CODE OF VIRGINIA

Title 19.2

Criminal Procedure

Title 19.2 - CRIMINAL PROCEDURE

Chapter 1 - GENERAL PROVISIONS

§ 19.2-1. 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of municipal charters, inconsistent with the provisions of this title, are, except as herein otherwise provided, repealed to the extent of such inconsistency.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, c. 495.

§ 19.2-2. Effect of repeal of Title 19.1 and enactment of this title

The repeal of Title 19.1 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 19.1 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, c. 495.

§ 19.2-3. 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, c. 495.

§ 19.2-3.1. Personal appearance by two-way electronic video and audio communication; standards

A. Where an appearance is required or permitted before a magistrate, intake officer or, prior to trial, before a judge, the appearance may be by (i) personal appearance before the magistrate, intake officer or judge or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, a magistrate, intake officer or judge may exercise all powers conferred by law and all communications and proceedings shall be conducted in the same manner as if the appearance were in person. If two-way electronic video and audio communication is available for use by a district court for the conduct of a hearing to determine bail or to determine representation by counsel, the court shall use such communication in any such proceeding that would otherwise require the transportation of a person from outside the jurisdiction of the court in order to appear in person before the court. Any documents transmitted between the magistrate, intake officer, or judge and the person appearing before the magistrate,

intake officer, or judge may be transmitted by electronically transmitted facsimile process or other electronic method. The facsimile or other electronically generated document may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures.

B. Any two-way electronic video and audio communication system used for an appearance shall meet the following standards:

1. The persons communicating must simultaneously see and speak to one another;

2. The signal transmission must be live, real time;

3. The signal transmission must be secure from interception through lawful means by anyone other than the persons communicating; and

4. Any other specifications as may be promulgated by the Chief Justice of the Supreme Court.

1991, c. 41; 1996, cc. 755, 914; 2006, c. 285; 2009, cc. 94, 623; 2010, c. 800.

§ 19.2-4. References to former sections, articles or chapters of Titles 18.1 and 19.1

Whenever in this title any of the conditions, requirements, provisions or contents of any section, article or chapter of Titles 18.1 and 19.1, 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 of Title 18.2, and whenever any such former section, article or chapter is given a new number in this title or in Title 18.2, all references to any such former section, article or chapter of Title 19.1 or of Title 18.1 appearing elsewhere in this Code than in this title or in Title 18.2, 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, c. 495.

§ 19.2-5. Meaning of certain terms

As used in this title, unless otherwise clearly indicated by the context in which it appears:

"Court" means any court vested with appropriate jurisdiction under the Constitution and laws of the Commonwealth.

"Court not of record" and "district court" shall have the respective meanings assigned to them in Chapter 4.1 (§ 16.1-69.1 et seq.) of Title 16.1.

"Judge" means any judge, associate judge or substitute judge of any court or any magistrate.

Code 1950, § 19.1-5; 1960, c. 366; 1975, c. 495; 2005, c. 839; 2008, cc. 551, 691.

§ 19.2-6. Appointive power of circuit courts

Unless otherwise specifically provided, whenever an appointive power is given to the judge of a circuit court, that power shall be exercised by a majority of the judges of the circuit. In case of a tie, such fact shall be communicated to the Chief Justice of the Supreme Court, who shall appoint a

circuit judge from another circuit who shall act as a tie breaker. Where the power of appointment is to be exercised by a majority of the judges of the Second Judicial Circuit and such appointment is to a local post, board or commission in Accomack or Northampton County, the resident judge or judges of the County of Accomack or Northampton shall exercise such appointment power as if he or they comprise the majority of the judges of the Circuit.

1975, c. 495; 1977, c. 288; 1994, c. 407.

§ 19.2-7. Rewards for arrest of persons convicted of or charged with offenses; rewards for conviction of unknown offenders

The Governor may offer a reward for apprehending and securing any person convicted of an offense or charged therewith, who shall have escaped from lawful custody or confinement, or for apprehending and securing any person charged with an offense, who, there is reason to fear, cannot be arrested in the common course of proceeding. The Governor may also offer a reward for the detection and conviction of the person guilty of an offense when such offense has been committed but the person guilty thereof is unknown.

Any sheriff, deputy sheriff, sergeant, deputy sergeant or any other officer may claim and receive any reward which may be offered for the arrest and detention of any offender against the criminal laws of this or any other state or nation.

Code 1950, §§ 19.1-6, 19.1-6.1; 1960, c. 366; 1962, c. 513; 1964, c. 171; 1975, c. 495.

§ 19.2-8. Limitation of prosecutions

A prosecution for a misdemeanor, or any pecuniary fine, forfeiture, penalty or amercement, shall be commenced within one year next after there was cause therefor, except that a prosecution for petit larceny may be commenced within five years, and for an attempt to produce abortion, within two years after commission of the offense.

A prosecution for any misdemeanor violation of § 54.1-3904 shall be commenced within two years of the discovery of the offense.

A prosecution for violation of laws governing the placement of children for adoption without a license pursuant to § 63.2-1701 shall be commenced within one year from the date of the filing of the petition for adoption.

A prosecution for making a false statement or representation of a material fact knowing it to be false or knowingly failing to disclose a material fact, to obtain or increase any benefit or other payment under the Virginia Unemployment Compensation Act (§ 60.2-100 et seq.) shall be commenced within three years next after the commission of the offense.

A prosecution for any violation of § 10.1-1320, 62.1-44.32 (b), 62.1-194.1, or Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of Title 62.1 that involves the discharge, dumping or emission of any toxic substance as defined in § 32.1-239 shall be commenced within three years next after the commission of the offense.

Prosecution of Building Code violations under § 36-106 shall commence within one year of discovery of the offense by the building official, provided that such discovery occurs within two years of the date of initial occupancy or use after construction of the building or structure, or the issuance of a certificate of use and occupancy for the building or structure, whichever is later. However, prosecutions under § 36-106 relating to the maintenance of existing buildings or structures as contained in the Uniform Statewide Building Code shall commence within one year of the issuance of a notice of violation for the offense by the building official.

Prosecution of any misdemeanor violation of § 54.1-111 shall commence within one year of the discovery of the offense by the complainant, but in no case later than five years from occurrence of the offense.

Prosecution of any misdemeanor violation of any professional licensure requirement imposed by a locality shall commence within one year of the discovery of the offense by the complainant, but in no case later than five years from occurrence of the offense.

Prosecution of nonfelonious offenses which constitute malfeasance in office shall commence within two years next after the commission of the offense.

Prosecution of any violation of § 55-79.87, 55-79.88, 55-79.89, 55-79.90, 55-79.93, 55-79.94, 55-79.95, 55-79.103, or any rule adopted under or order issued pursuant to § 55-79.98, shall commence within three years next after the commission of the offense.

Prosecution of illegal sales or purchases of wild birds, wild animals and freshwater fish under § 29.1-553 shall commence within three years after commission of the offense.

Prosecution of violations under Title 58.1 for offenses involving false or fraudulent statements, documents or returns, or for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof, or for the offense of willfully failing to pay any tax, or willfully failing to make any return at the time or times required by law or regulations shall commence within three years next after the commission of the offense, unless a longer period is otherwise prescribed.

Prosecution of violations of subsection A or B of § 3.2-6570 shall commence within five years of the commission of the offense, except violations regarding agricultural animals shall commence within one year of the commission of the offense.

A prosecution for a violation of § 18.2-386.1 shall be commenced within five years of the commission of the offense.

A prosecution for any violation of the Campaign Finance Disclosure Act, Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2, shall commence within one year of the discovery of the offense but in no case more than three years after the date of the commission of the offense.

A prosecution of a crime that is punishable as a misdemeanor pursuant to the Virginia Computer Crimes Act (§ 18.2-152.1 et seq.) or pursuant to § 18.2-186.3 for identity theft shall be

commenced before the earlier of (i) five years after the commission of the last act in the course of conduct constituting a violation of the article or (ii) one year after the existence of the illegal act and the identity of the offender are discovered by the Commonwealth, by the owner, or by anyone else who is damaged by such violation.

A prosecution of a misdemeanor under § 18.2-64.2, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-67.5, or 18.2-370.6 where the victim is a minor at the time of the offense shall be commenced no later than one year after the victim reaches majority.

A prosecution for a violation of § 18.2-260.1 shall be commenced within three years of the commission of the offense.

Nothing in this section shall be construed to apply to any person fleeing from justice or concealing himself within or without the Commonwealth to avoid arrest or be construed to limit the time within which any prosecution may be commenced for desertion of a spouse or child or for neglect or refusal or failure to provide for the support and maintenance of a spouse or child.

Code 1950, § 19.1-8; 1960, c. 366; 1974, c. 466; 1975, c. 495; 1976, cc. 114, 620; 1977, c. 108; 1978, c. 730; 1979, c. 243; 1980, c. 496; 1981, c. 31; 1984, c. 601; 1987, c. 488; 1990, cc. 575, 976; 1992, cc. 177, 435, 650; 1996, c. 484; 1998, c. 566; 1999, c. 620; 2005, cc. 746, 761, 827; 2006, cc. 193, 787, 892; 2008, c. 769; 2011, cc. 118, 143, 494, 553; 2014, c. 169; 2015, c. 176; 2016, cc. 233, 253.

§ 19.2-8.1. Prosecution for murder or manslaughter; passage of time not a limitation

A prosecution for murder or manslaughter, whether at common law or under the Code of Virginia, may be instituted regardless of the time elapsed between the act or omission causing the death of the victim and the death of the victim.

2009, c. 278.

§ 19.2-9. Prosecution of certain criminal cases removed from state to federal courts; costs

When any person indicted in the courts of this Commonwealth for a violation of its laws, has his case removed to the district court of the United States under 28 U.S.C. § 1442, it shall be the duty of the attorney for the Commonwealth for the county or city in which any such indictment is found to prosecute any such case in the United States district court to which the same shall be so removed, and for his services in this behalf he shall be paid a fee of $100 for each case tried by him in such United States district court, and mileage at the rate now allowed by law to the members of the General Assembly for all necessary travel in going to and returning from such court, to be paid on his account when approved by the Attorney General.

A per diem of one dollar and fifty cents for each day of actual attendance upon such United States district court and mileage at a rate as provided by law for every mile of necessary travel in going to and returning from such court shall be paid out of the state treasury to each witness for the Commonwealth in every such case upon accounts therefor against the Commonwealth, certified by the attorney for the Commonwealth prosecuting such case and approved by the Attorney General.

It shall not be the duty of the Attorney General to appear for the Commonwealth in such cases unless he can do so without interfering with the efficient discharge of the duties imposed upon him by law; but he may appear with the attorney for the Commonwealth prosecuting such case in any case when the interests of the Commonwealth may in his judgment require his presence.

The Comptroller shall from time to time draw his warrants upon the state treasury in favor of the parties entitled to be paid the above compensation and expenses, or their assigns, upon bills certified and approved as above prescribed.

Code 1950, § 19.1-14; 1960, c. 366; 1975, c. 495.

§ 19.2-9.1. Written notice required for complaining witness who is requested to take polygraph test

A. For offenses not specified in subsection B, if a complaining witness is requested to submit to a polygraph examination during the course of a criminal investigation, such witness shall be informed in writing prior to the examination that (i) the examination is voluntary, (ii) the results thereof are inadmissible as evidence and (iii) the agreement of the complaining witness to submit thereto shall not be the sole condition for initiating or continuing the criminal investigation.

B. No law-enforcement officer, attorney for the Commonwealth, or other government official shall ask or require a victim of an alleged sex offense to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an offense. If a victim is requested to submit to a polygraph examination during the course of a criminal investigation, such victim shall be informed in writing of the provisions of subsection A and that the refusal of a victim to submit to such an examination shall not prevent the investigation, charging, or prosecution of the offense.

C. A "sex offense," for the purposes of this section, shall mean any offense set forth in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2.

1994, c. 336; 2008, cc. 512, 748.

§ 19.2-10. Outlawry abolished

No proceeding of outlawry shall hereafter be instituted or prosecuted.

Code 1950, § 19.1-15; 1960, c. 366; 1975, c. 495.

§ 19.2-10.1. Subpoena duces tecum for obtaining records concerning banking and credit cards

A. A financial institution as defined in § 6.2-604, money transmitter as defined in § 6.2-1900, or commercial businesses providing credit history or credit reports; or an issuer as defined in § 6.2-424 shall disclose a record or other information pertaining to a customer, to a law-enforcement officer pursuant to a subpoena duces tecum issued pursuant to this section.

1. In order to obtain such records, the law-enforcement official shall provide a statement of the facts documenting the reasons that the records or other information sought are relevant to a

legitimate law-enforcement inquiry, relating to a named person or persons, to the attorney for the Commonwealth. A court shall issue a subpoena duces tecum upon motion of the Commonwealth only if the court finds that there is probable cause to believe that a crime has been committed and to believe the records sought or other information sought, including electronic data and electronic communications, are relevant to a legitimate law-enforcement inquiry into that offense. The court may issue a subpoena duces tecum under this section regardless of whether any criminal charges have been filed.

2. A court issuing an order pursuant to this section, on a motion made promptly by the financial institution or credit card issuer, or enterprise may quash or modify the subpoena duces tecum, if the information or records requested are unusually voluminous in nature or compliance with such subpoena duces tecum would otherwise cause an undue burden on such provider.

B. No cause of action shall lie in any court against a financial institution or credit card issuer, or enterprise, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a subpoena duces tecum under this section.

C. Upon issuance of a subpoena duces tecum under this section, the statement shall be temporarily sealed by the court upon application of the attorney for the Commonwealth for good cause shown in an ex parte proceeding. Any individual arrested and claiming to be aggrieved by the order may move the court for the unsealing of the statement, and the burden of proof with respect to continued sealing shall be upon the Commonwealth.

D. Any and all records received by law enforcement pursuant to this section shall be utilized only for a reasonable amount of time and only for a legitimate law-enforcement purpose. Upon the completion of the investigation the records shall be submitted to the court by the attorney for the Commonwealth along with a proposed order requiring the records to be sealed. Upon entry of such order, the court shall seal the records in accordance with the requirements contained in subsection C.

2003, cc. 223, 541, 549; 2004, cc. 883, 996; 2010, cc. 702, 794.

§ 19.2-10.2. Administrative subpoena issued for record from provider of electronic communication service or remote computing service

A. A provider of electronic communication service or remote computing service that is transacting or has transacted any business in the Commonwealth shall disclose a record or other information pertaining to a subscriber to or customer of such service, excluding the contents of electronic communications as required by § 19.2-70.3, to an attorney for the Commonwealth or the Attorney General pursuant to an administrative subpoena issued under this section.

1. In order to obtain such records or other information, the attorney for the Commonwealth or the Attorney General shall certify on the face of the subpoena that there is reason to believe that the records or other information being sought are relevant to a legitimate law-enforcement investigation concerning violations of §§ 18.2-47, 18.2-48, 18.2-49, 18.2-346, 18.2-347, 18.2-348, 18.2-

349, 18.2-355, 18.2-356, 18.2-357, 18.2-374.1, and 18.2-374.1:1, former § 18.2-374.1:2, and § 18.2-374.3.

2. Upon written certification by the attorney for the Commonwealth or the Attorney General that there is a reason to believe that the victim is under the age of 18 and that notification or disclosure of the existence of the subpoena will endanger the life or physical safety of an individual, or lead to flight from prosecution, the destruction of or tampering with evidence, the intimidation of potential witnesses, or otherwise seriously jeopardize an investigation, the subpoena shall include a provision ordering the service provider not to notify or disclose the existence of the subpoena to another person, other than an attorney to obtain legal advice, for a period of 30 days after the date on which the service provider responds to the subpoena.

3. On a motion made promptly by the electronic communication service or remote computing service provider, a court of competent jurisdiction may quash or modify the administrative subpoena if the records or other information requested are unusually voluminous in nature or if compliance with the subpoena would otherwise cause an undue burden on the service provider.

B. All records or other information received by an attorney for the Commonwealth or the Attorney General pursuant to an administrative subpoena issued under this section shall be used only for a reasonable length of time not to exceed 30 days and only for a legitimate law-enforcement purpose. Upon completion of the investigation, the records or other information held by the attorney for the Commonwealth or the Attorney General shall be destroyed if no prosecution is initiated. The existence of such a subpoena shall be disclosed upon motion of an accused.

C. No cause of action shall lie in any court against an electronic communication service or remote computing service provider, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of an administrative subpoena issued under this section.

D. Records or other information pertaining to a subscriber to or customer of such service means name, address, local and long distance telephone connection records, or records of session times and durations, length of service, including start date, and types of service utilized, telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address, and means and source of payment for such service.

E. Nothing in this section shall require the disclosure of information in violation of any federal law.

2007, cc. 802, 814; 2014, c. 166; 2015, cc. 544, 625.

§ 19.2-10.3. Reasonable suspicion required to stop, board, or inspect a noncommercial vessel on navigable waters of the Commonwealth

A. Notwithstanding any other provision of law, no law-enforcement officer charged with enforcing laws or regulations on the navigable waters of the Commonwealth shall stop, board, or inspect

any noncommercial vessel on the navigable waters of the Commonwealth unless such officer has reasonable suspicion that a violation of law or regulation exists.

B. The provisions of subsection A shall not apply to lawful stops, boardings, or inspections conducted by conservation police officers, as defined in § 29.1-100, or the Virginia Marine Police for the purposes of inspecting hunting, fishing, and trapping licenses pursuant to §§ 28.2-231 and 29.1-337 or creel and bag limit inspections pursuant to § 29.1-209, nor shall it prohibit lawful boating safety checkpoints conducted by conservation police officers and Virginia Marine Police in accordance with established agency policy.

2015, c. 484.

§ 19.2-11. Procedure in contempt cases

No court or judge shall impose a fine upon a juror, witness or other person for disobedience of its process or any contempt, unless he either be present in court at the time, or shall have been served with a rule, returnable to a certain time, requiring him to show cause why the fine should not be imposed and shall have failed to appear and show cause.

Code 1950, § 19.1-16; 1960, c. 366; 1968, c. 639; 1975, c. 495.

Chapter 1.1 - CRIME VICTIM AND WITNESS RIGHTS ACT

§ 19.2-11.01. Crime victim and witness rights

A. In recognition of the Commonwealth's concern for the victims and witnesses of crime, it is the purpose of this chapter to ensure that the full impact of crime is brought to the attention of the courts of the Commonwealth; that crime victims and witnesses are treated with dignity, respect and sensitivity; and that their privacy is protected to the extent permissible under law. It is the further purpose of this chapter to ensure that victims and witnesses are informed of the rights provided to them under the laws of the Commonwealth; that they receive authorized services as appropriate; and that they have the opportunity to be heard by law-enforcement agencies, attorneys for the Commonwealth, corrections agencies and the judiciary at all critical stages of the criminal justice process to the extent permissible under law. Unless otherwise stated and subject to the provisions of § 19.2-11.1, it shall be the responsibility of a locality's crime victim and witness assistance program to provide the information and assistance required by this chapter, including verification that the standardized form listing the specific rights afforded to crime victims has been received by the victim.

As soon as practicable after identifying a victim of a crime, the investigating law-enforcement agency shall provide the victim with a standardized form listing the specific rights afforded to crime victims. The form shall include a telephone number by which the victim can receive further information and assistance in securing the rights afforded crime victims, the name, address and telephone number of the office of the attorney for the Commonwealth, the name, address and telephone number of the investigating law-enforcement agency, and a summary of the victim's rights under § 40.1-28.7:2.

1. Victim and witness protection and law-enforcement contacts.

a. In order that victims and witnesses receive protection from harm and threats of harm arising out of their cooperation with law-enforcement, or prosecution efforts, they shall be provided with information as to the level of protection which may be available pursuant to § 52-35 or to any other federal, state or local program providing protection, and shall be assisted in obtaining this protection from the appropriate authorities.

b. Victims and witnesses shall be provided, where available, a separate waiting area during court proceedings that affords them privacy and protection from intimidation, and that does not place the victim in close proximity to the defendant or the defendant's family.

2. Financial assistance.

a. Victims shall be informed of financial assistance and social services available to them as victims of a crime, including information on their possible right to file a claim for compensation from the Crime Victims' Compensation Fund pursuant to Chapter 21.1 (§ 19.2-368.1 et seq.) of this title and on other available assistance and services.

b. Victims shall be assisted in having any property held by law-enforcement agencies for evidentiary purposes returned promptly in accordance with §§ 19.2-270.1 and 19.2-270.2.

c. Victims shall be advised that restitution is available for damages or loss resulting from an offense and shall be assisted in seeking restitution in accordance with §§ 19.2-305, 19.2-305.1, Chapter 21.1 (§ 19.2-368.1 et seq.) of this title, Article 21 (§ 58.1-520 et seq.) of Chapter 3 of Title 58.1, and other applicable laws of the Commonwealth.

3. Notices.

a. Victims and witnesses shall be (i) provided with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances and (ii) advised that pursuant to § 18.2-465.1 it is unlawful for an employer to penalize an employee for appearing in court pursuant to a summons or subpoena.

b. Victims shall receive advance notification when practicable from the attorney for the Commonwealth of judicial proceedings relating to their case and shall be notified when practicable of any change in court dates in accordance with § 19.2-265.01 if they have provided their names, current addresses and telephone numbers.

c. Victims shall receive notification, if requested, subject to such reasonable procedures as the Attorney General may require pursuant to § 2.2-511, from the Attorney General of the filing and disposition of any appeal or habeas corpus proceeding involving their case.

d. Victims shall be notified by the Department of Corrections or a sheriff or jail superintendent (i) in whose custody an escape, change of name, transfer, release or discharge of a prisoner occurs

pursuant to the provisions of §§ 53.1-133.02 and 53.1-160 or (ii) when an accused is released on bail, if they have provided their names, current addresses and telephone numbers in writing. Such notification may be provided through the Virginia Statewide VINE (Victim Information and Notification Everyday) System or other similar electronic or automated system.

e. Victims shall be advised that, in order to protect their right to receive notices and offer input, all agencies and persons having such duties must have current victim addresses and telephone numbers given by the victims. Victims shall also be advised that any such information given shall be confidential as provided by § 19.2-11.2.

4. Victim input.

a. Victims shall be given the opportunity, pursuant to § 19.2-299.1, to prepare a written victim impact statement prior to sentencing of a defendant and may provide information to any individual or agency charged with investigating the social history of a person or preparing a victim impact statement under the provisions of §§ 16.1-273 and 53.1-155 or any other applicable law.

b. Victims shall have the right to remain in the courtroom during a criminal trial or proceeding pursuant to the provisions of § 19.2-265.01.

c. On motion of the attorney for the Commonwealth, victims shall be given the opportunity, pursuant to §§ 19.2-264.4 and 19.2-295.3, to testify prior to sentencing of a defendant regarding the impact of the offense.

d. In a felony case, the attorney for the Commonwealth, upon the victim's written request, shall consult with the victim either verbally or in writing (i) to inform the victim of the contents of a proposed plea agreement and (ii) to obtain the victim's views about the disposition of the case, including the victim's views concerning dismissal, pleas, plea negotiations and sentencing. However, nothing in this section shall limit the ability of the attorney for the Commonwealth to exercise his discretion on behalf of the citizens of the Commonwealth in the disposition of any criminal case. The court shall not accept the plea agreement unless it finds that, except for good cause shown, the Commonwealth has complied with clauses (i) and (ii). Good cause shown shall include, but not be limited to, the unavailability of the victim due to incarceration, hospitalization, failure to appear at trial when subpoenaed, or change of address without notice.

Upon the victim's written request, the victim shall be notified in accordance with subdivision A 3 b of any proceeding in which the plea agreement will be tendered to the court.

The responsibility to consult with the victim under this subdivision shall not confer upon the defendant any substantive or procedural rights and shall not affect the validity of any plea entered by the defendant.

5. Courtroom assistance.

a. Victims and witnesses shall be informed that their addresses and telephone numbers may not be disclosed, pursuant to the provisions of §§ 19.2-11.2 and 19.2-269.2, except when necessary for the conduct of the criminal proceeding.

b. Victims and witnesses shall be advised that they have the right to the services of an interpreter in accordance with §§ 19.2-164 and 19.2-164.1.

c. Victims and witnesses of certain sexual offenses shall be advised that there may be a closed preliminary hearing in accordance with § 18.2-67.8 and, if a victim was 14 years of age or younger on the date of the offense and is 16 or under at the time of the trial, or a witness to the offense is 14 years of age or younger at the time of the trial, that two-way closed-circuit television may be used in the taking of testimony in accordance with § 18.2-67.9.

6. Post trial assistance.

a. Within 30 days of receipt of a victim's written request after the final trial court proceeding in the case, the attorney for the Commonwealth shall notify the victim in writing, of (i) the disposition of the case, (ii) the crimes of which the defendant was convicted, (iii) the defendant's right to appeal, if known, and (iv) the telephone number of offices to contact in the event of nonpayment of restitution by the defendant.

b. If the defendant has been released on bail pending the outcome of an appeal, the agency that had custody of the defendant immediately prior to his release shall notify the victim as soon as practicable that the defendant has been released.

c. If the defendant's conviction is overturned, and the attorney for the Commonwealth decides to retry the case or the case is remanded for a new trial, the victim shall be entitled to the same rights as if the first trial did not take place.

B. For purposes of this chapter, "victim" means (i) a person who has suffered physical, psychological, or economic harm as a direct result of the commission of (a) a felony, (b) assault and battery in violation of § 18.2-57 or 18.2-57.2, stalking in violation of § 18.2-60.3, a violation of a protective order in violation of § 16.1-253.2 or 18.2-60.4, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, or maiming or driving while intoxicated in violation of § 18.2-51.4 or 18.2-266, or (c) a delinquent act that would be a felony or a misdemeanor violation of any offense enumerated in clause (b) if committed by an adult; (ii) a spouse or child of such a person; (iii) a parent or legal guardian of such a person who is a minor; (iv) for the purposes of subdivision A 4 only, a current or former foster parent or other person who has or has had physical custody of such a person who is a minor, for six months or more or for the majority of the minor's life; or (v) a spouse, parent, sibling, or legal guardian of such a person who is physically or mentally incapacitated or was the victim of a homicide; however, "victim" does not mean a parent, child, spouse, sibling, or legal guardian who commits a felony or other enumerated criminal offense against a victim as defined in clause (i).

C. Officials and employees of the judiciary, including court services units, law-enforcement agencies, the Department of Corrections, attorneys for the Commonwealth and public defenders, shall be provided with copies of this chapter by the Department of Criminal Justice Services or a crime victim and witness assistance program. Each agency, officer or employee who has a responsibility or responsibilities to victims under this chapter or other applicable law shall make reasonable efforts to become informed about these responsibilities and to ensure that victims and witnesses receive such information and services to which they may be entitled under applicable law, provided that no liability or cause of action shall arise from the failure to make such efforts or from the failure of such victims or witnesses to receive any such information or services.

1995, c. 687; 1996, c. 546; 1997, c. 691; 1998, c. 485; 1999, cc. 668, 702, 844; 2000, cc. 272, 827; 2001, cc. 410, 530, 549; 2002, cc. 310, 810, 818; 2003, cc. 103, 751, 764; 2006, c. 241; 2007, cc. 94, 109, 423; 2014, c. 230.

§ 19.2-11.1. Establishment of crime victim-witness assistance programs; funding; minimum standards

Any local governmental body which establishes, operates and maintains a crime victim and witness assistance program, whose funding is provided in whole or part by grants administered by the Department of Criminal Justice Services pursuant to § 9.1-104, shall operate the program in accordance with guidelines which shall be established by the Department to implement the provisions of this chapter and other applicable laws establishing victims' rights.

1988, c. 542; 1994, cc. 361, 598; 1995, c. 687; 1996, c. 545.

§ 19.2-11.2. Crime victim's right to nondisclosure of certain information; exceptions; testimonial privilege

Upon request of any witness in a criminal prosecution under § 18.2-46.2, 18.2-46.3, or 18.2-248 or of any violent felony as defined by subsection C of § 17.1-805, or any crime victim, neither a law-enforcement agency, the attorney for the Commonwealth, the counsel for a defendant, a court nor the Department of Corrections, nor any employee of any of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the witness or victim or a member of the witness' or victim's family, except to the extent that disclosure is (i) of the site of the crime, (ii) required by law or Rules of the Supreme Court, (iii) necessary for law-enforcement purposes or preparation for court proceedings, or (iv) permitted by the court for good cause.

Except with the written consent of the victim, a law-enforcement agency may not disclose to the public information which directly or indirectly identifies the victim of a crime involving any sexual assault, sexual abuse or family abuse, except to the extent that disclosure is (i) of the site of the crime, (ii) required by law, (iii) necessary for law-enforcement purposes, or (iv) permitted by the court for good cause. In addition, at the request of the victim to the Court of Appeals of Virginia or the Supreme Court of Virginia hearing, on or after July 1, 2007, the case of a crime involving

any sexual assault or sexual abuse, no appellate decision shall contain the first or last name of the victim.

Nothing herein shall limit the right to examine witnesses in a court of law or otherwise affect the conduct of any criminal proceeding.

1994, cc. 845, 931; 2002, cc. 810, 818; 2005, cc. 764, 813; 2007, c. 503; 2014, c. 744.

§ 19.2-11.3. Virginia Crime Victim-Witness Fund

There is hereby established the Virginia Crime Victim-Witness Fund as a special nonreverting fund to be administered by the Department of Criminal Justice Services to support victim and witness services that meet the minimum standards prescribed for such programs under § 19.2-11.1. A portion of the sum collected pursuant to §§ 16.1-69.48:1, 17.1-275.1, 17.1-275.2, 17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8, and 17.1-275.9, as specified in these sections, shall be deposited into the state treasury to the credit of this Fund. The Fund shall be distributed according to grant procedures adopted pursuant to § 9.1-104 and shall be established on the books of the Comptroller. Any funds remaining in such Fund at the end of the biennium shall not revert to the general fund, but shall remain in the Fund. Interest earned on the Fund shall be credited to the Fund.

1995, c. 371; 2002, c. 831.

§ 19.2-11.4. Establishment of victim-offender reconciliation program

A. Any Crime Victim and Witness Assistance Program may establish a victim-offender reconciliation program to provide an opportunity after conviction for a victim, at his request and upon the subsequent agreement of the offender, to:

1. Meet with the offender in a safe, controlled environment in accordance with the policies established pursuant to subsection B of § 53.1-30;

2. Give to the offender, either orally or in writing, a summary of the financial, emotional, and physical effects of the offense on the victim or the victim's family; and

3. Discuss a proposed restitution agreement which may be submitted for consideration by the sentencing court for damages incurred by the victim as a result of the offense.

B. If the victim chooses to participate in a victim-offender reconciliation program under this section, the victim shall execute a waiver releasing the Crime Victim and Witness Assistance Program, attorney for the offender and the attorney for the Commonwealth from civil and criminal liability for actions taken by the victim or offender as a result of participation by the victim or the offender in a victim-offender reconciliation program.

C. A victim shall not be required to participate in a victim-offender reconciliation program under this section.

D. The failure of any person to participate in a reconciliation program pursuant to this section shall not be used directly or indirectly at sentencing.

1995, c. 628; 2010, c. 844.

Chapter 2 - CONSERVATORS OF THE PEACE AND SPECIAL POLICEMEN

Article 1 - APPOINTMENT

§ 19.2-12. Who are conservators of the peace

Every judge and attorney for the Commonwealth throughout the Commonwealth and every magistrate within the geographical area for which he is appointed or elected, shall be a conservator of the peace. In addition, every commissioner in chancery, while sitting as such commissioner; any special agent or law-enforcement officer of the United States Department of Justice, National Marine Fisheries Service of the United States Department of Commerce, Department of Treasury, Department of Agriculture, Department of Defense, Department of State, Office of the Inspector General of the Department of Transportation, Department of Homeland Security, and Department of Interior; any inspector, law-enforcement official or police personnel of the United States Postal Service; any United States marshal or deputy United States marshal whose duties involve the enforcement of the criminal laws of the United States; any officer of the Virginia Marine Police; any criminal investigator of the Department of Professional and Occupational Regulation, who meets the minimum law-enforcement training requirements established by the Department of Criminal Justice Services for in-service training; any criminal investigator of the United States Department of Labor; any special agent of the United States Naval Criminal Investigative Service, any special agent of the National Aeronautics and Space Administration, and any sworn municipal park ranger, who has completed all requirements under § 15.2-1706, shall be a conservator of the peace, while engaged in the performance of their official duties.

Code 1950, § 19.1-20; 1960, c. 366; 1968, c. 639; 1972, c. 549; 1975, c. 495; 1978, c. 697; 1981, cc. 572, 587; 1990, c. 558; 1991, cc. 74, 338; 1994, cc. 375, 569, 626; 1997, c. 34; 2001, cc. 3, 31; 2002, cc. 86, 605, 789; 2004, c. 1009; 2005, c. 372; 2006, c. 88; 2007, c. 224; 2015, cc. 75, 126.

§ 19.2-13. Special conservators of the peace; authority; jurisdiction; registration; liability of employers; penalty; report

A. Upon the submission of an application, which shall include the results of the background investigation conducted pursuant to subsection C, from (i) any sheriff or chief of police of any county, city, or town; (ii) any corporation authorized to do business in the Commonwealth; (iii) the owner, proprietor, or authorized custodian of any place within the Commonwealth; or (iv) any museum owned and managed by the Commonwealth, a circuit court judge of any county or city shall appoint special conservators of the peace who shall serve as such for such length of time as the court may designate, but not exceeding four years under any one appointment, during which time the court shall retain jurisdiction over the appointment order, upon a showing by the applicant of a necessity for the security of property or the peace and presentation of evidence that the person or persons to be appointed as a special conservator of the peace possess a valid registration issued by the Department of Criminal Justice Services in accordance with the provisions of subsection C. Upon an application made pursuant to clause (ii), (iii), or (iv), the court shall, prior to

entering the order of appointment, transmit a copy of the application to the local attorney for the Commonwealth and the local sheriff or chief of police who may submit to the court a sworn, written statement indicating whether the order of appointment should be granted. However, a judge may deny the appointment for good cause, and shall state the specific reasons for the denial in writing in the order denying the appointment. A judge also may revoke the appointment order for good cause shown, upon the filing of a sworn petition by the attorney for the Commonwealth, sheriff, or chief of police for any locality in which the special conservator of the peace is authorized to serve or by the Department of Criminal Justice Services. Prior to revocation, a hearing shall be set and the special conservator of the peace shall be given notice and the opportunity to be heard. The judge may temporarily suspend the appointment pending the hearing for good cause shown. A hearing on the petition shall be heard by the court as soon as practicable. If the appointment order is suspended or revoked, the clerk of court shall notify the Department of Criminal Justice Services, the Department of State Police, the applicable local law-enforcement agencies in all cities and counties where the special conservator of the peace is authorized to serve, and the employer of the special conservator of the peace.

The order of appointment may provide that a special conservator of the peace shall have all the powers, functions, duties, responsibilities and authority of any other conservator of the peace within such geographical limitations as the court may deem appropriate within the confines of the county, city or town that makes application or on the real property where the corporate applicant is located, or any real property contiguous to such real property, limited, except as provided in subsection F, to the city or county wherein application has been made, whenever such special conservator of the peace is engaged in the performance of his duties as such. The order may provide that the special conservator of the peace shall have the authority to make an arrest outside of such geographical limitations if the arrest results from a close pursuit that was initiated when the special conservator of the peace was within the confines of the area wherein he has been authorized to have the powers and authority of a special conservator of the peace; the order may further delineate a geographical limitation or distance beyond which the special conservator of the peace may not effectuate such an arrest that follows from a close pursuit. The order shall require the special conservator of the peace to comply with the provisions of the United States Constitution and the Constitution of Virginia. The order shall not identify the special conservator of the peace as a law-enforcement officer pursuant to § 9.1-101. The order may provide, however, that the special conservator of the peace is a "law-enforcement officer" for the purposes of Article 4 (§ 37.2-808 et seq.) of Chapter 8 of Title 37.2 or Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, but such designation shall not qualify the special conservator of the peace as a "qualified law-enforcement officer" or "qualified retired law-enforcement officer" within the meaning of the federal Law Enforcement Officer Safety Act, 18 U.S.C. § 926(B) et seq., and the order of appointment shall specifically state this. Upon request and for good cause shown, the order may also provide that the special conservator of the peace is authorized to use the seal of the Commonwealth in a badge or other credential of office as the court may deem appropriate. Upon request and for good cause

shown, the order may also provide that the special conservator of the peace may use the title "police" on any badge or uniform worn in the performance of his duties as such. The order may also provide that a special conservator of the peace who has completed the minimum training standards established by the Criminal Justice Services Board, has the authority to affect arrests, using up to the same amount of force as would be allowed to a law-enforcement officer employed by the Commonwealth or any of its political subdivisions when making a lawful arrest. The order shall prohibit blue flashing lights, but upon request and for good cause shown may provide that the special conservator of the peace may use flashing lights and sirens on any vehicle used by the special conservator of the peace when he is in the performance of his duties. Prior to granting an application for appointment, the circuit court shall ensure that the applicant has met the registration requirements established by the Criminal Justice Services Board.

B. All applications and orders for appointments of special conservators of the peace shall be submitted on forms developed by the Office of the Executive Secretary of the Supreme Court of Virginia in consultation with the Department of Criminal Justice Services and shall specify the duties for which the applicant is qualified. The applications and orders shall specify the geographic limitations consistent with subsection A.

C. No person shall seek appointment as a special conservator of the peace from a circuit court judge without possessing a valid registration issued by the Department of Criminal Justice Services, except as provided in this section. Applicants for registration may submit an application on or after January 1, 2004. A temporary registration may be issued in accordance with regulations established by the Criminal Justice Services Board while awaiting the results of a state and national fingerprint search. However, no person shall be issued a valid registration or temporary registration until he has (i) complied with, or been exempted from the compulsory minimum training standards as set forth in this section; (ii) submitted his fingerprints on a form provided by the Department to be used for the conduct of a national criminal records search and a Virginia criminal history records search; (iii) submitted the results of a background investigation, performed by any state or local law-enforcement agency, which may, at its discretion, charge a reasonable fee to the applicant and which shall include a review of the applicant's criminal history records and may include a review of the applicant's school records, employment records, or interviews with persons possessing general knowledge of the applicant's character and fitness for such appointment; and (iv) met all other requirements of this article and Board regulations. No person with a criminal conviction for a misdemeanor involving (a) moral turpitude, (b) assault and battery, (c) damage to real or personal property, (d) controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, (e) prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, or (f) firearms, or any felony, or who is required to register with the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, or who is prohibited from possessing, transporting, or purchasing a firearm shall be eligible for registration or appointment as a special conservator of the peace. A

special conservator of the peace shall report if he is arrested for, charged with, or convicted of any misdemeanor or felony offense or becomes ineligible for registration or appointment as a special conservator of the peace pursuant to this subsection to the Department of Criminal Justice Services and the chief law-enforcement officer of all localities in which he is authorized to serve within three days of such arrest or of becoming ineligible for registration or appointment as a special conservator of the peace. Any appointment for a special conservator of the peace shall be eligible for suspension and revocation after a hearing pursuant to subsection A if the special conservator of the peace is convicted of any offense listed in this subsection or becomes ineligible for registration or appointment as a special conservator of the peace pursuant to this subsection. All appointments for special conservators of the peace shall become void on September 15, 2004, unless they have obtained a valid registration issued by the Department of Criminal Justice Services.

D. Each person registered as or seeking registration as a special conservator of the peace shall be covered by evidence of a policy of liability insurance or self-insurance in an amount and with coverage as fixed by the Board. Any person who is aggrieved by the misconduct of any person registered as a special conservator of the peace and recovers a judgment against the registrant, which is unsatisfied in whole or in part, may bring an action in his own name against the insurance policy of the registrant.

E. Effective July 1, 2015, all persons currently appointed or seeking appointment or reappointment as a special conservator of the peace are required to register with the Department of Criminal Justice Services, regardless of any other standing the person may have as a law-enforcement officer or other position requiring registration or licensure by the Department. The employer of any special conservator of the peace shall notify the circuit court, the Department of Criminal Justice Services, the Department of State Police, and the chief law-enforcement officer of all localities in which the special conservator of the peace is authorized to serve within 30 days after the date such individual has left employment and all powers of the special conservator of the peace shall be void. Failure to provide such notification shall be punishable by a fine of $250 plus an additional $50 per day for each day such notice is not provided.

F. When the application is made by any sheriff or chief of police, the circuit court shall specify in the order of appointment the name of the applicant authorized under subsection A and the geographic jurisdiction of the special conservator of the peace. Such appointments shall be limited to the city or county wherein application has been made. When the application is made by any corporation authorized to do business in the Commonwealth, any owner, proprietor, or authorized custodian of any place within the Commonwealth, or any museum owned and managed by the Commonwealth, the circuit court shall specify in the order of appointment the name of the applicant authorized under subsection A and the specific real property where the special conservator of the peace is authorized to serve. Such appointments shall be limited to the specific real property within the county, city, or town wherein application has been made. In the case of a corporation

or other business, the court appointment may also include, for good cause shown, any real property owned or leased by the corporation or business, including any subsidiaries, in other specifically named cities and counties, but shall provide that the powers of the special conservator of the peace do not extend beyond the boundaries of such real property. The clerk of the appointing circuit court shall transmit to the Department of State Police, the clerk of the circuit court of each locality where the special conservator of the peace is authorized to serve, and the sheriff or chief of police of each such locality a copy of the order of appointment that shall specify the following information: the person's complete name, address, date of birth, social security number, gender, race, height, weight, color of hair, color of eyes, firearm authority or limitation as set forth in subsection G, date of the order, and other information as may be required by the Department of State Police. The Department of State Police shall enter the person's name and other information into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. The Department of State Police may charge a fee not to exceed $10 to cover its costs associated with processing these orders. Each special conservator of the peace so appointed on application shall present his credentials to the chief of police or sheriff or his designee of all jurisdictions where he has conservator powers. If his powers are limited to certain areas of real property owned or leased by a corporation or business, he shall also provide notice of the exact physical addresses of those areas. Each special conservator shall provide to the circuit court a temporary registration letter issued by the Department of Criminal Justice Services to include the results of the background check prior to seeking an appointment by the circuit court. Once the applicant receives the appointment from the circuit court the applicant shall file the appointment order and a copy of the application with the Department of Criminal Justice Services in order to receive his special conservator of the peace registration document. If the court appointment includes any real property owned or leased by the corporation or business in other specifically named cities and counties not within the city or county wherein application has been made, the clerk of the appointing court shall transmit a copy of the order of appointment to (i) the clerk of the circuit court for each jurisdiction where the special conservator of the peace is authorized to serve and (ii) the sheriff or chief of police of each jurisdiction where the special conservator of the peace is authorized to serve.

If any such special conservator of the peace is the employee, agent or servant of another, his appointment as special conservator of the peace shall not relieve his employer, principal or master from civil liability to another arising out of any wrongful action or conduct committed by such special conservator of the peace while within the scope of his employment.

Effective July 1, 2002, no person employed by a local school board as a school security officer, as defined in § 9.1-101, shall be eligible for appointment as a conservator for purposes of maintaining safety in a public school in the Commonwealth. All appointments of special conservators of the peace granted to school security officers as defined in § 9.1-101 prior to July 1, 2002 are void.

G. The court may limit or prohibit the carrying of weapons by any special conservator of the peace initially appointed on or after July 1, 1996, while the appointee is within the scope of his employment as such.

H. The governing body of any locality or the sheriff of a county where no police department has been established may enter into mutual aid agreements with any entity employing special conservators of the peace that is located in such locality for the use of their joint forces and their equipment and materials to maintain peace and good order. Any law-enforcement officer or special conservator of the peace, while performing his duty under any such agreement, shall have the same authority as lawfully conferred on him within his own jurisdiction.

Code 1950, § 19.1-28; 1960, c. 366; 1974, cc. 44, 45; 1975, c. 495; 1976, c. 220; 1982, c. 523; 1989, c. 455; 1996, cc. 850, 956; 2001, c. 249; 2002, cc. 605, 836, 868; 2003, c. 922; 2004, c. 401; 2005, c. 498; 2006, c. 290; 2007, cc. 380, 481; 2008, c. 795; 2010, cc. 530, 778, 825; 2013, cc. 105, 122; 2015, cc. 602, 766, 772; 2016, c. 551.

§ 19.2-13.1. Application for special conservator of the peace by locality

No official or employee of a school board or county, city, or town, its departments, or its agents shall submit an application for the appointment of a special conservator of the peace without attaching a written assessment from the chief law-enforcement officer of the locality stating the need for the appointment and recommending any limitations that should be included in the order of appointment to the application submitted to the court pursuant to subsection A of § 19.2-13.

2016, c. 416.

§ 19.2-14. Conservators of the peace for fairgrounds and cemeteries; bond required

The superintendent or other person in charge of any fairgrounds or any public or private cemetery shall, for the purpose of maintaining order and enforcing the criminal and police laws of the Commonwealth, or the county or city in which such fairgrounds or cemetery is situated, have all the powers, functions, duties, responsibilities and authority of a conservator of the peace within the fairgrounds or cemetery over which he may have charge and within one-half of a mile around the same.

The provisions of § 19.2-13 relative to the giving of bond and the liability of an employer, principal or master, shall be applicable to every person exercising any powers of a conservator of the peace under this section.

Code 1950, § 19.1-32; 1960, c. 366; 1975, c. 495.

§ 19.2-15. When conservator appointed under § 19.2-13 need not be a citizen

Any such conservator appointed under the provisions of § 19.2-13 whose jurisdiction is limited to the grounds attached to an airport, need not be a citizen of the Commonwealth if the proprietors of such airport shall, before any such conservator shall enter upon the duties of the office, enter into bond with approved surety before the clerk of the circuit court having jurisdiction over such

airport in the penalty of $1,000 for each conservator so appointed, with condition for the faithful discharge of his official duties.

Code 1950, § 19.1-29; 1960, c. 366; 1975, c. 495.

§ 19.2-16. Repealed
Repealed by Acts 1994, c. 205.

§ 19.2-17. Repealed
Repealed by Acts 1996, c. 850.

Article 2 - POWERS AND DUTIES

§ 19.2-18. Powers and duties generally
Every conservator of the peace shall have authority to arrest without a warrant in such instances as are set out in §§ 19.2-19 and 19.2-81. Upon making an arrest without a warrant, the conservator of the peace shall proceed in accordance with the provisions of § 19.2-22 or § 19.2-82 as the case may be.

Code 1950, § 19.1-20; 1960, c. 366; 1968, c. 639; 1972, c. 549; 1975, c. 495.

§ 19.2-19. Recognizance to keep the peace; when required
If any person threatens to kill or injure another or to commit violence or injury against his person or property, or to unlawfully trespass upon his property, he shall be required to give a recognizance to keep the peace for such period not to exceed one year as the court hearing the complaint may determine.

Code 1950, §§ 19.1-26, 19.1-27; 1960, c. 366; 1975, c. 495; 1978, c. 500.

§ 19.2-20. Same; complaint and issuance of warrant therefor
If complaint be made to any magistrate or judge that a person should be required to give a recognizance to keep the peace due to any of the reasons set forth in § 19.2-19, such magistrate or judge shall examine on oath the complainant, and any witness who may be produced, reduce the complaint to writing, and cause it to be signed by the complainant; and if probable cause is established, such magistrate or judge shall issue a warrant, reciting the complaint, and requiring the person complained of forthwith to be apprehended and brought before the district court having appropriate jurisdiction.

