembly after having been lawfully warned to disperse, shall be guilty of a Class 3 misdemeanor.

Code 1950, § 18.1-254.4; 1968, c. 460; 1971, Ex. Sess., c. 251; 1975, cc. 14, 15.

§ 18.2-408. Conspiracy; incitement, etc., to riot

Any person who conspires with others to cause or produce a riot, or directs, incites, or solicits other persons who participate in a riot to acts of force or violence, shall be guilty of a Class 5 felony.

Code 1950, § 18.1-254.5:1; 1971, Ex. Sess., c. 251; 1975, cc. 14, 15.

§ 18.2-409. Resisting or obstructing execution of legal process

Every person acting jointly or in combination with any other person to resist or obstruct the execution of any legal process shall be guilty of a Class 1 misdemeanor.

Code 1950, § 18.1-254.6; 1968, c. 460; 1975, cc. 14, 15.

§ 18.2-410. Power of Governor to summon law-enforcement agencies, national guard, etc., to execute process or preserve the peace

If it appears to the Governor that the power of the locality is not sufficient to enable the sheriff or other officer to execute process delivered to him or to suppress riots and to preserve the peace, he may order law-enforcement agencies, national guard, militia or other agencies of the Commonwealth or localities as may be necessary to execute such process and to preserve the peace. All persons so ordered or summoned by the Governor are required to attend and act. Any person who, without lawful cause, refuses or neglects to obey the command, shall be guilty of a Class 1 misdemeanor.

Code 1950, § 18.1-254.7; 1968, c. 460; 1975, cc. 14, 15.

§ 18.2-411. Dispersal of unlawful or riotous assemblies; duties of officers

When any number of persons, whether armed or not, are unlawfully or riotously assembled, the sheriff of the county and his deputies, the police officials of the county, city or town, and any assigned militia, or any of them, shall go among the persons assembled or as near to them as safety will permit and command them in the name of the Commonwealth immediately to disperse. If upon such command the persons unlawfully assembled do not disperse immediately, such sheriff, officer or militia may use such force as is reasonably necessary to disperse them and to arrest those who fail or refuse to disperse. To accomplish this end, the sheriff or other law-enforcement officer may request and use the assistance and services of private citizens. Every endeavor shall be used, both by such sheriff or other officers and by the officer commanding any other force, which can be made consistently with the preservation of life, to induce or force those unlawfully assembled to disperse before an attack is made upon those unlawfully assembled by which their lives may be endangered.

Code 1950, §§ 18.1-254.8, 18.1-254.9; 1968, c. 460; 1975, cc. 14, 15.

§ 18.2-412. Immunity of officers and others in quelling a riot or unlawful assembly

No liability, criminal or civil, shall be imposed upon any person authorized to disperse or assist in dispersing a riot or unlawful assembly for any action of such person which was taken after those rioting or unlawfully assembled had been commanded to disperse, and which action was reasonably necessary under all the circumstances to disperse such riot or unlawful assembly or to arrest those who failed or refused to disperse.

Code 1950, §§ 18.1-254.8, 18.1-254.9; 1968, c. 460; 1975, cc. 14, 15.

§ 18.2-413. Commission of certain offenses in county, city or town declared by Governor to be in state of riot or insurrection

Any person, who after the publication of a proclamation by the Governor, or who after lawful notice to disperse and retire, resists or aids in resisting the execution of process in any county, city or town declared to be in a state of riot or insurrection, or who aids or attempts the rescue or escape of another from lawful custody or confinement, or who resists or aids in resisting a force ordered out by the Governor or any sheriff or other officer to quell or suppress an insurrection or riot, shall be guilty of a Class 5 felony.

Code 1950, § 18.1-254.10; 1968, c. 460; 1975, cc. 14, 15.

§ 18.2-414. Injury to property or persons by persons unlawfully or riotously assembled

If any person or persons, unlawfully or riotously assembled, pull down, injure, or destroy, or begin to pull down, injure or destroy any dwelling house or other building, or assist therein, or perpetrate any premeditated injury on the person of another, he shall be guilty of a Class 6 felony.

Code 1950, § 18.1-254.11; 1968, c. 460; 1975, cc. 14, 15.

§ 18.2-414.1. Obstructing emergency medical services agency personnel in performance of mission; penalty

Any person who unreasonably or unnecessarily obstructs the delivery of emergency medical services by emergency medical services agency personnel, whether governmental, private, or volunteer, or who fails or refuses to cease such obstruction or move on when requested to do so by emergency medical services personnel going to or at the site at which emergency medical services are required is guilty of a Class 2 misdemeanor.

1976, c. 233; 2002, c. 560; 2015, cc. 502, 503.

§ 18.2-414.2. Crossing established police lines, perimeters or barricades

It shall be unlawful for any person to cross or remain within police lines or barricades which have been established pursuant to § 15.2-1714 without proper authorization.

Any person violating the provisions of this section shall be guilty of a Class 3 misdemeanor.

1984, c. 533; 1990, c. 327 .

Article 2 - DISORDERLY CONDUCT

§ 18.2-415. Disorderly conduct in public places

A person is guilty of disorderly conduct if, with the intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

A. In any street, highway, public building, or while in or on a public conveyance, or public place engages in conduct having a direct tendency to cause acts of violence by the person or persons at whom, individually, such conduct is directed; or

B. Willfully or being intoxicated, whether willfully or not, and whether such intoxication results from self-administered alcohol or other drug of whatever nature, disrupts 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; or

C. Willfully or while intoxicated, whether willfully or not, and whether such intoxication results from self-administered alcohol or other drug of whatever nature, disrupts 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.

However, the conduct prohibited under subdivision A, B or C of this section shall not be deemed to include the utterance or display of any words or to include conduct otherwise made punishable under this title.

The person in charge of any such building, place, conveyance, meeting, operation or activity may eject therefrom any person who violates any provision of this section, with the aid, if necessary, of any persons who may be called upon for such purpose.

The governing bodies of counties, cities and towns are authorized to adopt ordinances prohibiting and punishing the acts and conduct prohibited by this section, provided that the punishment fixed therefor shall not exceed that prescribed for a Class 1 misdemeanor. A person violating any provision of this section shall be guilty of a Class 1 misdemeanor.

Code 1950, §§ 18.1-239, 18.1-240, 18.1-253.1 through 18.1-253.3; 1960, c. 358; 1968, c. 639; 1969, Ex. Sess., c. 2; 1970, c. 374; 1975, cc. 14, 15; 1976, c. 244; 1990, c. 627; 2006, c. 250.

Article 3 - ABUSIVE AND INSULTING LANGUAGE

§ 18.2-416. Punishment for using abusive language to another

If any person shall, in the presence or hearing of another, curse or abuse such other person, or use any violent abusive language to such person concerning himself or any of his relations, or otherwise use such language, under circumstances reasonably calculated to provoke a breach of the peace, he shall be guilty of a Class 3 misdemeanor.

Code 1950, § 18.1-255; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-417. Slander and libel

Any person who shall falsely utter and speak, or falsely write and publish, of and concerning any female of chaste character, any words derogatory of such female's character for virtue and chastity, or imputing to such female acts not virtuous and chaste, or who shall falsely utter and speak, or falsely write and publish, of and concerning another person, any words which from their usual construction and common acceptation are construed as insults and tend to violence and breach of the peace or shall use grossly insulting language to any female of good character or reputation, shall be guilty of a Class 3 misdemeanor.

The defendant shall be entitled to prove upon trial in mitigation of the punishment, the provocation which induced the libelous or slanderous words, or any other fact or circumstance tending to disprove malice, or lessen the criminality of the offense.

Code 1950, § 18.1-256; 1960, c. 358; 1973, c. 526; 1975, cc. 14, 15.

Article 4 - PICKETING OF DWELLING PLACES

§ 18.2-418. Declaration of policy

It is hereby declared that the protection and preservation of the home is the keystone of democratic government; that the public health and welfare and the good order of the community require that members of the community enjoy in their homes a feeling of well-being, tranquility, and privacy, and when absent from their homes carry with them the sense of security inherent in the assurance that they may return to the enjoyment of their homes; that the practice of picketing

before or about residences and dwelling places causes emotional disturbance and distress to the occupants; that such practice has as its object the harassing of such occupants; and without resort to such practice, full opportunity exists, and under the terms and provisions of this article will continue to exist, for the exercise of freedom of speech and other constitutional rights; and that the provisions hereinafter enacted are necessary in the public interest, to avoid the detrimental results herein set forth.

Code 1950, § 18.1-367.1; 1970, c. 711; 1975, cc. 14, 15.

§ 18.2-419. Picketing or disrupting tranquility of home

Any person who shall engage in picketing before or about the residence or dwelling place of any individual, or who shall assemble with another person or persons in a manner which disrupts or threatens to disrupt any individual's right to tranquility in his home, shall be guilty of a Class 3 misdemeanor. Each day on which a violation of this section occurs shall constitute a separate offense.

Nothing herein shall be deemed to prohibit (1) the picketing in any lawful manner, during a labor dispute, of the place of employment involved in such labor dispute; (2) the picketing in any lawful manner of a construction site; or (3) the holding of a meeting or assembly on any premises commonly used for the discussion of subjects of general public interest.

Notwithstanding the penalties herein provided, any court of general equity jurisdiction may enjoin conduct, or threatened conduct, proscribed by this article, and may in any such proceeding award damages, including punitive damages, against the persons found guilty of actions made unlawful by this section.

Code 1950, §§ 18.1-367.2 through 18.1-367.6; 1970, c. 711; 1975, cc. 14, 15.

Article 5 - ACTIVITIES TENDING TO CAUSE VIOLENCE

§ 18.2-420. "Clandestine organization" defined

"Clandestine organization" means: any organization (1) which conceals, or attempts to conceal, its name, activities or membership, or the names, activities or membership of any chapter, branch, unit or affiliate thereof, by the use of cover-names, codes, or any deceptive practice or other means, or (2) whose members shall be required, urged, or instructed, or shall adopt any practice, to conceal their membership or affiliation and that of others in or with such organization, or (3) whose members shall take any oath or pledge, or shall administer any such oath or pledge to those associated with them, to maintain in secrecy any matter or knowledge committed to them by the organization or by any member thereof, or (4) which shall transact business or advance any purpose at any secret meeting or meetings which are guarded or secured against intrusion by persons not associated with it, and (5) whose purpose, policy or activity includes the unlawful use of violence, threats, or intimidation in accomplishing any of its objectives.

Code 1950, § 18.1-380.1; 1968, c. 792; 1975, cc. 14, 15.

§ 18.2-421. Information to be filed by clandestine organization with State Corporation Commission

Every existing membership corporation and every existing unincorporated association which is a clandestine organization as defined in § 18.2-420, shall file with the clerk of the State Corporation Commission a sworn copy of its constitution, bylaws, rules, regulations, and oath of membership, together with a roster of its membership and a list of its officers for the current year. Every such corporation and association shall, in case its constitution, bylaws, rules, regulations or oath of membership or any part thereof be revised, changed or amended, within ten days after such revision or amendment, file with the clerk of the State Corporation Commission a sworn copy of such revised, changed or amended constitution, bylaw, rule, regulation or oath of membership. Every such corporation or association shall, within thirty days after a change has been made in its officers, file with the clerk of the State Corporation Commission a sworn statement showing such change. Every such corporation or association shall, at intervals of six months, file with the clerk of the State Corporation Commission, a sworn statement showing the names and addresses of such additional members as have been received in such corporation or association during such interval.

The violation of any provision of this section shall constitute a Class 3 misdemeanor.

The provisions of §§ 18.2-420 and 18.2-421 shall not apply to fraternal organizations which are organized for charitable, benevolent, and educational objectives and whose transactions and list of members are open for public inspection.

Code 1950, § 18.1-380.2; 1968, c. 792; 1975, cc. 14, 15.