Code 1950, § 19.1-21; 1960, c. 366; 1975, c. 495; 1978, c. 500; 1979, c. 708.

§ 19.2-21. Same; procedure when accused appears
When such person appears, if the judge, on hearing the parties, considers that there is not good cause for the complaint, he shall discharge such person, and may give judgment in his favor against the complainant for his costs. If he considers that there is good cause therefor, he may require a recognizance of the person against whom it is, and give judgment against him for the costs of the prosecution, or any part thereof; and, unless such recognizance be given, he shall

commit him to jail by a warrant, stating the sum and time in and for which the recognizance is directed. The person given judgment under this section for costs may issue a writ of fieri facias thereon, if an appeal be not allowed; and proceedings thereupon may be according to §§ 16.1-99 through 16.1-101.

Code 1950, § 19.1-22; 1960, c. 366; 1975, c. 495; 1978, c. 500.

§ 19.2-22. Same; arrest without a warrant

A person arrested without a warrant by any conservator of the peace or other law-enforcement officer for any of the acts set forth in § 19.2-19 committed in the presence of such conservator of the peace or law-enforcement officer, shall be brought forthwith before a magistrate or judge, and proceedings shall be had in accordance with §§ 19.2-20 and 19.2-21.

1975, c. 495.

§ 19.2-23. Payment of fees or mileage allowances into county or city treasury

Any conservator or policeman appointed under the provisions of this chapter shall not be entitled to fees or mileage for performance of his duties as such conservator or policeman.

Code 1950, § 19.1-31; 1960, c. 366; 1975, c. 495.

Article 3 - APPEALS

§ 19.2-24. When appeal may be taken; witnesses recognized; bail

Any person from whom a recognizance is required under the provisions of this chapter or who has been committed to jail for failure to give security therefor, may appeal to the circuit court of the county or city, and, in such case, the judge from whose judgment the appeal is taken shall recognize such of the witnesses as he thinks proper; provided, however, that the person taking the appeal may be required to give bail, with good security, for his appearance at the circuit court of the county or city.

Code 1950, § 19.1-23; 1960, c. 366; 1975, c. 495; 1978, c. 500.

§ 19.2-25. Power of court on appeal

The court may dismiss the complaint or affirm the judgment, and make what order it sees fit as to the costs. If it award costs against the appellant, the recognizance which he may have given shall stand as security therefor. When there is a failure to prosecute the appeal, such recognizance shall remain in force, although there be no order of affirmance. On any appeal the court may require of the appellant a new recognizance if it see fit.

Any person committed to jail under this chapter may be discharged by the circuit court of the county or city on such terms as it may deem reasonable.

Code 1950, §§ 19.1-24, 19.1-25; 1960, c. 366; 1975, c. 495.

Chapter 3 - MAGISTRATES

Article 1 - TRANSITION PROVISIONS

§ 19.2-26. Repeal of inconsistent statutes, municipal charters, etc

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.

Code 1950, § 19.1-374; 1973, c. 545; 1975, c. 495.

§ 19.2-27. Effect of repeal of Title 39.1 on prior acts, offenses, etc

The repeal of Title 39.1 effective as of January 1, 1974, 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.

Code 1950, § 19.1-375; 1973, c. 545; 1975, c. 495.

§ 19.2-28. Certain notices, recognizances and processes validated

Any notice given, recognizance taken, or process or writ issued, before January 1, 1974, 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.

Code 1950, § 19.1-376; 1973, c. 545; 1975, c. 495.

§ 19.2-29. References to former sections, articles and chapters in Title 39.1

Whenever in Chapter 3 (§ 19.2-26 et seq.) of this title any of the conditions, requirements, provisions or contents of any section, article or chapter of Title 39.1, as such title existed prior to January 1, 1974, are transferred in the same or modified form to a new section, article or chapter, and whenever any such former section, article or chapter is given a new number in Chapter 3 of this title all references to any such former section, article or chapter of Title 39.1 appearing elsewhere in this Code than in Chapter 3 of 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.

Code 1950, § 19.1-377; 1973, c. 545; 1975, c. 495; 2002, c. 310.

Article 2 - ABOLITION OF JUSTICE OF THE PEACE SYSTEM

§ 19.2-30. Repealed

Repealed by Acts 2008, cc. 551 and 691, cl. 2.

§ 19.2-31. Abolition of office of issuing justice

Effective January 1, 1974, the office of issuing justice as provided for in Chapter 2 (§ 39.1-20 et seq.) of Title 39.1 having been abolished, nevertheless, any such special justice of the peace in office December 31, 1973, and elected by the town council for a specific term to expire after that date, may continue in office for the remainder of that term. If he continues in office as provided

herein, such justice shall exercise the same powers, perform the same duties, and receive such compensation as he was receiving as of December 31, 1973.

Code 1950, § 19.1-379; 1973, c. 545; 1975, c. 495.

§ 19.2-32. References to justices of the peace

References in law to justices of the peace shall be deemed to apply to magistrates unless the provisions of Chapter 3 (§ 19.2-26 et seq.) of this title shall render such reference inapplicable.

Code 1950, § 19.1-380; 1973, c. 545; 1975, c. 495; 2002, c. 310.

Article 3 - THE MAGISTRATE SYSTEM

§ 19.2-33. Office of magistrate

The office of magistrate shall be vested with all the authority, duties and obligations previously vested in the office of justice of the peace prior to January 1, 1974.

Code 1950, § 19.1-381; 1973, c. 545; 1975, c. 495.

§ 19.2-34. Number of magistrates

There shall be appointed as many magistrates as are necessary for the effective administration of justice. The positions of all employees of the magistrate system shall be authorized by the Committee on District Courts established pursuant to § 16.1-69.33.

Code 1950, § 19.1-382; 1973, c. 545; 1974, c. 484; 1975, c. 495; 1976, c. 138; 1977, c. 198; 1981, c. 4; 1992, c. 55; 2008, cc. 551, 691.

§ 19.2-35. Appointment; supervision generally

Magistrates and any other personnel in the office of the magistrate shall be appointed by the Executive Secretary of the Supreme Court of Virginia in consultation with the chief judges of the circuit courts having jurisdiction within the region. Each magistrate shall be appointed to serve one or more of the magisterial regions created by the Executive Secretary. Each magisterial region shall be comprised of one or more judicial districts. The Executive Secretary shall have full supervisory authority over the magistrates so appointed. Notwithstanding any other provision of law, the only methods for the selection of magistrates shall be as set out in this section.

No person shall be appointed under this section until he has submitted his fingerprints to be used for the conduct of a national criminal records search and a Virginia criminal history records search. No person with a criminal conviction for a felony shall be appointed as a magistrate.

Code 1950, § 19.1-383; 1973, c. 545; 1974, c. 484; 1975, c. 495; 1976, c. 138; 1981, c. 4; 1988, c. 511; 2002, c. 310; 2004, cc. 370, 452; 2008, cc. 551, 691.

§ 19.2-36. Chief magistrates

A. The Executive Secretary of the Supreme Court of Virginia may appoint chief magistrates, for the purpose of assisting in the training of the magistrates and being responsible to the Executive Secretary for the conduct of the magistrates and to further assist the Office of the Executive Secretary

in the operation of one or more of the magisterial regions. The chief magistrate shall exercise direct daily supervision over the magistrates he supervises and shall have the power to suspend without pay a magistrate after consultation and with the concurrence of the Executive Secretary.

B. To be eligible for appointment as chief magistrate, a person shall meet all of the qualifications of a magistrate under § 19.2-37 and must be a member in good standing of the Virginia State Bar. His appointment as chief magistrate shall terminate effective on the date on which his membership in good standing ceases. The requirements of this subsection relating to membership in the Virginia State Bar shall not apply to any person appointed as a chief magistrate before July 1, 2008, who continues in that capacity without a break in service.

Code 1950, § 19.1-384; 1973, c. 545; 1974, c. 484; 1975, c. 495; 1984, c. 37; 2004, c. 370; 2008, cc. 551, 691.

§ 19.2-37. Magistrates; eligibility for appointment; restrictions on activities

A. Any person who is a United States citizen and resident of the Commonwealth may be appointed to the office of magistrate under this title subject to the limitations of Chapter 28 (§ 2.2-2800 et seq.) of Title 2.2 and of this section.

B. Every person appointed as a magistrate on and after July 1, 2008, shall be required to have a bachelor's degree from an accredited institution of higher education. A person initially appointed as a magistrate prior to July 1, 2008, who continues in office without a break in service is not required to have a bachelor's degree from an accredited institution of higher education.

C. A person shall not be eligible for appointment as a magistrate under the provisions of this title: (a) if such person is a law-enforcement officer; (b) if such person or his spouse is a clerk, deputy or assistant clerk, or employee of any such clerk of a district or circuit court, provided that the Committee on District Courts may authorize a magistrate to assist in the district court clerk's office on a part-time basis; (c) if the parent, child, spouse, or sibling of such person is a district or circuit court judge in the magisterial region where he will serve; or (d) if such person is the chief executive officer, or a member of the board of supervisors, town or city council, or other governing body for any political subdivision of the Commonwealth.

D. No magistrate shall issue any warrant or process in complaint of his spouse, child, grandchild, parent, grandparent, parent-in-law, child-in-law, brother, sister, brother-in-law or sister-in-law, nephew, niece, uncle, aunt, first cousin, guardian or ward.

E. A magistrate may not engage in any other activity for financial gain during the hours that he is serving on duty as a magistrate. A magistrate may not be employed outside his duty hours without the prior written approval of the Executive Secretary.

F. No person appointed as a magistrate on or after July 1, 2008, may engage in the practice of law.

G. A magistrate who is designated as a marriage celebrant under § 20-25 may not accept a fee, a gratuity, or any other thing of value for exercise of authority as a marriage celebrant.

Code 1950, § 19.1-385; 1973, c. 545; 1975, c. 495; 1976, c. 138; 1978, cc. 463, 760; 1984, c. 41; 1985, c. 45; 1986, c. 202; 1996, c. 112; 1999, c. 267; 2004, c. 830; 2008, cc. 551, 691.

§ 19.2-38. Probationary period; compensation and benefits; vacancies; revocation of appointment

Persons appointed as magistrates under the provisions of this chapter shall serve at the pleasure of the Executive Secretary. Upon appointment by the Executive Secretary, every magistrate shall serve initially for a nine-month probationary period during which the magistrate must complete the minimum training program as established by the Committee on District Courts and satisfactorily complete a certification examination. Any magistrate who fails to successfully pass the certification examination shall not serve beyond the nine-month probationary period. The probationary period described in this section shall not apply to any magistrate serving on July 1, 2008, who has successfully completed the minimum training program and passed the certification examination, provided there is no break in service after July 1, 2008. Magistrates shall be entitled to compensation and other benefits only from the time they take office.

Code 1950, § 19.1-386; 1973, c. 545; 1974, c. 484; 1975, c. 495; 1980, c. 505; 2004, c. 370; 2008, cc. 551, 691.

§ 19.2-38.1. Training standards; training prerequisite to reappointment; waiver

The Committee on District Courts shall establish minimum training and certification standards for magistrates in accordance with such rules and regulations as may be established by the Committee. Every magistrate shall comply with these standards and shall complete the minimum training standards as a prerequisite for continuing to serve as magistrate beyond the nine-month probationary period as established by § 19.2-38. The Committee on District Courts upon request may waive any portion of the minimum training standards for an individual magistrate.

1980, c. 505; 1985, c. 132; 1995, c. 611; 2008, cc. 551, 691.

§ 19.2-39. Bond

Every magistrate appointed under the provisions of this chapter shall enter into bond in the sum of $5,000, made payable to the Commonwealth, before a clerk of a circuit court, for the faithful performance of his duties. The premium for such bond shall be paid by the Commonwealth. Provided, however, that in lieu of specific bonds, the Committee on District Courts may in its discretion procure faithful performance of duty blanket bonds for all magistrates and for the penalty contained in this section, unless in the discretion of the Committee, bonds with a larger penalty should be obtained. Such blanket bonds shall be made payable to the Commonwealth and shall cover all funds handled by a magistrate whether such funds belong to the Commonwealth or any political subdivision thereof. Provided further, that in those instances where specific bonds for magistrates are in effect, the Committee on District Courts may, whenever it deems it advisable, terminate such specific bonds upon obtaining a blanket bond covering such magistrates with appropriate refunds or credit being made for the unearned premiums on the specific bonds terminated. A copy of any such blanket bond so procured shall be filed with the State Comptroller and with the clerk

of the respective circuit courts. The premiums for such blanket bonds shall be paid by the Commonwealth.

Code 1950, § 19.1-387; 1973, c. 545; 1974, c. 484; 1975, c. 495; 2008, cc. 551, 691.

§ 19.2-40. Repealed
Repealed by Acts 1980, c. 758.

Article 4 - SUPERVISION

§ 19.2-41. Repealed
Repealed by Acts 2008, cc. 551 and 691, cl. 2.

§ 19.2-42. Repealed
Repealed by Acts 2004, c. 327.

§ 19.2-43. Duty of Executive Secretary of Supreme Court
It shall be the duty of the Executive Secretary of the Supreme Court to exercise general supervisory power over the administration of magistrates and adopt such policies as are deemed necessary to supplement or clarify the provisions of this chapter with respect to such magistrates, to include fixing the time and place such magistrates shall serve. The Executive Secretary shall conduct training sessions and meetings for magistrates and provide information and materials for their use. He may appoint one or more magistrates to assist him and, in addition, require annual reports to be filed by the magistrates on their work as such, fees associated therewith and other information pertinent to their office, on forms to be furnished by him. The Executive Secretary may appoint and employ such personnel as are needed to manage the magistrate system and carry out the duties and responsibilities conferred upon the Executive Secretary by this chapter.

Code 1950, § 19.1-392; 1973, c. 545; 1974, c. 484; 1975, c. 495; 2008, cc. 551, 691.

Article 5 - JURISDICTION AND POWERS

§ 19.2-44. Territorial jurisdiction
A magistrate shall be authorized to exercise the powers conferred on magistrates by this title only in the magisterial region or regions for which he is appointed, except that a magistrate may issue search warrants in accordance with the provisions of Chapter 5 (§ 19.2-52 et seq.) throughout the Commonwealth. A magistrate may exercise all powers conferred on magistrates by this title throughout the Commonwealth when so authorized by the Executive Secretary upon a determination that such assistance is necessary.

Code 1950, § 19.1-393; 1973, c. 545; 1974, c. 484; 1975, c. 495; 1976, c. 138; 1995, c. 551; 2008, cc. 551, 691; 2014, cc. 305, 310.

§ 19.2-44.1. Repealed
Repealed by Acts 1976, c. 138.

§ 19.2-45. Powers enumerated

A magistrate shall have the following powers only:

(1) To issue process of arrest in accord with the provisions of §§ 19.2-71 to 19.2-82 of the Code;

(2) To issue search warrants in accord with the provisions of §§ 19.2-52 to 19.2-60 of the Code;

(3) To admit to bail or commit to jail all persons charged with offenses subject to the limitations of and in accord with general laws on bail;

(4) The same power to issue warrants and subpoenas as is conferred upon district courts and as limited by the provisions of §§ 19.2-71 through 19.2-82. A copy of all felony warrants issued at the request of a citizen shall be promptly delivered to the attorney for the Commonwealth for the county or city in which the warrant is returnable. Upon the request of the attorney for the Commonwealth, a copy of any misdemeanor warrant issued at the request of a citizen shall be delivered to the attorney for the Commonwealth for such county or city. All attachments, warrants and subpoenas shall be returnable before a district court or any court of limited jurisdiction continued in operation pursuant to § 16.1-70.1;

(5) To issue civil warrants directed to the sheriff or constable of the county or city wherein the defendant resides, together with a copy thereof, requiring him to summon the person against whom the claim is, to appear before a district court on a certain day, not exceeding 30 days from the date thereof to answer such claim. If there be two or more defendants and any defendant resides outside the jurisdiction in which the warrant is issued, the summons for such defendant residing outside the jurisdiction may be directed to the sheriff of the county or city of his residence, and such warrant may be served and returned as provided in § 16.1-80;

(6) To administer oaths and take acknowledgments;

(7) To act as conservators of the peace;

(8), (9) [Repealed.]

(10) To perform such other acts or functions specifically authorized by law.

Code 1950, § 19.1-394; 1973, c. 545; 1974, c. 484; 1975, c. 495; 1976, c. 471; 1977, c. 332; 1978, cc. 500, 605; 1985, c. 77; 2007, cc. 122, 373; 2008, cc. 551, 691; 2009, cc. 291, 344.

Article 6 - COMPENSATION AND FEES

§ 19.2-46. Compensation

The salaries of all magistrates shall be fixed and paid as provided in § 19.2-46.1. The salaries referred to herein shall be in lieu of all fees which may accrue to the recipient by virtue of his office.

Code 1950, § 19.1-395; 1973, c. 545; 1974, c. 484; 1975, c. 495; 1980, c. 139; 2008, cc. 551, 691.

§ 19.2-46.1. Salaries to be fixed by the Executive Secretary; limitations; mileage allowance

Salaries of magistrates and any other personnel in the office of the magistrate shall be fixed by the Executive Secretary of the Supreme Court. Such salaries shall be fixed by the Executive Secretary at least annually at such time as he deems proper and as soon as practicable thereafter certified to the Comptroller.

In determining the salary of any magistrate, the Executive Secretary shall consider the work load of and territory and population served by the magistrate and such other factors he deems relevant.

The governing body of any county or city may add to the fixed compensation of magistrates such amount as the governing body may appropriate with the total amount not to exceed 50 percent of the amount paid by the Commonwealth to magistrates provided such additional compensation was in effect on June 30, 2008, for such magistrates and any magistrate receiving such additional compensation continues in office without a break in service. However, the total amount of additional compensation may not be increased after June 30, 2008. No additional amount paid by a local governing body shall be chargeable to the Executive Secretary of the Supreme Court, nor shall it remove or supersede any authority, control or supervision of the Executive Secretary or Committee on District Courts.

1973, c. 545, § 14.1-44.2; 1974, c. 484; 1975, c. 334; 1981, c. 4; 1995, cc. 331, 378; 1998, c. 872; 2008, cc. 551, 691.

§ 19.2-46.2. Full-time magistrates; certification for retirement coverage

The Committee on District Courts shall certify to the director of the Virginia Retirement System the names of those magistrates serving on a regular full-time basis. Certification by the Committee shall qualify a magistrate as a state employee, for purposes of §§ 51.1-124.3 and 51.1-152 of the Virginia Retirement System (§ 51.1-124.1 et seq.), effective on the date given in the certificate as the date on which such magistrate first served on a regular full-time basis on or after January 1, 1974.

1974, c. 353, § 14.1-44.2:1; 1998, c. 872.

§ 19.2-47. Magistrate not to receive claims or evidence of debt for collection

No magistrate shall receive claims or evidence of debt for collection; and it shall be unlawful for any magistrate to receive claims of any kind for collection, or to accept or receive money or any other things of value by way of commission or compensation for or on account of any collection made by or through him on any such claim, either before or after judgment. Any magistrate violating this section shall be guilty of a Class 1 misdemeanor.

Code 1950, § 19.1-396; 1973, c. 545; 1975, c. 495.

§ 19.2-47.1. Disposition of funds

All funds paid to and collected by or on behalf of a magistrate shall be paid promptly to the appropriate district court clerk, circuit court clerk, commissioner in chancery, department of the Commonwealth, federal agency or as otherwise authorized by statute.

1973, c. 545, § 14.1-44.4; 1980, c. 356; 1987, c. 22; 1998, c. 872.

§ 19.2-48. Audits

The Auditor of Public Accounts shall audit the records of all magistrates who serve any county or city when auditing the records of the district courts of such county or city or upon request of the chief district judge of the district in which such county or city is located.

Code 1950, § 19.1-397; 1973, c. 545; 1975, c. 495; 1980, c. 195; 2008, cc. 551, 691.

§ 19.2-48.1. Quarters for magistrates

A. The counties and cities served by a magistrate or magistrates shall provide suitable quarters for such magistrates, including a site for any videoconferencing equipment necessary to provide remote access to such magistrates. Insofar as possible, such quarters should be located in a public facility and should be appropriate to conduct the affairs of a judicial officer as well as provide convenient access to the public and law-enforcement officers. The county or city shall also provide all furniture and other equipment necessary for the efficient operation of the office.

B. Wherever practical, the office of magistrate shall be located at the county seat. However, offices may be located at other locations in the county, or city adjacent thereto, whenever such additional offices are necessary to effect the efficient administration of justice.

1975, c. 495; 1981, c. 5; 1988, c. 510; 2008, cc. 551, 691.

Chapter 4 - SPECIAL MAGISTRATES [Repealed]

§§ 19.2-49 through 19.2-51. Repealed

Repealed by Acts 1980, c. 758.

Chapter 5 - SEARCH WARRANTS

§ 19.2-52. When search warrant may issue

Except as provided in § 19.2-56.1, search warrants, based upon complaint on oath supported by an affidavit as required in § 19.2-54, may be issued by any judge, magistrate or other person having authority to issue criminal warrants, if he be satisfied from such complaint and affidavit that there is reasonable and probable cause for the issuance of such search warrant.

Code 1950, § 19.1-83; 1960, c. 366; 1975, c. 495; 1986, c. 636.

§ 19.2-53. What may be searched and seized

A. Search warrants may be issued for the search of or for specified places, things or persons, and seizure therefrom of the following things as specified in the warrant:

1. Weapons or other objects used in the commission of crime;

2. Articles or things the sale or possession of which is unlawful;

3. Stolen property or the fruits of any crime;

4. Any object, thing, or person, including without limitation, documents, books, papers, records or body fluids, constituting evidence of the commission of crime.

Notwithstanding any other provision in this chapter to the contrary, no search warrant may be issued as a substitute for a witness subpoena.

B. Any search warrant issued for the search and seizure of a computer, computer network, or other device containing electronic or digital information shall be deemed to include the search and seizure of the physical components and the electronic or digital information contained in any such computer, computer network, or other device.

C. Any search, including the search of the contents of any computer, computer network, or other device conducted pursuant to subsection B, may be conducted in any location and is not limited to the location where the evidence was seized.

Code 1950, § 19.1-84; 1960, c. 366; 1962, c. 519; 1966, c. 363; 1970, c. 650; 1974, c. 113; 1975, c. 495; 1981, c. 559; 2015, c. 501.

§ 19.2-53.1. Taking blood samples pursuant to search warrant; immunity

No cause of action shall lie in any court against any person authorized by law to withdraw blood pursuant to a search warrant issued in accordance with § 19.2-53 when that person is acting in accordance with such warrant, except in cases of negligence in the withdrawing of blood or willful misconduct.

2015, c. 425.

§ 19.2-54. Affidavit preliminary to issuance of search warrant; general search warrant prohibited; effect of failure to file affidavit

No search warrant shall be issued until there is filed with the officer authorized to issue the same an affidavit of some person reasonably describing the place, thing, or person to be searched, the things or persons to be searched for thereunder, alleging briefly material facts, constituting the probable cause for the issuance of such warrant and alleging substantially the offense in relation to which such search is to be made and that the object, thing, or person searched for constitutes evidence of the commission of such offense. The affidavit may be filed by electronically transmitted (i) facsimile process or (ii) electronic record as defined in § 59.1-480. Such affidavit shall be certified by the officer who issues such warrant and delivered in person; mailed by certified mail, return receipt requested; or delivered by electronically transmitted facsimile process or by use of filing and security procedures as defined in the Uniform Electronic Transactions Act (§ 59.1-479 et seq.) for transmitting signed documents, by such officer or his designee or agent, to the clerk of the circuit court of the county or city wherein the search is made, with a copy of the affidavit also being delivered to the clerk of the circuit court of the county or city where the warrant is issued, if in a different county or city, within seven days after the issuance of such warrant and shall by such clerks be preserved as a record and shall at all times be subject to inspection by the public after the warrant that is the subject of the affidavit has been executed or 15 days after issuance of the warrant, whichever is earlier; however, such affidavit, any warrant issued pursuant thereto, any return made thereon, and any order sealing the affidavit, warrant, or return may be temporarily

sealed for a specific period of time by the appropriate court upon application of the attorney for the Commonwealth for good cause shown in an ex parte hearing. Any individual arrested and claiming to be aggrieved by such search and seizure or any person who claims to be entitled to lawful possession of such property seized may move the appropriate court for the unsealing of such affidavit, warrant, and return. The burden of proof with respect to continued sealing shall be upon the Commonwealth. Each such clerk shall maintain an index of all such affidavits filed in his office in order to facilitate inspection. No such warrant shall be issued on an affidavit omitting such essentials, and no general warrant for the search of a house, place, compartment, vehicle or baggage shall be issued. The term "affidavit" as used in this section, means statements made under oath or affirmation and preserved verbatim.

Failure of the officer issuing such warrant to file the required affidavit shall not invalidate any search made under the warrant unless such failure shall continue for a period of 30 days. If the affidavit is filed prior to the expiration of the 30-day period, nevertheless, evidence obtained in any such search shall not be admissible until a reasonable time after the filing of the required affidavit.

Code 1950, § 19.1-85; 1960, c. 366; 1973, c. 502; 1975, c. 495; 1976, c. 552; 1977, c. 109; 1979, c. 583; 1980, c. 362; 1981, c. 559; 1989, c. 719; 2006, c. 285; 2007, c. 212; 2008, cc. 147, 183; 2011, cc. 196, 219; 2012, c. 5.

§ 19.2-55. Issuing general search warrant or search warrant without affidavit deemed malfeasance

Any person having authority to issue criminal warrants who wilfully and knowingly issues a general search warrant or a search warrant without the affidavit required by § 19.2-54 shall be deemed guilty of a malfeasance.

Code 1950, § 19.1-89; 1960, c. 366; 1975, c. 495.

§ 19.2-56. To whom search warrant directed; what it shall command; warrant to show date and time of issuance; copy of affidavit to be part of warrant and served therewith; warrants not executed within 15 days

The judge, magistrate or other official authorized to issue criminal warrants, shall issue a search warrant if he finds from the facts or circumstances recited in the affidavit that there is probable cause for the issuance thereof.

Every search warrant shall be directed to (i) the sheriff, sergeant, or any policeman of the county, city or town in which the place to be searched is located, (ii) any law-enforcement officer or agent employed by the Commonwealth and vested with the powers of sheriffs and police, or (iii) jointly to any such sheriff, sergeant, policeman or law-enforcement officer or agent and an agent, special agent or officer of the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco and Firearms of the United States Treasury, the United States Naval Criminal Investigative Service, the United States Department of Homeland Security, any inspector, law-enforcement official or police personnel of the United States Postal Service, or the Drug Enforcement Administration. The

warrant shall (i) name the affiant, (ii) recite the offense in relation to which the search is to be made, (iii) name or describe the place to be searched, (iv) describe the property or person to be searched for, and (v) recite that the magistrate has found probable cause to believe that the property or person constitutes evidence of a crime (identified in the warrant) or tends to show that a person (named or described therein) has committed or is committing a crime.

The warrant shall command that the place be forthwith searched, either in day or night, and that the objects or persons described in the warrant, if found there, be seized. An inventory shall be produced before a court having jurisdiction of the offense in relation to which the warrant was issued as provided in § 19.2-57.

Any such warrant as provided in this section shall be executed by the policeman or other law-enforcement officer or agent into whose hands it shall come or be delivered. If the warrant is directed jointly to a sheriff, sergeant, policeman or law-enforcement officer or agent of the Commonwealth and a federal agent or officer as otherwise provided in this section, the warrant may be executed jointly or by the policeman, law-enforcement officer or agent into whose hands it is delivered. No other person may be permitted to be present during or participate in the execution of a warrant to search a place except (i) the owners and occupants of the place to be searched when permitted to be present by the officer in charge of the conduct of the search and (ii) persons designated by the officer in charge of the conduct of the search to assist or provide expertise in the conduct of the search.

Any search warrant for records or other information pertaining to a subscriber to, or customer of, an electronic communication service or remote computing service, whether a domestic corporation or foreign corporation, that is transacting or has transacted any business in the Commonwealth, to be executed upon such service provider may be executed within or without the Commonwealth by hand, United States mail, commercial delivery service, facsimile, or other electronic means upon the service provider. Notwithstanding the provisions of § 19.2-57, the officer executing a warrant pursuant to this paragraph shall endorse the date of execution thereon and shall file the warrant, with the inventory attached (or a notation that no property was seized) and the accompanying affidavit, unless such affidavit was made by voice or videotape recording, within three days after the materials ordered to be produced are received by the officer from the service provider. The return shall be made in the circuit court clerk's office for the jurisdiction wherein the warrant was issued. Saturdays, Sundays, or any federal or state legal holiday shall not be used in computing the three-day filing period.

Electronic communication service or remote computing service providers, whether a foreign or domestic corporation, shall also provide the contents of electronic communications pursuant to a search warrant issued under this section and § 19.2-70.3 using the same process described in the preceding paragraph.

Every search warrant shall contain the date and time it was issued. However, the failure of any such search warrant to contain the date and time it was issued shall not render the warrant void, provided that the date and time of issuing of said warrant is established by competent evidence.

The judge, magistrate, or other official authorized to issue criminal warrants shall attach a copy of the affidavit required by § 19.2-54, which shall become a part of the search warrant and served therewith. However, this provision shall not be applicable in any case in which the affidavit is made by means of a voice or videotape recording or where the affidavit has been sealed pursuant to § 19.2-54.

Any search warrant not executed within 15 days after issuance thereof shall be returned to, and voided by, the officer who issued such search warrant.

For the purposes of this section:

"Foreign corporation" means any corporation or other entity, whose primary place of business is located outside of the boundaries of the Commonwealth, that makes a contract or engages in a terms of service agreement with a resident of the Commonwealth to be performed in whole or in part by either party in the Commonwealth, or a corporation that has been issued a certificate of authority pursuant to § 13.1-759 to transact business in the Commonwealth. The making of the contract or terms of service agreement or the issuance of a certificate of authority shall be considered to be the agreement of the foreign corporation or entity that a search warrant or subpoena, which has been properly served on it, has the same legal force and effect as if served personally within the Commonwealth.

"Properly served" means delivery of a search warrant or subpoena by hand, by United States mail, by commercial delivery service, by facsimile or by any other manner to any officer of a corporation or its general manager in the Commonwealth, to any natural person designated by it as agent for the service of process, or if such corporation has designated a corporate agent, to any person named in the latest annual report filed pursuant to § 13.1-775.

Code 1950, § 19.1-86; 1960, c. 366; 1968, c. 572; 1975, c. 495; 1977, c. 289; 1979, c. 584; 1980, c. 573; 1981, c. 559; 1984, cc. 491, 598; 1988, c. 50; 1989, c. 719; 2000, c. 783; 2001, cc. 183, 205; 2007, c. 416; 2009, c. 725; 2015, cc. 75, 126.

§ 19.2-56.1. Warrant issued for search of attorney's office

A. Any warrant sought for the search of a premises or the contents thereof belonging to or under the control of any licensed attorney-at-law to search for evidence of any crime solely involving a client of such attorney shall be issued only by a circuit court judge. Any evidence seized pursuant to this section shall be inventoried forthwith by the clerk of the issuing court and sealed by the issuing judge. As soon thereafter as is practicable, the issuing judge shall conduct an in camera inspection of the seized evidence in the presence of the attorney from whom the evidence was seized. Following such inspection the issuing judge shall return any evidence so seized which is

determined to be within the scope of the attorney-client privilege and not otherwise subject to seizure.

B. Nothing herein shall bar the standing of the client to challenge the admissibility of any evidence seized pursuant to this section in any trial or proceeding.

1986, c. 636.

§ 19.2-56.2. Application for and issuance of search warrant for a tracking device; installation and use

A. As used in this section, unless the context requires a different meaning:

"Judicial officer" means a judge, magistrate, or other person authorized to issue criminal warrants.

"Law-enforcement officer" shall have the same meaning as in § 9.1-101.

"Tracking device" means an electronic or mechanical device that permits a person to remotely determine or track the position or movement of a person or object. "Tracking device" includes devices that store geographic data for subsequent access or analysis and devices that allow for the real-time monitoring of movement.

"Use of a tracking device" includes the installation, maintenance, and monitoring of a tracking device but does not include the interception of wire, electronic, or oral communications or the capture, collection, monitoring, or viewing of images.

B. A law-enforcement officer may apply for a search warrant from a judicial officer to permit the use of a tracking device. Each application for a search warrant authorizing the use of a tracking device shall be made in writing, upon oath or affirmation, to a judicial officer for the circuit in which the tracking device is to be installed, or where there is probable cause to believe the offense for which the tracking device is sought has been committed, is being committed, or will be committed.

The law-enforcement officer shall submit an affidavit, which may be filed by electronically transmitted (i) facsimile process or (ii) electronic record as defined in § 59.1-480, and shall include:

1. The identity of the applicant and the identity of the law-enforcement agency conducting the investigation;

2. The identity of the vehicle, container, item, or object to which, in which, or on which the tracking device is to be attached, placed, or otherwise installed; the name of the owner or possessor of the vehicle, container, item, or object described, if known; and the jurisdictional area in which the vehicle, container, item, or object described is expected to be found, if known;

3. Material facts constituting the probable cause for the issuance of the search warrant and alleging substantially the offense in relation to which such tracking device is to be used and a showing that probable cause exists that the information likely to be obtained will be evidence of the commission of such offense; and

4. The name of the county or city where there is probable cause to believe the offense for which the tracking device is sought has been committed, is being committed, or will be committed.

C.1. If the judicial officer finds, based on the affidavit submitted, that there is probable cause to believe that a crime has been committed, is being committed, or will be committed and that there is probable cause to believe the information likely to be obtained from the use of the tracking device will be evidence of the commission of such offense, the judicial officer shall issue a search warrant authorizing the use of the tracking device. The search warrant shall authorize the use of the tracking device from within the Commonwealth to track a person or property for a reasonable period of time, not to exceed 30 days from the issuance of the search warrant. The search warrant shall authorize the collection of the tracking data contained in or obtained from the tracking device but shall not authorize the interception of wire, electronic, or oral communications or the capture, collection, monitoring, or viewing of images.

2. The affidavit shall be certified by the judicial officer who issues the search warrant and shall be delivered to and preserved as a record by the clerk of the circuit court of the county or city where there is probable cause to believe the offense for which the tracking device has been sought has been committed, is being committed, or will be committed. The affidavit shall be delivered by the judicial officer in person; mailed by certified mail, return receipt requested; or delivered by electronically transmitted facsimile process or by use of filing and security procedures as defined in the Uniform Electronic Transactions Act (§ 59.1-479 et seq.) for transmitting signed documents.

3. By operation of law, the affidavit, search warrant, return, and any other related materials or pleadings shall be sealed. Upon motion of the Commonwealth or the owner or possessor of the vehicle, container, item, or object that was tracked, the circuit court may unseal such documents if it appears that the unsealing is consistent with the ends of justice or is necessary to reasonably inform such person of the nature of the evidence to be presented against him or to adequately prepare for his defense.

4. The circuit court may, for good cause shown, grant one or more extensions, not to exceed 30 days each.

D.1. The search warrant shall command the law-enforcement officer to complete the installation authorized by the search warrant within 15 days after issuance of the search warrant.

2. The law-enforcement officer executing the search warrant shall enter on it the exact date and time the device was installed and the period during which it was used.

3. Law-enforcement officers shall be permitted to monitor the tracking device during the period authorized in the search warrant, unless the period is extended as provided for in this section.

4. Law-enforcement officers shall remove the tracking device as soon as practical, but not later than 10 days after the use of the tracking device has ended. Upon request, and for good cause

shown, the circuit court may grant one or more extensions for such removal for a period not to exceed 10 days each.

5. In the event that law-enforcement officers are unable to remove the tracking device as required by subdivision 4, the law-enforcement officers shall disable the device, if possible, and all use of the tracking device shall cease.

6. Within 10 days after the use of the tracking device has ended, the executed search warrant shall be returned to the circuit court of the county or city where there is probable cause to believe the offense for which the tracking device has been sought has been committed, is being committed, or will be committed, as designated in the search warrant, where it shall be preserved as a record by the clerk of the circuit court.

E. Within 10 days after the use of the tracking device has ended, a copy of the executed search warrant shall be served on the person who was tracked and the person whose property was tracked. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked or by leaving a copy with any individual found at the person's usual place of abode who is a member of the person's family, other than a temporary sojourner or guest, and who is 16 years of age or older and by mailing a copy to the person's last known address. Upon request, and for good cause shown, the circuit court may grant one or more extensions for such service for a period not to exceed 30 days each. Good cause shall include, but not be limited to, a continuing criminal investigation, the potential for intimidation, the endangerment of an individual, or the preservation of evidence.

F. The disclosure or publication, without authorization of a circuit court, by a court officer, law-enforcement officer, or other person responsible for the administration of this section of the existence of a search warrant issued pursuant to this section, application for such search warrant, any affidavit filed in support of such warrant, or any return or data obtained as a result of such search warrant that is sealed by operation of law is punishable as a Class 1 misdemeanor.

2012, cc. 636, 679.

§ 19.2-57. Execution and return of warrant; list of property seized

The warrant shall be executed by the search of the place described in the warrant and, if property described in the warrant is found there, by the seizure of the property. The officer who seizes any property shall prepare an inventory thereof, under oath. An inventory of any seized property shall be produced before the circuit court of the county or city where the search was conducted. The officer executing the warrant shall endorse the date of execution thereon and the officer or his designee shall file the warrant, with the inventory attached (or a notation that no property was seized) and the accompanying affidavit, unless such affidavit was made by voice or videotape recording, within three days after the execution of such search warrant in the circuit court clerk's office, wherein the search was made, as provided in § 19.2-54. Saturdays, Sundays, or any federal or state legal holiday shall not be used in computing the three-day filing period. The officer, or his

designee or agent, may file the warrant, inventory, and accompanying affidavit by delivering them in person, or by mailing them certified mail, return receipt requested, or delivering them by electronically transmitted facsimile process.

Code 1950, § 19.1-87.1; 1970, c. 416; 1973, c. 11; 1975, c. 495; 1976, cc. 142, 552; 1977, c. 109; 1980, c. 573; 1984, c. 491; 2008, cc. 147, 183.

§ 19.2-58. Disposition of property seized

If any such warrant be executed by the seizure of property, or of any other of the things aforesaid, the same shall be safely kept by the direction of such judge or court, to be used as evidence, and thereafter be disposed of as provided by law; provided, however, that any such property seized under such warrant which is not used in evidence and any property which is stolen or embezzled property shall be restored to its owner, and the things mentioned in § 19.2-53 may be burnt or otherwise destroyed, under such direction, as soon as there is no further need for its use as evidence unless it is otherwise expressly provided by law.

Code 1950, § 19.1-87; 1960, c. 366; 1975, c. 495.

§ 19.2-59. Search without warrant prohibited; when search without warrant lawful

No officer of the law or any other person shall search any place, thing or person, except by virtue of and under a warrant issued by a proper officer. Any officer or other person searching any place, thing or person otherwise than by virtue of and under a search warrant, shall be guilty of malfeasance in office. Any officer or person violating the provisions of this section shall be liable to any person aggrieved thereby in both compensatory and punitive damages. Any officer found guilty of a second offense under this section shall, upon conviction thereof, immediately forfeit his office, and such finding shall be deemed to create a vacancy in such office to be filled according to law.

Provided, however, that any officer empowered to enforce the game laws or marine fisheries laws as set forth in Title 28.2 may without a search warrant enter for the purpose of enforcing such laws, any freight yard or room, passenger depot, baggage room or warehouse, storage room or warehouse, train, baggage car, passenger car, express car, Pullman car or freight car of any common carrier, or any boat, automobile or other vehicle; but nothing in this proviso contained shall be construed to permit a search of any occupied berth or compartment on any passenger car or boat or any baggage, bag, trunk, box or other closed container without a search warrant.

Code 1950, § 19.1-88; 1960, c. 366; 1975, c. 495; 1976, c. 293; 1978, c. 721; 1997, c. 147.

§ 19.2-59.1. Strip searches prohibited; exceptions; how strip searches conducted

A. No person in custodial arrest for a traffic infraction, Class 3 or Class 4 misdemeanor, or a violation of a city, county, or town ordinance, which is punishable by no more than thirty days in jail shall be strip searched unless there is reasonable cause to believe on the part of a law-enforcement officer authorizing the search that the individual is concealing a weapon. All strip searches conducted under this section shall be performed by persons of the same sex as the person arrested

and on premises where the search cannot be observed by persons not physically conducting the search.

B. A regional jail superintendent or the chief of police or the sheriff of the county or city shall develop a written policy regarding strip searches.

C. A search of any body cavity must be performed under sanitary conditions and a search of any body cavity, other than the mouth, shall be conducted either by or under the supervision of medically trained personnel.

D. Strip searches authorized pursuant to the exceptions stated in subsection A of this section shall be conducted by a law-enforcement officer as defined in § 9.1-101.

E. The provisions of this section shall not apply when the person is taken into custody by or remanded to a law-enforcement officer pursuant to a circuit or district court order.

F. For purposes of this section, "strip search" shall mean having an arrested person remove or arrange some or all of his clothing so as to permit a visual inspection of the genitals, buttocks, anus, female breasts, or undergarments of such person.

G. Nothing in this section shall prohibit a sheriff or a regional jail superintendent from requiring that inmates take hot water and soap showers and be subjected to visual inspection upon assignment to the general population area of the jail or upon determination by the sheriff or regional jail superintendent that the inmate must be held at the jail by reason of his inability to post bond after reasonable opportunity to do so.

1981, c. 608; 1995, c. 112.

§ 19.2-60. Motion for return of seized property and to suppress

A person aggrieved by an allegedly unlawful search or seizure may move the court to return any seized property and to suppress it for use as evidence. The court shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted by a court of record, any seized property shall be restored as soon as practicable unless otherwise subject to lawful detention, and such property shall not be admissible in evidence at any hearing or trial. If the motion is granted by a court not of record, such property shall not be admissible in evidence at any hearing or trial before that court, but the ruling shall have no effect on any hearing or trial in a court of record.

1975, c. 495.

§ 19.2-60.1. Use of unmanned aircraft systems by public bodies; search warrant required

A. As used in this section, unless the context requires a different meaning:

"Unmanned aircraft" means an aircraft that is operated without the possibility of human intervention from within or on the aircraft.

"Unmanned aircraft system" means an unmanned aircraft and associated elements, including communication links, sensing devices, and the components that control the unmanned aircraft.

B. No state or local government department, agency, or instrumentality having jurisdiction over criminal law enforcement or regulatory violations, including but not limited to the Department of State Police, and no department of law enforcement as defined in § 15.2-836 of any county, city, or town shall utilize an unmanned aircraft system except during the execution of a search warrant issued pursuant to this chapter or an administrative or inspection warrant issued pursuant to law.

C. Notwithstanding the prohibition in this section, an unmanned aircraft system may be deployed without a warrant (i) when an Amber Alert is activated pursuant to § 52-34.3, (ii) when a Senior Alert is activated pursuant to § 52-34.6, (iii) when a Blue Alert is activated pursuant to § 52-34.9, (iv) where use of an unmanned aircraft system is determined to be necessary to alleviate an immediate danger to any person, (v) for training exercises related to such uses, or (vi) if a person with legal authority consents to the warrantless search.

D. The warrant requirements of this section shall not apply when such systems are utilized to support the Commonwealth for purposes other than law enforcement, including damage assessment, traffic assessment, flood stage assessment, and wildfire assessment. Nothing herein shall prohibit use of unmanned aircraft systems for private, commercial, or recreational use or solely for research and development purposes by institutions of higher education and other research organizations or institutions.

E. Evidence obtained through the utilization of an unmanned aircraft system in violation of this section is not admissible in any criminal or civil proceeding.

F. In no case may a weaponized unmanned aircraft system be deployed in the Commonwealth or its use facilitated in the Commonwealth by a state or local government department, agency, or instrumentality or department of law enforcement in the Commonwealth except in operations at the Space Port and Naval/Aegis facilities at Wallops Island.

G. Nothing herein shall apply to the Armed Forces of the United States or the Virginia National Guard while utilizing unmanned aircraft systems during training required to maintain readiness for its federal mission or when facilitating training for other U.S. Department of Defense units.

2015, cc. 764, 774.

Chapter 6 - INTERCEPTION OF WIRE, ELECTRONIC OR ORAL COMMUNICATIONS

§ 19.2-61. Definitions

As used in this chapter:

"Aggrieved person" means a person who was a party to any intercepted wire, electronic or oral communication or a person against whom the interception was directed;

"Aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception;

"Communications common carrier" means any person engaged as a common carrier for hire in communication by wire or radio or in radio transmission of energy;

"Contents" when used with respect to any wire, electronic or oral communication, includes any information concerning the substance, purport or meaning of that communication;

"Electronic, mechanical or other device" means any device or apparatus that can be used to intercept a wire, electronic or oral communication other than:

(a) Any telephone or telegraph instrument, equipment or facility, or any component thereof, (i) furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by the subscriber or user for connection to the facilities of such service and used in the ordinary course of the subscriber's or user's business; or (ii) being used by a communications common carrier in the ordinary course of its business, or by an investigative or law-enforcement officer in the ordinary course of his duties;

(b) A hearing aid or similar device being used to correct subnormal hearing to not better than normal;

"Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system. The term does not include:

1. Any wire communication or oral communication as defined herein;

2. Any communication made through a tone-only paging device;

3. Any communication from an electronic or mechanical device which permits the tracking of the movement of a person or object; or

4. Any electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds;

"Electronic communication service" means any service which provides to users thereof the ability to send or receive wire or electronic communications;

"Electronic communication system" means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;

"Electronic storage" means any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof and any storage of such communication by an electronic communication service for purposes of backup protection of such communication;

"Intercept" means any aural or other means of acquisition of the contents of any wire, electronic or oral communication through the use of any electronic, mechanical or other device;

"Investigative or law-enforcement officer" means any officer of the United States or of a state or political subdivision thereof, who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this chapter, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses;

"Judge of competent jurisdiction" means a judge of any circuit court of the Commonwealth with general criminal jurisdiction;

"Monitor" or "monitoring" means the actual auditory or visual acquisition of an intercepted communication by any means;

"Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectations but does not include any electronic communication;

"Pen register" means a device or process that records or decodes dialing, routing, addressing or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted; however, such information shall not include the contents of any communication. The term does not include any device or process used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device or process used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of the provider's or customer's business;

"Person" means any employee or agent of the Commonwealth or a political subdivision thereof, and any individual, partnership, association, joint stock company, trust or corporation;

"Readily accessible to the general public" means, with respect to a radio communication, that such communication is not (i) scrambled or encrypted; (ii) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of such communication; (iii) carried on a subcarrier or other signal subsidiary to a radio transmission; (iv) transmitted over a communication system provided by a communications common carrier, unless the communication is a tone-only paging system communication; or (v) transmitted on frequencies allocated under Part 25, subpart D, E, or F of Part 74, or Part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under Part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio;

"Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system;

"Trap and trace device" means a device or process that captures the incoming electronic or other impulses that identify the originating number or other dialing, routing, addressing and signaling information reasonably likely to identify the source of a wire or electronic communication; however, such information shall not include the contents of any communication;

"User" means any person or entity who uses an electronic communication service and is duly authorized by the provider of such service to engage in such use;

"Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection, including the use of such connection in a switching station, furnished or operated by any person engaged in providing or operating such facilities for the transmission of communications.

Code 1950, § 19.1-89.1; 1973, c. 442; 1975, c. 495; 1988, c. 889; 2002, cc. 588, 623; 2005, c. 934.

§ 19.2-62. Interception, disclosure, etc., of wire, electronic or oral communications unlawful; penalties; exceptions

A. Except as otherwise specifically provided in this chapter any person who:

1. Intentionally intercepts, endeavors to intercept or procures any other person to intercept or endeavor to intercept, any wire, electronic or oral communication;

2. Intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical or other device to intercept any oral communication;

3. Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, electronic or oral communication knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication; or

4. Intentionally uses, or endeavors to use, the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication; shall be guilty of a Class 6 felony.

B.1. It shall not be unlawful under this chapter for an operator of a switchboard, or an officer, employee or agent of a provider of wire or electronic communications service, whose facilities are used in the transmission of a wire communication, to intercept, disclose or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the provider of that service. However, a provider of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks. It shall not be a criminal offense under this chapter for providers of wire or electronic communications service, their officers, employees and agents, landlords, custodians, or other persons pursuant to a court order under this chapter, to provide information facilities or technical assistance to an investigative or law-enforcement officer, who, pursuant to this chapter, is authorized to intercept a wire, electronic or oral communication.

2. It shall not be a criminal offense under this chapter for a person to intercept a wire, electronic or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

3. It shall not be a criminal offense under this chapter for any person:

(a) To intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;

(b) To intercept any radio communication which is transmitted (i) by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress, (ii) by any governmental, law-enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public, (iii) by a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or (iv) by any marine or aeronautical communications system;

(c) To intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of such interference;

(d) Using the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system, if such communication is not scrambled or encrypted;

(e) To use a pen register or a trap and trace device pursuant to §§ 19.2-70.1 and 19.2-70.2; or

(f) Who is a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of such service.

C. A person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication, other than one to such person or entity or an agent thereof, while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of the addressee or intended recipient. However, a person or entity providing electronic communication service to the public may divulge the contents of any such communication:

1. As authorized in subdivision B 1 of this section or § 19.2-67;

2. With the lawful consent of the originator or any addressee or intended recipient of such communication;

3. To a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

4. Which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, to a law-enforcement agency.

Conduct otherwise an offense under this subsection that consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted (i) to a broadcasting station for purposes of retransmission to the general public, or (ii) as an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls, is not an offense under this section unless the conduct is for the purposes of direct or indirect commercial advantage or private financial gain. Further, private viewing of a satellite video communication that is not scrambled or encrypted and interception of a radio communication that is transmitted on frequencies allocated under subpart D of Part 74 of the Rules of the Federal Communications Commission that is not scrambled or encrypted when the viewing or interception is not done for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, shall not be offenses under this chapter.

Violation of this subsection shall be punishable as a Class 1 misdemeanor.

Code 1950, § 19.1-89.2; 1973, c. 442; 1975, c. 495; 1988, c. 889; 2004, c. 149.

§ 19.2-63. Manufacture, possession, sale or advertising of certain devices unlawful; penalties; exceptions

A. Except as otherwise specifically provided in this chapter, any person who intentionally:

1. Manufactures, assembles, possesses, or sells any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, electronic or oral communications; or

2. Places in any newspaper, magazine, handbill, or other publication any advertisement of:

(a) Any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, electronic or oral communications, or

(b) Any other electronic, mechanical, or other device where such advertisement promotes the use of such device for the purpose of the surreptitious interception of wire, electronic or oral communications; shall be guilty of a Class 6 felony.

B. It shall not be unlawful under this section for:

1. A provider of wire or electronic communication service or an officer, agent, or employee of, or a person under contract with, such provider in the normal course of the provider's business, or

2. An officer, agent, or employee of, or a person under contract with the United States, the Commonwealth or a political subdivision thereof, in the normal course of the activities of the United States, the Commonwealth, or a political subdivision thereof, to manufacture, assemble, possess,

or sell any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, electronic or oral communications.

Code 1950, § 19.1-89.3; 1973, c. 442; 1975, c. 495; 1988, c. 889.

§ 19.2-63.1. Supervision and control of devices; unauthorized possession

Any electronic, mechanical or other device as defined in this chapter which is in the possession of any sheriff's office or police department of a county, city or town, or in the possession of any employee of such office, shall be under the direct control and supervision of the sheriff or chief of police of the office or department or his designee who is an employee of the office or department. Unauthorized possession of any such device under the provisions of this section by any such employee is unlawful, notwithstanding the provisions of subdivision B 2 of § 19.2-63, and a Class 1 misdemeanor.

1978, c. 63; 1988, c. 889; 2011, c. 193.

§ 19.2-64. Forfeiture of unlawful devices

Any electronic, mechanical or other device used, manufactured, assembled, possessed, sold, or advertised in violation of § 19.2-62 or § 19.2-63 may be seized and forfeited to the Commonwealth, and turned over to the court of record in the city or county in which it was seized and such property shall be disposed of in such manner as the court may direct.

Code 1950, § 19.1-89.4; 1973, c. 442; 1975, c. 495.

§ 19.2-65. When intercepted communications and evidence derived therefrom not to be received in evidence

Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing or other proceeding in or before any court, grand jury, department, officer, commission, regulatory body, legislative committee or other agency of this Commonwealth or a political subdivision thereof if the disclosure of that information would be in violation of this chapter.

Code 1950, § 19.1-89.5; 1973, c. 442; 1975, c. 495.

§ 19.2-66. When Attorney General or Chief Deputy Attorney General may apply for order authorizing interception of communications

A. The Attorney General or Chief Deputy Attorney General, if the Attorney General so designates in writing, in any case where the Attorney General is authorized by law to prosecute or pursuant to a request in his official capacity of an attorney for the Commonwealth in any city or county, may apply to a judge of competent jurisdiction for an order authorizing the interception of wire, electronic or oral communications by the Department of State Police, when such interception may reasonably be expected to provide evidence of the commission of a felonious offense of extortion, bribery, kidnapping, murder, any felony violation of § 18.2-248 or 18.2-248.1, any felony violation of Chapter 29 (§ 59.1-364 et seq.) of Title 59.1, any felony violation of Article 2 (§ 18.2-38

et seq.), Article 2.1 (§ 18.2-46.1 et seq.), Article 2.2 (§ 18.2-46.4 et seq.), Article 5 (§ 18.2-58 et seq.), Article 6 (§ 18.2-59 et seq.) or any felonies that are not Class 6 felonies in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, or any conspiracy to commit any of the foregoing offenses. The Attorney General or Chief Deputy Attorney General may apply for authorization for the observation or monitoring of the interception by a police department of a county or city, by a sheriff's office, or by law-enforcement officers of the United States. Such application shall be made, and such order may be granted, in conformity with the provisions of § 19.2-68.

B. The application for an order under subsection B of § 19.2-68 shall be made as follows:

1. In the case of an application for a wire or electronic interception, a judge of competent jurisdiction shall have the authority to issue an order under subsection B of § 19.2-68 if there is probable cause to believe that an offense was committed, is being committed, or will be committed or the person or persons whose communications are to be intercepted live, work, subscribe to a wire or electronic communication system, maintain an address or a post office box, or are making the communication within the territorial jurisdiction of the court.

2. In the case of an application for an oral intercept, a judge of competent jurisdiction shall have the authority to issue an order under subsection B of § 19.2-68 if there is probable cause to believe that an offense was committed, is being committed, or will be committed or the physical location of the oral communication to be intercepted is within the territorial jurisdiction of the court.

C. For the purposes of an order entered pursuant to subsection B of § 19.2-68 for the interception of a wire or electronic communication, such communication shall be deemed to be intercepted in the jurisdiction where the order is entered, regardless of the physical location or the method by which the communication is captured or routed to the monitoring location.

Code 1950, § 19.1-89.6; 1973, c. 442; 1975, c. 495; 1976, c. 271; 1979, c. 602; 1982, cc. 40, 274; 1988, cc. 855, 889; 2002, cc. 588, 623; 2004, c. 122; 2005, c. 934; 2011, cc. 403, 414; 2013, cc. 448, 664.

§ 19.2-67. Disclosure of information obtained by authorized means

A. Any investigative or law-enforcement officer, or police officer of a county or city, who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, electronic or oral communication, or evidence derived therefrom, may disclose such contents to another investigative or law-enforcement officer, or police officer of a county or city, to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

B. Any investigative or law-enforcement officer or police officer of a county or city, who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, electronic or oral communication or evidence derived therefrom may use such contents to the extent such use is appropriate to the proper performance of his official duties.

C. Any person who has received, by any means authorized by this chapter, any information concerning a wire, electronic or oral communication, or evidence derived therefrom intercepted in accordance with the provisions of this chapter may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any criminal proceeding for an offense specified in § 19.2-66, or any conspiracy or attempt to commit the same, in any court of the United States or of any state or in any federal or state grand jury proceeding.

D. No wire, electronic or oral communication which is a privileged communication between the parties to the conversation which is intercepted in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character, nor shall it be disclosed or used in any way.

E. When an investigative or law-enforcement officer, or police officer of a county or city, while engaged in intercepting wire, electronic or oral communications in the manner authorized herein, or observing or monitoring such interception intercepts, observes or monitors wire, electronic or oral communications relating to offenses other than those specified in the order of authorization, the contents thereof, and evidence derived therefrom, shall not be disclosed or used as provided in subsections A, B and C of this section, unless such communications or derivative evidence relates to a felony, in which case use or disclosure may be made as provided in subsections A, B and C of this section. Such use and disclosure pursuant to subsection C of this section shall be permitted only when approved by a judge of competent jurisdiction where such judge finds, on subsequent application, that such communications were otherwise intercepted in accordance with the provisions of this chapter. Violations of this subsection E shall be punishable as provided in § 19.2-62.

Code 1950, § 19.1-89.7; 1973, c. 442; 1975, c. 495; 1976, c. 231; 1979, c. 602; 1983, c. 536; 1988, c. 889.

§ 19.2-68. Application for and issuance of order authorizing interception; contents of order; recording and retention of intercepted communications, applications and orders; notice to parties; introduction in evidence of information obtained

A. Each application for an order authorizing the interception of a wire, electronic or oral communication shall be made in writing upon oath or affirmation to the appropriate judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall be verified by the Attorney General to the best of his knowledge and belief and shall include the following information:

1. The identity of the attorney for the Commonwealth and law-enforcement officer who requested the Attorney General to apply for such order;

2. A full and complete statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including (i) details as to the particular offense that has been, is being or is about to be committed, (ii) except as provided in subsection I, a particular

description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

3. A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

4. A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

5. A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept wire, electronic or oral communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each such application;

6. Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results; and

7. If authorization is requested for observation or monitoring by a police department of a county or city, by a sheriff's office, or by law-enforcement officers of the United States, a statement containing the name of the police department, sheriff's office, or United States agency and an explanation of the reasons such observation or monitoring is necessary.

The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

B. Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing interception of wire, electronic or oral communications if the judge determines on the basis of the facts submitted by the applicant that:

1. There is probable cause for belief that an individual is committing, has committed or is about to commit an offense enumerated in § 19.2-66 of this chapter;

2. There is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

3. Normal investigative procedures have been tried and have failed, or reasonably appear to be unlikely to succeed if tried, or to be too dangerous; and interception under this chapter is the only alternative investigative procedure available;

4. Except as provided in subsection I, there is probable cause for belief that the facilities from which, or the place where, the wire, electronic or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person;

5. A wire, electronic or oral communication authorized to be intercepted pursuant to this section may be monitored at any location within the Commonwealth of Virginia.

C. Each order authorizing the interception of any wire, electronic or oral communication shall specify:

1. The identity of the person, if known, whose communications are to be intercepted;

2. The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

3. A particular description of the type of communication sought to be intercepted, and a statement of the particular offense enumerated in § 19.2-66 to which it relates;

4. That such interception is to be conducted only by the Department of State Police;

5. If observation or monitoring by the police department of a county or city, by a sheriff's office, or by law-enforcement officers of the United States is authorized, only that police department, sheriff's office, or agency or the officers from any police department of a town which originated the investigation leading to the application shall observe or monitor the interception; and

6. The period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

An order authorizing the interception of a wire, electronic or oral communication shall, upon request of the applicant, direct that a provider of wire or electronic communications service, landlord, custodian or other person shall furnish the Department of State Police forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider, landlord, custodian or person is providing the person whose communications are to be intercepted. Any provider of wire or electronic communications service, landlord, custodian or other person furnishing such facilities or technical assistance shall be compensated therefor by the Commonwealth for reasonable and actual expenses incurred in providing such facilities or assistance, to be paid out of the criminal fund.

D. No order entered under this section may authorize the interception of any wire, electronic or oral communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than 30 days which period begins to run on the earlier of the day on which the investigative or law-enforcement officer begins to conduct an interception under the order or 10 days after the date of entry of the order. Extensions of an order may be granted, but

only upon application for an extension made in accordance with subsection A of this section and the court's making the findings required by subsection B of this section. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than 30 days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or in any event in 30 days. In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception.

E. Whenever an order authorizing interception is entered pursuant to this chapter, the order shall require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge shall require.

F.1. The contents of any wire, electronic or oral communication intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. Should it not be possible to record the intercepted communication, a detailed resume of such communication shall forthwith be reduced to writing and filed with the court. The recording of the contents of any wire, electronic or oral communication under this subsection shall be done in such way as will protect the recording from editing or other alterations and shall not be duplicated except upon order of the court as hereafter provided. Immediately upon the expiration of the period of the order, or extensions thereof, such recording or detailed resume shall be made available to the judge issuing such order and sealed under his directions. Custody of any recordings or detailed resumes shall be vested with the court and shall not be destroyed for a period of 10 years from the date of the order and then only by direction of the court; provided, however, should any interception fail to reveal any information related to the offense or offenses for which it was authorized, such recording or resume shall be destroyed after the expiration of 60 days after the notice required by subdivision 4 of this subsection is served. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsections A and B of § 19.2-67 for investigations. The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire, electronic or oral communication or evidence derived therefrom under subsection C of § 19.2-67.

2. Applications made and orders granted or denied under this chapter shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for 10 years.

3. Any violation of the provisions of this subsection may be punished as contempt of the issuing or denying court.

4. Within a reasonable time but not later than 90 days after the filing of an application for an order of authorization which is denied or the termination of the period of an order or extensions thereof, the issuing or denying judge shall cause to be served, on the persons named in the order or the application, and such other parties to intercepted communications as the judge may determine in his discretion that is in the interest of justice, an inventory which shall include notice of:

(a) The fact of the entry of the order or the application;

(b) The date of the entry and the period of authorized interception, or the denial of the application;

(c) The fact that during the period wire, electronic or oral communications were or were not intercepted; and

(d) The fact that unless he files a motion with the court within 60 days after the service of notice upon him, the recordation or resume may be destroyed in accordance with subdivision 1 of this subsection.

The judge, upon the filing of a motion, shall make available to such person or his counsel for inspection the intercepted communications, applications and orders. The serving of the inventory required by this subsection may be postponed for additional periods, not to exceed 30 days each, upon the ex parte showing of good cause to a judge of competent jurisdiction.

G. The contents of any intercepted wire, electronic or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in a state court unless each party to the communication and to such proceeding, not less than 10 days before the trial, hearing or proceeding, has been furnished with a copy of the court order, accompanying application under which the interception was authorized and the contents of any intercepted wire, electronic or oral communication that is to be used in any trial, hearing or other proceeding in a state court. This 10-day period may be waived by the judge if he finds that it was not possible to furnish the party with the above information 10 days before the trial, hearing or proceeding and that the party will not be prejudiced by the delay in receiving such information; provided that such information in any event shall be given prior to the day of the trial, and the inability to comply with such 10-day period shall be grounds for the granting of a continuance to either party.

The judge who considers an application for an interception under this chapter, whether issuing or denying the order, shall be disqualified from presiding at any trial resulting from or in any manner connected with such interception, regardless of whether the evidence acquired thereby is used in such trial.

H. Any aggrieved person in any trial, hearing or proceeding in or before any court, department, officer, agency, regulatory body or other authority of the Commonwealth, or a political subdivision thereof, may move to suppress the contents of any intercepted wire, electronic or oral communication, or evidence derived therefrom, on the grounds that:

1. The communication was unlawfully intercepted, or was not intercepted in compliance with this chapter; or

2. The order of the authorization or approval under which it was intercepted is insufficient on its face; or

3. The interception was not made in conformity with the order of authorization or approval; or

4. The interception is not admissible into evidence in any trial, proceeding or hearing in a state court under the applicable rules of evidence.

Such motion shall be made before the trial, hearing or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted pursuant to subdivision 1, 2 or 3 of this subsection, the contents of the intercepted wire, electronic or oral communication or evidence derived therefrom shall be treated as having been obtained in violation of this chapter. The judge, upon the filing of such motion by the aggrieved person, shall make available to the aggrieved person, or his counsel, for inspection the intercepted communication.

I. The requirements of subdivision 2 of subsection A and subdivision 4 of subsection B of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if:

1. In the case of an application with respect to the interception of an oral communication:

(a) The application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

(b) The judge finds that such specification is not practical; or

2. In the case of an application with respect to a wire or electronic communication:

(a) the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

(b) the judge finds that such purpose has been adequately shown.

The interception of a communication under an order issued pursuant to this subsection shall not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order issued pursuant to this subdivision 2 may move

the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the Attorney General, shall decide the motion expeditiously.

Code 1950, § 19.1-89.8; 1973, c. 442; 1975, c. 495; 1976, c. 163; 1977, c. 335; 1979, c. 602; 1980, c. 244; 1988, c. 889; 2002, c. 91; 2005, c. 934; 2013, cc. 448, 664.

§ 19.2-69. Civil action for unlawful interception, disclosure or use

Any person whose wire, electronic or oral communication is intercepted, disclosed or used in violation of this chapter shall (i) have a civil cause of action against any person who intercepts, discloses or uses, or procures any other person to intercept, disclose or use such communications, and (ii) be entitled to recover from any such person:

1. Actual damages but not less than liquidated damages computed at the rate of $400 a day for each day of violation or $4,000, whichever is higher, provided that liquidated damages shall be computed at the rate of $800 a day for each day of violation or $8,000, whichever is higher, if the wire, electronic, or oral communication intercepted, disclosed, or used is between (i) a husband and wife; (ii) an attorney and client; (iii) a licensed practitioner of the healing arts and patient; (iv) a licensed professional counselor, licensed clinical social worker, licensed psychologist, or licensed marriage and family therapist and client; or (v) a clergy member and person seeking spiritual counsel or advice;

2. Punitive damages; and

3. A reasonable attorney's fee and other litigation costs reasonably incurred.

A good faith reliance on a court order or legislative authorization shall constitute a complete defense to any civil or criminal action brought under this chapter or under any other law.

Code 1950, § 19.1-89.9; 1973, c. 442; 1975, c. 495; 1988, c. 889; 2010, c. 343; 2015, c. 672.

§ 19.2-70. Reports to be filed by courts and Attorney General

All courts of the Commonwealth and the Attorney General shall file all reports required by 18 U.S.C.A. § 2519. The Attorney General shall file a written report with the Clerks of the Senate and House of Delegates on or before December 31 of each year setting forth the number of applications made pursuant to this chapter, the number of interceptions authorized, the number of arrests resulting from each application, the number of convictions including a breakdown by offense, the cost of each application granted and the number of requests denied. Such information shall be made available by such Clerks to any member of the General Assembly upon request. However, notwithstanding the above requirements, no report shall be made concerning a granted application until after all inventories associated with such application are served pursuant to subdivision F 4 of § 19.2-68.

Code 1950, § 19.1-89.10; 1973, c. 442; 1975, c. 495; 2011, cc. 403, 414.

§ 19.2-70.1. General prohibition on pen register and trap and trace device use; exceptions

Except as provided in this section, no person may install or use a pen register or a trap and trace device without first obtaining a court order under § 19.2-70.2.

However, a court order shall not be required for use of a pen register or trap and trace device by a provider of electronic or wire communication service (i) relating to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of the provider, or to the protection of users of that service from abuse of service or unlawful use of service; (ii) to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service; or (iii) where the consent of the user of that service has been obtained.

Any person who knowingly violates this section shall be guilty of a Class 1 misdemeanor.

1988, c. 889.

§ 19.2-70.2. Application for and issuance of order for a pen register or trap and trace device; assistance in installation and use

A. An investigative or law-enforcement officer may make application for an order or an extension of an order authorizing or approving the installation and use of a pen register or a trap and trace device, in writing under oath or equivalent affirmation, to a court of competent jurisdiction. The application shall include:

1. The identity of the officer making the application and the identity of the law-enforcement agency conducting the investigation; and

2. A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

The application may include a request that the order require information, facilities and technical assistance necessary to accomplish the installation be furnished.

B. An application for an ex parte order authorizing the installation and use of a pen register or trap and trace device may be filed in the jurisdiction where the ongoing criminal investigation is being conducted; where there is probable cause to believe that an offense was committed, is being committed, or will be committed; or where the person or persons who subscribe to the wire or electronic communication system live, work, or maintain an address or a post office box. For the purposes of an order entered pursuant to this section for the installation and use of a pen register or trap and trace device, such installation shall be deemed to occur in the jurisdiction where the order is entered, regardless of the physical location or the method by which the information is captured or routed to the law-enforcement officer that made the application. Upon application, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device if the court finds that the investigative or law-enforcement officer has certified to

the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.

The order shall specify:

1. The identity, if known, of the person in whose name the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied is listed or to whom the line or other facility is leased;

2. The identity, if known, of the person who is the subject of the criminal investigation;

3. The attributes of the communications to which the order applies, including the number or other identifier and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied; and

4. A statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates.

C. Installation and use of a pen register or a trap and trace device shall be authorized for a period not to exceed 60 days. Extensions of the order may be granted, but only upon application made and order issued in accordance with this section. The period of an extension shall not exceed 60 days.

D. An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that:

1. The order and application be sealed until otherwise ordered by the court;

2. Information, facilities and technical assistance necessary to accomplish the installation be furnished if requested in the application; and

3. The person owning or leasing the line or other facility to which the pen register or trap and trace device is attached or applied, or who is obligated by the order to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

E. Upon request of an investigative or a law-enforcement officer authorized by the court to install and use a pen register, a provider of wire or electronic communication service, a landlord, custodian or any other person so ordered by the court shall, as soon as practicable, furnish the officer with all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place.

F. Upon request of an investigative or law-enforcement officer authorized by the court to receive the results of a trap and trace device under this section, a provider of wire or electronic

communication service, a landlord, custodian or any other person so ordered by the court shall, as soon as practicable, install the device on the appropriate line and furnish the officer with all additional information, facilities and technical assistance, including installation and operation of the device, unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place. Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the investigative or law-enforcement officer designated by the court at reasonable intervals during regular business hours for the duration of the order. Where the law-enforcement agency implementing an ex parte order under this subsection seeks to do so by installing and using its own pen register or trap and trace device on a packet-switched data network of a provider of electronic communication service to the public, the agency shall ensure that a record will be maintained that will identify (i) any officer or officers who installed the device and any officer or officers who accessed the device to obtain information from the network; (ii) the date and time the device was installed, the date and time the device was uninstalled, and the date, time, and duration of each time the device is accessed to obtain information; (iii) the configuration of the device at the time of its installation and any subsequent modification thereof; and (iv) any information that has been collected by the device. To the extent that the pen register or trap and trace device can be set automatically to record this information electronically, the record shall be maintained electronically throughout the installation and use of such device. The record maintained hereunder shall be provided ex parte and under seal of the court that entered the ex parte order authorizing the installation and use of the device within 30 days after termination of the order, including any extensions thereof.

G. A provider of a wire or electronic communication service, a landlord, custodian or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for reasonable and actual expenses incurred in providing such facilities and assistance. The expenses shall be paid out of the criminal fund.

H. No cause of action shall lie in any court against a provider of a wire or electronic communication service, its officers, employees, agents or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order issued pursuant to this section. Good faith reliance on a court order, a legislative authorization or a statutory authorization is a complete defense against any civil or criminal action based upon a violation of this chapter.

1988, c. 889; 2002, cc. 588, 623; 2005, c. 934; 2016, c. 231.

§ 19.2-70.3. Obtaining records concerning electronic communication service or remote computing service

A. A provider of electronic communication service or remote computing service, which, for purposes of subdivisions 2, 3, and 4, includes a foreign corporation that provides such services, shall disclose a record or other information pertaining to a subscriber to or customer of such service,

excluding the contents of electronic communications and real-time location data, to an investigative or law-enforcement officer only pursuant to:

1. A subpoena issued by a grand jury of a court of the Commonwealth;

2. A search warrant issued by a magistrate, general district court, or circuit court;

3. A court order issued by a circuit court for such disclosure issued as provided in subsection B; or

4. The consent of the subscriber or customer to such disclosure.

B. A court shall issue an order for disclosure under this section only if the investigative or law-enforcement officer shows that there is reason to believe the records or other information sought are relevant and material to an ongoing criminal investigation, or the investigation of any missing child as defined in § 52-32, missing senior adult as defined in § 52-34.4, or an incapacitated person as defined in § 64.2-2000 who meets the definition of a missing senior adult except for the age requirement. Upon issuance of an order for disclosure under this section, the order and any written application or statement of facts may be sealed by the court for 90 days for good cause shown upon application of the attorney for the Commonwealth in an ex parte proceeding. The order and any written application or statement of facts may be sealed for additional 90-day periods for good cause shown upon subsequent application of the attorney for the Commonwealth in an ex parte proceeding. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify the order, if the information or records requested are unusually voluminous in nature or compliance with such order would otherwise cause an undue burden on such provider.

C. Except as provided in subsection D or E, a provider of electronic communication service or remote computing service, including a foreign corporation that provides such services, shall disclose the contents of electronic communications or real-time location data to an investigative or law-enforcement officer only pursuant to a search warrant issued by a magistrate, a juvenile and domestic relations district court, a general district court, or a circuit court, based upon complaint on oath supported by an affidavit as required in § 19.2-54, or judicial officer or court of any of the several states of the United States or its territories, or the District of Columbia when the warrant issued by such officer or such court complies with the provisions of subsection G. In the case of a search warrant directed to a foreign corporation, the affidavit shall state that the complainant believes that the records requested are actually or constructively possessed by a foreign corporation that provides electronic communication service or remote computing service within the Commonwealth of Virginia. If satisfied that probable cause has been established for such belief and as required by Chapter 5 (§ 19.2-52 et seq.), the magistrate, the juvenile and domestic relations district court, the general district court, or the circuit court shall issue a warrant identifying those records to be searched for and commanding the person seeking such warrant to properly serve the warrant upon the foreign corporation. A search warrant for real-time location data shall be issued if the magistrate, the juvenile and domestic relations district court, the general district

court, or the circuit court is satisfied that probable cause has been established that the real-time location data sought is relevant to a crime that is being committed or has been committed or that an arrest warrant exists for the person whose real-time location data is sought.

D. A provider of electronic communication service or remote computing service, including a foreign corporation that provides such services, shall disclose a record or other information pertaining to a subscriber to or customer of such service, including real-time location data but excluding the contents of electronic communications, to an investigative or law-enforcement officer pursuant to an administrative subpoena issued pursuant to § 19.2-10.2 concerning a violation of § 18.2-374.1 or 18.2-374.1:1, former § 18.2-374.1:2, or § 18.2-374.3 when the information sought is relevant and material to an ongoing criminal investigation.

E. When disclosure of real-time location data is not prohibited by federal law, an investigative or law-enforcement officer may obtain real-time location data without a warrant in the following circumstances:

1. To respond to the user's call for emergency services;

2. With the informed, affirmative consent of the owner or user of the electronic device concerned if (i) the device is in his possession; (ii) the owner or user knows or believes that the device is in the possession of an employee or agent of the owner or user with the owner's or user's consent; or (iii) the owner or user knows or believes that the device has been taken by a third party without the consent of the owner or user;

3. With the informed, affirmative consent of the legal guardian or next of kin of the owner or user, if reasonably available, if the owner or user is reasonably believed to be deceased, is reported missing, or is unable to be contacted; or

4. If the investigative or law-enforcement officer reasonably believes that an emergency involving the immediate danger to a person requires the disclosure, without delay, of real-time location data concerning a specific person and that a warrant cannot be obtained in time to prevent the identified danger.

No later than three business days after seeking disclosure of real-time location data pursuant to this subsection, the investigative or law-enforcement officer seeking the information shall file with the appropriate court a written statement setting forth the facts giving rise to the emergency and the facts as to why the person whose real-time location data was sought is believed to be important in addressing the emergency.

F. In order to comply with the requirements of § 19.2-54, any search of the records of a foreign corporation shall be deemed to have been made in the same place wherein the search warrant was issued.

G. A Virginia corporation or other entity that provides electronic communication services or remote computing services to the general public, when properly served with a search warrant and

affidavit in support of the warrant, issued by a judicial officer or court of any of the several states of the United States or its territories, or the District of Columbia with jurisdiction over the matter, to produce a record or other information pertaining to a subscriber to or customer of such service, including real-time location data, or the contents of electronic communications, or both, shall produce the record or other information, including real-time location data, or the contents of electronic communications as if that warrant had been issued by a Virginia court. The provisions of this subsection shall only apply to a record or other information, including real-time location data, or contents of electronic communications relating to the commission of a criminal offense that is substantially similar to (i) a violent felony as defined in § 17.1-805, (ii) an act of violence as defined in § 19.2-297.1, (iii) any offense for which registration is required pursuant to § 9.1-902, (iv) computer fraud pursuant to § 18.2-152.3, or (v) identity theft pursuant to § 18.2-186.3. The search warrant shall be enforced and executed in the Commonwealth as if it were a search warrant described in subsection C.

H. The provider of electronic communication service or remote computing service may verify the authenticity of the written reports or records that it discloses pursuant to this section by providing an affidavit from the custodian of those written reports or records or from a person to whom said custodian reports certifying that they are true and complete copies of reports or records and that they are prepared in the regular course of business. When so authenticated, no other evidence of authenticity shall be necessary. The written reports and records, excluding the contents of electronic communications, shall be considered business records for purposes of the business records exception to the hearsay rule.

I. No cause of action shall lie in any court against a provider of a wire or electronic communication service or remote computing service or such provider's officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, administrative subpoena, or subpoena under this section or the provisions of subsection E.

J. A search warrant or administrative subpoena for the disclosure of real-time location data pursuant to this section shall require the provider to provide ongoing disclosure of such data for a reasonable period of time, not to exceed 30 days. A court may, for good cause shown, grant one or more extensions, not to exceed 30 days each.

K. An investigative or law-enforcement officer shall not use any device to obtain electronic communications or collect real-time location data from an electronic device without first obtaining a search warrant authorizing the use of the device if, in order to obtain the contents of such electronic communications or such real-time location data from the provider of electronic communication service or remote computing service, such officer would be required to obtain a search warrant pursuant to this section. However, an investigative or law-enforcement officer may use such a device without first obtaining a search warrant under the circumstances set forth in sub-

section E. For purposes of subdivision E 4, the investigative or law-enforcement officer using such a device shall be considered to be the possessor of the real-time location data.

L. Upon issuance of any subpoena, search warrant, or order for disclosure issued under this section, upon written certification by the attorney for the Commonwealth that there is a reason to believe that the victim is under the age of 18 and that notification or disclosure of the existence of the subpoena, search warrant, or order will endanger the life or physical safety of an individual, or lead to flight from prosecution, the destruction of or tampering with evidence, the intimidation of potential witnesses, or otherwise seriously jeopardize an investigation, the court may in an ex parte proceeding order a provider of electronic communication service or remote computing service not to disclose for a period of 90 days the existence of the subpoena, search warrant, or order and written application or statement of facts to another person, other than an attorney to obtain legal advice. The nondisclosure order may be renewed for additional 90-day periods for good cause shown upon subsequent application of the attorney for the Commonwealth in an ex parte proceeding. A court issuing an order for disclosure pursuant to this section, on a motion made promptly by the service provider, may quash or modify the order if the information or records requested are unusually voluminous in nature or compliance with such order would otherwise cause an undue burden on such provider.

M. For the purposes of this section:

"Electronic device" means a device that enables access to, or use of, an electronic communication service, remote computing service, or location information service, including a global positioning service or other mapping, locational, or directional information service.

"Foreign corporation" means any corporation or other entity, whose primary place of business is located outside of the boundaries of the Commonwealth, that makes a contract or engages in a terms of service agreement with a resident of the Commonwealth to be performed in whole or in part by either party in the Commonwealth, or a corporation that has been issued a certificate of authority pursuant to § 13.1-759 to transact business in the Commonwealth. The making of the contract or terms of service agreement or the issuance of a certificate of authority shall be considered to be the agreement of the foreign corporation or entity that a search warrant or subpoena, which has been properly served on it, has the same legal force and effect as if served personally within the Commonwealth.

"Properly served" means delivery of a search warrant or subpoena by hand, by United States mail, by commercial delivery service, by facsimile or by any other manner to any officer of a corporation or its general manager in the Commonwealth, to any natural person designated by it as agent for the service of process, or if such corporation has designated a corporate agent, to any person named in the latest annual report filed pursuant to § 13.1-775.

"Real-time location data" means any data or information concerning the current location of an electronic device that, in whole or in part, is generated, derived from, or obtained by the operation of the device.

1988, c. 889; 2009, c. 378; 2010, cc. 319, 473, 582, 720, 721; 2011, c. 392; 2014, c. 388; 2015, cc. 43, 634; 2016, cc. 549, 576, 616.

Chapter 7 - ARREST

§ 19.2-71. Who may issue process of arrest

A. Process for the arrest of a person charged with a criminal offense may be issued by the judge, or clerk of any circuit court, any general district court, any juvenile and domestic relations district court, or any magistrate as provided for in Chapter 3 (§ 19.2-26 et seq.) of this title. However, no magistrate may issue an arrest warrant for a felony offense upon the basis of a complaint by a person other than a law-enforcement officer or an animal control officer without prior authorization by the attorney for the Commonwealth or by a law-enforcement agency having jurisdiction over the alleged offense.

B. No law-enforcement officer shall seek issuance of process by any judicial officer, for the arrest of a person for the offense of capital murder as defined in § 18.2-31, without prior authorization by the attorney for the Commonwealth. Failure to comply with the provisions of this subsection shall not be (i) a basis upon which a warrant may be quashed or deemed invalid, (ii) deemed error upon which a conviction or sentence may be reversed or vacated, or (iii) a basis upon which a court may prevent or delay execution of sentence.

Code 1950, § 19.1-90; 1960, c. 366; 1975, c. 495; 1999, c. 266; 2002, c. 310; 2009, cc. 291, 344; 2010, c. 240; 2011, cc. 205, 223.

§ 19.2-72. When it may issue; what to recite and require

On complaint of a criminal offense to any officer authorized to issue criminal warrants he shall examine on oath the complainant and any other witnesses, or when such officer shall suspect that an offense punishable otherwise than by a fine has been committed he may, without formal complaint, issue a summons for witnesses and shall examine such witnesses. A written complaint shall be required if the complainant is not a law-enforcement officer; however, if no arrest warrant is issued in response to a written complaint made by such complainant, the written complaint shall be returned to the complainant. If upon such examination such officer finds that there is probable cause to believe the accused has committed an offense, such officer shall issue a warrant for his arrest, except that no magistrate may issue an arrest warrant for a felony offense upon the basis of a complaint by a person other than a law-enforcement officer or an animal control officer without prior authorization by the attorney for the Commonwealth or by a law-enforcement agency having jurisdiction over the alleged offense. The warrant shall (i) be directed to an appropriate officer or officers, (ii) name the accused or, if his name is unknown, set forth a description by which he can be identified with reasonable certainty, (iii) describe the offense charged with

reasonable certainty, (iv) command that the accused be arrested and brought before a court of appropriate jurisdiction in the county, city or town in which the offense was allegedly committed, and (v) be signed by the issuing officer. The warrant shall require the officer to whom it is directed to summon such witnesses as shall be therein named to appear and give evidence on the examination. But in a city or town having a police force, the warrant shall be directed "To any policeman, sheriff or his deputy sheriff of such city (or town), " and shall be executed by the policeman, sheriff or his deputy sheriff into whose hands it shall come or be delivered. A sheriff or his deputy may execute an arrest warrant throughout the county in which he serves and in any city or town surrounded thereby and effect an arrest in any city or town surrounded thereby as a result of a criminal act committed during the execution of such warrant. A jail officer as defined in § 53.1-1 employed at a regional jail or jail farm is authorized to execute a warrant of arrest upon an accused in his jail. The venue for the prosecution of such criminal act shall be the jurisdiction in which the offense occurred.

Code 1950, § 19.1-91; 1960, c. 366; 1975, c. 495; 1991, c. 420; 2000, c. 170; 2007, c. 412; 2009, cc. 291, 344; 2010, c. 240; 2011, cc. 205, 223; 2013, c. 207; 2016, c. 204.

§ 19.2-73. Issuance of summons instead of warrant in certain cases

A. In any misdemeanor case or in any class of misdemeanor cases, or in any case involving complaints made by any state or local governmental official or employee having responsibility for the enforcement of any statute, ordinance or administrative regulation, the magistrate or other issuing authority having jurisdiction may issue a summons instead of a warrant when there is reason to believe that the person charged will appear in the courts having jurisdiction over the trial of the offense charged.

B. If any person under suspicion for driving while intoxicated has been taken to a medical facility for treatment or evaluation of his medical condition, the officer at the medical facility may issue, on the premises of the medical facility, a summons for a violation of § 18.2-266, 18.2-266.1, 18.2-272 or 46.2-341.24 and for refusal of tests in violation of subsection A of § 18.2-268.3 or subsection A of § 46.2-341.26:3, in lieu of securing a warrant and without having to detain that person, provided that the officer has probable cause to place him under arrest. The issuance of such summons shall be deemed an arrest for purposes of Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2.

C. Any person on whom such summons is served shall appear on the date set forth in same, and if such person fails to appear in such court at such time and on such date then he shall be treated in accordance with the provisions of § 19.2-128, regardless of the disposition of, and in addition to, the charge upon which he was originally arrested.

Code 1950, § 19.1-146; 1972, c. 461; 1975, c. 495; 1978, c. 500; 1981, c. 382; 2005, c. 425; 2010, c. 840.

§ 19.2-73.1. Notice of issuance of warrant or summons; appearance; failure to appear

In any misdemeanor case or in any class of misdemeanor cases and in a Class 5 or Class 6 felony case, the chief of police of the city or county or his designee, or the sheriff or deputy sheriff of the county, if the county has no police department, in which the case is pending may notify the accused of the issuance of the warrant or summons and direct the accused to appear at the time and place directed for the purpose of the execution of the summons or warrant. However, the issuing judicial officer may direct the execution of such process prior to any such notification. If the accused does not appear, then the warrant or summons shall be executed and returned as provided by § 19.2-76.

1979, c. 335; 1991, c. 162; 1993, c. 350 .

§ 19.2-73.2. Law-enforcement officers to issue subpoenas; penalty

Law-enforcement officers as defined in § 9.1-101 and state police officers, in the course of their duties, in the investigation of any Class 3 or Class 4 misdemeanor or any traffic infraction, may, within seventy-two hours of the time of the offense, issue a subpoena to any witness to appear in court and testify with respect to any such criminal charge or traffic infraction brought against any person as a result of such investigation. The return of service thereof shall be made within seventy-two hours after service to the appropriate court clerk. A subpoena so issued shall have the same force and effect as if issued by the court.

Any person failing to appear in response to a subpoena issued as provided in this section shall be punished as provided by law.

1995, c. 335.

§ 19.2-74. Issuance and service of summons in place of warrant in misdemeanor case; issuance of summons by special conservators of the peace

A. 1. Whenever any person is detained by or is in the custody of an arresting officer for any violation committed in such officer's presence which offense is a violation of any county, city or town ordinance or of any provision of this Code punishable as a Class 1 or Class 2 misdemeanor or any other misdemeanor for which he may receive a jail sentence, except as otherwise provided in Title 46.2, or for offenses listed in subsection D of § 19.2-81, or an arrest on a warrant charging an offense for which a summons may be issued, and when specifically authorized by the judicial officer issuing the warrant, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving by such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions of § 19.2-82.

Anything in this section to the contrary notwithstanding, if any person is believed by the arresting officer to be likely to disregard a summons issued under the provisions of this subsection, or if any person is reasonably believed by the arresting officer to be likely to cause harm to himself or

to any other person, a magistrate or other issuing authority having jurisdiction shall proceed according to the provisions of § 19.2-82.

2. Whenever any person is detained by or is in the custody of an arresting officer for a violation of any county, city, or town ordinance or of any provision of this Code, punishable as a Class 3 or Class 4 misdemeanor or any other misdemeanor for which he cannot receive a jail sentence, except as otherwise provided in Title 46.2, or to the offense of public drunkenness as defined in § 18.2-388, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving of such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions of § 19.2-82.

3. Any person so summoned shall not be held in custody after the issuance of such summons for the purpose of complying with the requirements of Chapter 23 (§ 19.2-387 et seq.) of this title. Reports to the Central Criminal Records Exchange concerning such persons shall be made after a disposition of guilt is entered as provided for in § 19.2-390.

Any person refusing to give such written promise to appear under the provisions of this section shall be taken immediately by the arresting or other police officer before a magistrate or other issuing authority having jurisdiction, who shall proceed according to provisions of § 19.2-82.

Any person who willfully violates his written promise to appear, given in accordance with this section, shall be treated in accordance with the provisions of § 19.2-128, regardless of the disposition of, and in addition to, the charge upon which he was originally arrested.

Any person charged with committing any violation of § 18.2-407 may be arrested and immediately brought before a magistrate who shall proceed as provided in § 19.2-82.

B. Conservators of the peace appointed under Chapter 2 (§ 19.2-12 et seq.) may issue summonses pursuant to this section, if such officers are in uniform or displaying a badge of office. On application, the chief law-enforcement officer of the county or city shall supply each officer with a supply of summons forms, for which such officer shall account pursuant to regulation of such chief law-enforcement officer.

C. The summons used by a law-enforcement officer pursuant to this section shall be in form the same as the uniform summons for motor vehicle law violations as prescribed pursuant to § 46.2-388.

Code 1950, § 19.1-92.1; 1973, c. 98; 1974, c. 481; 1975, c. 495; 1976, c. 753; 1978, c. 500; 1979, cc. 679, 680; 1980, c. 492; 1981, c. 382; 1982, cc. 485, 500; 1984, c. 24; 1988, c. 455; 1995, c. 471; 2010, c. 840; 2014, c. 543.

§ 19.2-74.1. Repealed

Repealed by Acts 1981, c. 382.

§ 19.2-75. Copy of process to be left with accused; exception

Except as provided in § 46.2-936, any process issued against a person charged with a criminal offense shall be in duplicate and the officer serving such process shall leave a copy with the person charged.

Code 1950, § 19.1-92; 1960, c. 366; 1975, c. 495.

§ 19.2-76. Execution and return of warrant, capias or summons; arrest outside county or city where charge is to be tried

A law-enforcement officer may execute within his jurisdiction a warrant, capias or summons issued anywhere in the Commonwealth. A jail officer as defined in § 53.1-1 employed at a regional jail or jail farm may execute upon a person being held in his jail a warrant, capias or summons issued anywhere in the Commonwealth. A warrant or capias shall be executed by the arrest of the accused, and a summons shall be executed by delivering a copy to the accused personally.

If the accused is a corporation, partnership, unincorporated association or legal entity other than an individual, a summons may be executed by service on the entity in the same manner as provided in Title 8.01 for service of process on that entity in a civil proceeding. However, if the summons is served on the entity by delivery to a registered agent or to any other agent who is not an officer, director, managing agent or employee of the entity, such agent shall not be personally subject to penalty for failure to appear as provided in § 19.2-128, nor shall the agent be subject to punishment for contempt for failure to appear under his summons as provided in § 19.2-129.

The law-enforcement officer or jail officer executing a warrant or capias shall endorse the date of execution thereon and make return thereof to a judicial officer. The law-enforcement officer executing a summons shall endorse the date of execution thereon and make return thereof to the court to which the summons is returnable.

Whenever a person is arrested upon a warrant or capias in a county or city other than that in which the charge is to be tried, the law-enforcement officer or jail officer making the arrest shall either (i) bring the accused forthwith before a judicial officer in the locality where the arrest was made or where the charge is to be tried or (ii) commit the accused to the custody of an officer from the county or city where the charge is to be tried who shall bring the accused forthwith before a judicial officer in the county or city in which the charge is to be tried. The judicial officer before whom the accused is brought shall immediately conduct a bail hearing and either admit the accused to bail or commit him to jail for transfer forthwith to the county or city where the charge is to be tried.

Code 1950, §§ 19.1-98, 19.1-99; 1960, c. 366; 1975, c. 495; 1979, c. 661; 1993, c. 431; 1994, c. 933; 1997, c. 10; 1998, c. 615; 2013, c. 207.

§ 19.2-76.1. Submission of quarterly reports concerning unexecuted felony and misdemeanor warrants and other criminal process; destruction; dismissal

It shall be the duty of the chief law-enforcement officer of the police department or sheriff's office, whichever is responsible for such service, in each county, town or city of the Commonwealth to submit quarterly reports to the attorney for the Commonwealth for the county, town or city concerning unexecuted felony and misdemeanor arrest warrants, summonses, capiases or other unexecuted criminal processes as hereinafter provided. The reports shall list those existing felony arrest warrants in his possession that have not been executed within seven years of the date of issuance, those misdemeanor arrest warrants, summonses and capiases and other criminal processes in his possession that have not been executed within three years from the date of issuance, and those unexecuted misdemeanor arrest warrants, summonses and capiases in his possession that were issued for a now deceased person, based on mistaken identity or as a result of any other technical or legal error. The reports shall be submitted in writing no later than the tenth day of April, July, October, and January of each year, together with the unexecuted felony and misdemeanor warrants, or other unexecuted criminal processes listed therein. Upon receipt of the report and the warrants listed therein, the attorney for the Commonwealth shall petition the circuit court of the county or city for the destruction of such unexecuted felony and misdemeanor warrants, summonses, capiases or other unexecuted criminal processes. The attorney for the Commonwealth may petition that certain of the unexecuted warrants, summonses, capiases and other unexecuted criminal processes not be destroyed based upon justifiable continuing, active investigation of the cases. The circuit court shall order the destruction of each such unexecuted felony warrant and each unexecuted misdemeanor warrant, summons, capias and other criminal process except (i) any warrant which charges capital murder and (ii) any unexecuted criminal process whose preservation is deemed justifiable by the court. No arrest shall be made under the authority of any warrant or other process which has been ordered destroyed pursuant to this section. Nothing in this section shall be construed to relate to or affect the time within which a prosecution for a felony or a misdemeanor shall be commenced.

Notwithstanding the foregoing, an attorney for the Commonwealth may at any time move for the dismissal and destruction of any unexecuted warrant or summons issued by a magistrate upon presentation of such warrant or summons to the court in which the warrant or summons would otherwise be returnable. The court shall not order the dismissal and destruction of any warrant which charges capital murder and shall not order the dismissal and destruction of an unexecuted criminal process whose preservation is deemed justifiable by the court. Dismissal of such a warrant or summons shall be without prejudice.

As used herein, the term "chief law-enforcement officer" refers to the chiefs of police of cities, counties and towns and sheriffs of cities and counties, unless a political subdivision has otherwise designated its chief law-enforcement officer by appropriate resolution or ordinance, in which case the local designation shall be controlling.