§ 18.2-422. Prohibition of wearing of masks in certain places; exceptions

It shall be unlawful for any person over 16 years of age to, with the intent to conceal his identity, wear any mask, hood or other device whereby a substantial portion of the face is hidden or covered so as to conceal the identity of the wearer, to be or appear in any public place, or upon any private property in this Commonwealth without first having obtained from the owner or tenant thereof consent to do so in writing. However, the provisions of this section shall not apply to persons (i) wearing traditional holiday costumes; (ii) engaged in professions, trades, employment or other activities and wearing protective masks which are deemed necessary for the physical safety of the wearer or other persons; (iii) engaged in any bona fide theatrical production or masquerade ball; or (iv) wearing a mask, hood or other device for bona fide medical reasons upon (a) the advice of a licensed physician or osteopath and carrying on his person an affidavit from the physician or osteopath specifying the medical necessity for wearing the device and the date on which the wearing of the device will no longer be necessary and providing a brief description of the device, or (b) the declaration of a disaster or state of emergency by the Governor in response to a public health emergency where the emergency declaration expressly waives this section, defines the mask appropriate for the emergency, and provides for the duration of the waiver. The violation of any provisions of this section is a Class 6 felony.

Code 1950, §§ 18.1-364, 18.1-367; 1960, c. 358; 1975, cc. 14, 15; 1986, c. 19; 2010, cc. 262, 420; 2014, c. 167.

§ 18.2-423. Burning cross on property of another or public place with intent to intimidate; penalty; prima facie evidence of intent

It shall be unlawful for any person or persons, with the intent of intimidating any person or group of persons, to burn, or cause to be burned, a cross on the property of another, a highway or other public place. Any person who shall violate any provision of this section shall be guilty of a Class 6 felony.

Any such burning of a cross shall be prima facie evidence of an intent to intimidate a person or group of persons.

Code 1950, §§ 18.1-365 through 18.1-367; 1960, c. 358; 1968, c. 350; 1975, cc. 14, 15; 1983, c. 337.

§ 18.2-423.01. Burning object on property of another or a highway or other public place with intent to intimidate; penalty

A. Any person who, with the intent of intimidating any person or group of persons, burns an object on the private property of another without permission, is guilty of a Class 6 felony.

B. Any person who, with the intent of intimidating any person or group of persons, burns an object on a highway or other public place in a manner having a direct tendency to place another person in reasonable fear or apprehension of death or bodily injury is guilty of a Class 6 felony.

2002, cc. 589, 600.

§ 18.2-423.1. Placing swastika on certain property with intent to intimidate; penalty; prima facie evidence of intent

It shall be unlawful for any person or persons, with the intent of intimidating another person or group of persons, to place or cause to be placed a swastika on any church, synagogue or other building or place used for religious worship, or on any school, educational facility or community center owned or operated by a church or religious body.

A violation of this section shall be punishable as a Class 6 felony.

For the purposes of this section, any such placing of a swastika shall be prima facie evidence of an intent to intimidate another person or group of persons.

1983, c. 337.

§ 18.2-423.2. Displaying noose on property of another or a highway or other public place with intent to intimidate; penalty

A. Any person who, with the intent of intimidating any person or group of persons, displays a noose on the private property of another without permission is guilty of a Class 6 felony.

B. Any person who, with the intent of intimidating any person or group of persons, displays a noose on a highway or other public place in a manner having a direct tendency to place another person in reasonable fear or apprehension of death or bodily injury is guilty of a Class 6 felony.

2009, c. 277.

Article 6 - UNLAWFUL USE OF TELEPHONES

§§ 18.2-424, 18.2-425.1. Repealed
Repealed by Acts 2007, c. 467, cl. 2.

§ 18.2-425.1. Repealed
Repealed by Acts 2009, c. 699, cl. 2.

§ 18.2-426. "Emergency call" and "emergency personnel" defined
As used in this article:

"Emergency call" means a call to report a fire or summon police, or for emergency medical services, in a situation where human life or property is in jeopardy and the prompt summoning of aid is essential.

"Emergency personnel" means any persons, paid or volunteer, who receive calls for dispatch of police, fire, or emergency medical services personnel, and includes law-enforcement officers, firefighters, including special forest wardens designated pursuant to § 10.1-1135, and emergency medical services personnel.

Code 1950, § 18.1-370; 1960, c. 358; 1975, cc. 14, 15; 1995, c. 791; 2000, c. 962; 2007, c. 467; 2015, cc. 502, 503.

§ 18.2-427. Use of profane, threatening, or indecent language over public airways or by other methods
Any person who uses obscene, vulgar, profane, lewd, lascivious, or indecent language, or makes any suggestion or proposal of an obscene nature, or threatens any illegal or immoral act with the intent to coerce, intimidate, or harass any person, over any telephone or citizens band radio, in this Commonwealth, is guilty of a Class 1 misdemeanor.

"Over any telephone" includes, for purposes of this section, any electronically transmitted communication producing a visual or electronic message that is received or transmitted by cellular telephone or other wireless telecommunications device.

Code 1950, § 18.1-238; 1960, c. 358; 1964, c. 577; 1975, cc. 14, 15; 1976, c. 312; 1984, c. 592; 2010, c. 565; 2011, c. 246.

§ 18.2-428. Giving certain false information to another by telephone
If any person maliciously advises or informs another over any telephone in this Commonwealth of the death of, accident to, injury to, illness of, or disappearance of some third party, knowing the same to be false, he shall be guilty of a Class 1 misdemeanor.

Code 1950, § 18.1-238.1; 1962, c. 225; 1975, cc. 14, 15.

§ 18.2-429. Causing telephone or pager to ring with intent to annoy

A. Any person who, with or without intent to communicate but with intent to annoy any other person, causes any telephone or digital pager, not his own, to ring or to otherwise signal, and any person who permits or condones the use of any telephone under his control for such purpose, is guilty of a Class 3 misdemeanor. A second or subsequent conviction under this subsection is punishable as a Class 2 misdemeanor if such prior conviction occurred before the date of the offense charged.

B. Any person who, with or without intent to converse, but with intent to annoy, harass, hinder or delay emergency personnel in the performance of their duties as such, causes a telephone to ring, which is owned or leased for the purpose of receiving emergency calls by a public or private entity providing fire, police or emergency medical services, and any person who knowingly permits the use of a telephone under his control for such purpose, is guilty of a Class 1 misdemeanor.

Code 1950, § 18.1-238.2; 1962, c. 495; 1975, cc. 14, 15; 1989, c. 59; 1995, cc. 410, 478, 791; 2012, c. 133; 2015, cc. 502, 503.

§ 18.2-430. Venue for offenses under this article

Any person violating any of the provisions of this article may be prosecuted either in the county or city from which he called or in the county or city in which the call was received.

Code 1950, § 18.1-238; 1960, c. 358; 1964, c. 577; 1975, cc. 14, 15.

§ 18.2-431. Duty of telephone companies; notices in directories

(1) It shall be the duty, on pain of contempt of court, of each telephone company in this Commonwealth to furnish immediately in response to a subpoena issued by a circuit court such information as it, its officers and employees may possess which, in the opinion of the court, may aid in the apprehension of persons suspected of violating the provisions of this article or the provisions of § 18.2-83 or § 18.2-212.

(2) Every telephone directory distributed to the public which lists the calling numbers of telephones or of any telephone exchange located in this Commonwealth shall contain a notice which explains the offenses made punishable under this article, such notice to be printed in type which conforms with and is comparable to other type on the same page, and to be placed in a prominent place in such directory. Any violation of this subsection shall be punishable as a Class 4 misdemeanor.

Code 1950, §§ 18.1-238, 18.1-371; 1960, c. 358; 1964, c. 577; 1975, cc. 14, 15; 1982, c. 502.

§ 18.2-431.1. Illegal conveyance or possession of cellular telephone or other wireless telecommunications device by prisoner or committed person; penalty

A. It is unlawful for any person without authorization to provide or cause to be provided a cellular telephone or other wireless telecommunications device to an incarcerated prisoner or person committed to the Department of Juvenile Justice in any juvenile correctional center.

B. It is unlawful for an incarcerated prisoner or person committed to the Department of Juvenile Justice in any juvenile correctional center without authorization to possess a cellular telephone or other wireless telecommunications device during the period of his incarceration.

C. Any violation of this section is a Class 6 felony.

2005, c. 171; 2013, cc. 707, 782; 2015, c. 601.

Article 7 - PLACES OF AMUSEMENT AND DANCE HALLS

§§ 18.2-432, 18.2-433. Repealed

Repealed by Acts 2004, c. 462.

Article 8 - UNLAWFUL PARAMILITARY ACTIVITY

§ 18.2-433.1. Definitions

As used in this article:

"Civil disorder" means any public disturbance within the United States or any territorial possessions thereof involving acts of violence by assemblages of three or more persons, which causes an immediate danger of or results in damage or injury to the property or person of any other individual.

"Explosive or incendiary device" means (i) dynamite and all other forms of high explosives, (ii) any explosive bomb, grenade, missile, or similar device, or (iii) any incendiary bomb or grenade, fire bomb, or similar device, including any device which consists of or includes a breakable container including a flammable liquid or compound, and a wick composed of any material which, when ignited, is capable of igniting such flammable liquid or compound, and can be carried or thrown by one individual acting alone.

"Firearm" means any weapon that will or is designed to or may readily be converted to expel single or multiple projectiles by the action of an explosion of a combustible material; or the frame or receiver of any such weapon.

"Law-enforcement officer" means any officer as defined in § 9.1-101 or any such officer or member of the armed forces of the United States, any state, any political subdivision of a state, or the District of Columbia, and such term shall specifically include, but shall not be limited to, members of the National Guard, as defined in § 101(c) of Title 10, United States Code, members of the organized militia of any state or territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, not included within the definition of National Guard as defined by such § 101(c), and members of the Armed Forces of the United States.

1987, c. 720; 2003, c. 976; 2004, c. 263.

§ 18.2-433.2. Paramilitary activity prohibited

A person shall be guilty of unlawful paramilitary activity, punishable as a Class 5 felony if he:

1. Teaches or demonstrates to any other person the use, application, or making of any firearm, explosive or incendiary device, or technique capable of causing injury or death to persons, knowing or having reason to know or intending that such training will be employed for use in, or in furtherance of, a civil disorder; or

2. Assembles with one or more persons 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, intending to employ such training for use in, or in furtherance of, a civil disorder.

1987, c. 720.

§ 18.2-433.3. Exceptions

Nothing contained in this article shall be construed to apply to:

1. Any act of a law-enforcement officer performed in the otherwise lawful performance of the officer's official duties;

2. Any activity, undertaken without knowledge of or intent to cause or further a civil disorder, which is intended to teach or practice self-defense or self-defense techniques such as karate clubs or self-defense clinics, and similar lawful activity;

3. Any facility, program or lawful activity related to firearms instruction and training intended to teach the safe handling and use of firearms; or

4. Any other lawful sports or activities related to the individual recreational use or possession of firearms, including but not limited to hunting activities, target shooting, self-defense and firearms collection.

Notwithstanding any language contained herein, no activity of any individual, group, organization or other entity engaged in the lawful display or use of firearms or other weapons or facsimiles thereof shall be deemed to be in violation of this statute.

1987, c. 720.

Chapter 10 - CRIMES AGAINST THE ADMINISTRATION OF JUSTICE

Article 1 - PERJURY

§ 18.2-434. What deemed perjury; punishment and penalty

If any person to whom an oath is lawfully administered on any occasion willfully swears falsely on such occasion touching any material matter or thing, or if a person falsely make oath that any other person is 18 years of age or older in order to obtain a marriage license for such other person, or if any person in any written declaration, certificate, verification, or statement under penalty of

perjury pursuant to § 8.01-4.3 willfully subscribes as true any material matter which he does not believe is true, he is guilty of perjury, punishable as a Class 5 felony. Upon the conviction of any person for perjury, such person thereby shall be adjudged forever incapable of holding any office of honor, profit or trust under the Constitution of Virginia, or of serving as a juror.

Code 1950, §§ 18.1-273 through 18.1-275; 1960, c. 358; 1972, c. 823; 1975, cc. 14, 15; 2005, c. 423.

§ 18.2-435. Giving conflicting testimony on separate occasions as to same matter; indictment; sufficiency of evidence

It shall likewise constitute perjury for any person, with the intent to testify falsely, to knowingly give testimony under oath as to any material matter or thing and subsequently to give conflicting testimony under oath as to the same matter or thing. In any indictment for such perjury, it shall be sufficient to allege the offense by stating that the person charged therewith did, knowingly and with the intent to testify falsely, on one occasion give testimony upon a certain matter and, on a subsequent occasion, give different testimony upon the same matter. Upon the trial on such indictment, it shall be sufficient to prove that the defendant, knowingly and with the intent to testify falsely, gave such differing testimony and that the differing testimony was given on two separate occasions.

Code 1950, § 18.1-276; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-436. Inducing another to give false testimony; sufficiency of evidence

If any person procure or induce another to commit perjury or to give false testimony under oath in violation of any provision of this article, he shall be punished as prescribed in § 18.2-434.

In any prosecution under this section, it shall be sufficient to prove that the person alleged to have given false testimony shall have been procured, induced, counselled or advised to give such testimony by the party charged.

Code 1950, § 18.1-277; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-437. Immunity of witnesses

No witness called by the attorney for the Commonwealth, or by the court, and required to give evidence for the prosecution in a proceeding under this article shall ever be proceeded against for the offense concerning which he testified. Such witness shall be compelled to testify and may be punished for contempt for refusing to do so.

Code 1950, § 18.1-277; 1960, c. 358; 1975, cc. 14, 15.

Article 2 - BRIBERY AND RELATED OFFENSES

§ 18.2-438. Bribes to officers or candidates for office

If any person corruptly give, offer or promise to any executive, legislative or judicial officer, sheriff or police officer, or to any candidate for such office, either before or after he shall have taken his seat, any gift or gratuity, with intent to influence his act, vote, opinion, decision or judgment on

any matter, question, cause or proceeding, which is or may be then pending, or may by law come or be brought before him in his official capacity, he shall be guilty of a Class 4 felony and shall forfeit to the Commonwealth any such gift or gratuity given. This section shall also apply to a resident of this Commonwealth who, while temporarily absent therefrom for that purpose, shall make such gift, offer or promise.

Code 1950, § 18.1-278; 1960, c. 358; 1975, cc. 14, 15; 1978, c. 123.

§ 18.2-439. Acceptance of bribe by officer or candidate

If any executive, legislative or judicial officer, sheriff or police officer, or any candidate for such office, accept in this Commonwealth, or if, being resident in this Commonwealth, such officer or candidate shall go out of this Commonwealth and accept and afterwards return to and reside in this Commonwealth, any gift or gratuity or any promise to make a gift or do any act beneficial to such officer or candidate under an agreement, or with an understanding, that his vote, opinion or judgment shall be given on any particular side of any question, cause or proceeding which is or may be by law brought before him in his official capacity or that in such capacity he shall make any particular nomination or appointment or take or fail to take any particular action or perform any duty required by law, he shall be guilty of a Class 4 felony and shall forfeit his office and be forever incapable of holding any office of honor, profit or trust under the Constitution of Virginia. The word candidate as used in this section and § 18.2-438, shall mean anyone who has filed his candidacy with the appropriate electoral official or who is a candidate as defined in § 24.2-101.

Code 1950, § 18.1-279; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-440. Bribes to officers to prevent service of process

If any officer authorized to serve legal process receive any money or other thing of value for omitting or delaying to perform any duty pertaining to his office, he shall be guilty of a Class 2 misdemeanor.

Code 1950, § 18.1-281; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-441. Giving bribes to, or receiving bribes by, commissioners, jurors, etc

If any person give, offer or promise to give any money or other thing of value to a commissioner appointed by a court, auditor, arbitrator, umpire or juror (although not impaneled), with intent to bias his opinion or influence his decision in relation to any matter in which he is acting or is to act, or if any such commissioner, auditor, arbitrator, umpire or juror corruptly take or receive such money or other thing, he shall be guilty of a Class 4 felony.

Code 1950, § 18.1-282; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-441.1. Bribery of witnesses

If any person give, offer, or promise to give any money or other thing of value to anyone with intent to prevent such person from testifying as a witness in any civil or criminal proceeding or with intent to cause that person to testify falsely, he shall be guilty of a Class 6 felony.

1978, c. 612.

§ 18.2-442. Bribery of participants in games, contests or sports

Whoever gives, promises or offers any valuable thing to any professional or amateur participant or prospective participant in any game, contest or sport, with intent to influence him to lose or try to lose or cause to be lost or to limit his or his team's margin of victory in any professional or amateur game, contest or sport in which such participant is taking part or expects to take part, or has any duty or connection therewith, shall be guilty of a Class 5 felony.

Code 1950, § 18.1-402; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-443. Solicitation or acceptance of bribes by participants or by managers, coaches or trainers

A professional or amateur participant or prospective participant in any game, contest or sport or a manager, coach or trainer of any team or individual participant or prospective participant in any such game, contest or sport, who solicits or accepts any valuable thing to influence him to lose or try to lose or cause to be lost or to limit his or his team's margin of victory in any game, contest or sport in which he is taking part, or expects to take part, or has any duty or connection therewith, shall be guilty of a Class 5 felony.

Code 1950, § 18.1-403; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-444. Corruptly influencing, or being influenced as, agents, etc

(1) Any person who gives, offers or promises to an agent, employee or servant any gift or gratuity whatever, without the knowledge and consent of the principal, employer or master of such agent, employee or servant, with intent to influence his action to the prejudice of his principal's, employer's or master's business; or

(2) An agent, employee or servant who, without the knowledge and consent of his principal, employer or master requests or accepts a gift or gratuity or a promise to make a gift or to do an act beneficial to himself, under an agreement or with an understanding that he shall act in any particular manner as to his principal's, employer's or master's business; or

(3) An agent, employee or servant who, being authorized to procure materials, supplies or other articles either by purchase or contract for his principal, employer or master or to employ service or labor for his principal, employer or master receives directly or indirectly, for himself or for another, a commission, discount or bonus from the person who makes such sale or contract, or furnishes such materials, supplies or other articles, or from a person who renders such service or labor; or

(4) Any person who gives or offers such an agent, employee or servant such commission, discount or bonus;

shall be guilty of a Class 3 misdemeanor.

Code 1950, § 18.1-404; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-444.1. Reserved

Reserved.

§ 18.2-444.2. Giving or accepting a fee or gift for purposes of influencing decisions of financial institution

A. No officer, director, or employee of a financial institution or subsidiary, affiliate or holding company thereof, or stockholder owning ten percent or more of the issued capital stock of any such financial institution or holding company, shall accept, receive or acquire any fee, gift, property interest, or other thing of value with the intent to influence the decision of the financial institution, subsidiary, affiliate or holding company with regard to any extension of credit, investment, or purchase or sale of assets by such financial institution, subsidiary, affiliate or holding company. No person shall give, provide or cause to be transferred to any such officer, director, employee or stockholder, any fee, gift, property interest or other thing of value with the intent to influence the decision of the financial institution, subsidiary, affiliate or holding company with regard to any extension of credit, investment or purchase or sale of assets by the financial institution, subsidiary, affiliate or holding company. The foregoing provisions shall not apply to salary, wages, fees or other compensation or consideration paid by, or expenses paid or reimbursed by, such financial institution, subsidiary, affiliate or holding company. The violation of this section shall be punishable as a Class 6 felony.

B. The provisions of this section shall not apply to any such officer, director, employee or stockholder who is a member of a firm of licensed brokers, in buying for or from or selling to, or for the account of, the financial institution, in the ordinary course of business, real estate or bonds, stocks, or other evidences of debt at the usual rate of commission for such service, if the officer, director, employee or stockholder notifies the board of directors of the financial institution, its cashier or secretary, in writing, that such services will be rendered for compensation prior to the rendition of the services or within five business days following the commencement of the services. If a continuing business relationship exists, an annual disclosure may be made.

C. The provisions of this section shall not apply to fees paid to any such officer, director, employee, or stockholder who renders services to a borrower outside of his relationship with the financial institution in connection with the preparation of a loan application, or in connection with the closing of a loan, in evaluating the security or affecting a lien on the collateral, where the fact of rendition of such services for compensation is disclosed in writing to the board of directors of the financial institution, or its cashier or secretary, prior to the time such services are rendered or within five business days following the commencement of the services. If a continuing business relationship exists, an annual disclosure may be made.

Code 1950, § 6.1-121; 1966, c. 584; 1981, c. 339; 1991, c. 501; 1992, c. 318 .

§ 18.2-445. Immunity of witnesses

No witness called by the court or attorney for the Commonwealth and giving evidence for the prosecution, either before the grand jury or the court in any prosecution, under this article shall ever be proceeded against for any offense of giving, or offering to give, or accepting a bribe committed

by him at the time and place indicated in such prosecution; but such witness shall be compelled to testify, and for refusing to answer questions may, by the court, be punished for contempt.

Code 1950, §§ 18.1-280, 18.1-405; 1960, c. 358; 1975, cc. 14, 15.

Article 3 - BRIBERY OF PUBLIC SERVANTS AND PARTY OFFICIALS

§ 18.2-446. Definitions

The following words and phrases when used in this article shall have the meanings respectively ascribed to them in this section except where the context clearly requires a different meaning:

(1) "Benefits" means a gain or advantage, or anything regarded by the beneficiary as a gain or advantage, including a benefit to any other person or entity in whose welfare he is interested, but shall not mean an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose;

(2) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts, or participates in directing or conducting party affairs at any level of responsibility;

(3) "Pecuniary benefit" means a benefit in the form of money, property, commercial interest or anything else the primary significance of which is economic gain;

(4) "Public servant" means any officer or employee of this Commonwealth or any political subdivision thereof, including members of the General Assembly and judges, and any person participating as a juror, advisor, consultant or otherwise, in performing any governmental function; but the term does not include witnesses;

(5) "Administrative proceeding" means any proceeding other than a judicial proceeding, the outcome of which is required to be based on a record or documentation prescribed by law including specifically, but not limited to, proceedings before a planning commission and board of zoning appeals.

Code 1950, § 18.1-282.1; 1968, c. 552; 1975, cc. 14, 15.

§ 18.2-447. When person guilty of bribery

A person shall be guilty of bribery under the provisions of this article:

(1) If he offers, confers or agrees to confer upon another (a) any pecuniary benefit as consideration for or to obtain or influence the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant or party official, or (b) any benefit as consideration for or to obtain or influence either the recipient's decision, opinion, recommendation, vote or other exercise of official discretion in a judicial or administrative proceeding or the recipient's violation of a known legal duty as a public servant or party official; or

(2) If he accepts or agrees to accept from another (a) any pecuniary benefit offered, conferred or agreed to be conferred as consideration for or to obtain or influence the recipient's decision,

opinion, recommendation, vote or other exercise of discretion as a public servant or party official, or (b) any benefit offered, conferred or agreed to be conferred as consideration for or to obtain or influence either the recipient's decision, opinion, recommendation, vote or other exercise of official discretion in a judicial or administrative proceeding or the recipient's violation of a known legal duty as a public servant or party official; or

(3) If he solicits from another (a) any pecuniary benefit or promise of pecuniary benefit as consideration for or in exchange for his decision, opinion, recommendation, vote or other exercise of discretion as a public servant or party official, or (b) any benefit or promise of benefit as consideration for or in exchange for his decision, opinion, recommendation, vote or other exercise of official discretion in a judicial or administrative proceeding or his violation of a known legal duty as a public servant or party official.