1976, c. 252; 1979, c. 34; 1982, c. 608; 1985, c. 199; 1990, c. 626; 1991, c. 542; 1993, c. 550; 2003, c. 147; 2010, c. 652; 2011, cc. 336, 347.

§ 19.2-76.2. Mailing of summons in certain cases

Notwithstanding the provisions of § 19.2-76, whenever a summons for a violation of a county, city or town parking ordinance is served in any county, city or town it may be executed by mailing by first-class mail a copy thereof to the address of the owner of the vehicle as shown on the records of the Department of Motor Vehicles. In addition, whenever a summons for a violation of a county, city or town trash ordinance punishable as a misdemeanor under § 15.2-901 is served in any county, city or town, it may be executed by mailing a copy by first-class mail to the person who occupies the subject premises. If the person fail to appear on the date of return set out in the summons mailed pursuant to this section, the summons shall be executed in the manner set out in § 19.2-76.3 of this Code .

No proceedings for contempt or arrest of a person summoned by mailing shall be instituted for his failure to appear on the return date of the summons.

1977, c. 233; 1978, c. 781; 1983, c. 254; 1984, c. 119.

§ 19.2-76.3. Failure to appear on return date for summons issued under § 19.2-76.2

A. If any person fails to appear on the date of the return contained in the summons issued in accordance with § 19.2-76.2, then a summons shall be delivered to the sheriff of the county, city, or town or to another authorized process server for service on that person as set out in § 8.01-296.

B. If such person then fails to appear on the date of return as contained in the summons so issued, a summons shall be executed in the manner set out in § 19.2-76.

C. No proceedings for contempt or arrest of any person summoned under the provisions of this section shall be instituted unless such person has been personally served with a summons and has failed to appear on the return date contained therein.

1983, c. 254; 1994, c. 642; 2016, cc. 242, 354.

§ 19.2-77. Escape, flight and pursuit; arrest anywhere in Commonwealth

Whenever a person in the custody of an officer shall escape or whenever a person shall flee from an officer attempting to arrest him, such officer, with or without a warrant, may pursue such person anywhere in the Commonwealth and, when actually in close pursuit, may arrest him wherever he is found. If the arrest is made in a county or city adjoining that from which the accused fled, or in any area of the Commonwealth within one mile of the boundary of the county or city from which he fled, the officer may forthwith return the accused before the proper official of the county or city from which he fled. If the arrest is made beyond the foregoing limits, the officer shall proceed according to the provisions of § 19.2-76, and if such arrest is made without a warrant, the officer shall procure a warrant from the magistrate serving the county or city wherein the arrest was made, charging the accused with the offense committed in the county or city from which he fled.

Code 1950, § 19.1-94; 1960, c. 366; 1975, c. 495; 1992, c. 881; 2008, cc. 551, 691.

§ 19.2-78. Uniform of officer making arrest

All officers whose duties are to make arrests acting under the authority of any law of this Commonwealth or any subdivision thereof, who shall make any arrest, search or seizure on any public road or highway of this Commonwealth shall be dressed at the time of making any such arrest, search or seizure in such uniform as he may customarily wear in the performance of his duties which will clearly show him to casual observation to be an officer.

Nothing in this section shall render unlawful any arrest, search or seizure by an officer who is not in such customary uniform.

Code 1950, §§ 19.1-95, 19.1-96; 1960, c. 366; 1975, c. 495.

§ 19.2-79. Arrest by officers of other states of United States

Any member of a duly organized state, county or municipal peace unit of another state of the United States who enters this Commonwealth in close pursuit, and continues within this Commonwealth in such close pursuit, of a person in order to arrest him on the ground that he has committed a felony in such other state shall have the same authority to arrest and hold in custody such person as members of a duly organized state, county or municipal peace unit of this Commonwealth have to arrest and hold in custody a person on the ground that he has committed a felony in this Commonwealth, if the state from which such person has fled extends similar privileges to any member of a duly organized state, county or municipal peace unit of this Commonwealth.

If an arrest is made in this Commonwealth by an officer of another state in accordance with the provisions of the first paragraph of this section, he shall without unnecessary delay take the person arrested before a judge of a general district court, or of the circuit court, of the county or city in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the judge determines that the arrest was lawful he shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the Governor. If the judge determines that the arrest was unlawful he shall discharge the person arrested.

The first paragraph of this section shall not be construed so as to make unlawful any arrest in this Commonwealth which would otherwise be lawful.

For the purpose of this section the word "State" shall include the District of Columbia.

Code 1950, § 19.1-97; 1960, c. 366; 1975, c. 495.

§ 19.2-80. Duty of arresting officer; bail

In any case in which an officer does not issue a summons pursuant to § 19.2-74 or § 46.2-936, a law-enforcement officer making an arrest under a warrant or capias shall bring the arrested person without unnecessary delay before a judicial officer. The judicial officer shall immediately conduct a bail hearing and either admit the accused to bail or commit him to jail. However, if (i) the accused is charged with a misdemeanor and is brought before a judge of the court having jurisdiction to try the case and (ii) both the accused and the Commonwealth consent, the judge may proceed to trial instead of conducting a bail hearing.

Code 1950, § 19.1-98; 1960, c. 366; 1975, c. 495; 1979, c. 679; 1986, c. 327; 1997, c. 10.

§ 19.2-80.1. When arrested person operating motor vehicle; how vehicle removed from scene of arrest

In any case in which a police officer arrests the operator of a motor vehicle and there is no legal cause for the retention of the motor vehicle by the officer, the officer shall allow the person arrested to designate another person who is present at the scene of the arrest and a licensed driver to drive the motor vehicle from the scene to a place designated by the person arrested. If such a designation is not made, the officer may cause the vehicle to be taken to the nearest appropriate place for safekeeping.

1981, c. 306.

§ 19.2-80.2. Duty of arresting officer; providing magistrate or court with criminal history information

In any case in which an officer proceeds under §§ 19.2-76, 19.2-80 and 19.2-82, such officer shall, to the extent possible, obtain and provide the magistrate or court with the arrested person's criminal history information prior to any proceeding under Article 1 (§ 19.2-119 et seq.) of Chapter 9 of this title. A pretrial services agency established pursuant to § 19.2-152.2 may, in lieu of the arresting officer, provide the criminal history to the magistrate or court.

1999, cc. 829, 846; 2007, c. 133.

§ 19.2-81. (Effective until July 1, 2018) Arrest without warrant authorized in certain cases

A. The following officers shall have the powers of arrest as provided in this section:

1. Members of the State Police force of the Commonwealth;

2. Sheriffs of the various counties and cities, and their deputies;

3. Members of any county police force or any duly constituted police force of any city or town of the Commonwealth;

4. The Commissioner, members and employees of the Marine Resources Commission granted the power of arrest pursuant to § 28.2-900;

5. Regular conservation police officers appointed pursuant to § 29.1-200;

6. United States Coast Guard and United States Coast Guard Reserve commissioned, warrant, and petty officers authorized under § 29.1-205 to make arrests;

7. Conservation officers appointed pursuant to § 10.1-115;

8. Full-time sworn members of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217;

9. Special agents of the Department of Alcoholic Beverage Control; and

10. (Effective until October 1, 2016) Campus police officers appointed under Chapter 17 (§ 23-232 et seq.) of Title 23.

10. (Effective October 1, 2016) Campus police officers appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1.

B. Such officers may arrest without a warrant any person who commits any crime in the presence of the officer and any person whom he has reasonable grounds or probable cause to suspect of having committed a felony not in his presence.

Such officers may arrest without a warrant any person whom the officer has probable cause to suspect of operating any watercraft or motorboat while (i) intoxicated in violation of subsection B of § 29.1-738 or a substantially similar ordinance of any county, city, or town in the Commonwealth or (ii) in violation of an order issued pursuant to § 29.1-738.4 and may thereafter transfer custody of the person arrested to another officer, who may obtain a warrant based upon statements made to him by the arresting officer.

C. Any such officer may, at the scene of any accident involving a motor vehicle, watercraft as defined in § 29.1-733.2 or motorboat, or at any hospital or medical facility to which any person involved in such accident has been transported, or in the apprehension of any person charged with the theft of any motor vehicle, on any of the highways or waters of the Commonwealth, upon reasonable grounds to believe, based upon personal investigation, including information obtained from eyewitnesses, that a crime has been committed by any person then and there present, apprehend such person without a warrant of arrest. For purposes of this section, "the scene of any accident " shall include a reasonable location where a vehicle or person involved in an accident has been moved at the direction of a law-enforcement officer to facilitate the clearing of the highway or to ensure the safety of the motoring public.

D. Such officers may, within three hours of the alleged offense, arrest without a warrant at any location any person whom the officer has probable cause to suspect of driving or operating a motor vehicle, watercraft or motorboat while intoxicated in violation of § 18.2-266, 18.2-266.1, 46.2-341.24, or subsection B of § 29.1-738; or a substantially similar ordinance of any county, city, or town in the Commonwealth, whether or not the offense was committed in such officer's presence. Such officers may, within three hours of the alleged offense, arrest without a warrant at any location any person whom the officer has probable cause to suspect of operating a watercraft or motorboat in violation of an order issued pursuant to § 29.1-738.4, whether or not the offense was committed in such officer's presence.

E. Such officers may arrest, without a warrant or a capias, persons duly charged with a crime in another jurisdiction upon receipt of a photocopy of a warrant or a capias, telegram, computer printout, facsimile printout, a radio, telephone or teletype message, in which photocopy of a warrant, telegram, computer printout, facsimile printout, radio, telephone or teletype message shall be given the name or a reasonably accurate description of such person wanted and the crime alleged.

F. Such officers may arrest, without a warrant or a capias, for an alleged misdemeanor not committed in his presence when the officer receives a radio message from his department or other law-enforcement agency within the Commonwealth that a warrant or capias for such offense is on file.

G. Such officers may also arrest without a warrant for an alleged misdemeanor not committed in their presence involving (i) shoplifting in violation of § 18.2-96 or 18.2-103 or a similar local ordinance, (ii) carrying a weapon on school property in violation of § 18.2-308.1, (iii) assault and battery, (iv) brandishing a firearm in violation of § 18.2-282, or (v) destruction of property in violation of § 18.2-137, when such property is located on premises used for business or commercial purposes, or a similar local ordinance, when any such arrest is based on probable cause upon reasonable complaint of the person who observed the alleged offense. The arresting officer may issue a summons to any person arrested under this section for a misdemeanor violation involving shoplifting.

Code 1950, § 19.1-100; 1960, c. 366; 1974, c. 241; 1975, c. 495; 1976, cc. 515, 570; 1977, c. 97; 1979, c. 268; 1982, c. 272; 1983, c. 206; 1984, c. 534; 1985, c. 507; 1988, cc. 353, 744, 752, 853; 1989, c. 726; 1990, cc. 635, 744, 784; 1995, c. 465; 1996, cc. 866, 929, 1015; 1998, c. 684; 2004, c. 949; 2005, cc. 88, 435; 2008, cc. 460, 737; 2010, c. 840; 2011, cc. 510, 643; 2012, c. 776; 2013, c. 787; 2014, c. 543.

§ 19.2-81. (Effective July 1, 2018) Arrest without warrant authorized in certain cases

A. The following officers shall have the powers of arrest as provided in this section:

1. Members of the State Police force of the Commonwealth;

2. Sheriffs of the various counties and cities, and their deputies;

3. Members of any county police force or any duly constituted police force of any city or town of the Commonwealth;

4. The Commissioner, members and employees of the Marine Resources Commission granted the power of arrest pursuant to § 28.2-900;

5. Regular conservation police officers appointed pursuant to § 29.1-200;

6. United States Coast Guard and United States Coast Guard Reserve commissioned, warrant, and petty officers authorized under § 29.1-205 to make arrests;

7. Conservation officers appointed pursuant to § 10.1-115;

8. Full-time sworn members of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217;

9. Special agents of the Virginia Alcoholic Beverage Control Authority; and

10. Campus police officers appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1.

B. Such officers may arrest without a warrant any person who commits any crime in the presence of the officer and any person whom he has reasonable grounds or probable cause to suspect of having committed a felony not in his presence.

Such officers may arrest without a warrant any person whom the officer has probable cause to suspect of operating any watercraft or motorboat while (i) intoxicated in violation of subsection B of § 29.1-738 or a substantially similar ordinance of any county, city, or town in the Commonwealth or (ii) in violation of an order issued pursuant to § 29.1-738.4 and may thereafter transfer custody of the person arrested to another officer, who may obtain a warrant based upon statements made to him by the arresting officer.

C. Any such officer may, at the scene of any accident involving a motor vehicle, watercraft as defined in § 29.1-733.2 or motorboat, or at any hospital or medical facility to which any person involved in such accident has been transported, or in the apprehension of any person charged with the theft of any motor vehicle, on any of the highways or waters of the Commonwealth, upon reasonable grounds to believe, based upon personal investigation, including information obtained from eyewitnesses, that a crime has been committed by any person then and there present, apprehend such person without a warrant of arrest. For purposes of this section, "the scene of any accident " shall include a reasonable location where a vehicle or person involved in an accident has been moved at the direction of a law-enforcement officer to facilitate the clearing of the highway or to ensure the safety of the motoring public.

D. Such officers may, within three hours of the alleged offense, arrest without a warrant at any location any person whom the officer has probable cause to suspect of driving or operating a motor vehicle, watercraft or motorboat while intoxicated in violation of § 18.2-266, 18.2-266.1, 46.2-341.24, or subsection B of § 29.1-738; or a substantially similar ordinance of any county, city, or town in the Commonwealth, whether or not the offense was committed in such officer's presence. Such officers may, within three hours of the alleged offense, arrest without a warrant at any location any person whom the officer has probable cause to suspect of operating a watercraft or motorboat in violation of an order issued pursuant to § 29.1-738.4, whether or not the offense was committed in such officer's presence.

E. Such officers may arrest, without a warrant or a capias, persons duly charged with a crime in another jurisdiction upon receipt of a photocopy of a warrant or a capias, telegram, computer printout, facsimile printout, a radio, telephone or teletype message, in which photocopy of a warrant, telegram, computer printout, facsimile printout, radio, telephone or teletype message shall be given the name or a reasonably accurate description of such person wanted and the crime alleged.

F. Such officers may arrest, without a warrant or a capias, for an alleged misdemeanor not committed in his presence when the officer receives a radio message from his department or other law-enforcement agency within the Commonwealth that a warrant or capias for such offense is on file.

G. Such officers may also arrest without a warrant for an alleged misdemeanor not committed in their presence involving (i) shoplifting in violation of § 18.2-96 or 18.2-103 or a similar local ordinance, (ii) carrying a weapon on school property in violation of § 18.2-308.1, (iii) assault and battery, (iv) brandishing a firearm in violation of § 18.2-282, or (v) destruction of property in violation of § 18.2-137, when such property is located on premises used for business or commercial purposes, or a similar local ordinance, when any such arrest is based on probable cause upon reasonable complaint of the person who observed the alleged offense. The arresting officer may issue a summons to any person arrested under this section for a misdemeanor violation involving shoplifting.

Code 1950, § 19.1-100; 1960, c. 366; 1974, c. 241; 1975, c. 495; 1976, cc. 515, 570; 1977, c. 97; 1979, c. 268; 1982, c. 272; 1983, c. 206; 1984, c. 534; 1985, c. 507; 1988, cc. 353, 744, 752, 853; 1989, c. 726; 1990, cc. 635, 744, 784; 1995, c. 465; 1996, cc. 866, 929, 1015; 1998, c. 684; 2004, c. 949; 2005, cc. 88, 435; 2008, cc. 460, 737; 2010, c. 840; 2011, cc. 510, 643; 2012, c. 776; 2013, c. 787; 2014, c. 543; 2015, cc. 38, 730.

§ 19.2-81.1. Arrest without warrant by correctional officers in certain cases

Any correctional officer, as defined in § 53.1-1, may arrest, in the same manner as provided in § 19.2-81, persons for crimes involving:

(a) The escape of an inmate from a correctional institution, as defined in § 53.1-1;

(b) Assisting an inmate to escape from a correctional institution, as defined in § 53.1-1;

(c) The delivery of contraband to an inmate in violation of § 18.2-474 or § 18.2-474.1; and

(d) Any other criminal offense which may contribute to the disruption of the safety, welfare, or security of the population of a correctional institution.

1976, c. 752.

§ 19.2-81.2. Power of correctional officers and designated noncustodial employees to detain

A. A correctional officer, as defined in § 53.1-1, who has completed the minimum training standards established by the Department of Criminal Justice Services, or other noncustodial employee of the Department of Corrections who has been designated to carry a weapon by the Director of the Department of Corrections pursuant to § 53.1-29 of the Code and who has completed the basic course in detention training as approved by the Department of Criminal Justice Services, may, while on duty in or on the grounds of a correctional institution, or with custody of prisoners without the confines of a correctional institution, detain any person whom he has reasonable suspicion to believe has committed a violation of §§ 18.2-473 through 18.2-475, or of aiding or abetting a prisoner in violating the provisions of § 53.1-203. Such detention shall be for the purpose of summoning a law-enforcement officer in order that the law-enforcement officer can arrest the person who is alleged to have violated any of the above sections.

B. Any employee of the Department of Corrections having the authority to detain any person pursuant to subsection A hereof shall not be held civilly liable for unlawful detention, slander, malicious prosecution, false imprisonment, false arrest, or assault and battery of the person so detained, whether such detention takes place within or without the grounds of a correctional institution, provided that, in causing the detention of such person, the employee had at the time of the detention reasonable suspicion to believe that the person committed a violation for which the detention was undertaken.

C. It is the purpose and intent of this section to ensure that the safety, stability, welfare and security of correctional institutions be preserved insofar as possible.

1976, c. 740; 1979, c. 642; 1984, cc. 720, 779.

§ 19.2-81.3. Arrest without a warrant authorized in cases of assault and battery against a family or household member and stalking and for violations of protective orders; procedure, etc

A. Any law-enforcement officer with the powers of arrest may arrest without a warrant for an alleged violation of § 18.2-57.2, 18.2-60.4, or 16.1-253.2 regardless of whether such violation was committed in his presence, if such arrest is based on probable cause or upon personal observations or the reasonable complaint of a person who observed the alleged offense or upon personal investigation.

B. A law-enforcement officer having probable cause to believe that a violation of § 18.2-57.2 or 16.1-253.2 has occurred shall arrest and take into custody the person he has probable cause to believe, based on the totality of the circumstances, was the predominant physical aggressor unless there are special circumstances which would dictate a course of action other than an arrest. The standards for determining who is the predominant physical aggressor shall be based on the following considerations: (i) who was the first aggressor, (ii) the protection of the health and safety of family and household members, (iii) prior complaints of family abuse by the allegedly abusing person involving the family or household members, (iv) the relative severity of the injuries inflicted on persons involved in the incident, (v) whether any injuries were inflicted in self-defense, (vi) witness statements, and (vii) other observations.

C. A law-enforcement officer having probable cause to believe that a violation of § 18.2-60.4 has occurred that involves physical aggression shall arrest and take into custody the person he has probable cause to believe, based on the totality of the circumstances, was the predominant physical aggressor unless there are special circumstances which would dictate a course of action other than an arrest. The standards for determining who is the predominant physical aggressor shall be based on the following considerations: (i) who was the first aggressor, (ii) the protection of the health and safety of the person to whom the protective order was issued and the person's family and household members, (iii) prior acts of violence, force, or threat, as defined in § 19.2-152.7:1, by the person against whom the protective order was issued against the person protected by the

order or the protected person's family or household members, (iv) the relative severity of the injuries inflicted on persons involved in the incident, (v) whether any injuries were inflicted in self-defense, (vi) witness statements, and (vii) other observations.

D. Regardless of whether an arrest is made, the officer shall file a written report with his department, which shall state whether any arrests were made, and if so, the number of arrests, specifically including any incident in which he has probable cause to believe family abuse has occurred, and, where required, including a complete statement in writing that there are special circumstances that would dictate a course of action other than an arrest. The officer shall provide the allegedly abused person or the person protected by an order issued pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, both orally and in writing, information regarding the legal and community resources available to the allegedly abused person or person protected by the order. Upon request of the allegedly abused person or person protected by the order, the department shall make a summary of the report available to the allegedly abused person or person protected by the order.

E. In every case in which a law-enforcement officer makes an arrest under this section for a violation of § 18.2-57.2, he shall petition for an emergency protective order as authorized in § 16.1-253.4 when the person arrested and taken into custody is brought before the magistrate, except if the person arrested is a minor, a petition for an emergency protective order shall not be required. Regardless of whether an arrest is made, if the officer has probable cause to believe that a danger of acts of family abuse exists, the law-enforcement officer shall seek an emergency protective order under § 16.1-253.4, except if the suspected abuser is a minor, a petition for an emergency protective order shall not be required.

F. A law-enforcement officer investigating any complaint of family abuse, including but not limited to assault and battery against a family or household member shall, upon request, transport, or arrange for the transportation of an abused person to a hospital or safe shelter, or to appear before a magistrate. Any local law-enforcement agency may adopt a policy requiring an officer to transport or arrange for transportation of an abused person as provided in this subsection.

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

H. (Effective until October 1, 2016) As used in this section, "law-enforcement officer" means (i) any full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision thereof, and any campus police officer appointed under Chapter 17 (§ 23-232 et seq.) of Title 23, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of this Commonwealth; (ii) any member of an auxiliary police force established pursuant to § 15.2-1731; and (iii) any special conservator of the peace who meets the certification requirements for a law-enforcement officer as set forth in § 15.2-1706. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

H. (Effective October 1, 2016) As used in this section, "law-enforcement officer" means (i) any full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision thereof, and any campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of this Commonwealth; (ii) any member of an auxiliary police force established pursuant to § 15.2-1731; and (iii) any special conservator of the peace who meets the certification requirements for a law-enforcement officer as set forth in § 15.2-1706. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

1991, c. 715; 1992, c. 886; 1995, cc. 413, 433; 1996, c. 866; 1997, c. 603; 1998, c. 569; 1999, cc. 697, 721, 807; 2002, cc. 810, 818; 2004, c. 1016; 2008, cc. 551, 691; 2011, cc. 445, 480; 2012, cc. 776, 827; 2014, cc. 779, 797.

§ 19.2-81.4. Repealed

Repealed by Acts 2008, cc. 600 and 771, cl. 2.

§ 19.2-81.5. Cooperation with a law-enforcement officer

Upon receipt of a request and documentation of an indictment or issuance of a warrant from a law-enforcement agency, any public agency within the Commonwealth may disclose to the requesting law-enforcement agency from agency records, to the extent permitted by federal law, the address of an individual who has been indicted or for whom a warrant for arrest for a crime punishable by incarceration has been issued.

1998, c. 436.

§ 19.2-81.6. Authority of law-enforcement officers to arrest illegal aliens

All law-enforcement officers enumerated in § 19.2-81 shall have the authority to enforce immigration laws of the United States, pursuant to the provisions of this section. Any law-enforcement officer enumerated in § 19.2-81 may, in the course of acting upon reasonable suspicion that an individual has committed or is committing a crime, arrest the individual without a warrant upon receiving confirmation from the Bureau of Immigration and Customs Enforcement of the United States Department of Homeland Security that the individual (i) is an alien illegally present in the United States, and (ii) has previously been convicted of a felony in the United States and deported or left the United States after such conviction. Upon receiving such confirmation, the officer shall take the individual forthwith before a magistrate or other issuing authority and proceed pursuant to § 19.2-82.

2004, cc. 360, 412.

§ 19.2-82. Procedure upon arrest without warrant

A. A person arrested without a warrant shall be brought forthwith before a magistrate or other issuing authority having jurisdiction who shall proceed to examine the officer making the arrest under

oath. If the magistrate or other issuing authority having jurisdiction has lawful probable cause upon which to believe that a criminal offense has been committed, and that the person arrested has committed such offense, he shall issue either a warrant under the provisions of § 19.2-72 or a summons under the provisions of § 19.2-73.

As used in this section the term "brought before a magistrate or other issuing authority having jurisdiction" shall include a personal appearance before such authority or any two-way electronic video and audio communication meeting the requirements of § 19.2-3.1, in order that the accused and the arresting officer may simultaneously see and speak to such magistrate or authority. If electronic means are used, any documents filed may be transmitted in accordance with § 19.2-3.1.

If a warrant is issued the case shall thereafter be disposed of under the provisions of §§ 19.2-183 through 19.2-190, if the issuing officer is a judge; under the provisions of §§ 19.2-119 through 19.2-134, if the issuing officer is a magistrate or other issuing officer having jurisdiction.

If such warrant or summons is not issued, the person so arrested shall be released.

B. A warrant may be issued pursuant to this section, where the person has been arrested in accordance with § 19.2-81.6, and the magistrate or other issuing authority examines the officer making the arrest under oath, and finds lawful probable cause to believe the arrested individual meets the conditions of clauses (i) and (ii) of § 19.2-81.6. If such warrant is issued, it shall recite § 19.2-81.6 and the applicable violation of federal criminal law previously confirmed with Immigration and Customs Enforcement. Upon the person being taken into federal custody, such state warrant shall be dismissed. Any warrant issued under this subsection shall expire within 72 hours, or when the person is taken into federal custody, whichever occurs first. Recurrent applications for a warrant under this subsection shall not be permitted within a six-month period except where confirmation has been received from Immigration and Customs Enforcement that the arrested person will be taken into federal custody.

Code 1950, § 19.1-100.1; 1968, c. 639; 1975, c. 495; 1981, c. 382; 1983, c. 564; 1984, c. 766; 1991, c. 41; 2002, c. 310; 2004, cc. 360, 412; 2009, c. 669.

§ 19.2-82.1. Giving false identity to law-enforcement officer; penalty

Any person who falsely identifies himself to a law-enforcement officer with the intent to deceive the law-enforcement officer as to his real identity after having been lawfully detained and after being requested to identify himself by a law-enforcement officer, is guilty of a Class 1 misdemeanor.

2006, c. 387.

§ 19.2-83. Repealed

Repealed by Acts 1994, c. 273.

§ 19.2-83.1. Report of arrest of school employees and adult students for certain offenses

A. Every state official or agency and every sheriff, police officer, or other local law-enforcement officer or conservator of the peace having the power to arrest for a felony, upon arresting a person who is known or discovered by the arresting official to be a full-time, part-time, permanent, or temporary teacher or other employee in any public school division in this Commonwealth for a felony or a Class 1 misdemeanor or an equivalent offense in another state shall file a report of such arrest with the division superintendent of the employing division as soon as practicable. The contents of the report required pursuant to this section shall be utilized by the local school division solely to implement the provisions of subsection B of § 22.1-296.2 and § 22.1-315.

B. Every state official or agency and every sheriff, police officer, or other local law-enforcement officer or conservator of the peace having the power to arrest for a felony, shall file a report, as soon as practicable, with the division superintendent of the school division in which the student is enrolled upon arresting a person who is known or discovered by the arresting official to be a student age 18 or older in any public school division in this Commonwealth for:

1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299 et seq.), 6.1 (§ 18.2-307.1 et seq.), or 7 (§ 18.2-308.1 et seq.) of Chapter 7 of Title 18.2;

2. Homicide, pursuant to Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;

3. Felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2;

4. Criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

5. Manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances, pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

7. Arson and related crimes, pursuant to Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2;

8. Burglary and related offenses, pursuant to §§ 18.2-89 through 18.2-93;

9. Robbery pursuant to § 18.2-58;

10. Prohibited criminal street gang activity pursuant to § 18.2-46.2; or

11. Recruitment of juveniles for criminal street gang pursuant to § 18.2-46.3.

1991, c. 2; 1996, cc. 958, 960; 1997, c. 721; 2001, c. 591; 2004, c. 517; 2011, cc. 384, 410; 2013, c. 746; 2014, cc. 674, 719.

§ 19.2-83.2. Jail officer to ascertain citizenship of inmate

Whenever any person is taken into custody at any jail, the sheriff or other officer in charge of such facility shall inquire as to whether the person (i) was born in a country other than the United States, and (ii) is a citizen of a country other than the United States. The sheriff or other officer in

charge of such facility shall make an immigration alien query to the Law Enforcement Support Center of the United States Immigration and Customs Enforcement for any person who (i) was born in a country other than the United States, and (ii) is a citizen of a country other than the United States, or for whom the answer to (i) or (ii) is unknown. The sheriff or other officer in charge shall communicate the results of any immigration alien query to the Local Inmate Data System of the State Compensation Board. The State Compensation Board shall communicate, on a monthly basis, the results of any immigration alien query that results in a confirmation that the person is illegally present in the United States to the Central Criminal Records Exchange of the Department of State Police in a format approved by the Exchange. The information received by the Central Criminal Records Exchange concerning the person's immigration status shall be recorded in the person's criminal history record.

2008, cc. 180, 415.

Chapter 8 - EXTRADITION OF CRIMINALS

Article 1 - FUGITIVES FROM FOREIGN NATIONS

§ 19.2-84. Governor to surrender on requisition of President

The Governor shall whenever required by the executive authority of the United States, pursuant to the Constitution and laws thereof, deliver over to justice any person found within the Commonwealth, who is charged with having committed any crime without the jurisdiction of the United States.

Code 1950, § 19.1-47; 1960, c. 366; 1975, c. 495.

Article 2 - UNIFORM CRIMINAL EXTRADITION ACT

§ 19.2-85. Definitions

When appearing in this chapter:

(1) The term "Governor" includes any person performing the functions of Governor by authority of the law of this Commonwealth;

(2) The term "executive authority" includes the Governor, and any person performing the functions of Governor in a state other than this Commonwealth;

(3) The term "State," referring to a state other than this Commonwealth, includes any other state or territory, organized or unorganized, of the United States of America, and the District of Columbia; and

(4) The term "judge" means a judge of a court of record having criminal jurisdiction.

Code 1950, § 19.1-49; 1960, c. 366; 1975, c. 495.

§ 19.2-86. Fugitives from justice; duty of Governor

Subject to the provisions of this chapter, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, the Governor shall have arrested and delivered up to the executive authority of any other of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this Commonwealth.

Code 1950, § 19.1-50; 1960, c. 366; 1975, c. 495.

§ 19.2-87. Form of demand

No demand for the extradition of a person charged with, or convicted of, crime in another state shall be recognized by the Governor unless in writing alleging, except in cases arising under § 19.2-91, that the accused was present in the demanding state at the time of the commission of the alleged crime and that thereafter he fled from such state, and accompanied: (1) by a copy of an indictment found, (2) by a copy or an information supported by an affidavit filed in the state having jurisdiction of the crime, (3) by a copy of an affidavit made before a magistrate in such state together with a copy of any warrant which was issued thereupon, or (4) by a copy of a judgment of conviction or of a sentence imposed in execution thereof together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of the indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand.

Code 1950, § 19.1-51; 1960, c. 366; 1975, c. 495.

§ 19.2-88. Governor may investigate case

When a demand shall be made upon the Governor by the executive authority of another state for the surrender of a person so charged with, or convicted of, crime, the Governor may call upon the Attorney General or any other officer of this Commonwealth to investigate or assist in investigating the demand and to report to him the situation and circumstances of the person so demanded and whether he ought to be surrendered.

Code 1950, § 19.1-52; 1960, c. 366; 1975, c. 495.

§ 19.2-89. Extradition of persons imprisoned or awaiting trial in another state

When it is desired to have returned to this Commonwealth a person charged in this Commonwealth with a crime and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the Governor may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this Commonwealth as soon as the prosecution in this Commonwealth is terminated.

Code 1950, § 19.1-53; 1960, c. 366; 1975, c. 495.

§ 19.2-90. Extradition of persons who have left demanding state involuntarily

The Governor may also surrender on demand of the executive authority of any other state any person in this Commonwealth who is charged in the manner provided in §§ 19.2-109 to 19.2-111, with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

Code 1950, § 19.1-54; 1960, c. 366; 1975, c. 495.

§ 19.2-91. Extradition of persons not in demanding state at time of commission of crime

The Governor may also surrender, on demand of the executive authority of any other state, any person in this Commonwealth charged in such other state in the manner provided in § 19.2-87 with committing an act in this Commonwealth, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand. The provisions of this chapter not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

Code 1950, § 19.1-55; 1960, c. 366; 1975, c. 495.

§ 19.2-92. Issuance of Governor's warrant of arrest; its recitals

If the Governor decides that a demand for the extradition of a person, charged with, or convicted of, crime in another state should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to the sheriff or sergeant of any county or city or to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance. Any electronically transmitted facsimile of a Governor's warrant shall be treated as an original document, provided the original is received within four working days of receipt of the facsimile.

Code 1950, § 19.1-56; 1960, c. 366; 1975, c. 495; 2001, cc. 214, 226; 2011, c. 59.

§ 19.2-93. Manner and place of execution of warrant

Such warrant shall authorize the officer or other person to whom it is directed to arrest the accused at any time and at any place where he may be found within the Commonwealth and to command the aid of all peace officers or other persons in the execution of the warrant and to deliver the accused, subject to the provisions of this chapter, to the duly authorized agent of the demanding state.

Code 1950, § 19.1-57; 1960, c. 366; 1975, c. 495.

§ 19.2-94. Assistance to arresting officer

Every officer or other person empowered to make the arrest, as provided in the preceding section, shall have the same authority, in arresting the accused, to command assistance therein as the sheriffs and sergeants of the several counties and cities of this Commonwealth have by law in the exe-

cution of any criminal process directed to them, with like penalties against those who refuse to render their assistance.

Code 1950, § 19.1-58; 1960, c. 366; 1975, c. 495.

§ 19.2-95. Rights of accused persons; application for writ of habeas corpus

No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a circuit or general district court in the Commonwealth, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof and of the time and place of hearing thereon shall be given to the attorney for the Commonwealth of the county or city in which the arrest is made and in which the accused is in custody, and to the agent of the demanding state.

Code 1950, § 19.1-59; 1960, c. 366; 1975, c. 495; 2005, c. 839.

§ 19.2-96. Penalty for noncompliance with preceding section

Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the Governor's warrant in willful disobedience to the last preceding section shall be guilty of a Class 1 misdemeanor.

Code 1950, § 19.1-60; 1960, c. 366; 1975, c. 495.

§ 19.2-97. Confinement in jail when necessary

The officer or persons executing the Governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail shall receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

Code 1950, § 19.1-61; 1960, c. 366; 1975, c. 495.

§ 19.2-98. Same; for prisoners being taken through Commonwealth

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this Commonwealth with such prisoner for the purpose of returning immediately such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail shall receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping, provided, however, that such officer or agent shall deliver to the

jailer the warrant or legal order authorizing custody of the prisoner. Such prisoner shall not be entitled to demand a new requisition while in this Commonwealth.

Code 1950, § 19.1-62; 1960, c. 366; 1975, c. 495.

§ 19.2-99. Arrest prior to requisition

Whenever: (1) any person within this Commonwealth shall be charged on the oath of any credible person before any judge, magistrate or other officer authorized to issue criminal warrants in this Commonwealth with the commission of any crime in any other state and, except in cases arising under § 19.2-91, (a) with having fled from justice, (b) with having been convicted of a crime in that state and of having escaped from confinement, or (c) of having broken the terms of his bail, probation, or parole, or (2) complaint shall have been made before any such judge, magistrate or other officer in this Commonwealth setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under § 19.2-91, (a) has fled from justice, (b) having been convicted of a crime in that state has escaped from confinement, or (c) broken the terms of his bail, probation or parole, and that the accused is believed to be in this Commonwealth, such judge, magistrate or other officer shall issue a warrant directed to any sheriff or to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this Commonwealth, and to bring him before any judge who may be available in or convenient of access to the place where the arrest may be made, to answer the charge of complaint and affidavit. A certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

Code 1950, § 19.1-63; 1960, c. 366; 1975, c. 495.

§ 19.2-100. Arrest without warrant

The arrest of a person may be lawfully made also by any peace officer or private person without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year. But when so arrested the accused shall be taken before a judge, magistrate or other officer authorized to issue criminal warrants in this Commonwealth with all practicable speed and complaint made against him under oath setting forth the ground for the arrest as in the preceding section; and thereafter his answer shall be heard as if he had been arrested on a warrant.

Code 1950, § 19.1-64; 1960, c. 366; 1975, c. 495.

§ 19.2-101. Confinement to await requisition; bail

If from the examination before the judge it appears that the person held pursuant to either of the two preceding sections is the person charged with having committed the crime alleged and, except in cases arising under § 19.2-91, that he has fled from justice, the judge shall, by a warrant reciting the accusation, commit him to jail for such a time, not exceeding thirty days, specified in the warrant as will enable the arrest of the accused to be made under a warrant of the Governor on a

requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in the next section, or until he shall be legally discharged.

Code 1950, § 19.1-65; 1960, c. 366; 1975, c. 495.

§ 19.2-102. In what cases bail allowed; conditions of bond

Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, any judge, magistrate or other person authorized by law to admit persons to bail in this Commonwealth may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned upon his appearance before a judge at a time specified in such bond and upon his surrender for arrest upon the warrant of the Governor of this Commonwealth.

Code 1950, § 19.1-66; 1960, c. 366; 1975, c. 495.

§ 19.2-103. Discharge, recommitment or renewal of bail

If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the warrant or bond, any judge in this Commonwealth may discharge him or may recommit him for a further period not to exceed sixty days, or such judge may again take bail for his appearance and surrender, as provided in the preceding section, but within a period not to exceed sixty days after the date of such new bond.

Code 1950, § 19.1-67; 1960, c. 366; 1975, c. 495.

§ 19.2-104. Forfeiture of bail

If the prisoner is admitted to bail and fails to appear and surrender himself according to the conditions of his bond, any judge of a circuit or general district court by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this Commonwealth. Recovery may be had on such bond in the name of the Commonwealth as in the case of other bonds given by the accused in criminal proceedings within this Commonwealth.

Code 1950, § 19.1-68; 1960, c. 366; 1975, c. 495.

§ 19.2-105. Persons under criminal prosecution in this Commonwealth at time of requisition

If a criminal prosecution has been instituted against such person under the laws of this Commonwealth and is still pending, the Governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this Commonwealth.

Code 1950, § 19.1-69; 1960, c. 366; 1975, c. 495.

§ 19.2-106. When guilt or innocence of accused inquired into

The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the Governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the Governor, except as it may be involved in identifying the person held as the person charged with the crime.

Code 1950, § 19.1-70; 1960, c. 366; 1975, c. 495.

§ 19.2-107. Governor may recall warrant or issue alias

The Governor may recall his warrant of arrest or may issue another warrant whenever he deems it proper.

Code 1950, § 19.1-71; 1960, c. 366; 1975, c. 495.

§ 19.2-108. Fugitives from this Commonwealth; duty of Governor

Whenever the Governor shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this Commonwealth, from the executive authority of any other state, or from the chief justice or an associate justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this Commonwealth to some agent commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county or city in this Commonwealth in which the offense was committed. Nothing herein shall prevent the sheriff or police chief of a county or city who has been directed to execute such warrant from authorizing a private prisoner transportation company meeting the minimum qualifications set by the Department of Criminal Justice Services to receive and return the person to the Commonwealth.

Code 1950, § 19.1-72; 1960, c. 366; 1975, c. 495; 2009, c. 848.

§ 19.2-109. Application for requisition for return of person charged with crime

When the return to this Commonwealth of a person charged with crime in this Commonwealth is required, the attorney for the Commonwealth shall present to the Governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made, and certifying that, in the opinion of the attorney for the Commonwealth, the ends of justice require the arrest and return of the accused to this Commonwealth for trial and that the proceeding is not instituted to enforce a private claim.

Code 1950, § 19.1-73; 1960, c. 366; 1975, c. 495.

§ 19.2-110. Application for requisition for return of escaped convict, etc

When the return to this Commonwealth is required of a person who has been convicted of a crime in this Commonwealth and has escaped from confinement or broken the terms of his bail, probation or parole, the attorney for the Commonwealth, of the county or city in which the offense was committed, or the warden of the institution or sheriff of the county or city from which the escape was made, shall present to the Governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the

terms of his bail, probation or parole and the state in which he is believed to be, including the location of the person therein at the time application is made.

Code 1950, § 19.1-74; 1960, c. 366; 1975, c. 495.

§ 19.2-111. Form of such applications; copies, etc

The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge of a circuit or general district court or other officer issuing the warrant stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The attorney for the Commonwealth, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the Governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the Secretary of the Commonwealth, to remain of record in that office. The other copies of all papers shall be forwarded with the Governor's requisition.

Code 1950, § 19.1-75; 1960, c. 366; 1975, c. 495.

§ 19.2-112. Costs and expenses of extradition

A. The expenses incident to the extradition of any person under the four preceding sections may be paid out of the state treasury, on warrants of the Comptroller issued upon vouchers signed by the Governor, or such other person as may be designated by him for such purpose.

B. If the person extradited is found guilty, or if the person was extradited after illegally leaving the Commonwealth while on parole or on probation, the person extradited, and not the Commonwealth, shall be responsible for the costs and expenses of extradition. The state treasury shall continue to reimburse local jurisdictions for the costs and expenses of extradition. The fugitive shall pay the costs and expenses of his extradition into the state treasury.

Code 1950, § 19.1-76; 1960, c. 366; 1975, c. 495; 1999, c. 322; 2002, c. 622.

§ 19.2-113. Immunity from service of process in certain civil actions

A person brought into this Commonwealth by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned, until he has been convicted in the criminal proceeding, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

Code 1950, § 19.1-77; 1960, c. 366; 1975, c. 495.

§ 19.2-114. Written waiver of extradition proceedings

Any person arrested in this Commonwealth charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or

parole may waive the issuance and service of the warrant provided for in §§ 19.2-92 and 19.2-93 and all other procedures incidental to extradition proceedings by executing or subscribing in the presence of a judge of a circuit or district court within this Commonwealth a writing which states that he consents to return to the demanding state. However, before the waiver is executed or subscribed by the person, it shall be the duty of the judge to inform the person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in § 19.2-95.

If and when such consent has been duly executed, it shall forthwith be forwarded to the office of the Governor and filed therein. The judge shall direct the officer having the person in custody to promptly deliver him to the duly accredited agent of the demanding state, and shall deliver or cause to be delivered to such agent a copy of the consent.

This section shall not be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an executive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this Commonwealth.

Code 1950, § 19.1-78; 1960, c. 366; 1975, c. 495; 1992, c. 306 .

§ 19.2-115. Nonwaiver by this Commonwealth

Nothing in this chapter contained shall be deemed to constitute a waiver by this Commonwealth of its right, power or privilege to try such demanded person for crime committed within this Commonwealth, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this Commonwealth, nor shall any proceedings had under this chapter which result in, or fail to result in, extradition be deemed a waiver by this Commonwealth of any of its rights, privileges or jurisdiction in any way whatsoever.

Code 1950, § 19.1-79; 1960, c. 366; 1975, c. 495.

§ 19.2-116. No right of asylum; no immunity from other criminal prosecutions while in this Commonwealth

After a person has been brought back to this Commonwealth by, or after waiver of, extradition proceedings he may be tried in this Commonwealth for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

Code 1950, § 19.1-80; 1960, c. 366; 1975, c. 495.

§ 19.2-117. Interpretation of article

The provisions of this article shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact statutes similar thereto.

Code 1950, § 19.1-81; 1960, c. 366; 1975, c. 495.

§ 19.2-118. Short title

This article may be cited as the Uniform Criminal Extradition Act.

Code 1950, § 19.1-82; 1960, c. 366; 1975, c. 495.

Chapter 9 - BAIL AND RECOGNIZANCES

Article 1 - BAIL

§ 19.2-119. Definitions

As used in this chapter:

"Bail" means the pretrial release of a person from custody upon those terms and conditions specified by order of an appropriate judicial officer.

"Bond" means the posting by a person or his surety of a written promise to pay a specific sum, secured or unsecured, ordered by an appropriate judicial officer as a condition of bail to assure performance of the terms and conditions contained in the recognizance.

"Criminal history" means records and data collected by criminal justice agencies or persons consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations or other formal charges, and any deposition arising therefrom.

"Judicial officer" means, unless otherwise indicated, any magistrate serving the jurisdiction, any judge of a district court and the clerk or deputy clerk of any district court or circuit court within their respective cities and counties, any judge of a circuit court, any judge of the Court of Appeals and any justice of the Supreme Court of Virginia.

"Person" means any accused, or any juvenile taken into custody pursuant to § 16.1-246.

"Recognizance" means a signed commitment by a person to appear in court as directed and to adhere to any other terms ordered by an appropriate judicial officer as a condition of bail.

Code 1950, § 19.1-109.1; 1973, c. 485; 1974, c. 114; 1975, c. 495; 1984, c. 703; 1991, c. 581; 1993, c. 636; 1999, cc. 829, 846; 2008, cc. 551, 691.

§ 19.2-120. Admission to bail

Prior to conducting any hearing on the issue of bail, release or detention, the judicial officer shall, to the extent feasible, obtain the person's criminal history.

A. A person who is held in custody pending trial or hearing for an offense, civil or criminal contempt, or otherwise shall be admitted to bail by a judicial officer, unless there is probable cause to believe that:

1. He will not appear for trial or hearing or at such other time and place as may be directed, or

2. His liberty will constitute an unreasonable danger to himself or the public.

B. The judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is currently charged with:

1. An act of violence as defined in § 19.2-297.1;

2. An offense for which the maximum sentence is life imprisonment or death;

3. A violation of § 18.2-248, 18.2-248.01, 18.2-255, or 18.2-255.2 involving a Schedule I or II controlled substance if (i) the maximum term of imprisonment is 10 years or more and the person was previously convicted of a like offense or (ii) the person was previously convicted as a "drug kingpin" as defined in § 18.2-248;

4. A violation of § 18.2-308.1, 18.2-308.2, or 18.2-308.4 and which relates to a firearm and provides for a mandatory minimum sentence;

5. Any felony, if the person has been convicted of two or more offenses described in subdivision 1 or 2, whether under the laws of the Commonwealth or substantially similar laws of the United States;

6. Any felony committed while the person is on release pending trial for a prior felony under federal or state law or on release pending imposition or execution of sentence or appeal of sentence or conviction;

7. An offense listed in subsection B of § 18.2-67.5:2 and the person had previously been convicted of an offense listed in § 18.2-67.5:2 or a substantially similar offense under the laws of any state or the United States and the judicial officer finds probable cause to believe that the person who is currently charged with one of these offenses committed the offense charged;

8. A violation of § 18.2-374.1 or 18.2-374.3 where the offender has reason to believe that the solicited person is under 15 years of age and the offender is at least five years older than the solicited person;

9. A violation of § 18.2-46.2, 18.2-46.3, 18.2-46.5, or 18.2-46.7;

10. A violation of § 18.2-36.1, 18.2-51.4, 18.2-266, or 46.2-341.24 and the person has, within the past five years of the instant offense, been convicted three times on different dates of a violation of any combination of these Code sections, or any ordinance of any county, city, or town or the laws of any other state or of the United States substantially similar thereto, and has been at liberty between each conviction;

11. A second or subsequent violation of § 16.1-253.2 or 18.2-60.4 or a substantially similar offense under the laws of any state or the United States;

12. A violation of subsection B of § 18.2-57.2;

13. A violation of subsection C of § 18.2-460 charging the use of threats of bodily harm or force to knowingly attempt to intimidate or impede a witness; or

14. A violation of § 18.2-51.6 if the alleged victim is a family or household member as defined in § 16.1-228.

C. The judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is being arrested pursuant to § 19.2-81.6.

D. A judicial officer who is a magistrate, clerk, or deputy clerk of a district court or circuit court may not admit to bail, that is not set by a judge, any person who is charged with an offense giving rise to a rebuttable presumption against bail as set out in subsection B or C without the concurrence of an attorney for the Commonwealth. For a person who is charged with an offense giving rise to a rebuttable presumption against bail, any judge may set or admit such person to bail in accordance with this section after notice and an opportunity to be heard has been provided to the attorney for the Commonwealth.