Code 1950, § 18.1-282.2; 1968, c. 552; 1975, cc. 14, 15.

§ 18.2-448. Certain matters not to constitute defenses

It shall be no defense to any prosecution under § 18.2-447 that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason. Also it shall be no defense to a prosecution under § 18.2-447 that a resident of this Commonwealth charged with committing an act of bribery was temporarily absent from this Commonwealth at the time such act was committed.

Code 1950, § 18.1-282.3; 1968, c. 552; 1975, cc. 14, 15.

§ 18.2-449. Punishment

Any person found guilty of bribery under the provisions of this article shall be guilty of a Class 4 felony, and if such person be a public servant he shall in addition forfeit his public office and shall be forever incapable of holding any public office in this Commonwealth.

Code 1950, § 18.1-282.4; 1968, c. 552; 1975, cc. 14, 15.

§ 18.2-450. Immunity of witnesses

No witness called by the court or attorney for the Commonwealth and giving evidence for the prosecution, either before the grand jury or the court in any prosecution under this article shall ever be proceeded against for any offense of giving, or offering to give, or accepting a bribe committed by him at the time and place indicated in such prosecution; but such witness shall be compelled to testify, and for refusing to answer questions, may by the court, be punished for contempt.

Code 1950, § 18.1-282.3; 1968, c. 552; 1975, cc. 14, 15.

Article 4 - BARRATRY

§ 18.2-451. Definitions; application and construction of article

(a) "Barratry" is the offense of stirring up litigation.

(b) A "barrator" is an individual, partnership, association or corporation who or which stirs up litigation.

(c) "Stirring up litigation" means instigating or attempting to instigate a person or persons to institute a suit at law or equity.

(d) "Instigating" means bringing it about that all or part of the expenses of the litigation are paid by the barrator or by a person or persons (other than the plaintiffs) acting in concert with the barrator, unless the instigation is justified.

(e) "Justified" means that the instigator is related by blood or marriage to the plaintiff whom he instigates, or that the instigator is entitled by law to share with the plaintiff in money or property that is the subject of the litigation or that the instigator has a direct interest in the subject matter of the litigation or occupies a position of trust in relation to the plaintiff; or that the instigator is acting on behalf of a duly constituted legal aid society approved by the Virginia State Bar which offers advice or assistance in all kinds of legal matters to all members of the public who come to it for advice or assistance and are unable because of poverty to pay legal fees.

(f) "Direct interest" means a personal right or a pecuniary right or liability.

This article shall not be applicable to attorneys who are parties to contingent fee contracts with their clients where the attorney does not protect the client from payment of the costs and expense of litigation, nor shall this article apply to any matter involving annexation, zoning, bond issues, or the holding or results of any election or referendum, nor shall this article apply to suits pertaining to or affecting possession of or title to real or personal property, regardless of ownership, nor shall this article apply to suits involving the legality of assessment or collection of taxes or the rates thereof, nor shall this article apply to suits involving rates or charges or services by common carriers or public utilities, nor shall this article apply to criminal prosecutions, nor to the payment of attorneys by legal aid societies approved by the Virginia State Bar, nor to proceedings to abate nuisances. Nothing herein shall be construed to be in derogation of the constitutional rights of real parties in interest to employ counsel or to prosecute any available legal remedy under the laws of this Commonwealth.

Code 1950, § 18.1-388; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-452. Barratry unlawful

Any person, if an individual, who shall engage in barratry shall be guilty of a Class 1 misdemeanor; and if a corporation, may be fined not more than $10,000. If the corporation be a foreign corporation, its certificate of authority to transact business in Virginia shall be revoked by the State Corporation Commission.

Code 1950, §§ 18.1-389, 18.1-390; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-453. Aiders and abettors

A person who aids and abets a barrator by giving money or rendering services to or for the use or benefit of the barrator for committing barratry shall be guilty of barratry and punished as provided in § 18.2-452.

Code 1950, § 18.1-391; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-454. Enjoining barratry

Suits to enjoin barratry may be brought by the Attorney General or the attorney for the Commonwealth in the appropriate circuit court.

Code 1950, § 18.1-392; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-455. Unprofessional conduct; revocation of license

Conduct that is made illegal by this article on the part of an attorney at law or any person holding license from the Commonwealth to engage in a profession is unprofessional conduct. Upon hearing pursuant to the provisions of § 54.1-3935, or other statute applicable to the profession concerned, if the defendant be found guilty of barratry, his license to practice law or any other profession shall be revoked for such period as provided by law.

Code 1950, § 18.1-393; 1960, c. 358; 1975, cc. 14, 15.

Article 5 - CONTEMPT OF COURT

§ 18.2-456. Cases in which courts and judges may punish summarily for contempt

The courts and judges may issue attachments for contempt, and punish them summarily, only in the cases following:

(1) Misbehavior in the presence of the court, or so near thereto as to obstruct or interrupt the administration of justice;

(2) Violence, or threats of violence, to a judge or officer of the court, or to a juror, witness or party going to, attending or returning from the court, for or in respect of any act or proceeding had or to be had in such court;

(3) Vile, contemptuous or insulting language addressed to or published of a judge for or in respect of any act or proceeding had, or to be had, in such court, or like language used in his presence and intended for his hearing for or in respect of such act or proceeding;

(4) Misbehavior of an officer of the court in his official character;

(5) Disobedience or resistance of an officer of the court, juror, witness or other person to any lawful process, judgment, decree or order of the court.

Code 1950, § 18.1-292; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-457. Fine and imprisonment by court limited unless jury impaneled

No court shall, without a jury, for any such contempt as is mentioned in the first class embraced in § 18.2-456, impose a fine exceeding $250 or imprison more than ten days; but in any such case

the court may, without an indictment, information or any formal pleading, impanel a jury to ascertain the fine or imprisonment proper to be inflicted and may give judgment according to the verdict.

Code 1950, § 18.1-295; 1960, c. 358; 1975, cc. 14, 15; 1999, c. 626.

§ 18.2-458. Power of judge of district court to punish for contempt

A judge of a district court shall have the same power and jurisdiction as a judge of a circuit court to punish summarily for contempt, but in no case shall the fine exceed $250, or the imprisonment exceed ten days, for the same contempt.

Code 1950, § 18.1-293; 1960, c. 358; 1975, cc. 14, 15; 1999, c. 626.

§ 18.2-459. Appeal from sentence of such judge

Any person sentenced to pay a fine, or to confinement, under § 18.2-458, may appeal therefrom to the circuit court of the county or city in which the sentence was pronounced, upon entering into recognizance before the sentencing judge, with surety and in penalty deemed sufficient, to appear before such circuit court to answer for the offense. If such appeal be taken, a certificate of the conviction and the particular circumstances of the offense, together with the recognizance, shall forthwith be transmitted by the sentencing judge to the clerk of such circuit court, who shall immediately deliver the same to the judge thereof. Such judge, sitting without a jury, shall hear the case upon the certificate and any legal testimony adduced on either side, and make such order therein as may seem to him proper.

Code 1950, § 18.1-294; 1960, c. 358; 1975, cc. 14, 15; 2013, c. 615.

Article 6 - INTERFERENCE WITH ADMINISTRATION OF JUSTICE

§ 18.2-460. Obstructing justice; penalty

A. If any person without just cause knowingly obstructs a judge, magistrate, justice, juror, attorney for the Commonwealth, witness, any law-enforcement officer, or animal control officer employed pursuant to § 3.2-6555 in the performance of his duties as such or fails or refuses without just cause to cease such obstruction when requested to do so by such judge, magistrate, justice, juror, attorney for the Commonwealth, witness, law-enforcement officer, or animal control officer employed pursuant to § 3.2-6555, he shall be guilty of a Class 1 misdemeanor.

B. Except as provided in subsection C, any person who, by threats or force, knowingly attempts to intimidate or impede a judge, magistrate, justice, juror, attorney for the Commonwealth, witness, any law-enforcement officer, or an animal control officer employed pursuant to § 3.2-6555 lawfully engaged in his duties as such, or to obstruct or impede the administration of justice in any court, is guilty of a Class 1 misdemeanor.

C. If any person by threats of bodily harm or force knowingly attempts to intimidate or impede a judge, magistrate, justice, juror, attorney for the Commonwealth, witness, any law-enforcement officer, lawfully engaged in the discharge of his duty, or to obstruct or impede the administration

of justice in any court relating to a violation of or conspiracy to violate § 18.2-248 or subdivision (a) (3), (b) or (c) of § 18.2-248.1, or § 18.2-46.2 or § 18.2-46.3, or relating to the violation of or conspiracy to violate any violent felony offense listed in subsection C of § 17.1-805, he shall be guilty of a Class 5 felony.

D. Any person who knowingly and willfully makes any materially false statement or representation to a law-enforcement officer or an animal control officer employed pursuant to § 3.2-6555 who is in the course of conducting an investigation of a crime by another is guilty of a Class 1 misdemeanor.

Code 1950, § 18.1-310; 1960, c. 358; 1975, cc. 14, 15; 1976, c. 269; 1984, c. 571; 1989, c. 506; 1993, c. 747; 1996, c. 718; 1999, cc. 770, 800; 2002, cc. 527, 810, 818; 2003, cc. 111, 149; 2004, cc. 396, 435; 2007, cc. 220, 282; 2009, c. 242.

§ 18.2-460.1. Unlawful disclosure of existence of order authorizing wire or oral interception of communication

Except as provided in Chapter 6 (§ 19.2-61 et seq.) of Title 19.2, it shall be unlawful for any person who, by virtue of his position of authority or in the course of his employment by a court, a public utility, a law-enforcement agency, or by any other agency of state or local government, obtains knowledge of the fact that an order authorizing interception of wire or oral communication has been entered or is sought to be entered, intentionally to disclose such information to any person, except in the performance of his duties. Persons violating this section shall be guilty of a Class 1 misdemeanor.

Nothing herein precludes a court authorizing an interception under this chapter from prohibiting any other person from disclosing the existence of an order, interception, or device and imposing contempt sanctions for any willful disclosure.

1980, c. 339.

§ 18.2-461. Falsely summoning or giving false reports to law-enforcement officials

It shall be unlawful for any person (i) to knowingly give a false report as to the commission of any crime to any law-enforcement official with intent to mislead, or (ii) without just cause and with intent to interfere with the operations of any law-enforcement official, to call or summon any law-enforcement official by telephone or other means, including engagement or activation of an automatic emergency alarm. Violation of the provisions of this section shall be punishable as a Class 1 misdemeanor.

Code 1950, § 18.1-401; 1960, c. 358; 1975, cc. 14, 15; 1996, cc. 753, 815.

§ 18.2-462. Concealing or compounding offenses; penalties

A. Except as provided in subsection B, if any person knowing of the commission of an offense takes any money or reward, or an engagement therefor, upon an agreement or understanding, expressed or implied, to compound or conceal such offense, or not to prosecute therefor, or not to give evidence thereof, he shall, if such offense is a felony, be guilty of a Class 2 misdemeanor; and

if such offense is not a felony, unless it is punishable merely by forfeiture to him, he shall be guilty of a Class 4 misdemeanor.

B. Any person, other than the victim of the crime or the husband, wife, parent, grandparent, child, grandchild, brother, or sister, by consanguinity or affinity of the offender, who with actual knowledge of the commission by another of any felony offense under Chapter 4 (§ 18.2-30 et seq.) of this title, willfully conceals, alters, dismembers, or destroys any item of physical evidence with the intent to delay, impede, obstruct, prevent, or hinder the investigation, apprehension, prosecution, conviction, or punishment of any person regarding such offense is guilty of a Class 6 felony.

Code 1950, § 18.1-303; 1960, c. 358; 1975, cc. 14, 15; 2005, c. 408.