E. The court shall consider the following factors and such others as it deems appropriate in determining, for the purpose of rebuttal of the presumption against bail described in subsection B, whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of the public:

1. The nature and circumstances of the offense charged;

2. The history and characteristics of the person, including his character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, membership in a criminal street gang as defined in § 18.2-46.1, and record concerning appearance at court proceedings; and

3. The nature and seriousness of the danger to any person or the community that would be posed by the person's release.

F. The judicial officer shall inform the person of his right to appeal from the order denying bail or fixing terms of bond or recognizance consistent with § 19.2-124.

G. If the judicial officer sets a secured bond and the person engages the services of a licensed bail bondsman, the magistrate executing recognizance for the accused shall provide the bondsman, upon request, with a copy of the person's Virginia criminal history record, if readily available, to be used by the bondsman only to determine appropriate reporting requirements to impose upon the accused upon his release. The bondsman shall pay a $15 fee payable to the state treasury to be credited to the Literary Fund, upon requesting the defendant's Virginia criminal history record issued pursuant to § 19.2-389. The bondsman shall review the record on the premises and promptly return the record to the magistrate after reviewing it.

1975, c. 495; 1978, c. 755; 1979, c. 649; 1987, c. 390; 1991, c. 581; 1993, c. 636; 1996, c. 973; 1997, cc. 6, 476; 1999, cc. 829, 846; 2000, c. 797; 2002, cc. 588, 623; 2004, cc. 308, 360, 406,

412, 461, 819, 954, 959; 2005, c. 132; 2006, c. 504; 2007, cc. 134, 386, 745, 923; 2008, c. 596; 2010, c. 862; 2011, cc. 445, 450, 480; 2012, c. 467; 2015, c. 413.

§ 19.2-120.1. Presumption of no bail for illegal aliens charged with certain crimes

A. In addition to the presumption against the admission to bail under subsection B of § 19.2-120, the judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if (i) the person is currently charged with an offense listed in subsection A of § 19.2-297.1, subsection C of § 17.1-805, any offense under Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 except any offense under subsection A of § 18.2-57.2, any felony offense under Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or any offense under Article 2 (§ 18.2-266 et seq.), or any local ordinance substantially similar thereto, 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299 et seq.), 6.1 (§ 18.2-307.1 et seq.), or 7 (§ 18.2-308.1 et seq.) of Chapter 7 of Title 18.2, and (ii) the person has been identified as being illegally present in the United States by United States Immigration and Customs Enforcement.

B. Notwithstanding subsection A, no presumption shall exist under this section as to any misdemeanor offense, or any felony offense under Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, unless United States Immigration and Customs Enforcement has guaranteed that, in all such cases in the Commonwealth, it will issue a detainer for the initiation of removal proceedings and agree to reimburse for the cost of incarceration from the time of the issuance of the detainer.

2008, cc. 469, 834; 2013, c. 746.

§ 19.2-121. Fixing terms of bail

If the person is admitted to bail, the terms thereof shall be such as, in the judgment of any official granting or reconsidering the same, will be reasonably fixed to assure the appearance of the accused and to assure his good behavior pending trial. The judicial officer shall take into account (i) the nature and circumstances of the offense; (ii) whether a firearm is alleged to have been used in the offense; (iii) the weight of the evidence; (iv) the financial resources of the accused or juvenile and his ability to pay bond; (v) the character of the accused or juvenile including his family ties, employment or involvement in education; (vi) his length of residence in the community; (vii) his record of convictions; (viii) his appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings; (ix) whether the person is likely to obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate a prospective witness, juror, or victim; and (x) any other information available which the court considers relevant to the determination of whether the accused or juvenile is unlikely to appear for court proceedings.

In any case where the accused has appeared and otherwise met the conditions of bail, no bond therefor shall be used to satisfy fines and costs unless agreed to by the person who posted such bond.

1975, c. 495; 1978, c. 755; 1980, c. 190; 1991, c. 581; 1992, c. 576; 1993, c. 636; 1999, cc. 829, 846.

§ 19.2-122. Repealed

Repealed by Acts 1986, c. 327.

§ 19.2-123. Release of accused on secured or unsecured bond or promise to appear; conditions of release

A. Any person arrested for a felony who has previously been convicted of a felony, or who is presently on bond for an unrelated arrest in any jurisdiction, or who is on probation or parole, may be released only upon a secure bond. This provision may be waived with the approval of the judicial officer and with the concurrence of the attorney for the Commonwealth or the attorney for the county, city or town. Subject to the foregoing, when a person is arrested for either a felony or a misdemeanor, any judicial officer may impose any one or any combination of the following conditions of release:

1. Place the person in the custody and supervision of a designated person, organization or pretrial services agency which, for the purposes of this section, shall not include a court services unit established pursuant to § 16.1-233;

2. Place restrictions on the travel, association or place of abode of the person during the period of release and restrict contacts with household members for a specified period of time;

2a. Require the execution of an unsecured bond;

3. Require the execution of a secure bond which at the option of the accused shall be satisfied with sufficient solvent sureties, or the deposit of cash in lieu thereof. Only the actual value of any interest in real estate or personal property owned by the proposed surety shall be considered in determining solvency and solvency shall be found if the value of the proposed surety's equity in the real estate or personal property equals or exceeds the amount of the bond;

3a. Require that the person do any or all of the following: (i) maintain employment or, if unemployed, actively seek employment; (ii) maintain or commence an educational program; (iii) avoid all contact with an alleged victim of the crime and with any potential witness who may testify concerning the offense; (iv) comply with a specified curfew; (v) refrain from possessing a firearm, destructive device, or other dangerous weapon; (vi) refrain from excessive use of alcohol, or use of any illegal drug or any controlled substance not prescribed by a health care provider; and (vii) submit to testing for drugs and alcohol until the final disposition of his case;

3b. Place a prohibition on a person who holds an elected constitutional office and who is accused of a felony arising from the performance of his duties from physically returning to his constitutional office;

3c. Require the accused to accompany the arresting officer to the jurisdiction's fingerprinting facility and submit to having his photograph and fingerprints taken prior to release; or

4. Impose any other condition deemed reasonably necessary to assure appearance as required, and to assure his good behavior pending trial, including a condition requiring that the person return to custody after specified hours or be placed on home electronic incarceration pursuant to § 53.1-131.2 or, when the person is required to execute a secured bond, be subject to monitoring by a GPS (Global Positioning System) tracking device, or other similar device. The defendant may be ordered by the court to pay the cost of the device.

Upon satisfaction of the terms of recognizance, the accused shall be released forthwith.

In addition, where the accused is an individual receiving services in a state training center for individuals with intellectual disability, the judicial officer may place the individual in the custody of the director of the training center, if the director agrees to accept custody. The director is hereby authorized to take custody of the individual and to maintain him at the training center prior to a trial or hearing under such circumstances as will reasonably assure the appearance of the accused for the trial or hearing.

B. In any jurisdiction served by a pretrial services agency which offers a drug or alcohol screening or testing program approved for the purposes of this subsection by the chief general district court judge, any such person charged with a crime may be requested by such agency to give voluntarily a urine sample, submit to a drug or alcohol screening, or take a breath test for presence of alcohol. A sample may be analyzed for the presence of phencyclidine (PCP), barbiturates, cocaine, opiates or such other drugs as the agency may deem appropriate prior to any hearing to establish bail. The judicial officer and agency shall inform the accused or juvenile being screened or tested that test results shall be used by a judicial officer only at a bail hearing and only to determine appropriate conditions of release or to reconsider the conditions of bail at a subsequent hearing. All screening or test results, and any pretrial investigation report containing the screening or test results, shall be confidential with access thereto limited to judicial officers, the attorney for the Commonwealth, defense counsel, other pretrial service agencies, any criminal justice agency as defined in § 9.1-101 and, in cases where a juvenile is screened or tested, the parents or legal guardian or custodian of such juvenile. However, in no event shall the judicial officer have access to any screening or test result prior to making a bail release determination or to determining the amount of bond, if any. Following this determination, the judicial officer shall consider the screening or test results and the screening or testing agency's report and accompanying recommendations, if any, in setting appropriate conditions of release. In no event shall a decision regarding a release determination be subject to reversal on the sole basis of such screening or test results. Any accused or juvenile whose urine sample has tested positive for such drugs and who is admitted to bail may, as a condition of release, be ordered to refrain from use of alcohol or illegal drugs and may be required to be tested on a periodic basis until final disposition of his case to ensure his compliance with the order. Sanctions for a violation of any condition of release, which violations shall include subsequent positive drug or alcohol test results or failure to report as ordered for testing, may be imposed in the discretion of the judicial officer and may include imposition of more

stringent conditions of release, contempt of court proceedings or revocation of release. Any test given under the provisions of this subsection which yields a positive drug or alcohol test result shall be reconfirmed by a second test if the person tested denies or contests the initial drug or alcohol test positive result. The results of any drug or alcohol test conducted pursuant to this subsection shall not be admissible in any judicial proceeding other than for the imposition of sanctions for a violation of a condition of release.

C. [Repealed.]

D. Nothing in this section shall be construed to prevent an officer taking a juvenile into custody from releasing that juvenile pursuant to § 16.1-247. If any condition of release imposed under the provisions of this section is violated, a judicial officer may issue a capias or order to show cause why the recognizance should not be revoked.

E. Nothing in this section shall be construed to prevent a court from imposing a recognizance or bond designed to secure a spousal or child support obligation pursuant to § 16.1-278.16, Chapter 5 (§ 20-61 et seq.) of Title 20, or § 20-114 in addition to any recognizance or bond imposed pursuant to this chapter.

Code 1950, § 19.1-109.2; 1973, c. 485; 1975, c. 495; 1978, cc. 500, 755; 1979, c. 518; 1981, c. 528; 1984, c. 707; 1989, c. 369; 1991, cc. 483, 512, 581, 585; 1992, c. 576; 1993, c. 636; 1999, cc. 829, 846; 2000, cc. 885, 1020, 1041; 2001, c. 201; 2006, c. 296; 2008, cc. 129, 884; 2011, cc. 799, 837; 2012, cc. 476, 507; 2013, c. 614; 2014, c. 466.

§ 19.2-124. Appeal from bail, bond, or recognizance order

A. If a judicial officer denies bail to a person, requires excessive bond, or fixes unreasonable terms of a recognizance under this article, the person may appeal the decision of the judicial officer.

If the initial bail decision on a charge brought by a warrant or district court capias is made by a magistrate, clerk, or deputy clerk, the person shall first appeal to the district court in which the case is pending.

If the initial bail decision on a charge brought by direct indictment or presentment or circuit court capias is made by a magistrate, clerk, or deputy clerk, the person shall first appeal to the circuit court in which the case is pending.

If the appeal of an initial bail decision is taken on any charge originally pending in a district court after that charge has been appealed, certified, or transferred to a circuit court, the person shall first appeal to the circuit court in which the case is pending.

Any bail decision made by a judge of a court may be appealed successively by the person to the next higher court, up to and including the Supreme Court of Virginia, where permitted by law.

B. The attorney for the Commonwealth may appeal a bail, bond, or recognizance decision to the same court to which the accused person is required to appeal under subsection A.

C. In a matter not governed by subsection B or C of § 19.2-120 or § 19.2-120.1, the court granting or denying such bail may, upon appeal thereof, and for good cause shown, stay execution of such order for so long as reasonably practicable for the party to obtain an expedited hearing before the next higher court. When a district court grants bail over the presumption against bail in a matter that is governed by subsection B or C of § 19.2-120 or § 19.2-120.1, and upon notice by the Commonwealth of its appeal of the court's decision, the court shall stay execution of such order for so long as reasonably practical for the Commonwealth to obtain an expedited hearing before the circuit court, but in no event more than five days, unless the defendant requests a hearing date outside the five-day limit.

No such stay under this subsection may be granted after any person who has been granted bail has been released from custody on such bail.

D. No filing or service fees shall be assessed or collected for any appeal taken pursuant to this section.

Code 1950, §§ 19.1-109.3, 19.1-112; 1960, c. 366; 1973, cc. 130, 485; 1975, c. 495; 1978, c. 755; 1984, c. 703; 1991, c. 581; 1999, cc. 829, 846; 2007, cc. 462, 549; 2010, cc. 404, 592; 2013, cc. 408, 474; 2016, c. 621.

§ 19.2-125. Release pending appeal from conviction in court not of record

A person who has been convicted of an offense in a district court and who has noted an appeal shall be given credit for any bond that he may have posted in the court from which he appeals and shall be treated in accordance with the provisions of this article.

Code 1950, § 19.1-109.4; 1973, c. 485; 1975, c. 495; 1978, c. 755; 1999, cc. 829, 846.

§ 19.2-126. Repealed

Repealed by Acts 1999, cc. 829 and 846.

§ 19.2-127. Conditions of release of material witness

If it appears by affidavit that the testimony of a person is material in any criminal proceeding, and it reasonably appears that it will be impossible to secure his presence by a subpoena, a judge shall inquire into the conditions of his release pursuant to this article.

Code 1950, § 19.1-109.6; 1973, c. 485; 1975, c. 495; 1999, cc. 829, 846.

§ 19.2-128. Penalties for failure to appear

A. Whoever, having been released pursuant to this chapter or § 19.2-319 or on a summons pursuant to § 19.2-73 or § 19.2-74, willfully fails to appear before any court or judicial officer as required, shall, after notice to all interested parties, incur a forfeiture of any security which may have been given or pledged for his release, unless one of the parties can show good cause for excusing the absence, or unless the court, in its sound discretion, shall determine that neither the interests of justice nor the power of the court to conduct orderly proceedings will be served by such forfeiture.

B. Any person (i) charged with a felony offense or (ii) convicted of a felony offense and execution of sentence is suspended pursuant to § 19.2-319 who willfully fails to appear before any court as required shall be guilty of a Class 6 felony.

C. Any person (i) charged with a misdemeanor offense or (ii) convicted of a misdemeanor offense and execution of sentence is suspended pursuant to § 19.2-319 who willfully fails to appear before any court as required shall be guilty of a Class 1 misdemeanor.

Code 1950, § 19.1-109.7; 1973, c. 485; 1975, c. 495; 1981, c. 382; 1982, c. 271; 1999, c. 821.

§ 19.2-129. Power of court to punish for contempt

Nothing in this chapter shall interfere with or prevent the exercise by any court of the Commonwealth of its power to punish for contempt, except that a person shall not be sentenced for contempt and under the provisions of § 19.2-128 for the same absence.

Code 1950, § 19.1-109.8; 1973, c. 485; 1975, c. 495.

§ 19.2-130. Bail in subsequent proceeding arising out of initial arrest

Any person admitted to bail by a judge or clerk of a district court or by a magistrate shall not be required to be admitted to bail in any subsequent proceeding arising out of the initial arrest unless the court having jurisdiction of such subsequent proceeding deems the initial amount of bond or security taken inadequate. When the court having jurisdiction of the proceeding believes the amount of bond or security inadequate or excessive, it may change the amount of such bond or security, require new and additional sureties, or set other terms of bail as are appropriate to the case, including, but not limited to, drug and alcohol monitoring. The court may, after notice to the parties, initiate a proceeding to alter the terms and conditions of bail on its own motion.

Code 1950, § 19.1-111.1; 1972, c. 366; 1975, c. 495; 1978, c. 755; 1991, c. 581; 2008, cc. 363, 812.

§ 19.2-130.1. Bail terms set by court on a capias to be honored by magistrate

A magistrate who is to set the terms of bail of a person arrested and brought before him pursuant to § 19.2-234 shall, unless circumstances exist that require him to set more restrictive terms, set the terms of bail in accordance with the order of the court that issued the capias, if such an order is affixed to or made a part of the capias by the court.

2010, cc. 312, 375; 2011, c. 112.

§ 19.2-131. Bail for person held in jurisdiction other than that of trial

In any case in which a person charged with a misdemeanor or felony, or a juvenile taken into custody pursuant to § 16.1-246 is held in some county, city or town other than that in which he is to be tried upon such charge, he may be admitted to bail by any judicial officer of the county, city or town in which he is so held in accordance with the provisions of law concerning the granting of bail in cases in which persons are so admitted to bail, when held in the county, city or town in which they are to be tried.

In such case, such judicial officer before whom he is brought may, without trial or examination, let him to bail, upon taking a recognizance for his appearance before the court having cognizance of the case. The fact of taking such recognizance shall be certified by the court or officer taking it upon the warrant under which such person was arrested or taken into custody and the warrant and recognizance shall be returned forthwith to the clerk of the court before whom the accused or juvenile taken into custody pursuant to § 16.1-246 is to appear. And to such court, the judicial officer who issued such warrant shall recognize or cause to be summoned such witnesses as he may think proper.

Code 1950, §§ 19.1-118, 19.1-119; 1960, c. 366; 1975, c. 495; 1978, c. 755; 1992, c. 576 .

§ 19.2-132. Motion to increase amount of bond fixed by judicial officer; when bond may be increased

If the amount of any bond fixed by a judicial officer is subsequently deemed insufficient, or the security taken inadequate, or if it appears that bail should have been denied or that the person has violated a term or condition of his release, or has been convicted of or arrested for a felony or misdemeanor, the attorney for the Commonwealth of the county or city in which the person is held for trial may, on reasonable notice to the person and, if such person has been admitted to bail, to any surety on the bond of such person, move the appropriate judicial officer to increase the amount of such bond or to revoke bail. The court may grant such motion and may require new or additional sureties therefor, or both or revoke bail. Any surety in a bond for the appearance of such person may take from his principal collateral or other security to indemnify such surety against liability. The failure to notify the surety will not prohibit the court from proceeding with the bond hearing.

The court ordering any increase in the amount of such bond, ordering new or additional sureties, or revoking such bail may, upon appeal, and for good cause shown, stay execution of such order for so long as reasonably practicable for such person to obtain an expedited hearing before the court to which such order has been appealed.

Code 1950, § 19.1-120; 1960, c. 366; 1975, c. 495; 1978, c. 755; 1989, c. 519; 1991, c. 581; 1999, cc. 829, 846; 2010, cc. 404, 592; 2013, cc. 408, 474.

§§ 19.2-132.1, 19.2-133. Repealed

Repealed by Acts 1991, c. 581 .

§ 19.2-134. When bail piece to be delivered to accused; form of bail piece

In all cases in which recognizances, at the suit of the Commonwealth, may have been, or shall hereafter be entered into, it shall be the duty of the clerk of the court in which, or in the clerk's office of which, any recognizance is filed, to deliver to the accused and his sureties upon request, a bail piece, in substance, as follows: "A. B. of the county or city of ....., is delivered to bail, unto C. D. of the county or city of ....., at the suit of the Commonwealth. Given under my hand, this day of ....., in the year ....."

Code 1950, § 19.1-123; 1960, c. 366; 1975, c. 495; 1991, c. 581; 1992, c. 576 .

Article 2 - RECOGNIZANCES

§ 19.2-135. Commitment for trial; recognizance; notice to attorney for Commonwealth; remand on violation of condition

When a judicial officer considers that there is sufficient cause for charging the accused or juvenile taken into custody pursuant to § 16.1-246 with a felony, unless it be a case wherein it is otherwise specially provided, the commitment shall be for trial or hearing. Any recognizance taken of the accused or juvenile shall be upon the following conditions: (1) that he appear to answer for the offense with which he is charged before the court or judge before whom the case will be tried at such time as may be stated in the recognizance and at any time or times to which the proceedings may be continued and before any court or judge thereafter in which proceedings on the charge are held; (2) that he shall not depart from the Commonwealth unless the judicial officer taking recognizance or a court in a subsequent proceeding specifically waives such requirement; and (3) that he shall keep the peace and be of good behavior until the case is finally disposed of. Every such recognizance shall also include a waiver such as is required by § 49-12 in relation to the bonds therein mentioned and though such waiver be not expressed in the recognizance it shall be deemed to be included therein in like manner and with the same effect as if it was so expressed. The judge shall return to the clerk of the court wherein the accused or juvenile is to be tried, or the case be heard as soon as may be, a certificate of the nature of the offense, showing whether the accused or juvenile was committed to jail or recognized for his appearance; and the clerk, as soon as may be, shall inform the attorney for the Commonwealth of such certificate.

The court may, in its discretion, in the event of a violation of any condition of a recognizance taken pursuant to this section, remand the principal to jail until the case is finally disposed of, and if the principal is remanded to jail, the surety is discharged from liability.

When a recognizance is taken of a witness in a case against an accused or juvenile, the condition thereof shall be that he appear to give evidence in such case and that he shall not depart from the Commonwealth without the leave of such court or judge.

Code 1950, §§ 19.1-125, 19.1-128, 19.1-133; 1960, c. 366; 1968, c. 639; 1975, c. 495; 1977, c. 287; 1978, c. 755; 1979, c. 735; 1988, c. 688; 1992, c. 576 .

§ 19.2-136. How bonds in recognizances payable; penalty

Bonds in recognizances in criminal or juvenile cases shall be payable to the county or city in which the case is prosecuted. The treasurer or director of finance of such locality may engage in collection activity regarding the judgment of default rendered pursuant to § 19.2-143. Any responses to the judgment of default rendered pursuant to § 19.2-143 shall be filed with the court, with notice given to such locality. Every bond under this title shall be in such sum as the court or officer requiring it may direct.

Code 1950, § 19.1-127; 1960, c. 366; 1973, c. 485; 1975, c. 495; 1978, c. 755; 1991, c. 581; 2011, c. 802; 2012, c. 408.

§ 19.2-137. Order of court on recognizance

When such recognizance is taken by a court of a person to answer a charge or of a witness to give evidence it shall be sufficient for the order of the court taking the recognizance to state that the party or parties recognized were duly recognized upon a bond in such sum as the court may have directed with such surety as the court may have accepted for his or their appearance before such court at such time as may have been prescribed by the court to answer for the offense with which such person is charged or to give evidence, as the case may be.

Code 1950, § 19.1-129; 1960, c. 366; 1975, c. 495; 1991, c. 581 .

§§ 19.2-138 through 19.2-140. Repealed

Repealed by Acts 1987, c. 670.

§ 19.2-141. How recognizance taken for incapacitated or insane person or one under disability

A recognizance which would be taken of a person but for his being a minor, insane or otherwise mentally incapacitated, may be taken of another person and without further surety, if such other person is deemed sufficient, for the performance by such minor, insane or otherwise incapacitated person, of the conditions of the recognizance.

Code 1950, § 19.1-134; 1960, c. 366; 1975, c. 495; 1997, c. 801.

§ 19.2-142. Where recognizance taken out of court to be sent

A person taking a recognizance out of court shall forthwith transmit it to the clerk of the court for appearance before which it is taken; or, if it be not for appearance before a court, to the clerk of the circuit court of the county or city in which it is taken; and it shall remain filed in the clerk's office.

Code 1950, § 19.1-136; 1960, c. 366; 1975, c. 495.

§ 19.2-143. Where default recorded; process on recognizance; forfeiture on recognizance; when copy may be used; cash bond

When a person, under recognizance in a case, either as party or witness, fails to perform the condition of appearance thereof, if it is to appear before a court of record, or a district court, a hearing shall be held upon reasonable notice to all parties affording them opportunity to show cause why the recognizance or any part thereof should not be forfeited. The show cause notice shall be issued within 45 days of the breach of the condition of appearance.

If the court finds the recognizance or any part thereof should be forfeited, the default shall be recorded therein, unless the defendant or juvenile is brought before the court within 150 days of the findings of default. After 150 days of the finding of default, his default shall be recorded therein, and if it is to appear before a district court, his default shall be entered by the judge of

such court, on the case papers unless the defendant or juvenile has been delivered or appeared before the court. The process on any such forfeited recognizance shall be issued from the court before which the appearance was to be, and wherein such forfeiture was recorded or entered. Any such process issued by a judge shall be made returnable before, and tried by, such judge, who shall promptly transmit to the clerk of the circuit court of his county or city wherein deeds are recorded an abstract of such judgment as he may render thereon, which shall be forthwith docketed by the clerk of such court.

If the defendant or juvenile appears before or is delivered to the court within 24 months of the findings of default, the court shall remit any bond previously ordered forfeited by the courts, less such costs as the court may direct.

If it is brought to the attention of the court that the defendant or juvenile is incarcerated in another state or country within 48 months of the finding of default, thereby preventing his delivery or appearance within that period, the court shall remit any bond previously ordered forfeited. If the defendant or juvenile left the Commonwealth with the permission of the court, the bond shall be remitted without deduction of costs; otherwise, the cost of returning him to the Commonwealth shall be deducted from the bond.

Evidence that the defendant or juvenile is incarcerated or subject to court process in another jurisdiction on the day his appearance is required or a medical certificate from a duly licensed physician that the defendant was physically unable to so appear shall be considered evidence of good cause why the recognizance should not be forfeited.

If such recognizance so forfeited is not for such appearance, process thereon shall be issued from the court in which it was taken, or the court to which it was made returnable, and in a proceeding in one court on a recognizance entered in another a copy thereof shall be evidence in like manner as the original would be if it had been entered in the court wherein the proceeding is being had thereon.

However, when any defendant or juvenile who posted a cash bond and failed to appear is tried in his absence and is convicted, the court or judge trying the case shall first apply the cash bond, or so much thereof as may be necessary, to the payment of any fines or costs, or both, adjudged against the defendant or juvenile or imposed by law. Any remaining funds shall be forfeited without further notice. However, if a rehearing is granted, the court may remit part or all of such cash bond not applied ultimately to fines or costs, and order a refund of the same by the State Treasurer, or by the treasurer or director of finance of the locality, if the bond was collected by a locality pursuant to § 19.2-136, but only if good cause is shown.

If the defendant or juvenile posted a cash bond and failed to appear, but is not tried in his absence, the bond shall be forfeited promptly without further notice. However, if the defendant or juvenile appears in court within 60 days after the bond is forfeited, the judge may remit part or all of any bond previously forfeited and order a refund of the same by the State Treasurer, or by the

treasurer or director of finance of the locality, if the bond was collected by a locality pursuant to § 19.2-136.

Code 1950, § 19.1-137; 1960, c. 366; 1962, c. 499; 1970, c. 371; 1973, c. 409; 1975, c. 495; 1978, c. 755; 1979, c. 735; 1987, c. 670; 1988, c. 443; 1990, c. 624; 2000, c. 885; 2003, c. 840; 2005, c. 585; 2006, cc. 296, 316; 2011, c. 802; 2012, c. 408.

§ 19.2-144. Forfeiture of recognizance while in military or naval service

If in any motion, action, suit or other proceeding made or taken in any court of this Commonwealth on a forfeited bail bond or forfeited recognizance, or to enforce the payment of the bond in any manner or any judgment thereon, or to forfeit any bail bond or recognizance, it appears that the person for whose alleged default such bail bond or recognizance was forfeited or judgment rendered, or such motion is made or proceeding taken, was prevented from complying with the condition of such bail bond or recognizance by reason of his having enlisted or been drafted in the army or navy of the United States, then judgment or decree on such motion, action, suit or other proceeding shall be given for the defendant.

Code 1950, § 19.1-139; 1960, c. 366; 1975, c. 495; 1991, c. 581 .

§ 19.2-145. How penalty remitted

When in an action or on a motion to extend the period for enforcement of a judgment on a recognizance the penalty is adjudged to be forfeited the court may on an application of a defendant or juvenile remit the penalty or any part of it and render judgment on such terms and conditions as it deems reasonable.

Code 1950, § 19.1-140; 1960, c. 366; 1975, c. 495; 1978, c. 755; 1982, c. 153.

§ 19.2-146. Defects in form of recognizance not to defeat action or judgment

No action or judgment on a recognizance shall be defeated or arrested by reason of any defect in the form of the recognizance, if it appear to have been taken by a court or officer authorized to take it and be substantially sufficient.

Code 1950, § 19.1-141; 1960, c. 366; 1975, c. 495.

§ 19.2-147. Docketing judgment on forfeited recognizance or bond

Whenever a judgment is entered in any court of record in favor of the Commonwealth of Virginia upon a forfeited recognizance or bond, the clerk of the court in which the judgment is rendered shall certify an abstract of the same to the clerk of the circuit court of the county or city wherein the judgment debtor resides or of any city or county in which he may own real property, who shall thereupon enter the abstract of judgment upon his judgment docket.

Code 1950, § 19.1-142; 1960, c. 366; 1975, c. 495; 1994, c. 432.

§ 19.2-148. Surety discharged on payment of amount, etc., into court

A surety on a bond in a recognizance may, after default, pay into the court from which the process has issued, or may issue thereon, the amount for which he is bound, with such costs as the court may direct, and be thereupon discharged.

Code 1950, § 19.1-143; 1960, c. 366; 1975, c. 495; 1991, c. 581 .

§ 19.2-149. How surety on a bond in recognizance may surrender principal and be discharged from liability

A bail bondsman or his licensed bail enforcement agent on a bond in a recognizance may at any time arrest his principal and surrender him to the court before which the recognizance was taken or before which such principal's appearance is required, or to the sheriff, sergeant or jailer of the county or city wherein the court before which such principal's appearance is required is located; in addition to the above authority, upon the application of the surety, the court, or the clerk thereof, before which the recognizance was taken, or before which such principal's appearance is required, or any magistrate shall issue a capias for the arrest of such principal, and such capias may be executed by such bail bondsman or his licensed bail enforcement agent, or by any sheriff, sergeant or police officer, and the person executing such capias shall deliver such principal and such capias to the sheriff or jailer of the county or the sheriff, sergeant or jailer of the city in which the appearance of such principal is required, and thereupon the surety or the property bail bondsman shall be discharged from liability for any act of the principal subsequent thereto. Such sheriff, sergeant or jailer shall thereafter deliver such capias to the clerk of such court, with his endorsement thereon acknowledging delivery of such principal to his custody. If a magistrate issues a capias pursuant to this section, the magistrate shall transmit a copy of the capias to the court before which such principal's appearance is required by the close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

Code 1950, § 19.1-144; 1960, c. 366; 1975, c. 495; 1991, c. 581; 2004, c. 460; 2015, c. 622.

§ 19.2-150. Proceeding when surety surrenders principal

If the surrender is to the court, the court shall make such order as it deems proper; if the surrender is to a sheriff or jailer, the officer to whom the accused has been surrendered shall give the surety a certificate of the fact. After such surrender the person shall be treated in accordance with the provisions of Article 1 (§ 19.2-119 et seq.) of Chapter 9 of this title unless the court or judge thereof has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community.

Code 1950, § 19.1-145; 1960, c. 366; 1973, c. 485; 1975, c. 495; 1978, c. 755; 1999, cc. 829, 846.

Article 3 - SATISFACTION AND DISCHARGE

§ 19.2-151. Satisfaction and discharge of assault and similar charges

When a person is in jail or under a recognizance to answer a charge of assault and battery or other misdemeanor, or has been indicted for an assault and battery or other misdemeanor for which there is a remedy by civil action, unless the offense was committed (i) by or upon any law-

enforcement officer, (ii) riotously in violation of §§ 18.2-404 to 18.2-407, (iii) against a family or household member in violation of § 18.2-57.2, or (iv) with intent to commit a felony, if the person injured appears before the court which made the commitment or took the recognizance, or before the court in which the indictment is pending, and acknowledges in writing that he has received satisfaction for the injury, the court may, in its discretion, by an order, supersede the commitment, discharge the recognizance, or dismiss the prosecution, upon payment by the defendant of costs accrued to the Commonwealth or any of its officers.

Code 1950, § 19.1-18; 1960, c. 366; 1968, c. 639; 1975, c. 495; 1997, c. 532; 1999, c. 963.

§ 19.2-152. Order discharging recognizance or superseding commitment; judgment for costs
Every order discharging a recognizance shall be filed with the clerk before the session of the court at which the party was to appear. Where a person is held under a commitment, any order superseding a commitment shall be delivered to the jailer, who shall forthwith discharge the witnesses, if any, and the accused or juvenile, and judgment against the accused or juvenile shall be entered in the court for the costs of the prosecution.

Code 1950, § 19.1-19; 1960, c. 366; 1975, c. 495; 1978, c. 755.

Article 4 - BAIL BONDSMEN

§§ 19.2-152.1 through 19.2-152.1:7. Repealed
Repealed by Acts 2004, c. 460, effective July 1, 2005.

Article 5 - PRETRIAL SERVICES ACT

§ 19.2-152.2. Purpose; establishment of pretrial services and services agencies
It is the purpose of this article to provide more effective protection of society by establishing pretrial services agencies that will assist judicial officers in discharging their duties pursuant to Article 1 (§ 19.2-119 et seq.) of Chapter 9 of this title. Such agencies are intended to provide better information and services for use by judicial officers in determining the risk to public safety and the assurance of appearance of persons age 18 or over or persons under the age of 18 who have been transferred for trial as adults held in custody and charged with an offense, other than an offense punishable by death, who are pending trial or hearing. Any city, county or combination thereof may establish a pretrial services agency and any city, county or combination thereof required to submit a community-based corrections plan pursuant to § 53.1-82.1 shall establish a pretrial services agency.

1994, 2nd Sp. Sess., cc. 1, 2; 1999, cc. 829, 846; 2004, c. 378; 2007, c. 133.

§ 19.2-152.3. Department of Criminal Justice Services to prescribe standards; biennial plan
The Department of Criminal Justice Services shall prescribe standards for the development, implementation, operation and evaluation of services authorized by this article. The Department of Criminal Justice Services shall develop risk assessment and other instruments to be used by pretrial services agencies in assisting judicial officers in discharging their duties pursuant to Article 1

(§ 19.2-119 et seq.) of Chapter 9 of this title. Any city, county or combination thereof which establishes pretrial services pursuant to this article shall submit a biennial plan to the Department of Criminal Justice Services for review and approval.

1994, 2nd Sp. Sess., cc. 1, 2; 1999, cc. 829, 846; 2007, c. 133.

§ 19.2-152.4. Mandated services

Any city, county or combination thereof which elects or is required to establish a pretrial services agency shall provide all information and services for use by judicial officers as set forth in Article 1 (§ 19.2-119 et seq.) of Chapter 9 of this title.

1994, 2nd Sp. Sess., cc. 1, 2; 1999, cc. 829, 846; 2007, c. 133.

§ 19.2-152.4:1. Form of oath of office for local pretrial services officer; authorization to seek capias

Every pretrial services officer who is an employee of a local pretrial services agency established by any city, county or combination thereof or operated pursuant to this article shall take an oath of office as prescribed in § 49-1 and to provide services pursuant to the requirements of this article before entering the duties of his office. The oath of office shall be taken before any general district or circuit court judge in any county or city which has established services for use by judicial officers pursuant to this article.

In addition, any officer of a pretrial services agency established or operated pursuant to this article may seek a capias from any judicial officer for the arrest of any person under the agency's custody and supervision for failure to comply with any conditions of release imposed by a judicial officer, for failure to comply with the conditions of pretrial supervision as established by a pretrial services agency, or when there is reason to believe that the person will fail to appear, will leave, or has left the jurisdiction to avoid prosecution.

2000, c. 1040; 2007, c. 133.

§ 19.2-152.4:2. Confidentiality of records of and reports on adult persons under investigation by or in the custody or supervision of a local pretrial services agency

A. Any pretrial investigation report prepared by a local pretrial services officer is confidential and is exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). Such reports shall be filed as a part of the case record. Such reports shall be sealed upon receipt by the court and made available only by court order; except that such reports shall be available upon request to (i) any criminal justice agency, as defined in § 9.1-101, of this or any other state or of the United States; (ii) any agency where the accused is referred for assessment or treatment; or (iii) counsel for the person who is the subject of the report.

B. Any report on the progress of an accused under the supervision or custody of a pretrial services agency and any information relative to the identity of or inferring personal characteristics of an accused, including demographic information, diagnostic summaries, records of office visits, medical, substance abuse, psychiatric or psychological records or information, substance abuse

screening, assessment and testing information, and other sensitive information not explicitly classified as criminal history record information, is exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). However, such information may be disseminated to criminal justice agencies as defined in § 9.1-101 in the discretion of the custodian of these records.

2002, c. 769; 2007, c. 133.

§ 19.2-152.4:3. Duties and responsibilities of local pretrial services officers

A. Each local pretrial services officer, for the jurisdictions served, shall:

1. Investigate and interview defendants arrested on state and local warrants and who are detained in jails located in jurisdictions served by the agency while awaiting a hearing before any court that is considering or reconsidering bail, at initial appearance, advisement or arraignment, or at other subsequent hearings;

2. Present a pretrial investigation report with recommendations to assist courts in discharging their duties related to granting or reconsidering bail;

3. Supervise and assist all defendants residing within the jurisdictions served and placed on pretrial supervision by any judicial officer within the jurisdictions to ensure compliance with the terms and conditions of bail;

4. Conduct random drug and alcohol tests on any defendant under supervision for whom a judicial officer has ordered testing or who has been required to refrain from excessive use of alcohol or use of any illegal drug or controlled substance or other defendant-specific condition of bail related to alcohol or substance abuse;

5. Seek a capias from any judicial officer pursuant to § 19.2-152.4:1 for any defendant placed under supervision or the custody of the agency who fails to comply with the conditions of bail or supervision, when continued liberty or noncompliance presents a risk of flight, a risk to public safety or risk to the defendant;

6. Seek an order to show cause why the defendant should not be required to appear before the court in those cases requiring a subsequent hearing before the court;

7. Provide defendant-based information to assist any law-enforcement officer with the return to custody of defendants placed on supervision for which a capias has been sought; and

8. Keep such records and make such reports as required by the Commonwealth of Virginia Department of Criminal Justice Services.

B. Each local pretrial services officer, for the jurisdictions served, may provide the following optional services, as appropriate and when available resources permit:

1. Conduct, subject to court approval, drug and alcohol screenings, or tests at investigation pursuant to subsection B of § 19.2-123 or following release to supervision, and conduct or facilitate the preparation of screenings or assessments or both pursuant to state approved protocols;

2. Facilitate placement of defendants in a substance abuse education or treatment program or services or other education or treatment service when ordered as a condition of bail;

3. Sign for the custody of any defendant investigated by a pretrial services officer, and released by a court to pretrial supervision as the sole term and condition of bail or when combined with an unsecured bond;

4. Provide defendant information and investigation services for those who are detained in jails located in jurisdictions served by the agency and are awaiting an initial bail hearing before a magistrate;

5. Supervise defendants placed by any judicial officer on home electronic monitoring as a condition of bail and supervision;

6. Prepare, for defendants investigated, the financial statement-eligibility determination form for indigent defense services; and

7. Subject to approved procedures and if so requested by the court, coordinate for defendants investigated, services for court-appointed counsel and for interpreters for foreign-language speaking and hearing-impaired defendants.

2003, c. 603; 2007, c. 133; 2008, cc. 551, 691.

§ 19.2-152.5. Community criminal justice boards

Each city, county or combination thereof establishing a pretrial services agency shall also establish a community criminal justice board pursuant to § 9.1-178.

1994, 2nd Sp. Sess., cc. 1, 2; 2007, c. 133.

§ 19.2-152.6. Withdrawal from pretrial services

Any participating city or county may, at the beginning of any calendar quarter, by ordinance or resolution of its governing authority, notify the Department of Criminal Justice Services of its intention to withdraw from participation in pretrial services. Such withdrawal shall be effective as of the last day of the quarter in which such notice is given.

1994, 2nd Sp. Sess., cc. 1, 2; 2007, c. 133.

§ 19.2-152.7. Funding; failure to comply

Counties and cities shall be required to establish a pretrial services agency only to the extent funded by the Commonwealth through the general appropriation act. The Department of Criminal Justice Services shall periodically review each agency established under this article to determine compliance with the submitted plan and operating standards. If the Department determines that any agency is not in substantial compliance with the submitted plan or standards, the Department may suspend all or any portion of financial aid made available to the locality for purposes of this article until there is compliance.

1994, 2nd Sp. Sess., cc. 1, 2; 2007, c. 133.

Chapter 9.1 - PROTECTIVE ORDERS

§ 19.2-152.7:1. Definitions

As used in this chapter:

"Act of violence, force, or threat" means any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury. Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault in violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury.

2011, cc. 445, 480.

§ 19.2-152.8. Emergency protective orders authorized

A. Any judge of a circuit court, general district court, juvenile and domestic relations district court or magistrate may issue a written or oral ex parte emergency protective order pursuant to this section in order to protect the health or safety of any person.

B. When a law-enforcement officer or an alleged victim asserts under oath to a judge or magistrate that such person is being or has been subjected to an act of violence, force, or threat and on that assertion or other evidence the judge or magistrate finds that (i) there is probable danger of a further such act being committed by the respondent against the alleged victim or (ii) a petition or warrant for the arrest of the respondent has been issued for any criminal offense resulting from the commission of an act of violence, force, or threat, the judge or magistrate shall issue an ex parte emergency protective order imposing one or more of the following conditions on the respondent:

1. Prohibiting acts of violence, force, or threat or criminal offenses resulting in injury to person or property;

2. Prohibiting such contacts by the respondent with the alleged victim or the alleged victim's family or household members, including prohibiting the respondent from being in the physical presence of the alleged victim or the alleged victim's family or household members, as the judge or magistrate deems necessary to protect the safety of such persons;

3. Such other conditions as the judge or magistrate deems necessary to prevent (i) acts of violence, force, or threat, (ii) criminal offenses resulting in injury to person or property, or (iii) communication or other contact of any kind by the respondent; and

4. Granting the petitioner the possession of any companion animal as defined in § 3.2-6500 if such petitioner meets the definition of owner in § 3.2-6500.

C. An emergency protective order issued pursuant to this section shall expire at 11:59 p.m. on the third day following issuance. If the expiration occurs on a day that the court is not in session, the emergency protective order shall be extended until 11:59 p.m. on the next day that the court

which issued the order is in session. The respondent may at any time file a motion with the court requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given precedence on the docket of the court.

D. A law-enforcement officer may request an emergency protective order pursuant to this section and, if the person in need of protection is physically or mentally incapable of filing a petition pursuant to § 19.2-152.9 or 19.2-152.10, may request the extension of an emergency protective order for an additional period of time not to exceed three days after expiration of the original order. The request for an emergency protective order or extension of an order may be made orally, in person or by electronic means, and the judge of a circuit court, general district court, or juvenile and domestic relations district court or a magistrate may issue an oral emergency protective order. An oral emergency protective order issued pursuant to this section shall be reduced to writing, by the law-enforcement officer requesting the order or the magistrate, on a preprinted form approved and provided by the Supreme Court of Virginia. The completed form shall include a statement of the grounds for the order asserted by the officer or the alleged victim of such crime.

E. The court or magistrate shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court or magistrate. A copy of an emergency protective order issued pursuant to this section containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith upon the respondent and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith upon the respondent. Upon service, the agency making service shall enter the date and time of service and other appropriate information required into the Virginia Criminal Information Network and make due return to the court. One copy of the order shall be given to the alleged victim of such crime. The judge or magistrate who issues an oral order pursuant to an electronic request by a law-enforcement officer shall verify the written order to determine whether the officer who

reduced it to writing accurately transcribed the contents of the oral order. The original copy shall be filed with the clerk of the appropriate district court within five business days of the issuance of the order. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due return made to the court. Upon request, the clerk shall provide the alleged victim of such crime with information regarding the date and time of service.

F. The issuance of an emergency protective order shall not be considered evidence of any wrongdoing by the respondent.

G. As used in this section, a "law-enforcement officer" means any (i) person who is a full-time or part-time employee of a police department or sheriff's office which is 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 and (ii) member of an auxiliary police force established pursuant to § 15.2-1731. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

H. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

I. As used in this section:

"Copy" includes a facsimile copy.

"Physical presence" includes (i) intentionally maintaining direct visual contact with the petitioner or (ii) unreasonably being within 100 feet from the petitioner's residence or place of employment.

J. No fee shall be charged for filing or serving any petition pursuant to this section.

K. No emergency protective order shall be issued pursuant to this section against a law-enforcement officer for any action arising out of the lawful performance of his duties.

1997, c. 831; 1998, cc. 569, 684; 1999, c. 371; 2001, c. 474; 2002, cc. 507, 706, 810, 818; 2003, c. 730; 2008, cc. 73, 246; 2009, cc. 341, 732; 2011, cc. 445, 480; 2012, cc. 146, 637, 827; 2014, c. 346; 2016, c. 455.

§ 19.2-152.9. Preliminary protective orders

A. Upon the filing of a petition alleging that (i) the petitioner is or has been, within a reasonable period of time, subjected to an act of violence, force, or threat, or (ii) a petition or warrant has been issued for the arrest of the alleged perpetrator for any criminal offense resulting from the commission of an act of violence, force, or threat, the court may issue a preliminary protective order against the alleged perpetrator in order to protect the health and safety of the petitioner or any family or household member of the petitioner. The order may be issued in an ex parte proceeding upon good cause shown when the petition is supported by an affidavit or sworn testimony before the judge or intake officer. Immediate and present danger of any act of violence, force, or threat or evidence sufficient to establish probable cause that an act of violence, force, or threat has recently occurred shall constitute good cause.

A preliminary protective order may include any one or more of the following conditions to be imposed on the respondent:

1. Prohibiting acts of violence, force, or threat or criminal offenses that may result in injury to person or property;

2. Prohibiting such other contacts by the respondent with the petitioner or the petitioner's family or household members as the court deems necessary for the health and safety of such persons;

3. Such other conditions as the court deems necessary to prevent (i) acts of violence, force, or threat, (ii) criminal offenses that may result in injury to person or property, or (iii) communication or other contact of any kind by the respondent; and

4. Granting the petitioner the possession of any companion animal as defined in § 3.2-6500 if such petitioner meets the definition of owner in § 3.2-6500.

B. The court shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court. A copy of a preliminary protective order containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the alleged perpetrator in person as provided in § 16.1-264, and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the person subject to

the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the alleged perpetrator in person as provided in § 16.1-264. Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. The preliminary order shall specify a date for the full hearing. The hearing shall be held within 15 days of the issuance of the preliminary order. If the respondent fails to appear at this hearing because the respondent was not personally served, the court may extend the protective order for a period not to exceed six months. The extended protective order shall be served as soon as possible on the respondent. However, upon motion of the respondent and for good cause shown, the court may continue the hearing. The preliminary order shall remain in effect until the hearing. Upon request after the order is issued, the clerk shall provide the petitioner with a copy of the order and information regarding the date and time of service. The order shall further specify that either party may at any time file a motion with the court requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given precedence on the docket of the court.

Upon receipt of the return of service or other proof of service pursuant to subsection C of § 16.1-264, the clerk shall forthwith forward an attested copy of the preliminary protective order to primary law-enforcement agency and the agency shall forthwith verify and enter any modification as necessary into the Virginia Criminal Information Network as described above. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due return made to the court.

C. The preliminary order is effective upon personal service on the alleged perpetrator. Except as otherwise provided, a violation of the order shall constitute contempt of court.

D. At a full hearing on the petition, the court may issue a protective order pursuant to § 19.2-152.10 if the court finds that the petitioner has proven the allegation that the petitioner is or has been, within a reasonable period of time, subjected to an act of violence, force, or threat by a preponderance of the evidence.