§ 18.2-462.1. Use of police radio during commission of crime

Any person who has in his possession or who uses a device capable of receiving a police radio signal, message, or transmission, while in the commission of a felony, is guilty of a Class 1 misdemeanor. A prosecution for or conviction of the crime of use or possession of a police radio is not a bar to conviction for any other crime committed while possessing or using the police radio.

1992, c. 499 .

§ 18.2-463. Refusal to aid officer in execution of his office

If any person on being required by any sheriff or other officer refuse or neglect to assist him: (1) in the execution of his office in a criminal case, (2) in the preservation of the peace, (3) in the apprehending or securing of any person for a breach of the peace, or (4) in any case of escape or rescue, he shall be guilty of a Class 2 misdemeanor.

Code 1950, § 18.301; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-464. Failure to obey order of conservator of the peace

If any person, being required by a conservator of the peace on view of a breach of the peace or other offense to bring before him the offender, refuse or neglect to obey the conservator of the peace, he shall be guilty of a Class 2 misdemeanor; and if the conservator of the peace declare himself or be known to be such to the person so refusing or neglecting, ignorance of his office shall not be pleaded as an excuse.

Code 1950, § 18.1-302; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-465. Officer summoning juror to act impartially

If any sheriff or other officer corruptly, or through favor or ill-will, summon a juror, with intent that such juror shall find a verdict for or against either party, he shall be guilty of a Class 3 misdemeanor, and forfeit his office; and he shall be forever incapable of holding any office of honor, profit or trust under the Constitution of Virginia.

Code 1950, § 18.1-296; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-465.1. Penalizing employee for court appearance or service on jury panel

Any person who is summoned to serve on jury duty or any person, except a defendant in a criminal case, who is summoned or subpoenaed to appear in any court of law or equity when a case is to be heard or who, having appeared, is required in writing by the court to appear at any future hearing, shall neither be discharged from employment, nor have any adverse personnel action taken against him, nor shall he be required to use sick leave or vacation time, as a result of his absence from employment due to such jury duty or court appearance, upon giving reasonable notice to his employer of such court appearance or summons. No person who is summoned and appears for jury duty for four or more hours, including travel time, in one day shall be required to start any work shift that begins on or after 5:00 p.m. on the day of his appearance for jury duty or begins before 3:00 a.m. on the day following the day of his appearance for jury duty. Any employer violating the provisions of this section is guilty of a Class 3 misdemeanor.

1981, c. 609; 1985, c. 436; 1988, c. 415; 2000, c. 295; 2002, c. 423; 2004, c. 800; 2005, c. 931.

§ 18.2-466. Corruptly procuring juror to be summoned

If any person procure or attempt to procure a juror to be summoned, with intent that such juror shall find a verdict for or against either party, he shall be guilty of a Class 3 misdemeanor.

Code 1950, § 18.1-297; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-467. Fraud in drawing jurors, etc

If any person be guilty of any fraud, either by tampering with the jury box prior to a draft, or in drawing a juror, or in returning into the jury box the name of any person which has lawfully been drawn out and drawing and substituting another in his stead, or in any other way in drawing of jurors, he shall be guilty of a Class 1 misdemeanor.

Code 1950, § 18.1-298; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-468. Making sound recordings of jury deliberations

If any person shall install or cause to be installed or use or cause to be used any microphone or device designed for recording or transmitting for recording sound in any jury room in this Commonwealth for the purpose of recording the deliberations of any jury or for the purpose of preparing a summary of such deliberations, he shall be guilty of a Class 6 felony.

Code 1950, § 18.1-299; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-469. Officer refusing, delaying, etc., to execute process for criminal

If any officer willfully and corruptly refuse to execute any lawful process requiring him to apprehend or confine a person convicted of, or charged with, an offense, or willfully and corruptly omit or delay to execute such process, whereby such person shall escape and go at large, such officer shall be guilty of a Class 3 misdemeanor.

Code 1950, § 18.1-300; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-470. Extortion by officer

If any officer, for performing an official duty for which a fee or compensation is allowed or provided by law, knowingly demand and receive a greater fee or compensation than is so allowed or provided, he shall be guilty of a Class 4 misdemeanor.

Code 1950, § 18.1-304; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-471. Fraudulent issue of fee bills

If any person authorized by law to charge fees for services performed by him and issue bills therefor fraudulently issue a fee bill for a service not performed by him, or for more than he is entitled to, he shall be guilty of a Class 3 misdemeanor and shall forfeit his office and be forever incapable of holding office of honor, profit or trust under the Constitution of Virginia.

Code 1950, §§ 18.1-305, 18.1-307; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-471.1. Destruction of human biological evidence; penalty

Any clerk of court or other public official who willfully violates an order entered pursuant to § 19.2-270.4:1 is guilty of a Class 6 felony.

2006, c. 913.

§ 18.2-472. False entries or destruction of records by officers

If a clerk of any court or other public officer fraudulently make a false entry, or erase, alter, secrete or destroy any record, including a microphotographic copy, in his keeping and belonging to his office, he shall be guilty of a Class 1 misdemeanor and shall forfeit his office and be forever incapable of holding any office of honor, profit or trust under the Constitution of Virginia.

Code 1950, §§ 18.1-306, 18.1-307; 1960, c. 358; 1975, cc. 14, 15; 1977, c. 107.

§ 18.2-472.1. Providing false information or failing to provide registration information; penalty; prima facie evidence

A. Any person subject to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, other than a person convicted of a sexually violent offense or murder as defined in § 9.1-902, who knowingly fails to register or reregister, or who knowingly provides materially false information to the Sex Offender and Crimes Against Minors Registry is guilty of a Class 1 misdemeanor. A second or subsequent conviction for an offense under this subsection is a Class 6 felony.

B. Any person convicted of a sexually violent offense or murder, as defined in § 9.1-902, who knowingly fails to register or reregister, or who knowingly provides materially false information to the Sex Offender and Crimes Against Minors Registry is guilty of a Class 6 felony. A second or subsequent conviction for an offense under this subsection is a Class 5 felony.

C. A prosecution pursuant to this section shall be brought in the city or county where the offender can be found or where the offender last registered or reregistered or, if the offender failed to comply with the duty to register, where the offender was last convicted of an offense for which registration or reregistration is required.

D. At any preliminary hearing pursuant to this section, an affidavit from the State Police issued as required in § 9.1-907 shall be admitted into evidence as prima facie evidence of the failure to comply with the duty to register or reregister. A copy of such affidavit shall be provided to the registrant or his counsel seven days prior to hearing or trial by the attorney for the Commonwealth.

E. The accused in any preliminary hearing in which an affidavit from the State Police issued as required in § 9.1-907 is offered into evidence pursuant to this section shall have the right to summon and call a custodian of records issuing the affidavit and examine him in the same manner as if he had been called as an adverse witness. Such witness shall appear at the cost of the Commonwealth.

F. At any trial or hearing other than a preliminary hearing conducted pursuant to this section, an affidavit from the State Police issued as required in § 9.1-907 shall constitute prima facie evidence of the failure to comply with the duty to register or reregister, provided the requirements of subsection G have been satisfied and the accused has not objected to the admission of the affidavit pursuant to subsection H.

G. If the attorney for the Commonwealth intends to offer the affidavit into evidence in lieu of testimony at a trial or hearing, other than a preliminary hearing, he shall:

1. Provide by mail, delivery, or otherwise, a copy of the affidavit to counsel of record for the accused, or to the accused if he is proceeding pro se, at no charge, no later than 28 days prior to the hearing or trial;

2. Provide simultaneously with the copy of the affidavit so provided under subdivision 1 a notice to the accused of his right to object to having the affidavit admitted without the presence and testimony of a custodian of the records; and

3. File a copy of the affidavit and notice with the clerk of the court hearing the matter on the day that the affidavit and notice are provided to the accused.

H. In any trial or hearing, other than a preliminary hearing, the accused may object in writing to admission of the affidavit, in lieu of testimony, as evidence of the facts stated therein. Such objection shall be filed with the court hearing the matter, with a copy to the attorney for the Commonwealth, no more than 14 days after the affidavit and notice were filed with the clerk by the attorney for the Commonwealth, or the objection shall be deemed waived. If timely objection is made, the affidavit shall not be admissible into evidence unless (i) the objection is waived by the accused or his counsel in writing or before the court, or (ii) the parties stipulate before the court to the admissibility of the affidavit.

I. Where a custodian of the records is not available for hearing or trial and the attorney for the Commonwealth has used due diligence to secure the presence of the person, the court shall order a continuance. Any continuances ordered pursuant to this subsection shall total not more than 90

days if the accused has been held continuously in custody and not more than 180 days if the accused has not been held continuously in custody.

J. Any objection by counsel for the accused, or the accused if he is proceeding pro se, to timeliness of the receipt of notice required by subsection G shall be made before hearing or trial upon his receipt of actual notice unless the accused did not receive actual notice prior to hearing or trial. A showing by the Commonwealth that the notice was mailed, delivered, or otherwise provided in compliance with the time requirements of this section shall constitute prima facie evidence that the notice was timely received by the accused. If the court finds upon the accused's objection made pursuant to this subsection, that he did not receive timely notice pursuant to subsection G, the accused's objection shall not be deemed waived and if the objection is made prior to hearing or trial, a continuance shall be ordered if requested by either party. Any continuance ordered pursuant to this subsection shall be subject to the time limitations set forth in subsection I.

K. For the purposes of this section any conviction for a substantially similar offense under the laws of (i) any foreign country or any political subdivision thereof, or (ii) any state or territory of the United States or any political subdivision thereof, the District of Columbia, or the United States shall be considered a prior conviction.

1997, c. 747; 1999, c. 845; 2001, c. 365; 2003, c. 584; 2006, cc. 857, 914, 931; 2008, c. 218; 2009, Sp. Sess. I, cc. 1, 4; 2010, c. 656; 2011, c. 285.

Article 7 - ESCAPE OF, COMMUNICATIONS WITH AND DELIVERIES TO PRISONERS

§ 18.2-473. Persons aiding escape of prisoner or child

When a person is lawfully detained as a prisoner in any jail or prison or held in custody, or when a child is placed in a local juvenile detention home, or committed to the Department of Juvenile Justice in any juvenile correctional center, or Reception and Diagnostic Center for Children or held in custody, if any person: (1) conveys anything into the jail, prison, juvenile detention home, juvenile correctional center or Reception and Diagnostic Center for Children with intent to facilitate a person's escape therefrom, (2) in any way aids such prisoner or child to escape, or in an attempt to escape, from such jail, prison, juvenile detention home, juvenile correctional center, Reception and Diagnostic Center for Children or custody, or (3) forcibly takes, or attempts to take him therefrom, such person, if the taking or escape is effected, shall, if the prisoner or child was detained on conviction, commitment or charge of felony, be confined in a state correctional facility not less than one year nor more than five years. If the same is not effected, or if the prisoner or child was not detained on such conviction, commitment or charge, he shall be guilty of a Class 1 misdemeanor.

Code 1950, § 18.1-284; 1960, c. 358; 1975, cc. 14, 15; 1984, c. 587; 1989, c. 733; 1996, cc. 755, 914.

§ 18.2-473.1. Communication with prisoners or committed person; penalty

It shall be unlawful for any person outside of any state or local correctional facility or any juvenile correctional center, other than the jailers or custodial officers in charge of the prisoners or in charge of the persons committed to the Department of Juvenile Justice, to communicate without authority by word or sign with the intent to disrupt institutional operations with any prisoner confined within a state or local correctional facility or with any person committed to the Department of Juvenile Justice in any juvenile correctional center. Any person violating this section is guilty of a Class 4 misdemeanor.

1982, c. 636; 2000, c. 286; 2013, cc. 707, 782.

§ 18.2-474. Delivery of articles to prisoners or committed person

No person shall willfully in any manner deliver, or attempt to deliver, to any prisoner confined under authority of the Commonwealth of Virginia, or of any political subdivision thereof, or to any person committed to the Department of Juvenile Justice in any juvenile correctional center, any article of any nature whatsoever, without first securing the permission of the person in whose charge such prisoner or committed person is, and who may in his discretion grant or refuse permission. Any person violating this section is guilty of a Class 1 misdemeanor.