E. No fees shall be charged for filing or serving petitions pursuant to this section.

F. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the

family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

G. As used in this section, "copy" includes a facsimile copy.

1997, c. 831; 1998, cc. 569, 684; 1999, c. 371; 2001, c. 101; 2002, cc. 507, 810, 818; 2003, c. 730; 2008, cc. 73, 128, 246; 2009, cc. 341, 732; 2011, cc. 445, 480; 2014, c. 346.

§ 19.2-152.10. Protective order

A. The court may issue a protective order pursuant to this chapter to protect the health and safety of the petitioner and family or household members of a petitioner upon (i) the issuance of a petition or warrant for, or a conviction of, any criminal offense resulting from the commission of an act of violence, force, or threat or (ii) a hearing held pursuant to subsection D of § 19.2-152.9. A protective order issued under this section may include any one or more of the following conditions to be imposed on the respondent:

1. Prohibiting acts of violence, force, or threat or criminal offenses that may result in injury to person or property;

2. Prohibiting such contacts by the respondent with the petitioner or family or household members of the petitioner as the court deems necessary for the health or safety of such persons;

3. Any other relief necessary to prevent (i) acts of violence, force, or threat, (ii) criminal offenses that may result in injury to person or property, or (iii) communication or other contact of any kind by the respondent; and

4. Granting the petitioner the possession of any companion animal as defined in § 3.2-6500 if such petitioner meets the definition of owner in § 3.2-6500.

B. The protective order may be issued for a specified period of time up to a maximum of two years. The protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Prior to the expiration of the protective order, a petitioner may file a written motion requesting a hearing to extend the order. Proceedings to extend a protective order shall be given precedence on the docket of the court. The court may extend the protective order for a period not longer than two years to protect the health and safety of the petitioner or persons who are family or household members of the petitioner at the time the request for an extension is made. The extension of the protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Nothing herein shall limit the number of extensions that may be requested or issued.

C. A copy of the protective order shall be served on the respondent and provided to the petitioner as soon as possible. The court, including a circuit court if the circuit court issued the order, shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's

identifying information and the name, date of birth, sex, and race of each protected person provided to the court and shall forthwith forward the attested copy of the protective order and containing any such identifying information to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith upon the respondent and due return made to the court. Upon service, the agency making service shall enter the date and time of service and other appropriate information required into the Virginia Criminal Information Network and make due return to the court. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due return made to the court.

D. Except as otherwise provided, a violation of a protective order issued under this section shall constitute contempt of court.

E. The court may assess costs and attorneys' fees against either party regardless of whether an order of protection has been issued as a result of a full hearing.

F. Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths, the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing violent or threatening acts or harassment against or contact or communication with or physical proximity to another person, including any of the conditions specified in subsection A, shall be accorded full faith and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person against whom the order is sought to be enforced sufficient to protect such person's due process rights and consistent with federal law. A person entitled to protection under such a foreign order may file the order in any appropriate district court by filing with the court, an attested or exemplified copy of the order. Upon such a filing, the clerk shall forthwith forward an attested copy of the order to the primary law-enforcement agency responsible for service and entry of protective orders which shall, upon receipt, enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained

by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where practical, the court may transfer information electronically to the Virginia Criminal Information Network.

Upon inquiry by any law-enforcement agency of the Commonwealth, the clerk shall make a copy available of any foreign order filed with that court. A law-enforcement officer may, in the performance of his duties, rely upon a copy of a foreign protective order or other suitable evidence which has been provided to him by any source and may also rely upon the statement of any person protected by the order that the order remains in effect.

G. Either party may at any time file a written motion with the court requesting a hearing to dissolve or modify the order. Proceedings to modify or dissolve a protective order shall be given precedence on the docket of the court.

H. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

I. No fees shall be charged for filing or serving petitions pursuant to this section.

J. As used in this section:

"Copy" includes a facsimile copy; and

"Protective order" includes an initial, modified or extended protective order.

1997, c. 831; 1998, cc. 569, 684; 1999, c. 371; 2002, cc. 507, 810, 818; 2003, c. 730; 2008, cc. 73, 246; 2009, cc. 341, 732; 2010, cc. 425, 468; 2011, cc. 445, 480; 2012, cc. 152, 261; 2014, c. 346.

§ 19.2-152.11. Venue for protective orders

Proceedings in which a protective order is sought pursuant to this chapter shall be commenced where (i) either party has his principal residence; (ii) the act of violence, force, or threat by the respondent against the petitioner occurred; or (iii) a protective order was issued if, at the time the proceeding is commenced, the order is in effect to protect the petitioner or a family or household member of the petitioner.

2012, c. 637.

§ 19.2-152.12. Compensation for required representation of respondents

Notwithstanding any other provision of law, when, in a proceeding pursuant to this chapter, representation of a respondent by counsel is required under the Servicemembers Civil Relief Act (50 U.S.C. § 3901 et seq.) or a guardian ad litem is required by law and there is no other provision for the compensation of counsel or a guardian ad litem, the court may order such counsel or guardian ad litem to be compensated for services pursuant to § 19.2-163.

2015, cc. 545, 556.

Chapter 10 - DISABILITY OF JUDGE OR ATTORNEY FOR COMMONWEALTH; COURT- APPOINTED COUNSEL; INTERPRETERS; TRANSCRIPTS

Article 1 - DISABILITY OF JUDGE

§ 19.2-153. When judge cannot sit on trial; how another judge procured to try the case

When the judge of a circuit court in which a prosecution is pending is connected with the accused or party injured, or is so situated in respect to the case as in his opinion to render it improper that he should preside at the trial, or if he has rejected a plea bargain agreement submitted by both parties and the parties do not agree that he may hear the case, he shall enter the fact of record and the clerk of the court shall at once certify this fact to the Chief Justice of the Supreme Court and thereupon another judge shall be appointed, in the manner prescribed by § 17.1-105, to preside at the trial.

Code 1950, § 19.1-7; 1960, c. 366; 1975, c. 495; 1984, c. 585; 1985, c. 253.

§ 19.2-154. Death or disability of judge during trial; how another judge procured to continue with trial

If by reason of death, sickness or other disability the judge who presided at a criminal jury trial is unable to proceed with and finish the trial, another judge of that court or a judge designated by the Chief Justice of the Supreme Court or by a justice designated by him for that purpose, may proceed with and finish the trial or, in his discretion, may grant and preside at a new trial. If by reason of such disability, the judge who presided at any trial is unable to perform the duties to be performed by the court after a finding of guilty by the jury or the court, another judge of that court, or a judge designated as provided in the preceding sentence, may perform those duties or, in his discretion, may grant and preside at a new trial. Before proceeding with the trial or performing such duties, such judge shall certify that he has familiarized himself with the record of the trial.

1975, c. 495.

Article 2 - DISABILITY OF ATTORNEY FOR COMMONWEALTH

§ 19.2-155. Disqualification or temporary disability of attorney for Commonwealth; appointment of substitute; powers, duties and compensation of such appointee

If the attorney for the Commonwealth of any county or city is connected by blood or marriage with the accused, or is so situated with respect to such accused as to render it improper, in his opinion, concurred in by the judge, for him to act, or if such attorney for the Commonwealth of any county or city is unable to act, or to attend to his official duties as attorney for the Commonwealth, due to sickness, disability or other reason of a temporary nature, then upon notification by such attorney for the Commonwealth, or upon the certificate of his attending physician, or the clerk of the court, which fact shall be entered of record, the judge of the circuit court shall appoint from another jurisdiction an attorney for the Commonwealth or an assistant

attorney for the Commonwealth, with the consent of such attorney for the Commonwealth or assistant, who is not authorized by law to engage in private practice for such case or cases, term or terms of court, or period or periods of time, as may be necessary or desirable, and the same to be forthwith entered of record. However, if the circuit court determines that the appointment of such attorney for the Commonwealth or such assistant attorney for the Commonwealth is not appropriate or that such an attorney or assistant is unavailable, or for other good cause, then the circuit court may appoint an attorney-at-law who shall be compensated pursuant to § 19.2-332. Such appointee shall act in place of, and otherwise perform the duties and exercise the powers of, such disqualified or disabled attorney for the Commonwealth, in regard to such case or cases, for the term or terms of the court, or the period or periods of time, for which the appointment and designation is made, or until the disqualified or disabled attorney for the Commonwealth shall again be able to attend to his duties as such. Nothing herein shall prevent a court from appointing as a special assistant attorney for the Commonwealth, without additional compensation, an attorney employed by a state agency when such appointment is requested by the attorney for the Commonwealth and the court determines such appointment will aid in the prosecution of a particular case or cases.

An attorney for the Commonwealth or assistant attorney for the Commonwealth who is required by law to devote full time to his duties as such shall not receive additional compensation for services rendered on appointment pursuant to this section. However, such attorney for the Commonwealth or assistant may receive reimbursement for actual expenses incurred, as approved by the Compensation Board to be paid by the Compensation Board, provided such expenses are not otherwise reimbursed by the county or city which he is elected or appointed to serve or by the Compensation Board.

Code 1950, §§ 19.1-9, 19.1-10; 1960, c. 366; 1975, c. 495; 1983, c. 362; 1985, c. 321; 1996, c. 968.

§ 19.2-156. Prolonged absence of attorney for Commonwealth

If it shall be necessary for the attorney for the Commonwealth of any county or city to absent himself for a prolonged period of time from the performance of the duties of his office, then, upon notification by such attorney for the Commonwealth, or by the court on its own motion, and the facts being entered of record, the judge of the circuit court shall appoint an attorney-at-law as acting attorney for the Commonwealth to serve for such length of time as may be necessary. Such acting attorney for the Commonwealth shall act in place of and otherwise perform the duties and exercise the powers of such regular attorney for the Commonwealth, and while so acting shall receive the salary and allowance for expenses fixed by the State Compensation Board for such regular attorney for the Commonwealth, who during such length of time shall not receive any such salary or allowance.

Code 1950, § 19.1-11; 1960, c. 366; 1975, c. 495.

Article 3 - APPOINTMENT OF ATTORNEY FOR ACCUSED

§ 19.2-157. Duty of court when accused appears without counsel

Except as may otherwise be provided in §§ 16.1-266 through 16.1-268, whenever a person charged with a criminal offense the penalty for which may be death or confinement in the state correctional facility or jail, including charges for revocation of suspension of imposition or execution of sentence or probation, appears before any court without being represented by counsel, the court shall inform him of his right to counsel. The accused shall be allowed a reasonable opportunity to employ counsel or, if appropriate, the statement of indigence provided for in § 19.2-159 may be executed.

Code 1950, §§ 19.1-241.1, 19.1-241.7; 1964, c. 657; 1966, c. 460; 1973, c. 316; 1975, c. 495; 1978, c. 362.

§ 19.2-158. When person not free on bail shall be informed of right to counsel and amount of bail

Every person charged with an offense described in § 19.2-157, who is not free on bail or otherwise, shall be brought before the judge of a court not of record, unless the circuit court issues process commanding the presence of the person, in which case the person shall be brought before the circuit court, on the first day on which such court sits after the person is charged, at which time the judge shall inform the accused of the amount of his bail and his right to counsel. If the court not of record sits on a day prior to the scheduled sitting of the court which issued process, the person shall be brought before the court not of record. The court shall also hear and consider motions by the person or Commonwealth relating to bail or conditions of release pursuant to Article 1 (§ 19.2-119 et seq.) of Chapter 9 of this title. Absent good cause shown, a hearing on bail or conditions of release shall be held as soon as practicable but in no event later than three calendar days, excluding Saturdays, Sundays, and legal holidays, following the making of such motion.

No hearing on the charges against the accused shall be had until the foregoing conditions have been complied with, and the accused shall be allowed a reasonable opportunity to employ counsel of his own choice, or, if appropriate, the statement of indigence provided for in § 19.2-159 may be executed.

Code 1950, §§ 19.1-241.2, 19.1-241.8; 1964, c. 657; 1966, c. 460; 1973, c. 316; 1975, c. 495; 1998, c. 773; 1999, cc. 829, 846; 2014, c. 515.

§ 19.2-159. Determination of indigency; guidelines; statement of indigence; appointment of counsel

A. If the accused shall claim that he is indigent, and the charge against him is a criminal offense which may be punishable by death or confinement in the state correctional facility or jail, subject to the provisions of § 19.2-160, the court shall determine from oral examination of the accused or

other competent evidence whether or not the accused is indigent within the contemplation of law pursuant to the guidelines set forth in this section.

B. In making its finding, the court shall determine whether or not the accused is a current recipient of a state or federally funded public assistance program for the indigent. If the accused is a current recipient of such a program and does not waive his right to counsel or retain counsel on his own behalf, he shall be presumed eligible for the appointment of counsel. This presumption shall be rebuttable where the court finds that a more thorough examination of the financial resources of the defendant is necessary. If the accused shall claim to be indigent and is not presumptively eligible under the provisions of this section, then a thorough examination of the financial resources of the accused shall be made with consideration given to the following:

1. The net income of the accused, which shall include his total salary and wages minus deductions required by law. The court also shall take into account income and amenities from other sources including but not limited to social security funds, union funds, veteran's benefits, other regular support from an absent family member, public or private employee pensions, dividends, interests, rents, estates, trusts, or gifts.

2. All assets of the accused which are convertible into cash within a reasonable period of time without causing substantial hardship or jeopardizing the ability of the accused to maintain home and employment. Assets shall include all cash on hand as well as in checking and savings accounts, stocks, bonds, certificates of deposit, and tax refunds. All personal property owned by the accused which is readily convertible into cash shall be considered, except property exempt from attachment. Any real estate owned by the accused shall be considered in terms of the amounts which could be raised by a loan on the property. For purposes of eligibility determination, the income, assets, and expenses of the spouse, if any, who is a member of the accused's household, shall be considered, unless the spouse was the victim of the offense or offenses allegedly committed by the accused.

3. Any exceptional expenses of the accused and his family which would, in all probability, prohibit him from being able to secure private counsel. Such items shall include but not be limited to costs for medical care, family support obligations, and child care payments.

The available funds of the accused shall be calculated as the sum of his total income and assets less the exceptional expenses as provided in paragraph 3 above. If the accused does not waive his right to counsel or retain counsel on his own behalf, counsel shall be appointed for the accused if his available funds are equal to or below 125 percent of the federal poverty income guidelines prescribed for the size of the household of the accused by the federal Department of Health and Human Services. The Supreme Court of Virginia shall be responsible for distributing to all courts the annual updates of the federal poverty income guidelines made by the Department.

If the available funds of the accused exceed 125 percent of the federal poverty income guidelines and the accused fails to employ counsel and does not waive his right to counsel, the court may, in

exceptional circumstances, and where the ends of justice so require, appoint an attorney to represent the accused. However, in making such appointments, the court shall state in writing its reasons for so doing. The written statement by the court shall be included in the permanent record of the case.

C. If the court determines that the accused is indigent as contemplated by law pursuant to the guidelines set forth in this section, the court shall provide the accused with a statement which shall contain the following:

"I have been advised this _____ day of _____, 20____, by the (name of court) court of my right to representation by counsel in the trial of the charge pending against me; I certify that I am without means to employ counsel and I hereby request the court to appoint counsel for me."

_____ (signature of accused)

The court shall also require the accused to complete a written financial statement to support the claim of indigency and to permit the court to determine whether or not the accused is indigent within the contemplation of law. The accused shall execute the said statements under oath, and the said court shall appoint competent counsel to represent the accused in the proceeding against him, including an appeal, if any, until relieved or replaced by other counsel.

The executed statements by the accused and the order of appointment of counsel shall be filed with and become a part of the record of such proceeding.

All other instances in which the appointment of counsel is required for an indigent shall be made in accordance with the guidelines prescribed in this section.

D. Except in jurisdictions having a public defender, or unless (i) the public defender is unable to represent the defendant by reason of conflict of interest or (ii) the court finds that appointment of other counsel is necessary to attain the ends of justice, counsel appointed by the court for representation of the accused shall be selected by a fair system of rotation among members of the bar practicing before the court whose names are on the list maintained by the Indigent Defense Commission pursuant to § 19.2-163.01. If no attorney who is on the list maintained by the Indigent Defense Commission is reasonably available, the court may appoint as counsel an attorney not on the list who has otherwise demonstrated to the court's satisfaction an appropriate level of training and experience. The court shall provide notice to the Commission of the appointment of the attorney.

Code 1950, § 19.1-241.3; 1964, c. 657; 1966, c. 460; 1975, c. 495; 1976, c. 553; 1978, c. 720; 1984, c. 709; 2004, cc. 884, 921; 2006, cc. 680, 708; 2008, cc. 122, 154.

§ 19.2-159.1. Interrogation by court; filing; change in circumstances; investigation by attorney for Commonwealth

A. The court shall thoroughly interrogate any person making the statement of indigency required in § 19.2-159 and shall further advise such person of the penalty which might result from false swearing, as provided in § 19.2-161.

B. The statement and oath of the defendant shall be filed with the papers in the case, and shall follow and be in effect at all stages of the proceedings against him without further oath. In the event the defendant undergoes a change of circumstances so that he is no longer indigent, the defendant shall thereupon obtain private counsel and shall forthwith advise the court of the change of circumstances. The court shall grant reasonable continuance to allow counsel to be obtained and to prepare for trial. When private counsel has been retained, appointed counsel shall forthwith be relieved of further responsibility and compensated for his services, pro rata, pursuant to § 19.2-163.

C. Upon the request of the court, it shall be the duty of the attorney for the Commonwealth of the county or city in which such statement and oath was made to make an investigation as to the indigency of the defendant, or of any other person making such statement. The attorney for the Commonwealth is authorized to delegate the responsibility for such investigation to any subordinate in his office, or to any agency, state or local, which possesses the facilities to quickly make such investigation. Such investigation shall be reduced to writing and forwarded to the court in which the statement and oath was made within fourteen days after such request by the court is made. Such report shall be placed with the papers in the case.

Code 1950, § 19.1-241.3:1; 1975, c. 580; 1977, c. 6; 1981, c. 289; 1984, c. 709.

§ 19.2-160. Appointment of counsel or waiver of right

If the charge against the accused is a crime the penalty for which may be incarceration, and the accused is not represented by counsel, the court shall ascertain by oral examination of the accused whether or not the accused desires to waive his right to counsel.

In the event the accused desires to waive his right to counsel, and the court ascertains that such waiver is voluntary and intelligently made, then the court shall provide the accused with a statement to be executed by the accused to document his waiver. The statement shall be in a form designed and provided by the Supreme Court. Any executed statement herein provided for shall be filed with and become a part of the record of such proceeding.

In the absence of a waiver of counsel by the accused, and if he shall claim that he is indigent, the court shall proceed in the same manner as is provided in § 19.2-159.

Should the defendant refuse or otherwise fail to sign either of the statements described in this section and § 19.2-159, the court shall note such refusal on the record. Such refusal shall be deemed to be a waiver of the right to counsel, and the court, after so advising the accused and offering him the opportunity to rescind his refusal shall, if such refusal is not rescinded and the accused's signature given, proceed to hear and decide the case. However, if, prior to the commencement of the trial, the court states in writing, either upon the request of the attorney for the Commonwealth or,

in the absence of the attorney for the Commonwealth, upon the court's own motion, that a sentence of incarceration will not be imposed if the defendant is convicted, the court may try the case without appointing counsel, and in such event no sentence of incarceration shall be imposed.

Code 1950, § 19.1-241.9; 1973, c. 316; 1975, c. 495; 1978, c. 365; 1979, c. 468; 1983, c. 97; 1989, c. 385 .

§ 19.2-161. Penalty for false swearing with regard to statement of indigence

Any person charged with a felony who shall falsely swear or who shall execute the statement provided for in § 19.2-159 knowing such statement to be false, shall be guilty of perjury, punishable as a Class 5 felony.

Any person charged with a misdemeanor punishable by confinement in jail who shall falsely swear or who shall execute the statement provided for in § 19.2-159 knowing such statement to be false shall be guilty of a Class 1 misdemeanor.

Code 1950, §§ 19.1-241.6, 19.1-241.12; 1964, c. 657; 1973, c. 316; 1975, c. 495.

§ 19.2-162. Continuances to be granted if necessary

Courts before which criminal proceedings are pending shall afford such continuances and take such other action as is necessary to comply with the provisions of this chapter.

Code 1950, §§ 19.1-241.4, 19.1-241.10; 1964, c. 657; 1973, c. 316; 1975, c. 495.

§ 19.2-163. Compensation of court-appointed counsel

Upon submission to the court, for which appointed representation is provided, of a detailed accounting of the time expended for that representation, made within 30 days of the completion of all proceedings in that court, counsel appointed to represent an indigent accused in a criminal case shall be compensated for his services on an hourly basis at a rate set by the Supreme Court of Virginia in a total amount not to exceed the amounts specified in the following schedule:

1. In a district court, a sum not to exceed $120, provided that, notwithstanding the foregoing limitation, the court in its discretion, and subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, may waive the limitation of fees up to (i) an additional $120 when the effort expended, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver; or (ii) an amount up to $650 to defend, in the case of a juvenile, an offense that would be a felony if committed by an adult that may be punishable by confinement in the state correctional facility for a period of more than 20 years, or a charge of violation of probation for such offense, when the effort expended, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver; or (iii) such other amount as may be provided by law. Such amount shall be allowed in any case wherein counsel conducts the defense of a single charge against the indigent through to its conclusion or a charge of violation of probation at any hearing conducted under § 19.2-306; thereafter, compensation for additional charges

against the same accused also conducted by the same counsel shall be allowed on the basis of additional time expended as to such additional charges;

2. In a circuit court (i) to defend a felony charge that may be punishable by death an amount deemed reasonable by the court; (ii) to defend a felony charge that may be punishable by confinement in the state correctional facility for a period of more than 20 years, or a charge of violation of probation for such offense, a sum not to exceed $1,235, provided that, notwithstanding the foregoing limitation, the court in its discretion, and subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, may waive the limitation of fees up to an additional $850 when the effort expended, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver; (iii) to defend any other felony charge, or a charge of violation of probation for such offense, a sum not to exceed $445, provided that, notwithstanding the foregoing limitation, the court in its discretion, and subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, may waive the limitation of fees up to an additional $155 when the effort expended, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver; and (iv) in the circuit court only, to defend any misdemeanor charge punishable by confinement in jail or a charge of violation of probation for such offense, a sum not to exceed $158. In the event any case is required to be retried due to a mistrial for any cause or reversed on appeal, the court may allow an additional fee for each case in an amount not to exceed the amounts allowable in the initial trial. In the event counsel is appointed to defend an indigent charged with a felony that may be punishable by death, such counsel shall continue to receive compensation as provided in this paragraph for defending such a felony, regardless of whether the charge is reduced or amended to a felony that may not be punishable by death, prior to final disposition of the case. In the event counsel is appointed to defend an indigent charged with any other felony, such counsel shall receive compensation as provided in this paragraph for defending such a felony, regardless of whether the charge is reduced or amended to a misdemeanor or lesser felony prior to final disposition of the case in either the district court or circuit court.

Counsel appointed to represent an indigent accused in a criminal case, who are not public defenders, may request an additional waiver exceeding the amounts provided for in this section. The request for any additional amount shall be submitted to the presiding judge, in writing, with a detailed accounting of the time spent and the justification for the additional amount. The presiding judge shall determine, subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, whether the request for an additional amount is justified in whole or in part, by considering the effort expended and the time reasonably necessary for the particular representation, and, if so, shall forward the request as approved to the chief judge of the circuit court or district court for approval.

If at any time the funds appropriated to pay for waivers under this section become insufficient, the Executive Secretary of the Supreme Court of Virginia shall so certify to the courts and no further waivers shall be approved.

The circuit or district court shall direct the payment of such reasonable expenses incurred by such court-appointed counsel as it deems appropriate under the circumstances of the case. Counsel appointed by the court to represent an indigent charged with repeated violations of the same section of the Code of Virginia, with each of such violations arising out of the same incident, occurrence, or transaction, shall be compensated in an amount not to exceed the fee prescribed for the defense of a single charge, if such offenses are tried as part of the same judicial proceeding. The trial judge shall consider any guidelines established by the Supreme Court but shall have the sole discretion to fix the amount of compensation to be paid counsel appointed by the court to defend a felony charge that may be punishable by death.

The circuit or district court shall direct that the foregoing payments shall be paid out by the Commonwealth, if the defendant is charged with a violation of a statute, or by the county, city or town, if the defendant is charged with a violation of a county, city or town ordinance, to the attorney so appointed to defend such person as compensation for such defense.

Counsel representing a defendant charged with a Class 1 felony, or counsel representing an indigent prisoner under sentence of death in a state habeas corpus proceeding, may submit to the court, on a monthly basis, a statement of all costs incurred and fees charged by him in the case during that month. Whenever the total charges as are deemed reasonable by the court for which payment has not previously been made or requested exceed $1,000, the court may direct that payment be made as otherwise provided in this section.

When such directive is entered upon the order book of the court, the Commonwealth, county, city or town, as the case may be, shall provide for the payment out of its treasury of the sum of money so specified. If the defendant is convicted, the amount allowed by the court to the attorney appointed to defend him shall be taxed against the defendant as a part of the costs of prosecution and, if collected, the same shall be paid to the Commonwealth, or the county, city or town, as the case may be. In the event that counsel for the defendant requests a waiver of the limitations on compensation, the court shall assess against the defendant an amount equal to the pre-waiver compensation limit specified in this section for each charge for which the defendant was convicted. An abstract of such costs shall be docketed in the judgment docket and execution lien book maintained by such court.

Any statement submitted by an attorney for payments due him for indigent representation or for representation of a child pursuant to § 16.1-266 shall, after the submission of the statement, be forwarded forthwith by the clerk to the Commonwealth, county, city or town, as the case may be, responsible for payment.

For the purposes of this section, the defense of a case may be considered conducted through to its conclusion and an appointed counsel entitled to compensation for his services in the event an indigent accused fails to appear in court subject to a capias for his arrest or a show cause summons for his failure to appear and remains a fugitive from justice for one year following the issuance of the capias or the summons to show cause, and appointed counsel has appeared at a hearing on behalf of the accused.

Effective July 1, 2007, the Executive Secretary of the Supreme Court of Virginia shall track and report the number and category of offenses charged involving adult and juvenile offenders in cases in which court-appointed counsel is assigned. The Executive Secretary shall also track and report the amounts paid by waiver above the initial cap to court-appointed counsel. The Executive Secretary shall provide these reports to the Governor, members of the House Appropriations Committee, and members of the Senate Finance Committee on a quarterly basis.

Code 1950, §§ 14.1-184, 14.1-184.1, 19.1-241.5, 19.1-241.11; 1964, cc. 386, 651, 657; 1968, c. 481; 1973, c. 316; 1975, c. 495; 1976, c. 553; 1980, c. 626; 1981, cc. 472, 486; 1985, c. 525; 1986, c. 425; 1987, c. 638; 1988, cc. 465, 472; 1989, c. 565; 1994, c. 451; 1995, cc. 571, 713; 1997, c. 492; 1998, cc. 440, 451; 2000, cc. 436, 448; 2001, c. 509; 2006, c. 332; 2007, cc. 938, 946; 2008, c. 760; 2009, c. 284.

Article 3.1 - INDIGENT DEFENSE

§ 19.2-163.01. Virginia Indigent Defense Commission established; powers and duties

A. The Virginia Indigent Defense Commission (hereinafter Indigent Defense Commission or Commission) is established. The Commission shall be supervisory and shall have sole responsibility for the powers, duties, operations, and responsibilities set forth in this section.

The Commission shall have the following powers and duties:

1. To publicize and enforce the qualification standards for attorneys seeking eligibility to serve as court-appointed counsel for indigent defendants pursuant to § 19.2-159.

2. To develop initial training courses for attorneys who wish to begin serving as court-appointed counsel, and to review and certify legal education courses that satisfy the continuing requirements for attorneys to maintain their eligibility for receiving court appointments.

3. To maintain a list of attorneys admitted to practice law in Virginia who are qualified to serve as court-appointed counsel for indigent defendants based upon the official standards and to disseminate the list by July 1 of each year and updates throughout the year to the Office of the Executive Secretary of the Supreme Court for distribution to the courts. In establishing and updating the list, the Commission shall consider all relevant factors, including but not limited to, the attorney's background, experience, and training and the Commission's assessment of whether the attorney is competent to provide quality legal representation.

4. To establish official standards of practice for court-appointed counsel and public defenders to follow in representing their clients, and guidelines for the removal of an attorney from the official list of those qualified to receive court appointments and to notify the Office of the Executive Secretary of the Supreme Court of any attorney whose name has been removed from the list.

5. To develop initial training courses for public defenders and to review and certify legal education courses that satisfy the continuing requirements for public defenders to maintain their eligibility.

6. To periodically review and report to the Virginia State Crime Commission, the House and the Senate Committees for Courts of Justice, the House Committee on Appropriations, and the Senate Committee on Finance on the caseload handled by each public defender office.

7. To maintain all public defender and regional capital defender offices established by the General Assembly.

8. To hire and employ and, at its pleasure, remove an executive director, counsel, and such other persons as it deems necessary, and to authorize the executive director to appoint, after prior notice to the Commission, a deputy director, and for each of the above offices a public defender or capital defender, as the case may be, who shall devote his full time to his duties and not engage in the private practice of law.

9. To authorize the public defender or capital defender to employ such assistants as authorized by the Commission.

10. To authorize the public defender or capital defender to employ such staff, including secretarial and investigative personnel, as may be necessary to carry out the duties imposed upon the public defender office.

11. To authorize the executive director of the Commission, in consultation with the public defender or capital defender to secure such office space as needed, to purchase or rent office equipment, to purchase supplies and to incur such expenses as are necessary to carry out the duties imposed upon him.

12. To approve requests for appropriations and receive and expend moneys appropriated by the General Assembly of Virginia, to receive other moneys as they become available to it and expend the same in order to carry out the duties imposed upon it.

13. To require and ensure that each public defender office collects and maintains caseload data and fields in a case management database on an annual basis.

14. To report annually on or before October 1 to the Virginia State Crime Commission, the House and Senate Committees for Courts of Justice, the House Committee on Appropriations, and the Senate Committee on Finance on the state of indigent criminal defense in the Commonwealth, including Virginia's ranking amongst the 50 states in terms of pay allowed for court-appointed counsel appointed pursuant to § 19.2-159 or subdivision C 2 of § 16.1-266.

B. The Commission shall adopt rules and procedures for the conduct of its business. The Commission may delegate to the executive director or, in the absence of the executive director, the deputy executive director, such powers and duties conferred upon the Commission as it deems appropriate, including powers and duties involving the exercise of discretion. The Commission shall ensure that the executive director complies with all Commission and statutory directives. Such rules and procedures may include the establishment of committees and the delegation of authority to the committees. The Commission shall review and confirm by a vote of the Commission its rules and procedures and any delegation of authority to the executive director at least every three years.

C. The executive director shall, with the approval of the Commission, fix the compensation of each public defender and all other personnel in each public defender office. The executive director shall also exercise and perform such other powers and duties as may be lawfully delegated to him and such powers and duties as may be conferred or imposed upon him by law.

2004, cc. 884, 921; 2005, c. 230; 2006, cc. 429, 501; 2007, c. 371; 2008, cc. 536, 815; 2010, c. 314.

§ 19.2-163.01:1. Supplementing compensation of public defender

A. The governing body of any county or city may supplement the compensation of the public defender or any of his deputies or employees above the compensation fixed by the executive director, in such amounts as it may deem expedient. Such additional compensation shall be wholly payable from the funds of any such county or city.

B. Due to the privileged and protected nature of the attorney-client relationship and the statutory scope of representation provided in §§ 19.2-157 and 19.2-163.3, no county or city providing a supplement to compensation under this section shall place any condition or requirement upon the receipt of such funds.

C. Funds provided by any county or city under this section shall be paid directly to the employees with notice to the Indigent Defense Commission of any amount so provided.

2008, cc. 536, 815; 2010, c. 314.

§ 19.2-163.02. Membership of Indigent Defense Commission; expenses

The Virginia Indigent Defense Commission shall consist of 14 members as follows: the chairmen of the House and Senate Committees for Courts of Justice or their designees who shall be members of the Courts of Justice committees; the chairman of the Virginia State Crime Commission or his designee; the Executive Secretary of the Supreme Court or his designee; two attorneys officially designated by the Virginia State Bar; two persons appointed by the Governor; three persons appointed by the Speaker of the House of Delegates; and three persons appointed by the Senate Committee on Rules. At least one of the appointments made by the Governor, one of the appointments made by the Speaker, and one of the appointments made by the Senate Committee on Rules, shall be an attorney in private practice with a demonstrated interest in indigent defense

issues. Persons who are appointed by virtue of their office shall hold terms coincident with their terms of office. If the chairman of the Virginia State Crime Commission is (i) the chairman of the House Committee for Courts of Justice, then the vice-chairman of the Committee shall serve in the position designated for the Committee chairman or (ii) the chairman of the Senate Committee for Courts of Justice, then the Senate Committee on Rules, upon the recommendation of the chairman of the Committee, shall appoint a member of the Committee to serve in the position designated for the Committee chairman. All other members shall be appointed for terms of three years and may be reappointed.

The Commission shall elect a chairman and a vice-chairman from among its membership annually. The chairman or his designee shall preside at all regular and called meetings of the Commission and shall have no additional duties or authority unless set by statute or by resolution of the Commission and annually confirmed by the Commission. A majority of the members shall constitute a quorum. The Commission shall meet at least four times each year. The meetings of the Commission shall be held at the call of the chairman or whenever three of the members so request.

Members shall be paid reasonable and necessary expenses incurred in the performance of their duties. Legislative members shall receive compensation as provided in § 30-19.12 and non-legislative citizen members shall receive compensation for their services as provided in §§ 2.2-2813 and 2.2-2825.

2004, cc. 884, 921; 2005, cc. 176, 758; 2006, cc. 429, 501; 2008, c. 115.

§ 19.2-163.03. Qualifications for court-appointed counsel

A. Initial qualification requirements. An attorney seeking to represent an indigent accused in a criminal case, in addition to being a member in good standing of the Virginia State Bar, shall meet the specific criteria required for each type or level of case. The following criteria shall be met for qualification and subsequent court appointment:

1. Misdemeanor case. To initially qualify to serve as counsel appointed pursuant to § 19.2-159 for an indigent defendant charged with a misdemeanor, the attorney shall:

(i) if an active member of the Virginia State Bar for less than one year, have completed six hours of MCLE-approved continuing legal education developed by the Indigent Defense Commission, or

(ii) if an active member of the Virginia State Bar for one year or more, either complete the six hours of approved continuing legal education developed by the Commission, or certify to the Commission that he has represented, in a district court within the past year, four or more defendants charged with misdemeanors, or

(iii) be qualified pursuant to this section to serve as counsel for an indigent defendant charged with a felony.

2. Felony case.

a. To initially qualify to serve as counsel appointed pursuant to § 19.2-159 for an indigent defendant charged with a felony, the attorney shall (i) have completed the six hours of MCLE-approved continuing legal education developed by the Commission, and (ii) certify that he has participated as either lead counsel or co-counsel in four felony cases from their beginning through to their final resolution, including appeals, if any.

b. If the attorney has been an active member of the Virginia State Bar for more than one year and certifies that he has participated, within the past year, as lead counsel in four felony cases through to their final resolution, including appeals, if any, the requirement to complete six hours of continuing legal education and the requirement to participate as co-counsel shall be waived.

c. If the attorney has been an active member of the Virginia State Bar for more than one year and certifies that he has participated, within the past five years, as lead counsel in five felony cases through to their final resolution, including appeals, if any, the requirement to participate as either lead counsel or co-counsel in four felony cases within the past year shall be waived.

3. Juvenile and domestic relations case.

a. To initially qualify to serve as appointed counsel in a juvenile and domestic relations district court pursuant to subdivision C 2 of § 16.1-266, the attorney shall (i) have completed the six hours of MCLE-approved continuing legal education developed by the Commission, (ii) have completed four additional hours of MCLE-approved continuing legal education on representing juveniles developed by the Commission, and (iii) certify that he has participated as either lead counsel or co-counsel in four cases involving juveniles in a juvenile and domestic relations district court.

b. If the attorney has been an active member of the Virginia State Bar for more than one year and certifies that he has, within the past year, been lead counsel in four cases involving juveniles in juvenile and domestic relations district court, the requirement to complete the 10 hours of continuing legal education shall be waived.

c. If the attorney has been an active member of the Virginia State Bar for more than one year and certifies that he has participated, within the past five years in five cases involving juveniles in a juvenile and domestic relations district court, the requirement to participate as either lead counsel or co-counsel in four juvenile cases shall be waived.

B. Requalification requirements. After initially qualifying as provided in subsection A, an attorney shall maintain his eligibility for certification biennially by notifying the Commission of completion of at least six hours of Commission and MCLE-approved continuing legal education. The Commission shall provide information on continuing legal education programs that have been approved.

In addition, to maintain eligibility to accept court appointments under subdivision C 2 of § 16.1-266, an attorney shall complete biennially thereafter four additional hours of MCLE-approved continuing legal education on representing juveniles, certified by the Commission.

C. Waiver and exceptions. The Commission or the court before which a matter is pending, may, in its discretion, waive the requirements set out in this section for individuals who otherwise demonstrate their level of training and experience. A waiver of such requirements pursuant to this subsection shall not form the basis for a claim of error at trial, on appeal, or in any habeas corpus proceeding.

2004, cc. 884, 921; 2006, c. 708; 2007, c. 571.

§ 19.2-163.04. Public Defender offices

Public defender offices are established in:

a. The City of Virginia Beach;

b. The City of Petersburg;

c. The Cities of Buena Vista, Lexington, Staunton and Waynesboro and the Counties of Augusta and Rockbridge;

d. The City of Roanoke;

e. The City of Portsmouth;

f. The City of Richmond;

g. The Counties of Clarke, Frederick, Page, Shenandoah and Warren, and the City of Winchester;

h. The City and County of Fairfax;

i. The City of Alexandria;

j. The City of Radford and the Counties of Bland, Pulaski and Wythe;

k. The Counties of Fauquier, Loudoun and Rappahannock;

l. The City of Suffolk;

m. The City of Franklin and the Counties of Isle of Wight and Southampton;

n. The County of Bedford;

o. The City of Danville;

p. The Counties of Halifax, Lunenburg and Mecklenburg;

q. The City of Fredericksburg and the Counties of King George, Stafford and Spotsylvania;

r. The City of Lynchburg;

s. The City of Martinsville and the Counties of Henry and Patrick;

t. The City of Charlottesville and the County of Albemarle;

u. The City of Norfolk;

v. The County of Arlington and the City of Falls Church;

w. The City of Newport News;

x. The City of Chesapeake; and

y. The City of Hampton.

2004, cc. 884, 921; 2004, Sp. Sess. I, c. 4, cl. 2; 2005, c. 951; 2006, Sp. Sess. I, c. 2; 2016, cc. 164, 312.

Article 4 - PUBLIC DEFENDERS

§§ 19.2-163.1, 19.2-163.2. Repealed
Repealed by Acts 2004, cc. 884 and 921.

§ 19.2-163.3. Duties of public defenders
Public defenders shall carry out the following duties in accordance with the guidance, policies, and authorizations of the Indigent Defense Commission:

(a) To assist the executive director of the Commission in securing office space, to employ a staff, to fix salaries and to do such other things necessary to carry out the duties imposed upon them with the approval of the Commission.

(b) To represent or supervise assistants in representing within their respective jurisdictions as set out in § 19.2-163.04 indigent persons charged with a crime or offense when such persons are entitled to be represented by law by court-appointed counsel in a court of record or a court not of record.

(c) To represent or supervise assistants in representing indigent persons who are entitled to be represented by court-appointed counsel in an appeal of their conviction to the Court of Appeals or the Supreme Court of Virginia.

(d) To submit such reports as required by the Commission.

Code 1950, § 19.1-32.4; 1972, c. 800; 1975, c. 495; 1978, c. 698; 1979, c. 194; 1990, c. 734; 1992, c. 80; 2007, c. 680.

§ 19.2-163.4. Inapplicability of §§ 17.1-606 and 19.2-163 where public defender offices established; exception
In counties and cities in which public defender offices are established pursuant to § 19.2-163.04, defense services for indigents charged with jailable offenses shall be provided by the public defenders unless (i) the public defender is unable to represent the defendant or petitioner by reason of conflict of interest or (ii) the court finds that appointment of other counsel is necessary to attain the ends of justice. Except for the provisions of § 19.2-163 relating to reasonable expenses, §§ 17.1-606 and 19.2-163 shall not apply when defense services are provided by the public defenders.

Code 1950, § 19.1-32.5; 1972, c. 800; 1975, cc. 476, 495; 1992, c. 80; 1994, c. 415.

§ 19.2-163.4:1. Repayment of representation costs by convicted persons

In any case in which an attorney from a public defender or capital defender office represents an indigent person charged with an offense and such person is convicted, the sum that would have been allowed a court-appointed attorney as compensation and as reasonable expenses shall be taxed against the person defended as a part of the costs of the prosecution, and, if collected, shall be paid to the Commonwealth or, if payment was made to the Commonwealth by a locality for defense of a local ordinance violation, to the appropriate county, city or town. An abstract of such costs shall be docketed in the judgment lien docket and execution book of the court.

2004, cc. 884, 921.

§ 19.2-163.5. Legal services to public defenders and/or assistant public defenders

At the request of a public defender, the Attorney General shall provide legal services to such attorney, his assistants, or members of his staff in any proceeding brought against him, his assistants, or staff for money damages, when the cause of action allegedly arises out of the duties of his office.

Any costs chargeable against the defendant or defendants in any such case shall be paid by the Commonwealth from the appropriation for the payment of criminal charges.

1978, c. 698.

§ 19.2-163.6. Repealed

Repealed by Acts 2004, c. 884 and 921.

Article 4.1 - COUNSEL IN CAPITAL CASES

§ 19.2-163.7. Counsel in capital cases

In any case in which an indigent defendant is charged with a capital offense, the judge of the circuit court, upon request for the appointment of counsel, shall appoint at least two attorneys from the list or lists established by the Supreme Court and the Indigent Defense Commission or as provided in subsection C of § 19.2-163.8 to represent the defendant at trial and, if the defendant is sentenced to death, on appeal. In all cases where counsel is appointed under this section after July 1, 2004, one of the attorneys appointed shall be from a capital defense unit maintained by the Indigent Defense Commission. This section shall be construed in conformity with the provisions of § 19.2-163.4. If prior to indictment the attorney for the Commonwealth declares in writing that the Commonwealth will not seek the death penalty, the capital defense unit attorney may upon motion before the circuit court seek to withdraw as counsel. The circuit court judge having heard the motion to withdraw shall permit the capital defense unit attorney to withdraw and shall appoint another attorney pursuant to the provisions of § 19.2-159. If the sentence of death is affirmed on appeal, the court shall, within 30 days after the decision of the Supreme Court of Virginia, appoint counsel from the same list, or such other list as the Supreme Court and the Commission may establish, to represent an indigent prisoner under sentence of death in a state habeas corpus proceeding. The Attorney General shall have no standing to object to the appointment of counsel for the petitioner.

1991, c. 664; 1995, c. 503; 2001, c. 766; 2002, c. 614; 2004, cc. 329, 884, 921.

§ 19.2-163.8. List of qualified attorneys

A. The Supreme Court and the Indigent Defense Commission, in conjunction with the Virginia State Bar, shall adopt standards for attorneys admitted to practice law in Virginia who are qualified to represent defendants charged with capital murder or sentenced to death, which take into consideration, to the extent practicable, the following criteria: (i) license or permission to practice law in Virginia; (ii) general background in criminal litigation; (iii) demonstrated experience in felony practice at trial and appeal; (iv) experience in death penalty litigation; (v) familiarity with the requisite court system; (vi) current training in death penalty litigation; (vii) current training in the analysis and introduction of forensic evidence, including deoxyribonucleic acid (DNA) testing and the evidence of a DNA profile comparison to prove or disprove the identity of any person; and (viii) demonstrated proficiency and commitment to quality representation.

B. The Supreme Court and the Indigent Defense Commission shall maintain a list of attorneys admitted to practice law in Virginia who are qualified to represent defendants charged with capital murder or sentenced to death. In establishing such a list, the Court and the Commission shall consider all relevant factors, including but not limited to, the attorney's background, experience, and training and the Court's and the Commission's assessment of whether the attorney is competent to provide quality legal representation.

C. Notwithstanding the requirements of § 19.2-163.7, the judge of the circuit court may appoint counsel who is not included on the list, but who otherwise qualifies under the standards established and maintained by the Court and the Commission.

D. Noncompliance with the requirements of this article shall not form the basis for a claim of error at trial, on appeal, or in any habeas corpus proceeding. The performance of habeas corpus counsel appointed pursuant to this article shall not form a basis for relief in any subsequent habeas corpus proceeding.

E. The Supreme Court and the Indigent Defense Commission shall, in conjunction with the Virginia State Bar, promulgate and thereafter maintain standards for the qualifications of counsel who shall be considered eligible to be placed on the list of qualified attorneys.

1991, c. 664; 2001, c. 766; 2004, cc. 884, 921.

Article 5 - INTERPRETERS

§ 19.2-164. Interpreters for non-English-speaking persons (Supreme Court Rule 2:507 derived in part from this section)

In any criminal case in which a non-English-speaking person is the accused, an interpreter for the non-English-speaking person shall be appointed. In any criminal case in which a non-English-speaking person is a victim or witness, an interpreter shall be appointed by the judge of the court in which the case is to be heard unless the court finds that the person does not require the

services of a court-appointed interpreter. An English-speaking person fluent in the language of the country of the accused, a victim or a witness shall be appointed by the judge of the court in which the case is to be heard, unless such person obtains an interpreter of his own choosing who is approved by the court as being competent. The compensation of an interpreter appointed by the court pursuant to this section shall be fixed by the court in accordance with guidelines set by the Judicial Council of Virginia and shall be paid from the general fund of the state treasury as part of the expense of trial. Such fee shall not be assessed as part of the costs unless (i) an interpreter has been appointed for the defendant, (ii) the defendant fails to appear, (iii) the interpreter appears in the case and no other case on that date, and (iv) the defendant is convicted of a failure to appear on that date the interpreter appeared in the case, then the court, in its discretion, may assess as costs the fee paid to the interpreter. Whenever a person communicates through an interpreter to any person under such circumstances that the communication would be privileged, and such person could not be compelled to testify as to the communications, this privilege shall also apply to the interpreter. The provisions of this section shall apply in both circuit courts and district courts.

Code 1950, § 19.1-246.1; 1966, c. 240; 1974, c. 110; 1975, c. 495; 1978, c. 601; 1982, c. 444; 1985, c. 396; 1995, c. 546; 1996, c. 402; 2003, c. 1011; 2007, c. 383.

§ 19.2-164.1. Interpreters for the deaf (Supreme Court Rule 2:507 derived in part from this section)

In any criminal case in which a deaf person is the accused, an interpreter for the deaf person shall be appointed. In any criminal case in which a deaf person is the victim or a witness, an interpreter for the deaf person shall be appointed by the court in which the case is to be heard unless the court finds that the deaf person does not require the services of a court-appointed interpreter and the deaf person waives his rights. Such interpreter shall be procured by the judge of the court in which the case is to be heard through the Department for the Deaf and Hard-of-Hearing.

The compensation of an interpreter appointed by the court pursuant to this section shall be fixed by the court and paid from the general fund of the state treasury as part of the expense of trial. Such fee shall not be assessed as part of the costs.

Any person entitled to the services of an interpreter under this section may waive these services for all or a portion of the proceedings. Such a waiver shall be made by the person upon the record after an opportunity to consult with legal counsel. A judicial officer, utilizing an interpreter obtained in accordance with this section, shall explain to the deaf person the nature and effect of any waiver. Any waiver shall be approved in writing by the deaf person's legal counsel. If the person does not have legal counsel, approval shall be made in writing by a judicial officer. A person who waives his right to an interpreter may provide his own interpreter at his own expense without regard to whether the interpreter is qualified under this section.

The provisions of this section shall apply in both circuit courts and district courts.

Whenever a person communicates through an interpreter to any person under such circumstances that the communication would be privileged, and such person could not be compelled to testify as to the communications, this privilege shall also apply to the interpreter.

In any judicial proceeding, the judge on his own motion or on the motion of a party to the proceeding may order all of the testimony of a deaf person and the interpretation thereof to be visually electronically recorded for use in verification of the official transcript of the proceedings.

1982, c. 444; 1985, c. 396; 1995, c. 546; 1996, c. 402.

Article 6 - RECORDING EVIDENCE AND INCIDENTS OF TRIAL

§ 19.2-165. Recording evidence and incidents of trial in felony cases; cost of recording; cost of transcripts; certified transcript deemed prima facie correct; request for copy of transcript
In all felony cases, the court or judge trying the case shall by order entered of record provide for the recording verbatim of the evidence and incidents of trial either by a court reporter or by mechanical or electronic devices approved by the court. The expense of reporting or recording the trial of criminal cases shall be paid by the Commonwealth out of the appropriation for criminal charges, upon approval of the trial judge. However, if the defendant is convicted, the Commonwealth shall be entitled to receive the amount allocated to the court reporter fund under the fixed felony fee. Localities that maintain mechanical or electronic devices for this purpose shall be entitled to retain their reasonable expenses attributable to the cost of operating and maintaining such equipment. The clerk shall receive the evidence at the time of admission of such evidence by the court and shall maintain control over such evidence until the time such evidence is transferred on appeal, or destroyed or returned in accordance with law.

In all felony cases where it appears to the court from the affidavit of the defendant and other evidence that the defendant intends to seek an appeal and is financially unable to pay such costs or to bear the expense of a copy of the transcript of the evidence for an appeal, the trial court shall, upon the motion of counsel for the defendant, order the evidence transcribed for such appeal and all costs therefor paid by the Commonwealth out of the appropriation for criminal charges. If the conviction is not reversed, all costs paid by the Commonwealth, under the provisions hereof, shall be assessed against the defendant.

The reporter or other individual designated to report and record the trial shall file the original shorthand notes or other original records with the clerk of the circuit court who shall preserve them in the public records of the court for not less than five years if an appeal was taken and a transcript was prepared, or ten years if no appeal was taken. The transcript in any case certified by the reporter or other individual designated to report and record the trial shall be deemed prima facie a correct statement of the evidence and incidents of trial.

Upon the request of any counsel of record, or of any party not represented by counsel, and upon payment of the reasonable cost thereof, the court reporter covering any proceeding shall provide

the requesting party with a copy of the transcript of such proceeding or any requested portion thereof.

The court shall not direct the court reporter to cease recording any portion of the proceeding without the consent of all parties or of their counsel of record.

The administration of this section shall be under the direction of the Supreme Court of Virginia.

Code 1950, § 17-30.1; 1952, c. 642; 1956, c. 699; 1962, c. 419; 1964, c. 533; 1968, c. 358; 1975, cc. 495, 640; 1983, c. 505; 1984, c. 752; 1994, c. 497; 1999, c. 9; 2014, c. 291.

§ 19.2-165.1. Payment of medical fees in certain criminal cases; reimbursement

A. Except as provided in subsection B, all medical fees expended in the gathering of evidence for all criminal cases where medical evidence is necessary to establish a crime has occurred and for cases involving abuse of children under the age of 18 shall be paid by the Commonwealth out of the appropriation for criminal charges, provided that any medical evaluation, examination, or service rendered be performed by a physician or facility specifically designated by the attorney for the Commonwealth in the city or county having jurisdiction of such case for such a purpose. If no such physician or facility is reasonably available in such city or county, then the attorney for the Commonwealth may designate a physician or facility located outside and adjacent to such city or county.

Where there has been no prior designation of such a physician or facility, such medical fees shall be paid out of the appropriation for criminal charges upon authorization by the attorney for the Commonwealth of the city or county having jurisdiction over the case. Such authorization may be granted prior to or within 48 hours after the medical evaluation, examination, or service rendered.

B. All medical fees expended in the gathering of evidence through physical evidence recovery kit examinations conducted on victims complaining of sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 shall be paid by the Commonwealth pursuant to subsection F of § 19.2-368.11:1. Victims complaining of sexual assault shall not be required to participate in the criminal justice system or cooperate with law-enforcement authorities in order to be provided with such forensic medical exams.

C. Upon conviction of the defendant in any case requiring the payment of medical fees authorized by this section, the court shall order that the defendant reimburse the Commonwealth for payment of such fees.

1976, c. 292; 1982, c. 507; 1987, c. 330; 1997, c. 322; 1999, c. 853; 2000, c. 292; 2003, cc. 28, 772; 2008, cc. 203, 251.

§ 19.2-166. Court reporters

Each judge of a court of record having jurisdiction over criminal proceedings shall be authorized, in all felony cases and habeas corpus proceedings to appoint a court reporter to report proceedings or to operate mechanical or electrical devices for recording proceedings, to transcribe the report or

record of such proceedings, to perform any stenographic work related to such report, record or transcript including work pertinent to the court's findings of fact and conclusions of law pertinent thereto. Such reporter shall be paid by the Commonwealth on a per diem or work basis as appropriate out of the appropriation for criminal charges.

Code 1950, § 17-30.1:1; 1968, c. 486; 1975, c. 495; 2003, c. 140.

Chapter 11 - PROCEEDINGS ON QUESTION OF INSANITY

§ 19.2-167. Accused not to be tried while insane or feebleminded

No person shall, while he is insane or feebleminded, be tried for a criminal offense.

Code 1950, § 19.1-227; 1960, c. 366; 1964, c. 231; 1968, c. 789; 1975, c. 495.

§ 19.2-168. Notice to Commonwealth of intention to present evidence of insanity; continuance if notice not given

In any case in which a person charged with a crime intends (i) to put in issue his sanity at the time of the crime charged and (ii) to present testimony of an expert to support his claim on this issue at his trial, he, or his counsel, shall give notice in writing to the attorney for the Commonwealth, at least 60 days prior to his trial, of his intention to present such evidence. However, if the period between indictment and trial is less than 120 days, the person or his counsel shall give such notice no later than 60 days following indictment. In the event that such notice is not given, and the person proffers such evidence at his trial as a defense, then the court may in its discretion, either allow the Commonwealth a continuance or, under appropriate circumstances, bar the defendant from presenting such evidence. The period of any such continuance shall not be counted for speedy trial purposes under § 19.2-243.

Code 1950, § 19.1-227.1; 1970, c. 336; 1975, c. 495; 1986, c. 535; 2008, c. 372.

§ 19.2-168.1. Evaluation on motion of the Commonwealth after notice

A. If the attorney for the defendant gives notice pursuant to § 19.2-168, and the Commonwealth thereafter seeks an evaluation of the defendant's sanity at the time of the offense, the court shall appoint one or more qualified mental health experts to perform such an evaluation. The court shall order the defendant to submit to such an evaluation and advise the defendant on the record in court that a refusal to cooperate with the Commonwealth's expert could result in exclusion of the defendant's expert evidence. The qualification of the experts shall be governed by subsection A of § 19.2-169.5. The location of the evaluation shall be governed by subsection B of § 19.2-169.5. The attorney for the Commonwealth shall be responsible for providing the experts the information specified in subsection C of § 19.2-169.5. After performing their evaluation, the experts shall report their findings and opinions, and provide copies of psychiatric, psychological, medical or other records obtained during the course of the evaluation to the attorneys for the Commonwealth and the defense. The evaluator shall also send a redacted copy of the report removing references to the defendant's name, date of birth, case number, and court of jurisdiction to the Commissioner

of Behavioral Health and Developmental Services for the purpose of peer review to establish and maintain the list of approved evaluators described in subsection A of § 19.2-169.5.

B. If the court finds, after hearing evidence presented by the parties, that the defendant has refused to cooperate with an evaluation requested by the Commonwealth, it may admit evidence of such refusal or, in the discretion of the court, bar the defendant from presenting expert psychiatric or psychological evidence at trial on the issue of his sanity at the time of the offense.

1982, c. 653; 1986, c. 535; 2016, c. 445.

§ 19.2-169. Repealed

Repealed by Acts 1982, c. 653.

§ 19.2-169.1. Raising question of competency to stand trial or plead; evaluation and determination of competency

A. If, at any time after the attorney for the defendant has been retained or appointed and before the end of trial, the court finds, upon hearing evidence or representations of counsel for the defendant or the attorney for the Commonwealth, that there is probable cause to believe that the defendant, whether a juvenile transferred pursuant to § 16.1-269.1 or adult, lacks substantial capacity to understand the proceedings against him or to assist his attorney in his own defense, the court shall order that a competency evaluation be performed by at least one psychiatrist or clinical psychologist who (i) has performed forensic evaluations; (ii) has successfully completed forensic evaluation training recognized by the Commissioner of Behavioral Health and Developmental Services; (iii) has demonstrated to the Commissioner competence to perform forensic evaluations; and (iv) is included on a list of approved evaluators maintained by the Commissioner.

B. The evaluation shall be performed on an outpatient basis at a mental health facility or in jail unless the court specifically finds that outpatient evaluation services are unavailable or unless the results of outpatient evaluation indicate that hospitalization of the defendant for evaluation on competency is necessary. If the court finds that hospitalization is necessary, the court, under authority of this subsection, may order the defendant sent to a hospital designated by the Commissioner of Behavioral Health and Developmental Services as appropriate for evaluations of persons under criminal charge. The defendant shall be hospitalized for such time as the director of the hospital deems necessary to perform an adequate evaluation of the defendant's competency, but not to exceed 30 days from the date of admission to the hospital.

C. The court shall require the attorney for the Commonwealth to provide to the evaluators appointed under subsection A any information relevant to the evaluation, including, but not limited to (i) a copy of the warrant or indictment; (ii) the names and addresses of the attorney for the Commonwealth, the attorney for the defendant, and the judge ordering the evaluation; (iii) information about the alleged crime; and (iv) a summary of the reasons for the evaluation request. The court shall require the attorney for the defendant to provide any available psychiatric records and

other information that is deemed relevant. The court shall require that information be provided to the evaluator within 96 hours of the issuance of the court order pursuant to this section.

D. Upon completion of the evaluation, the evaluators shall promptly submit a report in writing to the court and the attorneys of record concerning (i) the defendant's capacity to understand the proceedings against him; (ii) his ability to assist his attorney; and (iii) his need for treatment in the event he is found incompetent but restorable, or incompetent for the foreseeable future. If a need for restoration treatment is identified pursuant to clause (iii), the report shall state whether inpatient or outpatient treatment is recommended. No statements of the defendant relating to the time period of the alleged offense shall be included in the report. The evaluator shall also send a redacted copy of the report removing references to the defendant's name, date of birth, case number, and court of jurisdiction to the Commissioner of Behavioral Health and Developmental Services for the purpose of peer review to establish and maintain the list of approved evaluators described in subsection A.

E. After receiving the report described in subsection D, the court shall promptly determine whether the defendant is competent to stand trial. A hearing on the defendant's competency is not required unless one is requested by the attorney for the Commonwealth or the attorney for the defendant, or unless the court has reasonable cause to believe the defendant will be hospitalized under § 19.2-169.2. If a hearing is held, the party alleging that the defendant is incompetent shall bear the burden of proving by a preponderance of the evidence the defendant's incompetency. The defendant shall have the right to notice of the hearing, the right to counsel at the hearing and the right to personally participate in and introduce evidence at the hearing.

The fact that the defendant claims to be unable to remember the time period surrounding the alleged offense shall not, by itself, bar a finding of competency if the defendant otherwise understands the charges against him and can assist in his defense. Nor shall the fact that the defendant is under the influence of medication bar a finding of competency if the defendant is able to understand the charges against him and assist in his defense while medicated.

1982, c. 653; 1983, c. 373; 1985, c. 307; 2003, c. 735; 2007, c. 781; 2009, cc. 813, 840; 2014, cc. 329, 739; 2016, c. 445.

§ 19.2-169.2. Disposition when defendant found incompetent

A. Upon finding pursuant to subsection E of § 19.2-169.1 that the defendant, including a juvenile transferred pursuant to § 16.1-269.1, is incompetent, the court shall order that the defendant receive treatment to restore his competency on an outpatient basis or, if the court specifically finds that the defendant requires inpatient hospital treatment, at a hospital designated by the Commissioner of Behavioral Health and Developmental Services as appropriate for treatment of persons under criminal charge. Any psychiatric records and other information that have been deemed relevant and submitted by the attorney for the defendant pursuant to subsection C of § 19.2-169.1 and any reports submitted pursuant to subsection D of § 19.2-169.1 shall be made

available to the director of the community services board or behavioral health authority or his designee or to the director of the treating inpatient facility or his designee within 96 hours of the issuance of the court order requiring treatment to restore the defendant's competency. If the 96-hour period expires on a Saturday, Sunday, or other legal holiday, the 96 hours shall be extended to the next day that is not a Saturday, Sunday, or legal holiday.

B. If, at any time after the defendant is ordered to undergo treatment under subsection A of this section, the director of the community services board or behavioral health authority or his designee or the director of the treating inpatient facility or his designee believes the defendant's competency is restored, the director or his designee shall immediately send a report to the court as prescribed in subsection D of § 19.2-169.1. The court shall make a ruling on the defendant's competency according to the procedures specified in subsection E of § 19.2-169.1.

C. 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 an order for treatment issued pursuant to subsection A.

1982, c. 653; 2003, c. 735; 2007, c. 781; 2008, cc. 751, 788; 2009, cc. 813, 840; 2014, cc. 373, 408.

§ 19.2-169.3. Disposition of the unrestorably incompetent defendant; capital murder charge; sexually violent offense charge

A. If, at any time after the defendant is ordered to undergo treatment pursuant to subsection A of § 19.2-169.2, the director of the community services board or behavioral health authority or his designee or the director of the treating inpatient facility or his designee concludes that the defendant is likely to remain incompetent for the foreseeable future, he shall send a report to the court so stating. The report shall also indicate whether, in the board, authority, or inpatient facility director's or his designee's opinion, the defendant should be released, committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, committed pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, or certified pursuant to § 37.2-806 in the event he is found to be unrestorably incompetent. Upon receipt of the report, the court shall make a competency determination according to the procedures specified in subsection E of § 19.2-169.1. If the court finds that the defendant is incompetent and is likely to remain so for the foreseeable future, it shall order that he be (i) released, (ii) committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, or (iii) certified pursuant to § 37.2-806. However, if the court finds that the defendant is incompetent and is likely to remain so for the foreseeable future and the defendant has been charged with a sexually violent offense, as defined in § 37.2-900, he shall be screened pursuant to the procedures set forth in §§ 37.2-903 and 37.2-904. If the court finds the defendant incompetent but restorable to competency in the foreseeable future, it may order treatment continued until six months have elapsed from the date of the defendant's initial admission under subsection A of § 19.2-169.2.

B. At the end of six months from the date of the defendant's initial admission under subsection A of § 19.2-169.2 if the defendant remains incompetent in the opinion of the board, authority, or inpatient facility director or his designee, the director or his designee shall so notify the court and make recommendations concerning disposition of the defendant as described in subsection A. The court shall hold a hearing according to the procedures specified in subsection E of § 19.2-169.1 and, if it finds the defendant unrestorably incompetent, shall order one of the dispositions described in subsection A. If the court finds the defendant incompetent but restorable to competency, it may order continued treatment under subsection A of § 19.2-169.2 for additional six-month periods, provided a hearing pursuant to subsection E of § 19.2-169.1 is held at the completion of each such period and the defendant continues to be incompetent but restorable to competency in the foreseeable future.

C. If any defendant has been charged with a misdemeanor in violation of Article 3 (§ 18.2-95 et seq.) of Chapter 5 of Title 18.2 or Article 5 (§ 18.2-119 et seq.) of Chapter 5 of Title 18.2, other than a misdemeanor charge pursuant to § 18.2-130 or Article 2 (§ 18.2-415 et seq.) of Chapter 9 of Title 18.2, and is being treated pursuant to subsection A of § 19.2-169.2, and after 45 days has not been restored to competency, the director of the community service board, behavioral health authority, or the director of the treating inpatient facility, or any of their designees, shall send a report indicating the defendant's status to the court. The report shall also indicate whether the defendant should be released or committed pursuant to § 37.2-817 or certified pursuant to § 37.2-806. Upon receipt of the report, if the court determines that the defendant is still incompetent, the court shall order that the defendant be released, committed, or certified, and may dismiss the charges against the defendant.

D. Unless an incompetent defendant is charged with capital murder or the charges against an incompetent criminal defendant have been previously dismissed, charges against an unrestorably incompetent defendant shall be dismissed on the date upon which his sentence would have expired had he been convicted and received the maximum sentence for the crime charged, or on the date five years from the date of his arrest for such charges, whichever is sooner.

E. If the court orders an unrestorably incompetent defendant to be screened pursuant to the procedures set forth in §§ 37.2-903 and 37.2-904, it shall order the attorney for the Commonwealth in the jurisdiction wherein the defendant was charged and the Commissioner of Behavioral Health and Developmental Services to provide the Director of the Department of Corrections with any information relevant to the review, including, but not limited to: (i) a copy of the warrant or indictment, (ii) a copy of the defendant's criminal record, (iii) information about the alleged crime, (iv) a copy of the competency report completed pursuant to § 19.2-169.1, and (v) a copy of the report prepared by the director of the defendant's community services board, behavioral health authority, or treating inpatient facility or his designee pursuant to this section. The court shall further order that the defendant be held in the custody of the Department of Behavioral Health and Developmental Services for secure confinement and treatment until the Commitment Review

Committee's and Attorney General's review and any subsequent hearing or trial are completed. If the court receives notice that the Attorney General has declined to file a petition for the commitment of an unrestorably incompetent defendant as a sexually violent predator after conducting a review pursuant to § 37.2-905, the court shall order that the defendant be released, committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, or certified pursuant to § 37.2-806.

F. In any case when an incompetent defendant is charged with capital murder, notwithstanding any other provision of this section, the charge shall not be dismissed and the court having jurisdiction over the capital murder case may order that the defendant receive continued treatment under subsection A of § 19.2-169.2 for additional six-month periods without limitation, provided that (i) a hearing pursuant to subsection E of § 19.2-169.1 is held at the completion of each such period, (ii) the defendant remains incompetent, (iii) the court finds continued treatment to be medically appropriate, and (iv) the defendant presents a danger to himself or others.

G. The attorney for the Commonwealth may bring charges that have been dismissed against the defendant when he is restored to competency.

1982, c. 653; 1999, cc. 946, 985; 2003, cc. 915, 919, 989, cls. 4, 5, 1018, cls. 4, 5, 1042, cls. 10, 11; 2006, cc. 863, 914; 2007, cc. 781, 876; 2008, cc. 406, 796; 2009, cc. 813, 840; 2012, cc. 668, 800.

§ 19.2-169.4. Litigating certain issues when the defendant is incompetent

A finding of incompetency does not preclude the adjudication, at any time before trial, of a motion objecting to the sufficiency of the indictment, nor does it preclude the adjudication of similar legal objections which, in the court's opinion, may be undertaken without the personal participation of the defendant.

1982, c. 653.

§ 19.2-169.5. Evaluation of sanity at the time of the offense; disclosure of evaluation results

A. If, at any time before trial, the court finds, upon hearing evidence or representations of counsel for the defendant, that there is probable cause to believe that the defendant's sanity will be a significant factor in his defense and that the defendant is financially unable to pay for expert assistance, the court shall appoint one or more qualified mental health experts to evaluate the defendant's sanity at the time of the offense and, where appropriate, to assist in the development of an insanity defense. Such mental health expert shall be a psychiatrist or a clinical psychologist who (i) has performed forensic examinations, (ii) has successfully completed forensic evaluation training recognized by the Commissioner of Behavioral Health and Developmental Services, (iii) has demonstrated to the Commissioner competence to perform forensic evaluations, and (iv) is included on a list of approved evaluators maintained by the Commissioner. The defendant shall not be entitled to a mental health expert of his own choosing or to funds to employ such expert.

B. The evaluation shall be performed on an outpatient basis, at a mental health facility or in jail, unless the court specifically finds that outpatient services are unavailable, or unless the results of the outpatient evaluation indicate that hospitalization of the defendant for further evaluation of his sanity at the time of the offense is necessary. If either finding is made, the court, under authority of this subsection, may order that the defendant be sent to a hospital designated by the Commissioner of Behavioral Health and Developmental Services as appropriate for evaluation of the defendant under criminal charge. The defendant shall be hospitalized for such time as the director of the hospital deems necessary to perform an adequate evaluation of the defendant's sanity at the time of the offense, but not to exceed 30 days from the date of admission to the hospital.

C. The court shall require the party making the motion for the evaluation, and such other parties as the court deems appropriate, to provide to the evaluators appointed under subsection A any information relevant to the evaluation, including, but not limited to (i) copy of the warrant or indictment; (ii) the names and addresses of the attorney for the Commonwealth, the attorney for the defendant and the judge who appointed the expert; (iii) information pertaining to the alleged crime, including statements by the defendant made to the police and transcripts of preliminary hearings, if any; (iv) a summary of the reasons for the evaluation request; (v) any available psychiatric, psychological, medical or social records that are deemed relevant; and (vi) a copy of the defendant's criminal record, to the extent reasonably available.

D. The evaluators shall prepare a full report concerning the defendant's sanity at the time of the offense, including whether he may have had a significant mental disease or defect which rendered him insane at the time of the offense. The report shall be prepared within the time period designated by the court, said period to include the time necessary to obtain and evaluate the information specified in subsection C.

E. The report described in subsection D shall be sent solely to the attorney for the defendant and shall be deemed to be protected by the lawyer-client privilege. However, the Commonwealth shall be given the report in all felony cases, the results of any other evaluation of the defendant's sanity at the time of the offense, and copies of psychiatric, psychological, medical, or other records obtained during the course of any such evaluation, after the attorney for the defendant gives notice of an intent to present psychiatric or psychological evidence pursuant to § 19.2-168. In addition, in all cases, the evaluator shall send a redacted copy of the report removing references to the defendant's name, date of birth, case number, and court of jurisdiction to the Commissioner of Behavioral Health and Developmental Services for the purpose of peer review to establish and maintain the list of approved evaluators described in subsection A.

F. In any case where the defendant obtains his own expert to evaluate the defendant's sanity at the time of the offense, the provisions of subsections D and E, relating to the disclosure of the evaluation results, shall apply.

1982, c. 653; 1986, c. 535; 1987, c. 439; 1996, cc. 937, 980; 2005, c. 428; 2009, cc. 813, 840; 2016, c. 445.

§ 19.2-169.6. Inpatient psychiatric hospital admission from local correctional facility

A. Any inmate of a local correctional facility who is not subject to the provisions of § 19.2-169.2 may be hospitalized for psychiatric treatment at a hospital designated by the Commissioner of Behavioral Health and Developmental Services as appropriate for treatment of persons under criminal charge if:

1. The court with jurisdiction over the inmate's case, if it is still pending, on the petition of the person having custody over an inmate or on its own motion, holds a hearing at which the inmate is represented by counsel and finds by clear and convincing evidence that (i) the inmate has a mental illness; (ii) there exists a substantial likelihood that, as a result of a mental illness, the inmate will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and any other relevant information or (b) suffer serious harm due to his lack of capacity to protect himself from harm as evidenced by recent behavior and any other relevant information; and (iii) the inmate requires treatment in a hospital rather than the local correctional facility. Prior to making this determination, the court shall consider the examination conducted in accordance with § 37.2-815 and the preadmission screening report prepared in accordance with § 37.2-816 and conducted in-person or by means of a two-way electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or designee of the local community services board or behavioral health authority who is skilled in the assessment and treatment of mental illness, who is not providing treatment to the inmate, and who has completed a certification program approved by the Department of Behavioral Health and Developmental Services as provided in § 37.2-809. The examiner appointed pursuant to § 37.2-815, if not physically present at the hearing, shall be available whenever possible for questioning during the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1. Any employee or designee of the local community services board or behavioral health authority, as defined in § 37.2-809, representing the board or authority that prepared the preadmission screening report shall attend the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through a two-way electronic video and audio communication system as authorized in § 37.2-804.1. When the hearing is held outside the service area of the community services board or behavioral health authority that prepared the preadmission screening report, and it is not practicable for a representative of the board or authority to attend or participate in the hearing, arrangements shall be made by the board or authority for an employee or designee of the board or authority serving the area in which the hearing is held to attend or participate on behalf of the board or authority that prepared the preadmission screening report; or

2. Upon petition by the person having custody over an inmate, a magistrate finds probable cause to believe that (i) the inmate has a mental illness; (ii) there exists a substantial likelihood that, as

a result of a mental illness, the inmate will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and any other relevant information or (b) suffer serious harm due to his lack of capacity to protect himself from harm as evidenced by recent behavior and any other relevant information; and (iii) the inmate requires treatment in a hospital rather than a local correctional facility, and the magistrate issues a temporary detention order for the inmate. Prior to the filing of the petition, the person having custody shall arrange for an evaluation of the inmate conducted in-person or by means of a two-way electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or designee of the local community services board or behavioral health authority who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by the Department as provided in § 37.2-809. After considering the evaluation of the employee or designee of the local community services board or behavioral health authority, and any other information presented, and finding that probable cause exists to meet the criteria, the magistrate may issue a temporary detention order in accordance with the applicable procedures specified in §§ 37.2-809 through 37.2-813. The person having custody over the inmate shall notify the court having jurisdiction over the inmate's case, if it is still pending, and the inmate's attorney prior to the detention pursuant to a temporary detention order or as soon thereafter as is reasonable.

Upon detention pursuant to this subdivision, a hearing shall be held either before the court having jurisdiction over the inmate's case or before a district court judge or a special justice, as defined in § 37.2-100, in accordance with the provisions of §§ 37.2-815 through 37.2-821, in which case the inmate shall be represented by counsel as specified in § 37.2-814. The hearing shall be held within 72 hours of execution of the temporary detention order issued pursuant to this subdivision. If the 72-hour period terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the inmate may be detained until the close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. Any employee or designee of the local community services board or behavioral health authority, as defined in § 37.2-809, representing the board or authority that prepared the preadmission screening report shall attend the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through a two-way electronic video and audio communication system as authorized in § 37.2-804.1. When the hearing is held outside the service area of the community services board or behavioral health authority that prepared the preadmission screening report, and it is not practicable for a representative of the board or authority to attend or participate in the hearing, arrangements shall be made by the board or authority for an employee or designee of the board or authority serving the area in which the hearing is held to attend or participate on behalf of the board or authority that prepared the preadmission screening report. The judge or special justice conducting the hearing may order the inmate hospitalized if, after considering the examination conducted in accordance with § 37.2-815, the preadmission screening report prepared in accordance with § 37.2-816, and any other available information as specified in subsection C of § 37.2-

817, he finds by clear and convincing evidence that (1) the inmate has a mental illness; (2) there exists a substantial likelihood that, as a result of a mental illness, the inmate will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and any other relevant information or (b) suffer serious harm due to his lack of capacity to protect himself from harm as evidenced by recent behavior and any other relevant information; and (3) the inmate requires treatment in a hospital rather than a local correctional facility. The examiner appointed pursuant to § 37.2-815, if not physically present at the hearing, shall be available whenever possible for questioning during the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1. The examination and the preadmission screening report shall be admitted into evidence at the hearing.

B. In no event shall an inmate have the right to make application for voluntary admission as may be otherwise provided in § 37.2-805 or 37.2-814 or be subject to an order for mandatory outpatient treatment as provided in § 37.2-817.

C. If an inmate is hospitalized pursuant to this section and his criminal case is still pending, the court having jurisdiction over the inmate's case may order that the admitting hospital evaluate the inmate's competency to stand trial and his mental state at the time of the offense pursuant to §§ 19.2-169.1 and 19.2-169.5.

D. An inmate may not be hospitalized longer than 30 days under subsection A unless the court which has criminal jurisdiction over him or a district court judge or a special justice, as defined in § 37.2-100, holds a hearing and orders the inmate's continued hospitalization in accordance with the provisions of subdivision A 2. If the inmate's hospitalization is continued under this subsection by a court other than the court which has jurisdiction over his criminal case, the facility at which the inmate is hospitalized shall notify the court with jurisdiction over his criminal case and the inmate's attorney in the criminal case, if the case is still pending.

E. Hospitalization may be extended in accordance with subsection D for periods of 60 days for inmates awaiting trial, but in no event may such hospitalization be continued beyond trial, nor shall such hospitalization act to delay trial, as long as the inmate remains competent to stand trial. Hospitalization may be extended in accordance with subsection D for periods of 180 days for an inmate who has been convicted and not yet sentenced, or for an inmate who has been convicted of a crime and is in the custody of a local correctional facility after sentencing, but in no event may such hospitalization be continued beyond the date upon which his sentence would have expired had he received the maximum sentence for the crime charged. Any inmate who has not completed service of his sentence upon discharge from the hospital shall serve the remainder of his sentence.

F. For any inmate who has been convicted and not yet sentenced, or who has been convicted of a crime and is in the custody of a local correctional facility after sentencing, the time the inmate is

confined in a hospital for psychiatric treatment shall be deducted from any term for which he may be sentenced to any penal institution, reformatory or elsewhere.

G. Any health care provider, as defined in § 32.1-127.1:03, or other provider rendering services to an inmate who is the subject of a proceeding under this section, upon request, shall disclose to a magistrate, the court, the inmate's attorney, the inmate's guardian ad litem, the examiner appointed pursuant to § 37.2-815, the community service board or behavioral health authority preparing the preadmission screening pursuant to § 37.2-816, or the sheriff or administrator of the local correctional facility any and all information that is necessary and appropriate to enable each of them to perform his duties under this section. These health care providers and other service providers shall disclose to one another health records and information where necessary to provide care and treatment to the inmate and to monitor that care and treatment. Health records disclosed to a sheriff or administrator of the local correctional facility shall be limited to information necessary to protect the sheriff or administrator of the local correctional facility and his employees, the inmate, or the public from physical injury or to address the health care needs of the inmate. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained.

Any health care provider disclosing records pursuant to this section shall be immune from civil liability for any harm resulting from the disclosure, including any liability under the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.), as amended, unless the person or provider disclosing such records intended the harm or acted in bad faith.

H. Any order entered where an inmate is the subject of proceedings under this section shall provide for the disclosure of medical records pursuant to subsection G. This subsection shall not preclude any other disclosures as required or permitted by law.

I. As used in this section, "person having custody over an inmate" means the sheriff or other person in charge of the local correctional facility where the inmate is incarcerated at the time of the filing of a petition for the psychiatric treatment of the inmate.

1982, c. 653; 1986, c. 629; 1987, c. 96; 1990, c. 76; 1995, c. 844; 2005, c. 716; 2008, cc. 779, 782, 850, 870; 2010, cc. 340, 406; 2012, c. 801; 2014, cc. 499, 538, 691; 2016, cc. 357, 599.

§ 19.2-169.7. Disclosure by defendant during evaluation or treatment; use at guilt phase of trial

No statement or disclosure by the defendant concerning the alleged offense made during a competency evaluation ordered pursuant to § 19.2-169.1, a mental state at the time of the offense evaluation ordered pursuant to § 19.2-169.5, or treatment ordered pursuant to § 19.2-169.2 or § 19.2-169.6 may be used against the defendant at trial as evidence or as a basis for such evidence, except on the issue of his mental condition at the time of the offense after he raises the issue pursuant to § 19.2-168.

1982, c. 653.

§ 19.2-169.8. Orders for evaluation or treatment; duties of clerk; copies

A. Whenever a court orders an evaluation pursuant to § 19.2-168.1, 19.2-169.1, or 19.2-169.5 or orders treatment pursuant to § 19.2-169.2 or 19.2-169.6, the clerk of the court shall provide a copy of the order to the appointed evaluator or to the director of the community services board, behavioral health authority, or hospital named in the order as soon as practicable but no later than the close of business on the next business day following entry of the order. The party requesting the evaluation pursuant to § 19.2-168.1, 19.2-169.1, or 19.2-169.5, the attorney for the Commonwealth if treatment is ordered pursuant to § 19.2-169.2, or the petitioner if treatment is ordered pursuant to § 19.2-169.6 shall be responsible for providing to the court the name, address, and other contact information for the appointed evaluator or the director of the community services board, behavioral health authority, or hospital unless the court or clerk already has this information. The appointed evaluator or the director of the community services board, behavioral health authority, or hospital shall acknowledge receipt of the order to the clerk of the court on a form developed by the Office of the Executive Secretary of the Supreme Court of Virginia as soon as practicable but no later than the close of business on the next business day following receipt of the order.

B. No person shall be liable for any act or omission relating to the performance of any requirement set forth in subsection A unless the person was grossly negligent or engaged in willful misconduct.

2016, cc. 446, 449.

§§ 19.2-170 through 19.2-174. Repealed

Repealed by Acts 1982, c. 653.

§ 19.2-174.1. Information required prior to admission to a mental health facility

Prior to any person being placed into the custody of the Commissioner for evaluation or treatment pursuant to §§ 19.2-169.2, 19.2-169.3, 19.2-169.6, 19.2-182.2, and 19.2-182.3, and Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, the court or special justice shall provide the Commissioner with the following, if available: (i) the commitment order, (ii) the names and addresses for the attorney for the Commonwealth, the attorney for the person and the judge holding jurisdiction over the person, (iii) a copy of the warrant or indictment, and (iv) a copy of the criminal incident information as defined in § 2.2-3706 or a copy of the arrest report or a summary of the facts relating to the crime. The party requesting the placement into the Commissioner's custody or, in the case of admissions pursuant to §§ 19.2-169.3 and 19.2-169.6, and Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, the person having custody over the defendant or inmate shall gather the above information for submission to the court at the hearing. If the information is not available at the hearing, it shall be provided by the party requesting placement or the person having custody directly to the Commissioner within 96 hours of the person being placed into the Commissioner's custody. If the 96-hour period expires on a Saturday, Sunday or legal holiday, the 96 hours shall be extended to the next day that is not a Saturday, Sunday or legal holiday.

1995, c. 645; 1999, cc. 946, 985; 2001, c. 837; 2003, c. 989, cls. 4, 5, 1018, cls. 4, 5, 1042, cls. 10, 11; 2010, cc. 340, 406.

§ 19.2-175. Compensation of experts

Each psychiatrist, clinical psychologist or other expert appointed by the court to render professional service pursuant to § 19.2-168.1, 19.2-169.1, 19.2-169.5, 19.2-182.8, 19.2-182.9, 19.2-264.3:1, 19.2-264.3:3 or 19.2-301, who is not regularly employed by the Commonwealth of Virginia except by the University of Virginia School of Medicine and the Medical College of Virginia Commonwealth University, shall receive a reasonable fee for such service. For any psychiatrist, clinical psychologist, or other expert appointed by the court to render such professional services who is regularly employed by the Commonwealth of Virginia, except by the University of Virginia School of Medicine or the Medical College of Virginia Commonwealth University, the fee shall be paid only for professional services provided during nonstate hours that have been approved by his employing agency as being beyond the scope of his state employment duties. The fee shall be determined in each instance by the court that appointed the expert, in accordance with guidelines established by the Supreme Court after consultation with the Department of Behavioral Health and Developmental Services. Except in capital murder cases the fee shall not exceed $750, but in addition if any such expert is required to appear as a witness in any hearing held pursuant to such sections, he shall receive mileage and a fee of $100 for each day during which he is required so to serve. An itemized account of expense, duly sworn to, must be presented to the court, and when allowed shall be certified to the Supreme Court for payment out of the state treasury, and be charged against the appropriations made to pay criminal charges. Allowance for the fee and for the per diem authorized shall also be made by order of the court, duly certified to the Supreme Court for payment out of the appropriation to pay criminal charges.

Code 1950, § 19.1-233; 1960, c. 366; 1968, c. 657; 1970, c. 640; 1975, c. 495; 1976, c. 140; 1978, cc. 195, 794; 1979, c. 516; 1982, c. 653; 1986, c. 535; 1990, c. 697; 1995, c. 645; 2003, cc. 1031, 1040; 2006, cc. 114, 170; 2007, c. 829; 2009, cc. 813, 840; 2010, cc. 340, 406.

§ 19.2-176. Repealed

Repealed by Acts 2010, cc. 340 and 406, cl. 2.

§ 19.2-177. Repealed

Repealed by Acts 1988, cc. 787, 873.

§ 19.2-177.1. Repealed

Repealed by Acts 2010, cc. 340 and 406, cl. 2.

§ 19.2-178. Where prisoner kept when no vacancy in facility or hospital

When a court shall have entered any of the orders provided for in § 19.2-168.1, 19.2-169.1, 19.2-169.5, or 19.2-169.6, the sheriff of the county or city or the proper officer of the penal institution shall immediately proceed to ascertain whether a vacancy exists at the proper facility or hospital and until it is ascertained that there is a vacancy such person shall be kept in the jail of such

county or city or in such custody as the court may order, or in the penal institution in which he is confined, until there is room in such facility or hospital. Any person whose care and custody is herein provided for shall be taken to and from the facility or hospital to which he was committed by an officer of the penal institution having custody of him, or by the sheriff of the county or city whose court issued the order of commitment, and the expenses incurred in such removals shall be paid by such penal institution, county or city.

Code 1950, § 19.1-236; 1960, c. 366; 1975, c. 495; 1995, c. 645; 2010, cc. 340, 406.

§ 19.2-179. Repealed

Repealed by Acts 1981, c. 310.

§ 19.2-180. Sentence or trial of prisoner when restored to sanity

When a prisoner whose trial or sentence was suspended by reason of his being found to be insane or feebleminded, has been found to be mentally competent and is brought from a hospital and committed to jail, if already convicted, he shall be sentenced, and if not, the court shall proceed to try him as if no delay had occurred on account of his insanity or feeblemindedness.

Code 1950, § 19.1-238; 1960, c. 366; 1975, c. 495.

§ 19.2-181. Repealed

Repealed by Acts 1991, c. 427 .

§ 19.2-182. Representation by counsel in proceeding for commitment

A. In any proceeding for commitment under this title, the judge before whom or upon whose order the proceeding is being held shall ascertain if the person whose commitment is sought is represented by counsel. If the person is not represented by counsel, the judge shall appoint an attorney at law to represent him in the proceeding. The attorney shall receive a fee of $150 for his services, to be paid by the Commonwealth.

B. Any attorney representing any person in any proceeding for commitment under this title shall, prior to such proceeding, personally consult with such person.

Code 1950, § 19.1-239.1; 1966, c. 715; 1975, c. 495; 1991, c. 427; 2016, c. 474.

§ 19.2-182.1. Repealed

Repealed by Acts 1982, c. 653.

Chapter 11.1 - DISPOSITION OF PERSONS ACQUITTED BY REASON OF INSANITY

§ 19.2-182.2. Verdict of acquittal by reason of insanity to state the fact; temporary custody and evaluation

When the defense is insanity of the defendant at the time the offense was committed, the jurors shall be instructed, if they acquit him on that ground, to state the fact with their verdict. The court shall place the person so acquitted (the acquittee) in temporary custody of the Commissioner of

Behavioral Health and Developmental Services (hereinafter referred to in this chapter as the Commissioner) for evaluation as to whether the acquittee may be released with or without conditions or requires commitment. The evaluation shall be conducted by (i) one psychiatrist and (ii) one clinical psychologist. The psychiatrist or clinical psychologist shall be skilled in the diagnosis of mental illness and intellectual disability and qualified by training and experience to perform such evaluations. The Commissioner shall appoint both evaluators, at least one of whom shall not be employed by the hospital in which the acquittee is primarily confined. The evaluators shall determine whether the acquittee currently has mental illness or intellectual disability and shall assess the acquittee and report on his condition and need for hospitalization with respect to the factors set forth in § 19.2-182.3. The evaluators shall conduct their examinations and report their findings separately within 45 days of the Commissioner's assumption of custody. Copies of the report shall be sent to the acquittee's attorney, the attorney for the Commonwealth for the jurisdiction where the person was acquitted and the community services board or behavioral health authority as designated by the Commissioner. If either evaluator recommends conditional release or release without conditions of the acquittee, the court shall extend the evaluation period to permit the hospital in which the acquittee is confined and the appropriate community services board or behavioral health authority to jointly prepare a conditional release or discharge plan, as applicable, prior to the hearing.

1991, c. 427; 1993, c. 295; 1996, cc. 937, 980; 2007, cc. 485, 565; 2009, cc. 813, 840; 2012, cc. 476, 507.

§ 19.2-182.3. Commitment; civil proceedings

Upon receipt of the evaluation report and, if applicable, a conditional release or discharge plan, the court shall schedule the matter for hearing on an expedited basis, giving the matter priority over other civil matters before the court, to determine the appropriate disposition of the acquittee. Except as otherwise ordered by the court, the attorney who represented the defendant at the criminal proceedings shall represent the acquittee through the proceedings pursuant to this section. The matter may be continued on motion of either party for good cause shown. The acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. The hearing is a civil proceeding.

At the conclusion of the hearing, the court shall commit the acquittee if it finds that he has mental illness or intellectual disability and is in need of inpatient hospitalization. For the purposes of this chapter, mental illness includes any mental illness, as defined in § 37.2-100, in a state of remission when the illness may, with reasonable probability, become active. The decision of the court shall be based upon consideration of the following factors:

1. To what extent the acquittee has mental illness or intellectual disability, as those terms are defined in § 37.2-100;

2. The likelihood that the acquittee will engage in conduct presenting a substantial risk of bodily harm to other persons or to himself in the foreseeable future;

3. The likelihood that the acquittee can be adequately controlled with supervision and treatment on an outpatient basis; and

4. Such other factors as the court deems relevant.

If the court determines that an acquittee does not need inpatient hospitalization solely because of treatment or habilitation he is currently receiving, but the court is not persuaded that the acquittee will continue to receive such treatment or habilitation, it may commit him for inpatient hospitalization. The court shall order the acquittee released with conditions pursuant to §§ 19.2-182.7, 19.2-182.8, and 19.2-182.9 if it finds that he is not in need of inpatient hospitalization but that he meets the criteria for conditional release set forth in § 19.2-182.7. If the court finds that the acquittee does not need inpatient hospitalization nor does he meet the criteria for conditional release, it shall release him without conditions, provided the court has approved a discharge plan prepared by the appropriate community services board or behavioral health authority in consultation with the appropriate hospital staff.

1991, c. 427; 1993, c. 295; 2005, c. 716; 2012, cc. 476, 507.

§ 19.2-182.4. Confinement and treatment; interfacility transfers; out-of-hospital visits; notice of change in treatment

A. Upon commitment of an acquittee for inpatient hospitalization, the Commissioner shall determine the appropriate placement for him, based on his clinical needs and security requirements. The Commissioner may make interfacility transfers and treatment and management decisions regarding acquittees in his custody without obtaining prior approval of or review by the committing court. If the Commissioner is of the opinion that a temporary visit from the hospital would be therapeutic for the acquittee and that such visit would pose no substantial danger to others, the Commissioner may grant such visit not to exceed forty-eight hours.

B. The Commissioner shall give notice of the granting of an unescorted community visit to any victim of a felony offense against the person punishable by more than five years in prison that resulted in the charges on which the acquittee was acquitted or the next-of-kin of the victim at the last known address, provided the person seeking notice submits a written request for such notice to the Commissioner.

C. The Commissioner shall notify the attorney for the Commonwealth for the committing jurisdiction in writing of changes in an acquittee's course of treatment which will involve authorization for the acquittee to leave the grounds of the hospital in which he is confined.

1991, c. 427; 1993, c. 295; 2006, c. 358.

§ 19.2-182.5. Review of continuation of confinement hearing; procedure and reports; disposition

A. The committing court shall conduct a hearing twelve months after the date of commitment to assess the need for inpatient hospitalization of each acquittee who is acquitted of a felony by reason of insanity. A hearing for assessment shall be conducted at yearly intervals for five years and at biennial intervals thereafter. The court shall schedule the matter for hearing as soon as possible after it becomes due, giving the matter priority over all pending matters before the court.

B. Prior to the hearing, the Commissioner shall provide to the court a report evaluating the acquittee's condition and recommending treatment, to be prepared by a psychiatrist or a psychologist. The psychologist who prepares the report shall be a clinical psychologist and any evaluating psychiatrist or clinical psychologist shall be skilled in the diagnosis of mental illness and qualified by training and experience to perform forensic evaluations. If the examiner recommends release or the acquittee requests release, the acquittee's condition and need for inpatient hospitalization shall be evaluated by a second person with such credentials who is not currently treating the acquittee. A copy of any report submitted pursuant to this subsection shall be sent to the attorney for the Commonwealth for the jurisdiction from which the acquittee was committed.

C. The acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. Written notice of the hearing shall be provided to the attorney for the Commonwealth for the committing jurisdiction. The hearing is a civil proceeding.

According to the determination of the court following the hearing, and based upon the report and other evidence provided at the hearing, the court shall (i) release the acquittee from confinement if he does not need inpatient hospitalization and does not meet the criteria for conditional release set forth in § 19.2-182.7, provided the court has approved a discharge plan prepared jointly by the hospital staff and the appropriate community services board or behavioral health authority; (ii) place the acquittee on conditional release if he meets the criteria for conditional release, and the court has approved a conditional release plan prepared jointly by the hospital staff and the appropriate community services board or behavioral health authority; or (iii) order that he remain in the custody of the Commissioner if he continues to require inpatient hospitalization based on consideration of the factors set forth in § 19.2-182.3.

D. An acquittee who is found not guilty of a misdemeanor by reason of insanity on or after July 1, 2002, shall remain in the custody of the Commissioner pursuant to this chapter for a period not to exceed one year from the date of acquittal. If, prior to or at the conclusion of one year, the Commissioner determines that the acquittee meets the criteria for conditional release or release without conditions pursuant to § 19.2-182.7, emergency custody pursuant to § 37.2-808, temporary detention pursuant to §§ 37.2-809 to 37.2-813, or involuntary commitment pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, he shall petition the committing court. Written notice of an acquittee's scheduled release shall be provided by the Commissioner to the attorney for the Commonwealth for the committing jurisdiction not less than thirty days prior to

the scheduled release. The Commissioner's duty to file a petition upon such determination shall not preclude the ability of any other person meeting the requirements of § 37.2-808 to file the petition.

1991, c. 427; 1993, c. 295; 1996, cc. 937, 980; 2002, c. 750; 2007, cc. 485, 565.

§ 19.2-182.6. Petition for release; conditional release hearing; notice; disposition

A. The Commissioner may petition the committing court for conditional or unconditional release of the acquittee at any time he believes the acquittee no longer needs hospitalization. The petition shall be accompanied by a report of clinical findings supporting the petition with respect to the factors set forth in § 19.2-182.3 and by a conditional release or discharge plan, as applicable, prepared jointly by the hospital and the appropriate community services board or behavioral health authority. The acquittee may petition the committing court for release only once in each year in which no annual judicial review is required pursuant to § 19.2-182.5. The party petitioning for release shall transmit a copy of the petition to the attorney for the Commonwealth for the committing jurisdiction.