Nothing herein contained shall be construed to repeal or amend § 18.2-473.

Code 1950, § 18.1-285; 1960, c. 358; 1975, cc. 14, 15; 2013, cc. 707, 782.

§ 18.2-474.1. Delivery of drugs, firearms, explosives, etc., to prisoners or committed persons

Notwithstanding the provisions of § 18.2-474, any person who shall willfully in any manner deliver, attempt to deliver, or conspire with another to deliver to any prisoner confined under authority of the Commonwealth of Virginia, or of any political subdivision thereof, or to any person committed to the Department of Juvenile Justice in any juvenile correctional center, any drug which is a controlled substance regulated by the Drug Control Act in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 or marijuana is guilty of a Class 5 felony. Any person who shall willfully in any manner so deliver or attempt to deliver or conspire to deliver to any such prisoner or confined or committed person, firearms, ammunitions, or explosives of any nature is guilty of a Class 3 felony.

Nothing herein contained shall be construed to repeal or amend § 18.2-473.

1975, c. 608; 1982, c. 490; 2011, cc. 384, 410; 2013, cc. 707, 782; 2014, cc. 674, 719.

§ 18.2-475. Officers, etc., voluntarily allowing person convicted, charged, or adjudicated delinquent of felony to escape; penalty

If any sheriff, jailer, or other officer, or any guard or other person summoned or employed by any such sheriff, jailer, or other officer, voluntarily allows a prisoner or person committed to the Department of Juvenile Justice convicted of, charged with, or adjudicated delinquent of a felony to escape from his custody, he is guilty of a Class 4 felony.

Code 1950, § 18.1-286; 1960, c. 358; 1975, cc. 14, 15; 1983, c. 360; 2013, cc. 707, 782.

§ 18.2-476. Officers, etc., willfully and deliberately permitting person convicted of, charged with, or adjudicated delinquent of a nonfelonious offense to escape or willfully refusing to receive person; penalty

If any sheriff, jailer, or other officer, or any guard or other person summoned or employed by such sheriff, jailer, or other officer, willfully and deliberately permits a prisoner or person committed to the Department of Juvenile Justice convicted of, charged with, or adjudicated delinquent of an offense not a felony, to escape from his custody, or willfully refuses to receive into his custody a person lawfully committed thereto, he is guilty of a Class 2 misdemeanor.

Code 1950, § 18.1-287; 1960, c. 358; 1975, cc. 14, 15; 1983, c. 360; 2013, cc. 707, 782.

§ 18.2-477. Prisoner escaping from jail; how punished

If any person confined in jail or in custody after conviction of a criminal offense shall escape by force or violence, other than by setting fire thereto, he shall be guilty of a Class 6 felony. The term of confinement under this section shall commence from the expiration of the former sentence.

Code 1950, § 18.1-288; 1960, c. 358; 1962, c. 506; 1975, cc. 14, 15; 1985, c. 555.

§ 18.2-477.1. Escapes from juvenile facility; penalty

A. It shall be unlawful for any person to escape or remain away without proper authority from a group home or other residential care facility for children in need of services, delinquent or alleged delinquent youths in which he had been placed by the juvenile and domestic relations court or as a result of his commitment as a juvenile to the Department of Juvenile Justice. Any person violating this subsection shall be taken into custody and brought before the juvenile and domestic relations court. The court may find the person in violation of § 16.1-292 or, if the court finds the person amenable to further treatment in a juvenile facility, the court may return him to the custody of the Department.

B. It shall be unlawful for any person to escape or remain away without proper authority from a secure facility operated by or under contract with the Department of Juvenile Justice or from a secure juvenile detention facility in which he had been placed by the juvenile and domestic relations court or as a result of his commitment as a juvenile to the Department of Juvenile Justice. Any person who escapes from a facility specified in this subsection by force or by violence shall be guilty of a Class 6 felony or, if violation of this subsection occurs other than by force or violence, a Class 1 misdemeanor.

1985, c. 435; 1989, c. 733; 1993, c. 840; 1994, c. 490; 1997, c. 749.

§ 18.2-477.2. Punishment for certain offenses committed within a secure juvenile facility or detention home

It shall be unlawful for a person committed to the Department of Juvenile Justice in any juvenile correctional center or detained in a secure juvenile facility or detention home to commit any of the offenses enumerated in § 53.1-203. A violation of this section shall be punishable as a Class 6 felony, except that a violation of subdivision 6 of § 53.1-203 is a Class 5 felony.

1999, c. 21; 2007, c. 521; 2013, cc. 707, 782.

§ 18.2-478. Escape from jail or custody by force or violence without setting fire to jail

If any person lawfully imprisoned in jail and not tried or sentenced on a criminal offense escapes from jail by force or violence, other than by setting fire thereto or if any person lawfully in the custody of any police officer on a charge of criminal offense escapes from such custody by force or violence, he shall be guilty of a Class 6 felony.

Code 1950, § 18.1-289; 1960, c. 358; 1975, cc. 14, 15; 1985, c. 555.

§ 18.2-479. Escape without force or violence or setting fire to jail

A. Except as provided in subsection B, any person lawfully confined in jail or lawfully in the custody of any court, officer of the court, or of any law-enforcement officer for violation of his probation or parole or on a charge or conviction of a misdemeanor, who escapes, other than by force or violence or by setting fire to the jail, is guilty of a Class 1 misdemeanor.

B. Any person, lawfully confined in jail or lawfully in the custody of any court, officer of the court, or of any law-enforcement officer on a charge or conviction of a felony, who escapes, other than by force or violence or by setting fire to the jail, is guilty of a Class 6 felony.

Code 1950, § 18.1-290; 1960, c. 358; 1975, cc. 14, 15; 1985, c. 555; 2005, c. 573.

§ 18.2-479.1. Resisting arrest; fleeing from a law-enforcement officer; penalty

A. Any person who intentionally prevents or attempts to prevent a law-enforcement officer from lawfully arresting him, with or without a warrant, is guilty of a Class 1 misdemeanor.

B. For purposes of this section, intentionally preventing or attempting to prevent a lawful arrest means fleeing from a law-enforcement officer when (i) the officer applies physical force to the person, or (ii) the officer communicates to the person that he is under arrest and (a) the officer has the legal authority and the immediate physical ability to place the person under arrest, and (b) a reasonable person who receives such communication knows or should know that he is not free to leave.

2003, cc. 112, 805.

§ 18.2-480. Escape, etc., by setting fire to jail

If any person lawfully imprisoned in jail escape, or attempt to escape therefrom, by setting fire thereto, he shall be guilty of a Class 4 felony.

Code 1950, § 18.1-291; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-480.1. Admissibility of records of Department of Corrections in escape cases

In any prosecution for, or preliminary hearing for, the offense of escape under this article or Title 53.1, the records maintained by the Department of Corrections or the Department of Juvenile Justice, when such records are duly attested by the custodian of such records, shall be admissible in evidence as evidence of the fact, location and dates of confinement, provided that the records shall be filed with the clerk of the court hearing the case at least seven days prior to the trial or

preliminary hearing. On motion of the accused, the court may require the custodian to appear as a witness and be subject to cross-examination; provided such motion is made within a reasonable time prior to the day on which the case is set for trial; and provided further, that the custodian so appearing shall be considered the Commonwealth's witness.

1976, c. 394; 1989, c. 733 .

Chapter 11 - OFFENSES AGAINST THE SOVEREIGNTY OF THE COMMONWEALTH

Article 1 - TREASON AND RELATED OFFENSES

§ 18.2-481. Treason defined; how proved and punished

Treason shall consist only in:

(1) Levying war against the Commonwealth;

(2) Adhering to its enemies, giving them aid and comfort;

(3) Establishing, without authority of the legislature, any government within its limits separate from the existing government;

(4) Holding or executing, in such usurped government, any office, or professing allegiance or fidelity to it; or

(5) Resisting the execution of the laws under color of its authority.

Such treason, if proved by the testimony of two witnesses to the same overt act, or by confession in court, shall be punishable as a Class 2 felony.

Code 1950, § 18.1-418; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-482. Misprision of treason

If any person knowing of such treason shall not, as soon as may be, give information thereof to the Governor, or some conservator of the peace, he shall be guilty of a Class 6 felony.

Code 1950, § 18.1-419; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-483. Attempting, or instigating others, to establish usurped government

If any person attempt to establish any such usurped government and commit any overt act therefor or by writing or speaking endeavor to instigate others to establish such government, he shall be guilty of a Class 1 misdemeanor.

Code 1950, § 18.1-420; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-484. Advocacy of change in government by force, violence or other unlawful means

It shall be unlawful for any person, group, or organization to advocate any change, by force, violence, or other unlawful means in the government of the Commonwealth of Virginia or any of its subdivisions or in the government of the United States of America.

It shall be unlawful for any person to join, assist or otherwise contribute to any group or organization which, to the knowledge of such person, advocates or has as its purpose, aim or objective, any change, by force, violence, or other unlawful means in the government of the Commonwealth of Virginia or any of its subdivisions or in the government of the United States of America.

Violation of this section shall be punishable as a Class 6 felony.

Nothing herein shall be construed to limit or prohibit the advocacy, orally or otherwise, of any change, by peaceful means, in the government of the Commonwealth or any of its subdivisions or in the government of the United States.

Code 1950, § 18.1-421; 1960, c. 358; 1962, c. 343; 1975, cc. 14, 15.

§ 18.2-485. Conspiring to incite one race to insurrection against another race

If any person conspire with another to incite the population of one race to acts of violence and war against the population of another race, he shall, whether such acts of violence and war be made or not, be guilty of a Class 4 felony.

Code 1950, § 18.1-422; 1960, c. 358; 1975, cc. 14, 15.

Article 2 - UNIFORM FLAG ACT

§ 18.2-486. Definition of flag, standard, etc

The words flag, standard, color, ensign or shield, as used in this article, shall include any flag, standard, color, ensign or shield, or copy, picture or representation thereof, made of any substance or represented or produced thereon, and of any size, evidently purporting to be such flag, standard, color, ensign or shield of the United States, or of this Commonwealth, or a copy, picture or representation thereof.

Code 1950, § 18.1-423; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-487. Exhibition or display

No person shall, in any manner, for exhibition or display:

(1) Place or cause to be placed any word, figure, mark, picture, design, drawing or advertisement of any nature upon any flag, standard, color, ensign or shield of the United States or of this Commonwealth, or authorized by any law of the United States or of this Commonwealth;

(2) Expose to public view any such flag, standard, color, ensign or shield upon which shall have been printed, painted or otherwise produced, or to which shall have been attached, appended, affixed or annexed, any such word, figure, mark, picture, design, drawing or advertisement; or

(3) Expose to public view for sale, manufacture or otherwise, or sell, give or have in possession for sale, for gift or for use for any purpose, any substance, being an article of merchandise, or receptacle, or thing for holding or carrying merchandise, upon or to which shall have been produced or attached any such flag, standard, color, ensign or shield, in order to advertise, call attention to, decorate, mark or distinguish such article or substance.

Code 1950, § 18.1-424; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-488. Mutilating, defacing, etc

No person shall publicly burn with contempt, mutilate, deface, defile, trample upon, or wear with intent to defile any such flag, standard, color, ensign or shield.

Code 1950, § 18.1-425; 1960, c. 358; 1968, c. 349; 1975, cc. 14, 15, 493.

§ 18.2-488.1. Flag at half mast for certain public safety personnel killed in the line of duty

A. As used in this section, unless the context requires a different meaning:

"Emergency medical services provider" means the same as that term is defined in § 32.1-111.1 and any member of a volunteer emergency medical services agency.

"Firefighter" means the same as that term is defined in § 9.1-300, and any member of a volunteer fire department.

"Police officer" means any full-time or part-time employee of a police department or sheriff's office which is a part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth.

"Service member" means a member of the United States armed forces, Virginia National Guard, or Virginia Defense Force.

B. Whenever a service member, police officer, firefighter, or emergency medical services provider who is a resident of Virginia is killed in the line of duty, all flags, state and local, flown at any building owned and operated by the Commonwealth shall be flown at half staff or mast for one day to honor and acknowledge respect for those who made the supreme sacrifice.

C. The Department of General Services shall develop procedures to effectuate the purposes of this section.

2012, c. 767; 2015, cc. 502, 503.

§ 18.2-489. To what article applies

This article shall not apply to any act permitted by the statutes of the United States or by the laws of this Commonwealth, or by the United States armed forces regulations, nor shall it apply to any printed or written document or production, stationery, ornament, picture or jewelry whereon shall be depicted such flag, standard, color, ensign or shield, with no design or words thereon and dis-connected with any advertisement.

Code 1950, § 18.1-426; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-490. Penalty

Any violation of this article shall be punishable as a Class 1 misdemeanor.

The provisions of this section shall not apply to § 18.2-488.1.

Code 1950, § 18.1-427; 1960, c. 358; 1968, c. 349; 1975, cc. 14, 15; 2012, c. 767.

§ 18.2-491. Construction

This article shall be so construed as to effectuate its general purpose, and to make uniform the laws of the states which enact it.

Code 1950, § 18.1-428; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-492. Short title

This article may be cited as the Uniform Flag Act.

Code 1950, § 18.1-429; 1960, c. 358; 1975, cc. 14, 15.

Chapter 12 - MISCELLANEOUS

Article 1 - LIQUEFIED PETROLEUM GAS CONTAINERS

§ 18.2-493. Definitions

As used in this article, unless the text indicates otherwise:

(a) "Person" shall mean any person, firm or corporation.

(b) "Owner" shall mean any person who holds a written bill of sale under which title or ownership to a container was transferred to such person, or any manufacturer of a container who has not sold or transferred ownership thereof by written bill of sale.

(c) "Liquefied petroleum gas" shall mean any material which is composed predominately of any of the following hydrocarbons or mixtures of the same: propane, propylene, butanes (normal butane and isobutane) and butylenes.

Code 1950, § 18.1-400.1; 1970, c. 442; 1975, cc. 14, 15.

§ 18.2-494. Unlawful use of, filling or refilling or trafficking in containers

No person except the owner thereof or person authorized in writing by the owner shall fill or refill with liquefied petroleum gas, or any other gas or compound, a liquefied petroleum gas container; or buy, sell, offer for sale, give, take, loan, deliver or permit to be delivered, or otherwise use, dispose of, or traffic in a liquefied petroleum gas container or containers if the container bears upon the surface thereof in plainly legible characters the name, initials, mark or other device of the owner; nor shall any person other than the owner of a liquefied petroleum gas container or a person authorized in writing by the owner deface, erase, obliterate, cover up, or otherwise remove or conceal any name, mark, initial or device thereon.

Code 1950, § 18.1-400.2; 1970, c. 442; 1975, cc. 14, 15.

§ 18.2-495. Presumptive evidence

The use of a liquefied petroleum gas container or containers by any person other than the person whose name, mark, initial or device is on the liquefied petroleum gas container or containers, without written consent, or purchase of the marked and distinguished liquefied petroleum gas container for the sale of liquefied petroleum gas or filling or refilling with liquefied petroleum gas, or

possession of the liquefied petroleum gas containers by any person other than the person having his name, mark, initial or other device thereon, without the written consent of such owner, is presumptive evidence of the unlawful use, filling or refilling, or trafficking in of such liquefied petroleum gas containers.

Code 1950, § 18.1-400.3; 1970, c. 442; 1975, cc. 14, 15.

§ 18.2-496. Punishment for violation

Any person who fails to comply with any of the foregoing provisions of this article is guilty of a Class 3 misdemeanor for each separate offense.

Code 1950, § 18.1-400.4; 1970, c. 442; 1975, cc. 14, 15.

§ 18.2-497. Fines and costs

The costs incurred in the enforcement of this article shall be assessed and collected in the same manner as in criminal cases, and all fines collected by virtue of this article shall be turned over in the same manner and for the same purposes as criminal and misdemeanor fines are disposed of by law.

Code 1950, § 18.1-400.5; 1970, c. 442; 1975, cc. 14, 15.

§ 18.2-498. Exempt containers

Nothing in this article applies to or shall be construed to affect a liquefied petroleum gas container having a total capacity of five gallons or less.

Code 1950, § 18.1-400.6; 1970, c. 442; 1975, cc. 14, 15.

Article 1.1 - VIRGINIA GOVERNMENTAL FRAUDS ACT

§ 18.2-498.1. Short title

This article shall be known and cited as the Virginia Governmental Frauds Act.

1980, c. 472.

§ 18.2-498.2. Definitions

When used in this article, the term:

1. "Person" includes any natural person, any trust or association of persons, formal or otherwise, or any corporation, partnership, company or other legal or commercial entity.

2. "Commercial dealing" shall mean any offer, acceptance, agreement, or solicitation to sell or offer to sell or distribute goods, services or construction, to the Commonwealth of Virginia, or any local government within the Commonwealth or any department or agency thereof.

1980, c. 472.

§ 18.2-498.3. Misrepresentations prohibited

Any person, in any commercial dealing in any matter within the jurisdiction of any department or agency of the Commonwealth of Virginia, or any local government within the Commonwealth or

any department or agency thereof, who knowingly falsifies, conceals, misleads, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be guilty of a Class 6 felony.

1980, c. 472.

§ 18.2-498.4. Duty to provide certified statement

A. The Commonwealth, or any department or agency thereof, and any local government or any department or agency thereof, may require that any person seeking, offering or agreeing to transact business or commerce with it, or seeking, offering or agreeing to receive any portion of the public funds or moneys, submit a certification that the offer or agreement or any claim resulting therefrom is not the result of, or affected by, any act of collusion with another person engaged in the same line of business or commerce; or any act of fraud punishable under this article.

B. Any person required to submit a certified statement as provided in subsection A above who knowingly makes a false statement shall be guilty of a Class 6 felony.

1980, c. 472.

§ 18.2-498.5. Actions on behalf of Commonwealth or localities

The Attorney General on behalf of the Commonwealth, or the attorney for the Commonwealth, on behalf of the county or city as the case may be may institute actions and proceedings for any and all violations occurring within their jurisdictions.

1980, c. 472.

Article 2 - CONSPIRACY TO INJURE ANOTHER IN TRADE, BUSINESS OR PROFESSION

§ 18.2-499. Combinations to injure others in their reputation, trade, business or profession; rights of employees

A. Any two or more persons who combine, associate, agree, mutually undertake or concert together for the purpose of (i) willfully and maliciously injuring another in his reputation, trade, business or profession by any means whatever or (ii) willfully and maliciously compelling another to do or perform any act against his will, or preventing or hindering another from doing or performing any lawful act, shall be jointly and severally guilty of a Class 1 misdemeanor. Such punishment shall be in addition to any civil relief recoverable under § 18.2-500.

B. Any person who attempts to procure the participation, cooperation, agreement or other assistance of any one or more persons to enter into any combination, association, agreement, mutual understanding or concert prohibited in subsection A of this section shall be guilty of a violation of this section and subject to the same penalties set out in subsection A.

C. This section shall not affect the right of employees lawfully to organize and bargain concerning wages and conditions of employment, and take other steps to protect their rights as provided under state and federal laws.

Code 1950, § 18.1-74.1:1; 1964, c. 623; 1972, c. 469; 1975, cc. 14, 15; 1994, c. 534.

§ 18.2-500. Same; civil relief; damages and counsel fees; injunctions

A. Any person who shall be injured in his reputation, trade, business or profession by reason of a violation of § 18.2-499, may sue therefor and recover three-fold the damages by him sustained, and the costs of suit, including a reasonable fee to plaintiff's counsel, and without limiting the generality of the term, "damages" shall include loss of profits.

B. Whenever a person shall duly file a civil action in the circuit court of any county or city against any person alleging violations of the provisions of § 18.2-499 and praying that such party defendant be restrained and enjoined from continuing the acts complained of, such court shall have jurisdiction to hear and determine the issues involved, to issue injunctions pendente lite and permanent injunctions and to decree damages and costs of suit, including reasonable counsel fees to complainants' and defendants' counsel.

Code 1950, § 18.1-74.1:2; 1964, c. 623; 1975, cc. 14, 15; 2003, c. 578; 2005, c. 681.

§ 18.2-501. Same; protection of persons testifying or producing evidence

(a) No natural person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, in any action, suit, or prosecution authorized by this article; provided, that no person so testifying shall be exempt from prosecution or punishment for perjury committed in so testifying.

(b) As used in this article a "person" is any person, firm, corporation, partnership or association.

Code 1950, § 18.1-74.1:3; 1964, c. 623; 1975, cc. 14, 15.

Article 3 - MISCELLANEOUS OFFENSES IN GENERAL

§ 18.2-502. Medical referral for profit

(a) No person, firm, partnership, association or corporation, or agent or employee thereof, shall for profit engage in any business which in whole or in part includes the referral or recommendation of persons to a physician, hospital, health related facility, or dispensary for any form of medical care or treatment of any ailment or physical condition unless the person is advised of the criteria of selection of the physicians, hospitals, health-related facilities or dispensaries considered for the referral or recommendation. The acceptance of a fee or charge for any such referral or recommendation shall create a presumption that the business is engaged in such service for profit. A violation of the provisions of this section shall be punishable as a Class 1 misdemeanor.

(b) Whenever there is a violation of this section, in addition to the criminal sanctions, an application may be made by the Attorney General to the circuit court of the city or county in which the

offense occurred, to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation. If it appears to the satisfaction of the court or judge that the defendant has, in fact, violated this section, an injunction may be issued by such court or judge enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. Nothing in this section shall be construed to limit, prohibit, forbid or prevent any licensed physician or practitioner of the healing arts in the ordinary course of his professional practice from making referrals or recommendations to other members of such groups, so long as no fee is received for such referral or recommendation.

The criminal and civil provisions of this section shall not apply to any individual association or corporation not organized or incorporated for pecuniary profit or financial gain, or to any organization or association which is exempt from taxation pursuant to § 501(c) of Title 26 of the United States Code (Int. Rev. Code of 1954).

(c) Nothing in this section shall be construed to authorize any division of fees prohibited by § 54.1-2962 or any remuneration for referral prohibited by federal law or regulation.

Code 1950, § 18.1-417.2; 1972, c. 642; 1975, cc. 14, 15; 1986, c. 632.

§ 18.2-502.1. Weight loss centers or clinics; disclosure

No weight loss center or clinic shall, in its name or advertisements, use the words "physicians" or "doctors" or refer to its clients as "patients" or indicate that "medical teams" are available in its facility unless (i) the facility employs at least one registered nurse full-time and employs or contracts with at least one physician licensed by the Board of Medicine for services or consultation in connection with the facility's activities; or (ii) the facility is under the full-time supervision of a physician; or (iii) the clinic or program is operated by or in conjunction with a licensed hospital. Any physician affiliated with a weight loss center or clinic for purposes of consultation or supervision shall have primary responsibility for decisions made within the scope of that affiliation relating to the provision of medical services or care to persons using the services of that facility and shall have primary responsibility for medical decisions relating to the evaluation of the appropriateness of the admission of persons to the weight loss program. Any person who violates the provisions of this section shall be guilty of a Class 1 misdemeanor.

1988, c. 765.

§ 18.2-502.2. Warning required for certain medical tests; penalty

No commercial medical testing kit designed for consumer home use shall be sold in this Commonwealth unless a warning is provided to the consumer to the effect that such tests may produce erroneous results and that medical testing is more accurate when performed by professionals within the controlled conditions of a laboratory. The consumer shall be advised to seek professional medical consultation and, if recommended, another test for validation of such test results.

Any person who violates the provisions of this section shall be guilty of a Class 4 misdemeanor.

1989, c. 142 .

§ 18.2-503. Possession or duplication of certain keys

(a) No person shall knowingly possess any key to the lock of any building or other property owned by the Commonwealth of Virginia, or a department, division, agency or political subdivision thereof, without receiving permission from a person duly authorized to give such permission to possess such key.

(b) No person, without receiving permission from a person duly authorized to give such permission, shall knowingly duplicate, copy or make a facsimile of any key to a lock of a building or other property owned by the Commonwealth of Virginia, or a department, division, agency or political subdivision thereof.

Violation of this section shall constitute a Class 3 misdemeanor.

Code 1950, § 18.1-408.1; 1972, c. 139; 1975, cc. 14, 15; 1984, c. 61.

§ 18.2-504. Destroying or concealing wills

If any person fraudulently destroy or conceal any will or codicil, with intent to prevent the probate thereof, he shall be guilty of a Class 6 felony.

Code 1950, § 18.1-309; 1960, c. 358; 1975, cc. 14, 15.

§ 18.2-504.1. Unlawful change of name; punishment

If any person residing in this Commonwealth changes his name or assumes another name, unlawfully, he shall be guilty of a Class 3 misdemeanor.

Code 1950, § 8-577.1; 1956, c. 402; 1973, c. 401; 1976, c. 115; 1977, c. 624.

§ 18.2-505. Preparation, etc., of papers to be submitted for academic credit

(a) No person shall prepare, cause to be prepared or sell any term paper, thesis, dissertation or other written material for another person, for profit, with the knowledge, or under circumstances in which he should reasonably have known, that such term paper, thesis, dissertation or other written material is to be submitted by any other person for academic credit at any public or private college, university or other institution of higher learning in this Commonwealth.

(b) No person shall make or disseminate, with the intent to induce any other person to enter into any obligation relating thereto, any statement, written or oral, that he will prepare or cause to be prepared, any term paper, thesis, dissertation or other written material, to be sold for profit, for or on behalf of any person who has been assigned the written preparation of such term paper, thesis, dissertation or other written material for academic credit at any public or private college, university or other institution of higher learning in this Commonwealth.

Code 1950, § 18.1-371.1; 1974, c. 342; 1975, cc. 14, 15.

§ 18.2-506. "Person" and "prepare" defined

(a) As used in this article, "person" means any individual, partnership, corporation or association.

(b) As used in this article, "prepare" means to put into condition for intended use. "Prepare" does not include the mere typing or assembling of papers, nor the mere furnishing of information or research.

Code 1950, § 18.1-371.2; 1974, c. 342; 1975, cc. 14, 15.

§ 18.2-507. Injunctions against violation of § 18.2-505

Whenever a college, university or other institution of higher learning in this Commonwealth shall duly file a civil action in the circuit court of any county or city against any person alleging violations of the provisions of § 18.2-505, and praying that such party defendant be restrained and enjoined from continuing the acts complained of, such court shall have jurisdiction to hear and determine the issues involved, to issue injunctions pendente lite and permanent injunctions and to decree damages and costs of suit, including reasonable counsel fees to complainants' counsel.

Code 1950, § 18.1-371.3; 1974, c. 342; 1975, cc. 14, 15; 2005, c. 681.

§ 18.2-508. Penalties

Any person found guilty of violating any provision of § 18.2-505 shall be guilty of a misdemeanor and shall be punished by a fine not to exceed $1,000.

Code 1950, § 18.1-371.4; 1974, c. 342; 1975, cc. 14, 15.

§ 18.2-509. Employment of lights under certain circumstances

Any person in any motor vehicle or otherwise who, between a half hour after sunset on any day and a half hour before sunrise the following day, employs a light attached to such vehicle, or employs a spotlight to cast a light beyond the surface of the roadway upon any poultry house or other building inhabited by animals that causes such animals to panic or become injured, except upon his own land or upon private land on which he has permission, shall be guilty of a Class 4 misdemeanor.

1976, c. 332.

§ 18.2-510. Burial or cremation of animals or fowls which have died

When the owner of any animal or grown fowl which has died knows of such death, such owner shall forthwith have its body cremated or buried or request such service from an officer or other person designated for the purpose. If the owner fails to do so, any judge of a general district court, after notice to the owner if he can be ascertained, shall cause any such dead animal or fowl to be cremated or buried by an officer or other person designated for the purpose. Such officer or other person shall be entitled to recover of the owner of every such animal or fowl that is cremated or buried the actual cost of the cremation or burial and a reasonable fee to be recovered in the same manner as officers' fees are recovered, free from all exemptions in favor of such owner. Any person violating the provisions of this section shall be guilty of a Class 4 misdemeanor.

Nothing in this section shall be deemed to require the burial or cremation of the whole or portions of any animal or fowl which is to be used for food or in any commercial manner.

This section shall not apply to any county until the governing body thereof shall adopt the same.

Code 1950, § 32-70; 1979, c. 716; 1981, c. 578; 2008, c. 345.

§ 18.2-511. Sale of certain military grave markers prohibited

Any person who sells or offers for sale any military grave marker of one or more deceased persons who served in the military service of the Commonwealth, the United States, or any of the states thereof, shall be assessed a $100 civil penalty payable to the Literary Fund.

The provisions of this section shall not apply to the sale or offer for sale of such grave marker if it was (i) conveyed with real property to which it remains affixed, (ii) sold or offered for sale following manufacture or fabrication and prior to initial installation or dedication, or (iii) lawfully acquired.

2004, c. 299.

§ 18.2-511.1. Smoking in proximity to a medical oxygen source in a health care facility; penalty

Any person who smokes or uses an open flame within 25 feet of a medical oxygen source in a health care facility, as defined in § 15.2-2820, when the area is posted as an area where smoking and open flame are prohibited is guilty of a Class 2 misdemeanor.

2007, c. 430; 2009, cc. 153, 154.

Chapter 13 - VIRGINIA RACKETEER INFLUENCED AND CORRUPT ORGANIZATION ACT

§ 18.2-512. Short title

This chapter may be cited as the "Virginia Racketeer Influenced and Corrupt Organization (RICO) Act."

2004, cc. 883, 996.

§ 18.2-513. Definitions

As used in this chapter, the term:

"Criminal street gang" shall be as defined in § 18.2-46.1.

"Enterprise" includes any of the following: sole proprietorship, partnership, corporation, business trust, criminal street gang; or other group of three or more individuals associated for the purpose of criminal activity.

"Proceeds" shall be as defined in § 18.2-246.2.

"Racketeering activity" means to commit, attempt to commit, conspire to commit, or to solicit, coerce, or intimidate another person to commit two or more of the following offenses: Article 2.1

(§ 18.2-46.1 et seq.) of Chapter 4 of this title, § 18.2-460; a felony offense of §§ 3.2-4212, 3.2-4219, 10.1-1455, 18.2-31, 18.2-32, 18.2-32.1, 18.2-33, 18.2-35, Article 2.2 (§ 18.2-46.4 et seq.) of Chapter 4 of this title, §§ 18.2-47, 18.2-48, 18.2-48.1, 18.2-49, 18.2-51, 18.2-51.2, 18.2-52, 18.2-53, 18.2-55, 18.2-58, 18.2-59, 18.2-77, 18.2-79, 18.2-80, 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, 18.2-95, Article 4 (§ 18.2-111 et seq.) of Chapter 5 of this title, Article 1 (§ 18.2-168 et seq.) of Chapter 6 of this title, §§ 18.2-178, 18.2-186, Article 6 (§ 18.2-191 et seq.) of Chapter 6 of this title, Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of this title, § 18.2-246.13, Article 1 (§ 18.2-247 et seq.) of Chapter 7 of this title, §§ 18.2-279, 18.2-286.1, 18.2-289, 18.2-300, 18.2-308.2, 18.2-308.2:1, 18.2-328, 18.2-348, 18.2-355, 18.2-356, 18.2-357, 18.2-357.1, 18.2-368, 18.2-369, 18.2-374.1, Article 8 (§ 18.2-433.1 et seq.) of Chapter 9 of this title, Article 1 (§ 18.2-434 et seq.) of Chapter 10 of this title, Article 2 (§ 18.2-438 et seq.) of Chapter 10 of this title, Article 3 (§ 18.2-446 et seq.) of Chapter 10 of this title, Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12 of this title, § 3.2-6571, 18.2-516, 32.1-314, 58.1-1008.2, 58.1-1017, or 58.1-1017.1; or any substantially similar offenses under the laws of any other state, the District of Columbia, the United States or its territories.

2004, cc. 883, 996; 2008, c. 681; 2009, cc. 662, 847; 2013, c. 626; 2015, cc. 690, 691.

§ 18.2-514. Racketeering offenses

A. It shall be unlawful for an enterprise, or for any person who occupies a position of organizer, supervisor, or manager of an enterprise, to receive any proceeds known to have been derived directly from racketeering activity and to use or invest an aggregate of $10,000 or more of such proceeds in the acquisition of any title to, or any right, interest, or equity in, real property, or in the establishment or operation of any enterprise.

B. It shall be unlawful for any enterprise, or for any person who occupies a position of organizer, supervisor, or manager of an enterprise, to directly acquire or maintain any interest in or control of any enterprise or real property through racketeering activity.

C. It shall be unlawful for any person employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through racketeering activity.

D. It shall be unlawful for any person to conspire to violate any of the provisions of subsection A, B, or C.

E. Each violation of this section is a separate and distinct felony punishable in accordance with § 18.2-515.

2004, cc. 883, 996; 2009, c. 847.

§ 18.2-515. Criminal penalties; forfeiture

A. Any person or enterprise convicted of engaging in activity in violation of the provisions of § 18.2-514 is guilty of a felony punishable by imprisonment for not less than five years nor more than 40 years and a fine of not more than $1 million. A second or subsequent offense shall be punishable as a Class 2 felony and a fine of not more than $2 million.

The court may order any such person or enterprise to be divested of any interest in any enterprise or real property identified in § 18.2-514; order the dissolution or reorganization of such enterprise; and order the suspension or revocation of any license, permit, or prior approval granted to such enterprise or person by any agency of the Commonwealth or political subdivision thereof.

B. All property, real or personal, including money, together with any interest or profits derived from the investment of such money, used in substantial connection with, intended for use in the course of, or traceable to, conduct in violation of any provision of § 18.2-514 is subject to civil forfeiture to the Commonwealth. The forfeiture proceeding shall be conducted pursuant to the provisions of Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2.

2004, cc. 883, 996; 2012, c. 511.

§ 18.2-516. Prohibition of illegal money transmitting

A. Any person who controls, manages, or owns all or part of an enterprise, engaged in money transmission as defined in § 6.2-1900, and transmits money, which he knows or should have known was derived from or traceable to racketeering activity, is guilty of a Class 6 felony.

B. All property, real or personal, including money, used in substantial connection with, intended for use in the course of, or traceable to, conduct in violation of any provision of subsection A is subject to civil forfeiture to the Commonwealth. The forfeiture proceeding shall be conducted pursuant to the provisions of Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2.

2004, cc. 883, 996.

§ 18.2-517. Venue for prosecution

For the purposes of venue, any violation of this chapter shall be considered to have been committed in any county or city:

1. In which any act was performed in furtherance of any course of conduct that violates this chapter;

2. That is the principal place of the enterprise in the Commonwealth;

3. In which any offender had control or possession of any proceeds of a violation of this chapter, or of any records, or any other material or objects, which were used in furtherance of a violation;

4. In which any offender resides; or

5. Any place of venue under Article 2 (§ 19.2-244 et seq.) of Chapter 15 of Title 19.2.

2004, cc. 883, 996.