B. 1. When a petition for release is made by the acquittee, the court shall order the Commissioner to appoint two persons in the same manner as set forth in § 19.2-182.2 to assess and report on the acquittee's need for inpatient hospitalization by reviewing his condition with respect to the factors set forth in § 19.2-182.3. The evaluators shall conduct their evaluations and report their finding in accordance with the provisions of § 19.2-182.2, except that the evaluations shall be completed and findings reported within 45 days of issuance of the court's order for evaluation.

2. When a petition for release is made by the Commissioner no further evaluations of the acquittee shall be required unless otherwise deemed necessary by the court. If the court determines that further evaluation is necessary, the court shall order the Commissioner to appoint two persons in the same manner as set forth in § 19.2-182.2 to assess and report on the acquittee's need for inpatient hospitalization by reviewing his condition with respect to the factors set forth in § 19.2-182.3. The evaluators shall conduct their evaluations and report their finding in accordance with the provisions of § 19.2-182.2, except that the evaluations shall be completed and findings reported within 45 days of issuance of the court's order for evaluation.

The Commissioner shall give notice of the hearing to any victim of the act resulting in the charges on which the acquittee was acquitted or the next of kin of the victim at the last known address, provided the person submits a written request for such notification to the Commissioner.

C. Upon receipt of the reports of evaluation, the court shall conduct a hearing on the petition. The hearing shall be scheduled on an expedited basis and given priority over other civil matters before the court. The acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses. Written notice of the hear-

ing shall be provided to the attorney for the Commonwealth for the committing jurisdiction. The hearing is a civil proceeding.

At the conclusion of the hearing, based upon the report and other evidence provided at the hearing, the court shall order the acquittee (i) released from confinement if he does not need inpatient hospitalization and does not meet the criteria for conditional release set forth in § 19.2-182.3, provided the court has approved a discharge plan prepared jointly by the hospital and the appropriate community services board or behavioral health authority; (ii) placed on conditional release if he meets the criteria for such release as set forth in § 19.2-182.7, and the court has approved a conditional release plan prepared jointly by the hospital and the appropriate community services board or behavioral health authority; or (iii) retained in the custody of the Commissioner if he continues to require inpatient hospitalization based on consideration of the factors set forth in § 19.2-182.3.

D. Persons committed pursuant to this chapter shall be released only in accordance with the procedures set forth governing release and conditional release.

1991, c. 427; 1993, c. 295; 2007, cc. 485, 565, 785.

§ 19.2-182.7. Conditional release; criteria; conditions; reports

At any time the court considers the acquittee's need for inpatient hospitalization pursuant to this chapter, it shall place the acquittee on conditional release if it finds that (i) based on consideration of the factors which the court must consider in its commitment decision, he does not need inpatient hospitalization but needs outpatient treatment or monitoring to prevent his condition from deteriorating to a degree that he would need inpatient hospitalization; (ii) appropriate outpatient supervision and treatment are reasonably available; (iii) there is significant reason to believe that the acquittee, if conditionally released, would comply with the conditions specified; and (iv) conditional release will not present an undue risk to public safety. The court shall subject a conditionally released acquittee to such orders and conditions it deems will best meet the acquittee's need for treatment and supervision and best serve the interests of justice and society.

The community services board or behavioral health authority as designated by the Commissioner shall implement the court's conditional release orders and shall submit written reports to the court on the acquittee's progress and adjustment in the community no less frequently than every six months. An aquittee's conditional release shall not be revoked solely because of his voluntary admission to a state hospital.

After a finding by the court that the acquittee has violated the conditions of his release but does not require inpatient hospitalization pursuant to § 19.2-182.8, the court may hold the acquittee in contempt of court for violation of the conditional release order.

1991, c. 427; 1999, cc. 700, 746; 2007, cc. 485, 565; 2008, c. 810.

§ 19.2-182.8. Revocation of conditional release

If at any time the court that released an acquittee pursuant to § 19.2-182.7 finds reasonable ground to believe that an acquittee on conditional release (i) has violated the conditions of his release or is no longer a proper subject for conditional release based on application of the criteria for conditional release and (ii) requires inpatient hospitalization, it may order an evaluation of the acquittee by a psychiatrist or clinical psychologist, provided the psychiatrist or clinical psychologist is qualified by training and experience to perform forensic evaluations. If the court, based on the evaluation and after hearing evidence on the issue, finds by a preponderance of the evidence that an acquittee on conditional release (a) has violated the conditions of his release or is no longer a proper subject for conditional release based on application of the criteria for conditional release and (b) has mental illness or intellectual disability and requires inpatient hospitalization, the court may revoke the acquittee's conditional release and order him returned to the custody of the Commissioner.

At any hearing pursuant to this section, the acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. The hearing shall be scheduled on an expedited basis and shall be given priority over other civil matters before the court. Written notice of the hearing shall be provided to the attorney for the Commonwealth for the committing jurisdiction. The hearing is a civil proceeding.

1991, c. 427; 1993, c. 295; 1996, cc. 937, 980; 2006, cc. 343, 369, 370; 2008, c. 810; 2012, cc. 476, 507.

§ 19.2-182.9. Emergency custody of conditionally released acquittee

When exigent circumstances do not permit compliance with revocation procedures set forth in § 19.2-182.8, any district court judge or a special justice, as defined in § 37.2-100, or a magistrate may issue an emergency custody order, upon the sworn petition of any responsible person or upon his own motion based upon probable cause to believe that an acquittee on conditional release (i) has violated the conditions of his release or is no longer a proper subject for conditional release and (ii) requires inpatient hospitalization. The emergency custody order shall require the acquittee within his judicial district to be taken into custody and transported to a convenient location where a person designated by the community services board or behavioral health authority who is skilled in the diagnosis and treatment of mental illness shall evaluate such acquittee and assess his need for inpatient hospitalization. A law-enforcement officer who, based on his observation or the reliable reports of others, has probable cause to believe that any acquittee on conditional release has violated the conditions of his release and is no longer a proper subject for conditional release and requires emergency evaluation to assess the need for inpatient hospitalization, may take the acquittee into custody and transport him to an appropriate location to assess the need for hospitalization without prior judicial authorization. The evaluation shall be conducted immediately. The acquittee shall remain in custody until a temporary detention order is

issued or until he is released, but in no event shall the period of custody exceed eight hours. If it appears from all evidence readily available (a) that the acquittee has violated the conditions of his release or is no longer a proper subject for conditional release and (b) that he requires emergency evaluation to assess the need for inpatient hospitalization, the district court judge or a special justice, as defined in § 37.2-100, or magistrate, upon the advice of such person skilled in the diagnosis and treatment of mental illness, may issue a temporary detention order authorizing the executing officer to place the acquittee in an appropriate institution for a period not to exceed 72 hours prior to a hearing. If the 72-hour period terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the acquittee may be detained until the next day which is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

The committing court or any district court judge or a special justice, as defined in § 37.2-100, shall have jurisdiction to hear the matter. Prior to the hearing, the acquittee shall be examined by a psychiatrist or licensed clinical psychologist, provided the psychiatrist or clinical psychologist is skilled in the diagnosis of mental illness, who shall certify whether the person is in need of hospitalization. At the hearing the acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. Following the hearing, if the court determines, based on a preponderance of the evidence presented at the hearing, that the acquittee (1) has violated the conditions of his release or is no longer a proper subject for conditional release and (2) has mental illness or intellectual disability and is in need of inpatient hospitalization, the court shall revoke the acquittee's conditional release and place him in the custody of the Commissioner.

When an acquittee on conditional release pursuant to this chapter is taken into emergency custody, detained, or hospitalized, such action shall be considered to have been taken pursuant to this section, notwithstanding the fact that his status as an insanity acquittee was not known at the time of custody, detention, or hospitalization. Detention or hospitalization of an acquittee pursuant to provisions of law other than those applicable to insanity acquittees pursuant to this chapter shall not render the detention or hospitalization invalid. If a person's status as an insanity acquittee on conditional release is not recognized at the time of emergency custody or detention, at the time his status as such is verified, the provisions applicable to such persons shall be applied and the court hearing the matter shall notify the committing court of the proceedings.

1991, c. 427; 1993, c. 295; 1996, cc. 937, 980; 2001, c. 837; 2005, c. 716; 2006, cc. 343, 370; 2008, c. 810; 2009, cc. 21, 838; 2012, cc. 476, 507; 2014, cc. 499, 538, 691, 761.

§ 19.2-182.10. Release of person whose conditional release was revoked

If an acquittee is returned to the custody of the Commissioner for inpatient treatment pursuant to revocation proceedings, and his condition improves to the degree that, within 60 days of resumption of custody following the hearing, the acquittee, in the opinion of hospital staff treating the acquittee and the supervising community services board or behavioral health authority, is an

appropriate candidate for conditional release, he may be, with the approval of the court, conditionally released as if revocation had not taken place. If treatment is required for longer than 60 days, the acquittee shall be returned to the custody of the Commissioner for a period of hospitalization and treatment which is governed by the provisions of this chapter applicable to committed acquittees.

1991, c. 427; 1993, c. 295; 2006, cc. 199, 225; 2007, cc. 485, 565.

§ 19.2-182.11. Modification or removal of conditions; notice; objections; review

A. The committing court may modify conditions of release or remove conditions placed on release pursuant to § 19.2-182.7, upon petition of the supervising community services board or behavioral health authority, the attorney for the Commonwealth, or the acquittee or upon its own motion based on reports of the supervising community services board or behavioral health authority. However, the acquittee may petition only annually commencing six months after the conditional release order is issued. Upon petition, the court shall require the supervising community services board or behavioral health authority to provide a report on the acquittee's progress while on conditional release.

B. As it deems appropriate based on the community services board's or behavioral health authority's report and any other evidence provided to it, the court may issue a proposed order for modification or removal of conditions. The court shall provide notice of the order, and their right to object to it within ten days of its issuance, to the acquittee, the supervising community services board or behavioral health authority and the attorney for the Commonwealth for the committing jurisdiction and for the jurisdiction where the acquittee is residing on conditional release. The proposed order shall become final if no objection is filed within ten days of its issuance. If an objection is so filed, the court shall conduct a hearing at which the acquittee, the attorney for the Commonwealth, and the supervising community services board or behavioral health authority have an opportunity to present evidence challenging the proposed order. At the conclusion of the hearing, the court shall issue an order specifying conditions of release or removing existing conditions of release.

1991, c. 427; 2007, cc. 485, 565.

§ 19.2-182.12. Representation of Commonwealth and acquittee

The attorney for the Commonwealth shall represent the Commonwealth in all proceedings held pursuant to this chapter. The court shall appoint counsel for the acquittee unless the acquittee waives his right to counsel. The court shall consider appointment of the person who represented the acquittee at the last proceeding.

1991, c. 427; 1993, c. 295 .

§ 19.2-182.13. Authority of Commissioner; delegation to board; liability

The Commissioner may delegate any of the duties and powers imposed on or granted to him by this chapter to an administrative board composed of persons with demonstrated expertise in such

matters. The Department of Behavioral Health and Developmental Services shall assist the board in its administrative and technical duties. Members of the board shall exercise their powers and duties without compensation and shall be immune from personal liability while acting within the scope of their duties except for intentional misconduct.

1991, c. 427; 2009, cc. 813, 840.

§ 19.2-182.14. Escape of persons placed or committed; penalty

Any person placed in the temporary custody of the Commissioner pursuant to § 19.2-182.2 or committed to the custody of the Commissioner pursuant to § 19.2-182.3 who escapes from such custody shall be guilty of a Class 6 felony.

1993, c. 295 .

§ 19.2-182.15. Escape of persons placed on conditional release; penalty

Any person placed on conditional release pursuant to § 19.2-182.7 who leaves the Commonwealth without permission from the court which conditionally released the person shall be guilty of a Class 6 felony.

1993, c. 295 .

§ 19.2-182.16. Copies of orders to Commissioner

Copies of all orders and notices issued pursuant to this chapter shall be sent to the Commissioner of the Department of Behavioral Health and Developmental Services.

1993, c. 295; 2009, cc. 813, 840.

Chapter 12 - PRELIMINARY HEARING

§ 19.2-183. Examination of witnesses; assistance of counsel; evidentiary matters and remedies; power to adjourn case

A. The judge before whom any person is brought for an offense shall, as soon as may be practical, in the presence of such person, examine on oath the witnesses for and against him. Before conducting the hearing or accepting a waiver of the hearing, the judge shall advise the accused of his right to counsel and, if the accused is indigent and the offense charged be punishable by confinement in jail or the state correctional facility, the judge shall appoint counsel as provided by law.

B. At the hearing the judge shall, in the presence of the accused, hear testimony presented for and against the accused in accordance with the rules of evidence applicable to criminal trials in this Commonwealth. In felony cases, the accused shall not be called upon to plead, but he may cross-examine any witness who testifies on behalf of the Commonwealth or on behalf of any other defendant, introduce witnesses in his own behalf, and testify in his own behalf.

C. A judge may adjourn a trial, pending before him, not exceeding 10 days at one time, without the consent of the accused.

D. At any preliminary hearing under this section, certificates of analysis and reports prepared pursuant to §§ 19.2-187 and 19.2-188 shall be admissible without the testimony of the person preparing such certificate or report.

Code 1950, §§ 19.1-101, 19.1-102; 1960, c. 366; 1968, c. 639; 1973, c. 485; 1975, c. 495; 1982, c. 513; 2010, c. 555.

§ 19.2-183.1. Joint preliminary hearings

Upon motion of the attorney for the Commonwealth, preliminary hearings for persons alleged to have participated in contemporaneous and related acts or occurrences or in a series of such acts or occurrences constituting an offense or offenses may be heard jointly if jurisdiction over each person and offense lies in the same court, unless the court finds that such joint preliminary hearing would constitute prejudice to a defendant. Upon such a finding, the court shall order that the preliminary hearing for that defendant be held separately.

1993, cc. 462, 489 .

§ 19.2-184. Witnesses may be separated (Subsection (a) of Supreme Court Rule 2:615 derived in part from this section)

While a witness is under such examination all other witnesses may by order of the judge be excluded from the place of examination and kept separate from each other.

Code 1950, § 19.1-104; 1960, c. 366; 1968, c. 639; 1975, c. 495.

§ 19.2-185. Testimony may be reduced to writing and subscribed

When the judge deems it proper the testimony of the witnesses may be reduced to writing, and, if required by him, shall be signed by them respectively.

The judge of the court of record to which the case may be or has been certified may order the testimony of the witnesses at the preliminary hearing to be reduced to writing.

Code 1950, § 19.1-105; 1960, c. 366; 1968, c. 639; 1975, c. 495.

§ 19.2-186. When accused to be discharged, tried, committed or bailed by judge

The judge shall discharge the accused if he considers that there is not sufficient cause for charging him with the offense.

If a judge considers that there is sufficient cause only to charge the accused with an offense which the judge has jurisdiction to try, then he shall try the accused for such offense and convict him if he deems him guilty and pass judgment upon him in accordance with law just as if the accused had first been brought before him on a warrant charging him with such offense.

If a judge considers that there is sufficient cause to charge the accused with an offense that he does not have jurisdiction to try then he shall certify the case to the appropriate court having jurisdiction and shall commit the accused to jail or let him to bail pursuant to the provisions of Article 1 (§ 19.2-119 et seq.) of Chapter 9 of this title.

Code 1950, § 19.1-106; 1960, c. 366; 1968, c. 639; 1973, c. 485; 1975, c. 495; 1999, cc. 829, 846.

§ 19.2-187. Admission into evidence of certain certificates of analysis

In any hearing or trial of any criminal offense or in any proceeding brought pursuant to Chapter 22.1 (§ 19.2-386.1 et seq.), a certificate of analysis of a person performing an analysis or examination, duly attested by such person, shall be admissible in evidence as evidence of the facts therein stated and the results of the analysis or examination referred to therein, provided (i) the certificate of analysis is filed with the clerk of the court hearing the case at least seven days prior to the proceeding if the attorney for the Commonwealth intends to offer it into evidence in a preliminary hearing or the accused intends to offer it into evidence in any hearing or trial, or (ii) 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, when any such analysis or examination is performed in any laboratory operated by the Division of Consolidated Laboratory Services or the Department of Forensic Science or authorized by such Department to conduct such analysis or examination, or performed by a person licensed by the Department of Forensic Science pursuant to § 18.2-268.9 or 46.2-341.26:9 to conduct such analysis or examination, or performed by the Federal Bureau of Investigation, the United States Postal Service, the federal Bureau of Alcohol, Tobacco and Firearms, the Naval Criminal Investigative Service, the National Fish and Wildlife Forensics Laboratory, the federal Drug Enforcement Administration, the Forensic Document Laboratory of the U.S. Department of Homeland Security, or the U.S. Secret Service Laboratory.

In a hearing or trial in which the provisions of subsection A of § 19.2-187.1 do not apply, a copy of such certificate shall be mailed or delivered by the clerk or attorney for the Commonwealth to counsel of record for the accused at no charge at least seven days prior to the hearing or trial upon request made by such counsel to the clerk with notice of the request to the attorney for the Commonwealth. The request to the clerk shall be on a form prescribed by the Supreme Court and filed with the clerk at least 10 days prior to the hearing or trial. In the event that a request for a copy of a certificate is filed with the clerk with respect to a case that is not yet before the court, the clerk shall advise the requester that he must resubmit the request at such time as the case is properly before the court in order for such request to be effective. If, upon proper request made by counsel of record for the accused, a copy of such certificate is not mailed or delivered by the clerk or attorney for the Commonwealth to counsel of record for the accused in a timely manner in accordance with this section, the accused shall be entitled to continue the hearing or trial.

The certificate of analysis of any examination conducted by the Department of Forensic Science relating to a controlled substance or marijuana shall be mailed or forwarded by personnel of the Department of Forensic Science to the attorney for the Commonwealth of the jurisdiction where such offense may be heard. The attorney for the Commonwealth shall acknowledge receipt of the certificate on forms provided by the laboratory.

Any such certificate of analysis purporting to be signed, either by hand or by electronic means, by any such person shall be admissible as evidence in such hearing or trial without any proof of the

seal or signature or of the official character of the person whose name is signed to it. The attestation signature of a person performing the analysis or examination may be either hand or electronically signed.

For the purposes of this section and §§ 19.2-187.01, 19.2-187.1, and 19.2-187.2, the term "certificate of analysis" includes reports of analysis and results of laboratory examination.

Code 1950, § 19.1-106.1; 1974, c. 200; 1975, c. 495; 1976, c. 245; 1983, c. 178; 1984, c. 607; 1988, c. 494; 1990, cc. 737, 825; 1992, c. 56; 1994, cc. 41, 375; 1995, c. 437; 1999, c. 296; 2000, c. 336; 2002, c. 832; 2005, cc. 868, 881; 2006, c. 294; 2009, Sp. Sess. I, cc. 1, 4; 2010, c. 656; 2011, cc. 384, 410, 645; 2014, cc. 328, 674, 719; 2015, cc. 75, 126.

§ 19.2-187.01. Certificate of analysis as evidence of chain of custody of material described therein

A report of analysis duly attested by the person performing such analysis or examination in any laboratory operated by (i) the Division of Consolidated Laboratory Services, the Department of Forensic Science or any of its regional laboratories, or by any laboratory authorized by such Division or Department to conduct such analysis or examination; (ii) the Federal Bureau of Investigation; (iii) the federal Bureau of Alcohol, Tobacco and Firearms; (iv) the Naval Criminal Investigative Service; (v) the federal Drug Enforcement Administration; (vi) the United States Postal Service; (vii) the U.S. Secret Service; or (viii) the Forensic Document Laboratory of the U.S. Department of Homeland Security shall be prima facie evidence in a criminal or civil proceeding as to the custody of the material described therein from the time such material is received by an authorized agent of such laboratory until such material is released subsequent to such analysis or examination. Any such certificate of analysis purporting to be signed by any such person shall be admissible as evidence in such hearing or trial without any proof of the seal or signature or of the official character of the person whose name is signed to it. The signature of the person who received the material for the laboratory on the request for laboratory examination form shall be deemed prima facie evidence that the person receiving the material was an authorized agent and that such receipt constitutes proper receipt by the laboratory for purposes of this section.

1979, c. 364; 1989, c. 458; 1990, cc. 548, 825; 1991, c. 687; 1993, c. 32; 1994, c. 375; 1995, c. 437; 2005, cc. 868, 881; 2011, c. 645; 2015, cc. 75, 126.

§ 19.2-187.02. Admissibility of written reports or records of blood alcohol tests conducted in the regular course of providing emergency medical treatment

A. Notwithstanding any other provision of law, the written reports or records of blood alcohol tests conducted upon persons receiving medical treatment in a hospital or emergency room are admissible in evidence as a business records exception to the hearsay rule in prosecutions for any violation of § 18.2-266 (driving while intoxicated) or a substantially similar local ordinance, § 18.2-36.1 (involuntary manslaughter resulting from driving while intoxicated), § 18.2-36.2 (involuntary manslaughter resulting from boating while intoxicated), § 18.2-51.4 (maiming resulting from driving while intoxicated), § 18.2-51.5 (maiming resulting from boating while intoxicated), §

29.1-738 (boating while intoxicated), or § 46.2-341.24 (driving a commercial vehicle while intoxicated).

B. The provisions of law pertaining to confidentiality of medical records and medical treatment shall not be applicable to reports or records of blood alcohol tests sought or admitted as evidence under the provisions of this section in prosecutions as specified in subsection A. Owners or custodians of such reports or records may disclose them, in accordance with regulations concerning patient privacy promulgated by the U.S. Department of Health and Human Services, without obtaining consent or authorization for such disclosure. No person who is involved in taking blood or conducting blood alcohol tests shall be liable for civil damages for breach of confidentiality or unauthorized release of medical records because of the evidentiary use of blood alcohol test results under this section, or as a result of that person's testimony given pursuant to this section.

2002, c. 749; 2005, c. 801; 2007, cc. 379, 679.

§ 19.2-187.1. Procedures for notifying accused of certificate of analysis; waiver; continuances

A. In any trial and in any hearing other than a preliminary hearing, in which the attorney for the Commonwealth intends to offer a certificate of analysis into evidence in lieu of testimony pursuant to § 19.2-187, the attorney for the Commonwealth shall:

1. Provide by mail, delivery, or otherwise, a copy of the certificate 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 certificate so provided under subdivision 1 a notice to the accused of his right to object to having the certificate admitted without the person who performed the analysis or examination being present and testifying;

2a. When the attorney for the Commonwealth intends to present such testimony through two-way video conferencing, attach to the copy of the certificate provided under subdivision 1 a notice on a page separate from the notice in subdivision 2 specifying that the person who performed the analysis or examination may testify by two-way video conferencing and that the accused has a right to object to such two-way video testimony; and

3. File a copy of the certificate and notice with the clerk of the court hearing the matter (i) on the day that the certificate and notice are provided to the accused or (ii) in the case of a breath test certificate for a violation of any offense listed in subsection E of § 18.2-270, no later than three business days following the day that the certificate and notice are provided to the accused.

B. The accused may object in writing to admission of the certificate of analysis, in lieu of testimony, as evidence of the facts stated therein and of the results of the analysis or examination. 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 certificate 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 certificate shall not be admissible into evidence unless (i) the testimony of the person who performed the analysis or examination is admitted into evidence describing the facts and results of the analysis or examination during the Commonwealth's case-in-chief at the hearing or trial and that person is present and subject to cross-examination by the accused, (ii) the objection is waived by the accused or his counsel in writing or before the court, or (iii) the parties stipulate before the court to the admissibility of the certificate. If the accused demands, at hearing or trial, the presence of the person who performed the analysis or examination and he is thereafter found guilty of the charge or charges for which he demanded the presence of such witness, $50 for expenses related to the witness's appearance at hearing or trial shall be charged to the accused as court costs.

B1. When the attorney for the Commonwealth gives notice to the accused of intent to present testimony by two-way video conferencing, the accused may object in writing to the admission of such testimony and may file an objection as provided in subsection B. The provisions of subsection B shall apply to such objection mutatis mutandis.

B2. The two-way video testimony permitted by this section shall comply with the provisions of subsection B of § 19.2-3.1. In addition, unless otherwise agreed by the parties and the court, (i) all orders pertaining to witnesses apply to witnesses testifying by video conferencing; (ii) upon request, all materials read or used by the witness during his testimony shall be identified on the video; and (iii) any witness testifying by video conferencing shall certify at the conclusion of his testimony, under penalty of perjury, that he did not engage in any off-camera communications with any person during his testimony.

C. Where the person who performed the analysis and examination 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.

D. 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 A 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 A, 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 C.

E. Nothing in this section shall prohibit the admissibility of a certificate of analysis when the person who performed the analysis and examination testifies at trial or the hearing concerning the facts stated therein and of the results of the analysis or examination.

F. The accused in any hearing or trial in which a certificate of analysis is offered into evidence shall have the right to call the person performing such analysis or examination or involved in the chain of custody as a witness therein, and examine him in the same manner as if he had been called as an adverse witness. Such witness shall be summoned and appear at the cost of the Commonwealth; however, if the accused calls the person performing such analysis or examination as a witness and is found guilty of the charge or charges for which such witness is summoned, $50 for expenses related to that witness's appearance at hearing or trial shall be charged to the accused as court costs.

1976, c. 245; 1979, c. 364; 2009, Sp. Sess. I, cc. 1, 4; 2010, cc. 555, 656, 800; 2011, c. 32.

§ 19.2-187.2. Procedure for subpoena duces tecum of analysis evidence

No subpoena duces tecum shall issue for the production of writings or documents used to reach the conclusion contained in a certificate of analysis prepared pursuant to § 19.2-187 except upon affidavit that the requested writings or documents are material. Upon a showing by the Commonwealth that the production of such writings and documents would place an undue burden on the Department of Forensic Science, the court may order that the subpoena duces tecum be satisfied by making the writings and documents available for inspection by the requesting party at the laboratory site where the analysis was performed or at the laboratory operated by the Department of Forensic Science which is closest to the court in which the case is pending.

1993, c. 629; 2005, cc. 868, 881.

§ 19.2-188. Reports by Chief Medical Examiner received as evidence

A. Reports of investigations made by the Chief Medical Examiner, his assistants or medical examiners, and the records and certified reports of autopsies made under the authority of Title 32.1, shall be received as evidence in any court or other proceeding, and copies of photographs, laboratory findings and reports in the office of the Chief Medical Examiner or any medical examiner, when duly attested by the Chief Medical Examiner or one of his Assistant Chief Medical Examiners, shall be received as evidence in any court or other proceeding for any purpose for which the original could be received without proof of the official character or the person whose name is signed thereto.

B. Any statement of fact or of opinion in such reports and records concerning the physical or medical cause of death and not alleging any conduct by the accused shall be admissible as competent evidence of the cause of death in any preliminary hearing.

Code 1950, § 19.1-45; 1960, c. 366; 1975, c. 495; 2003, c. 459; 2009, c. 640.

§ 19.2-188.1. Testimony regarding identification of controlled substances

A. In any preliminary hearing on a violation of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or a violation of subdivision 6 of § 53.1-203, any law-enforcement officer shall be permitted to testify as to the results of field tests that have been approved by the Department of Forensic Science pursuant to regulations adopted in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), regarding whether or not any substance the identity of which is at issue in such hearing is a controlled substance, imitation controlled substance, or marijuana, as defined in § 18.2-247.

B. In any trial for a violation of § 18.2-250.1, any law-enforcement officer shall be permitted to testify as to the results of any marijuana field test approved as accurate and reliable by the Department of Forensic Science pursuant to regulations adopted in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), regarding whether or not any plant material, the identity of which is at issue, is marijuana provided the defendant has been given written notice of his right to request a full chemical analysis. Such notice shall be on a form approved by the Supreme Court and shall be provided to the defendant prior to trial.

In any case in which the person accused of a violation of § 18.2-250.1, or the attorney of record for the accused, desires a full chemical analysis of the alleged plant material, he may, by motion prior to trial before the court in which the charge is pending, request such a chemical analysis. Upon such motion, the court shall order that the analysis be performed by the Department of Forensic Science and shall prescribe in its order the method of custody, transfer, and return of evidence submitted for chemical analysis.

1991, c. 477; 1993, c. 33; 2005, cc. 868, 881; 2006, c. 447; 2013, c. 60.

§ 19.2-188.2. Certificate of surgeon as evidence

A. In any criminal proceeding, the certificate of a duly qualified surgeon stating that he has removed organs or other body parts from a decedent for transplant in accordance with Chapter 8 (§ 32.1-277 et seq.) of Title 32.1, shall be admissible in evidence as evidence of the facts stated therein. The certificate shall be competent evidence to show that such organs or body parts were functional at the time of recovery and not affected by any injury or illness that caused the decedent's death.

B. A copy of the certificate shall be filed with the attorney for the Commonwealth in the jurisdiction in which the decedent's fatal injury occurred. The certificate shall not be admitted into evidence unless the attorney for the Commonwealth has provided a copy of the certificate to counsel for the defendant at least fourteen days prior to the proceeding in which it is to be offered into evidence.

C. Any such certificate, when properly notarized, purporting to be signed by the surgeon who removed the organs or other body parts shall be admissible in evidence without proof of seal or signature of the person whose name is signed to it. In any hearing or trial the accused shall have the

right to call the person signing the certificate and the provisions of § 19.2-187.1 shall apply, mutatis mutandis.

1997, c. 557.

§ 19.2-188.3. Admissibility of affidavits by government officials regarding a search of government records (Subdivision (10)(b) of Supreme Court Rule 2:803 derived from this section)

In any hearing or trial, an affidavit signed by a government official who is competent to testify, deemed to have custody of an official record, or signed by his designee, stating that after a diligent search, no record or entry of such record is found to exist among the records in his custody, is admissible as evidence that his office has no such record or entry, provided that, if the hearing or trial is a proceeding other than a preliminary hearing, the procedures set forth in subsection G of § 18.2-472.1 for admission of an affidavit have been satisfied, mutatis mutandis, and the accused has not objected to the admission of the affidavit pursuant to the procedures set forth in subsection H of § 18.2-472.1, mutatis mutandis. Nothing in this section shall be construed to affect the admissibility of affidavits in civil cases under § 8.01-390.

2010, c. 464; 2011, c. 285.

§ 19.2-189. Commitment of accused for further examination

If the accused be committed, it shall be by an order of the judge stating that he is committed for further examination on a day specified in the order. And on that day he may be brought before such judge by his verbal order to the officer by whom he was committed, or by a written order to a different person.

Code 1950, § 19.1-107; 1960, c. 366; 1968, c. 639; 1975, c. 495.

§ 19.2-190. To whom, and when, examination and recognizance to be certified

Every examination and recognizance for a felony taken under this chapter, shall, by the person taking it, be certified to the clerk of the circuit court of the county or city in which the party charged is to be tried, or the witness is to appear, on or before the first day of its next term. If he fails he may be compelled to do so by attachment as for a contempt.

Code 1950, § 19.1-108; 1960, c. 366; 1975, c. 495.

§ 19.2-190.1. Certification of ancillary misdemeanor offenses

Upon certification of any felony offense pursuant to this chapter, the court shall also certify any ancillary misdemeanor offense to the clerk of the circuit court provided that the attorney for the Commonwealth and the accused consent to such certification. Any misdemeanor offense certified pursuant to this section shall proceed in the same manner as a misdemeanor appealed to circuit court pursuant to § 16.1-136.

2015, c. 548.

Chapter 13 - GRAND JURIES

Article 1 - IN GENERAL

§ 19.2-191. Functions of a grand jury

The functions of a grand jury are twofold:

(1) To consider bills of indictment prepared by the attorney for the Commonwealth and to determine whether as to each such bill there is sufficient probable cause to return such indictment "a true bill."

(2) To investigate and report on any condition that involves or tends to promote criminal activity, either in the community or by any governmental authority, agency or official thereof. These functions may be exercised by either a special grand jury or a regular grand jury as hereinafter provided.

1975, c. 495; 1980, c. 517; 2001, c. 4.

§ 19.2-192. Secrecy in grand jury proceedings

Except as otherwise provided in this chapter, every attorney for the Commonwealth, special counsel, sworn investigator, and member of a regular, special, or multi-jurisdiction grand jury shall keep secret all proceedings which occurred during sessions of the grand jury; provided, however, in a prosecution for perjury of a witness examined before a regular grand jury, a regular grand juror may be required by the court to testify as to the testimony given by such witness before the regular grand jury.

1975, c. 495; 2014, c. 389.

§ 19.2-192.1. Sealing of indictment

Upon ex parte motion by the Commonwealth and for good cause shown, the circuit court may seal an indictment until such time as the defendant is arrested.

2002, c. 130.

Article 2 - REGULAR GRAND JURIES

§ 19.2-193. Number of regular grand juries

There shall be a regular grand jury at each term of the circuit court of each county and city, unless the court, on the motion of the attorney for the Commonwealth or with his concurrence, finds that it is unnecessary or impractical to impanel a grand jury for the particular term and enters an order to that effect.

Whenever the number of cases to be considered by the grand jury at a given term is so great as to hamper the intelligent consideration thereof by a single grand jury, the court may order two or more regular grand juries to be impanelled to sit separately at the same or a different time during the term.

Whenever a regular grand jury has been discharged, the court, during the term, may impanel another regular grand jury.

Code 1950, § 19.1-147; 1960, c. 366; 1975, c. 495.

§ 19.2-194. When and how grand jurors to be selected and summoned; lists to be delivered to clerk

The judge or judges regularly presiding in the circuit court of each county and city shall annually, in the month of June, July, or August, select from citizens of the county or city at least 60 persons and not more than 120 persons 18 years of age or over, of honesty, intelligence, impartiality, and good demeanor and suitable in all respects to serve as grand jurors, who, except as hereinafter provided, shall be the grand jurors for the county or city from which they are selected for the next 12 months. The judge or judges making the selection shall at once furnish to the clerk of the circuit court a list of those selected for that county or city.

The clerk, not more than 20 days before the commencement of each term of his court at which a regular grand jury is required, shall issue a venire facias to the sheriff of his county or city, commanding him to summon not less than five nor more than nine of the persons selected as aforesaid (the number to be designated by the judge of the court by an order entered of record) to be named in the writ to appear on the first day of the court to serve as grand jurors. Those persons who are to be summoned shall be randomly selected but no such person shall be required to appear more than once until all the others have been summoned once, nor more than twice until the others have been twice summoned, and so on. The Circuit Court of James City County, or the judge thereof in vacation, shall select the grand jurors for each court from such county and the City of Williamsburg in such proportion from each as he may think proper.

Any person who has legal custody of and is responsible for a child 16 years of age or younger or a person having a mental or physical impairment requiring continuous care during normal court hours shall be excused from jury service upon his request.

Code 1950, § 19.1-148; 1960, c. 366; 1971, Ex. Sess., c. 262; 1973, cc. 401, 439; 1974, c. 618; 1975, c. 495; 1991, c. 226; 2003, c. 825; 2004, c. 306; 2008, c. 644.

§ 19.2-195. Number and qualifications of grand jurors

A regular grand jury shall consist of not less than five nor more than seven persons. Each grand juror shall be a citizen of this Commonwealth, eighteen years of age or over, and shall have been a resident of this Commonwealth one year and of the county or corporation in which the court is to be held six months, and in other respects a qualified juror, and, when the grand juror is for a circuit court of a county, not an inhabitant of a city, except in those cases in which the circuit court of the county has jurisdiction in the city.

Code 1950, § 19.1-150; 1960, c. 366; 1973, c. 439; 1974, c. 617; 1975, c. 495; 1991, c. 226 .

§ 19.2-196. How deficiency of jurors supplied

If a sufficient number of grand jurors do not appear, the court may order the deficiency to be supplied from the bystanders or from a list furnished by the judge to the sheriff or sergeant.

Code 1950, § 19.1-151; 1960, c. 366; 1975, c. 495.

§ 19.2-197. Foreman of grand jury; oaths of jurors and witnesses

From among the persons summoned who attend the court shall select a foreman who shall be sworn as follows: "You shall diligently inquire, and true presentment make, of all such matters as may be given you in charge, or come to your knowledge, touching the present service. You shall present no person through prejudice or ill-will, nor leave any unpresented through fear or favor, but in all your presentments you shall present the truth, the whole truth, and nothing but the truth. So help you God." The other grand jurors shall afterwards be sworn as follows: "The same oath that your foreman has taken on his part, you and each of you shall observe and keep on your part. So help you God." Any witness testifying before the grand jury may be sworn by the foreman.

Code 1950, § 19.1-152; 1960, c. 366; 1975, c. 495.

§ 19.2-198. When new foreman or juror may be sworn in

If the foreman or any grand juror, at any time after being sworn, fail or be unable to attend another may be sworn in his stead.

Code 1950, § 19.1-153; 1960, c. 366; 1975, c. 495.

§ 19.2-199. Judge to charge grand jury

The grand jury, after being sworn, shall be charged by the judge of the court and shall then be sent to their room. In the charge given by the court to a regular grand jury, the court shall instruct it to advise the court after their considerations of the bills of indictment whether it desires to be impanelled as a special grand jury to consider any matters provided for in subdivision (2) of § 19.2-191.

Code 1950, § 19.1-154; 1960, cc. 366, 467; 1975, c. 495.

§ 19.2-200. Duties of grand jury

The grand jury shall inquire of and present all felonies, misdemeanors and violations of penal laws committed within the jurisdiction of the respective courts wherein it is sworn; except that no presentment shall be made of a matter for which there is no corporal punishment, but only a fine, where the fine is limited to an amount not exceeding five dollars. After a regular grand jury has concluded its deliberation on bills of indictment and made its return thereon, the court shall inquire of it whether it recommends that a special grand jury be impanelled to perform any of the functions provided for in subdivision (2) of § 19.2-191. If a majority of the grand jurors responds in the affirmative, the court shall impanel so many of that jury as answer in the affirmative and are also willing to serve thereon, plus any additional members as may be necessary to complete the panel, as a special grand jury and if a minority of the grand jurors responds in the affirmative, the court may impanel a special grand jury in the same manner.

Code 1950, § 19.1-155; 1960, c. 366; 1975, c. 495; 1978, c. 741; 1980, c. 134.

§ 19.2-201. Officers to give information of violation of penal laws to attorney for Commonwealth

Every commissioner of the revenue, sheriff, constable or other officer shall promptly give information of the violation of any penal law to the attorney for the Commonwealth, who shall forthwith institute and prosecute all necessary and proper proceedings in such case, whether in the name of the Commonwealth or of a county or corporation, and may in such case issue or cause to be issued a summons for any witnesses he may deem material to give evidence before the court or grand jury. Except as otherwise provided in this chapter, no attorney for the Commonwealth shall go before any grand jury except when duly sworn to testify as a witness, but he may advise the foreman of a regular grand jury or any member or members thereof in relation to the discharge of their duties.

Code 1950, § 19.1-156; 1960, c. 366; 1975, c. 495.

§ 19.2-202. How indictments found and presentment made

At least four of a regular grand jury must concur in finding or making an indictment or presentment. It may make a presentment or find an indictment upon the information of two or more of its own body, or on the testimony of witnesses called on by the grand jury, or sent to it by the court. If only one of their number can testify as to an offense, he shall be sworn as any other witness. When a presentment or indictment is so made or found, the names of the grand jurors giving the information, or of the witnesses, shall be written at the foot of the presentment or indictment.

Code 1950, § 19.1-157; 1960, c. 366; 1975, c. 495.

§ 19.2-203. Indictments ignored may be sent to another grand jury; what irregularities not to vitiate indictment, etc

Although a bill of indictment be returned not a true bill the same or another bill of indictment against the same person for the same offense may be sent to, and acted on, by the same or another grand jury. No irregularity in the time or manner of selecting the jurors, or in the writ of venire facias, or in the manner of executing the same, shall vitiate any presentment, indictment or finding of a grand jury.

Code 1950, § 19.1-158; 1960, c. 366; 1975, c. 495.

§ 19.2-204. Penalties on officers and jurors for failure of duty

A court whose officer fails without good cause, when it is his duty, to summon a grand jury and return a list of its names shall fine him twenty dollars. A person summoned and failing to attend a court as a grand juror shall be fined by the court not less than five dollars nor more than twenty dollars, unless, after being summoned to show cause against the fine, he gives a reasonable excuse for his failure.

Code 1950, § 19.1-159; 1960, c. 366; 1975, c. 495.

§ 19.2-205. Pay and mileage of grand jurors

Every person who serves upon a grand jury, regular or special, shall receive the same compensation and mileage allowed jurors in civil cases by § 17.1-618 and the same shall be paid out of the county or corporation levy.

Code 1950, § 19.1-160; 1960, c. 366; 1974, c. 207; 1975, c. 495.

Article 3 - SPECIAL GRAND JURIES

§ 19.2-206. When impanelled

A. Special grand juries may be impanelled by a circuit court (i) at any time upon its own motion, (ii) upon recommendation of a minority of the members of a regular grand jury that a special grand jury be impanelled, to perform the functions provided for in subdivision (2) of § 19.2-191, or (iii) upon request of the attorney for the Commonwealth to investigate and report on any condition that involves or tends to promote criminal activity and consider bills of indictment to determine whether there is sufficient probable cause to return each such indictment as a "true bill."

B. A special grand jury shall be impanelled by a circuit court upon the recommendation of a majority of the members of a regular grand jury if the court finds probable cause to believe that a crime has been committed which should be investigated by a special grand jury impanelled to perform the functions provided for in subdivision (2) of § 19.2-191.

Code 1950, § 19.1-149; 1960, c. 366; 1975, c. 495; 1978, c. 741; 1980, c. 134; 1987, c. 136; 2001, c. 4.

§ 19.2-207. Composition of a special grand jury

Special grand juries shall consist of not less than seven and not more than 11 members, and shall be summoned from a list prepared by the court. Members of a special grand jury shall possess the same qualifications as those prescribed for members of a regular grand jury, including indifferent in the cause to be conducted by the special grand jury. In order to determine a potential juror's qualifications, the presiding judge shall examine each juror individually and under oath. He shall then certify in writing and not under seal that he has examined the members of the special grand jury and has found that they are qualified and are impartial and disinterested in the subject matter and outcome of the investigation. The examination shall be recorded by a court reporter and conducted pursuant to the requirements of secrecy provided for in this chapter. The court shall appoint one of the members as foreman.

1975, c. 495; 2008, c. 644.

§ 19.2-208. Subpoena power of special grand jury

The special grand jury may subpoena persons to appear before it to testify and to produce specified records, papers, and documents or other tangible things, but before any witness testifies, he shall be warned by the foreman that he need not answer any questions or produce any evidence that would tend to incriminate him, and that the witness may have counsel of his own

procurement present when he appears to testify, and at the same time the foreman also shall warn each witness that he may later be called upon to testify in any case that might grow out of the investigation and report of the special grand jury.

A witness who has been called to testify or produce specified records, papers and documents or other tangible things before a grand jury requested by the attorney for the Commonwealth, and who refuses to testify or produce specified records, papers and documents or other tangible things by expressly invoking his right not to incriminate himself, may be compelled to testify or produce specified records, papers and documents or other tangible things by the presiding judge. Such witness who refuses to testify or produce specified records, papers and documents or other tangible things after being ordered to do so by the presiding judge may be held in contempt and may be incarcerated until the contempt is purged by compliance with the order or the grand jury is discharged. When a witness is compelled to testify or produce specified records, papers and documents or other tangible things after expressly invoking his right not to incriminate himself, and the presiding judge has determined that the assertion of the right is bona fide, the compelled testimony, or any information directly or indirectly derived from such testimony or other information, shall not be used against the witness in any criminal proceeding except a prosecution for perjury.

Notwithstanding the provisions of this section, all provisions of this Code relative to immunity granted to witnesses who testify before a grand jury shall remain applicable.

The foreman shall administer the oath prescribed by law for witnesses, and any member of the special grand jury may examine a witness.

1975, c. 495; 2001, c. 4; 2003, c. 565.

§ 19.2-209. Presence of counsel for a witness

Any witness appearing before a special grand jury shall have the right to have counsel of his own procurement present when he testifies. Such counsel shall have the right to consult with and advise the witness during his examination, but shall not have the right to conduct an examination of his own of the witness.

1975, c. 495.

§ 19.2-210. Presence of attorney for the Commonwealth

The attorney for the Commonwealth shall not be present at any time while the special grand jury is in session except that during the investigatory stage of its proceedings he may be present. When the special grand jury is impanelled upon motion of the court or recommendation of a regular grand jury, he may be present during the investigatory stage only when his presence is requested by the special grand jury and may interrogate witnesses provided the special grand jury requests or consents to such interrogation. When the special grand jury was impanelled upon his request, he may examine any witness called to testify or produce evidence, but his examination of a witness shall in no way affect the right of any grand juror to examine the witness.

The attorney for the Commonwealth shall not be present during or after the investigative stage of the proceedings at any time while the special grand jury is discussing, evaluating or considering the testimony of a witness or is deliberating in order to reach decisions or prepare its report, except that he may be present when his legal advice is requested by the special grand jury.

1975, c. 495; 2001, c. 4.

§ 19.2-211. Provision for special counsel and other personnel

At the request of the special grand jury, the court may designate special counsel to assist it in its work, and may also provide it with appropriate specialized personnel for investigative purposes.

1975, c. 495.

§ 19.2-212. Provision for court reporter; use and disposition of notes, tapes and transcriptions

A. A court reporter shall be provided for a special grand jury to record, manually or electronically, and transcribe all oral testimony taken before a special grand jury, but such reporter shall not be present during any stage of its deliberations. The notes, tapes and transcriptions of the reporter are for the sole use of the special grand jury, and the contents thereof shall not be divulged by anyone except as hereinafter provided. After the special grand jury has completed its use of the notes, tapes and transcriptions, the foreman shall cause them to be sealed, the container dated, and delivered to the court.

The court shall cause the sealed container to be kept safely. If any witness testifying before the special grand jury is prosecuted subsequently for perjury, the court, on motion of either the attorney for the Commonwealth or the defendant, shall permit them both to have access to the testimony given by the defendant when a witness before the special grand jury, and the testimony shall be admissible in the perjury case.

If no prosecution for perjury is instituted within three years from the date of the report of the special grand jury, the court shall cause the sealed container to be destroyed; however, on motion of the attorney for the Commonwealth, the court may extend the time period for destruction if the grand jury was impanelled at the request of the attorney for the Commonwealth.

B. Upon motion to the presiding judge, the attorney for the Commonwealth shall be permitted to review any evidence that was presented to the special grand jury, and shall be permitted to make notes and to duplicate portions of the evidence as he deems necessary for use in a criminal investigation or proceeding. The attorney for the Commonwealth shall maintain the secrecy of all information obtained from a review or duplication of the evidence presented to the special grand jury. Upon motion to the presiding judge by a person indicted after a special grand jury investigation, similar permission to review, note or duplicate evidence shall be extended if it appears that the permission is consistent with the ends of justice and is necessary to reasonably inform such person of the nature of the evidence to be presented against him, or to adequately prepare his defense.

1975, c. 495; 2001, c. 4; 2003, c. 96; 2008, c. 644.

§ 19.2-213. Report by special grand jury; return of true bill

At the conclusion of its investigation and deliberation, a special grand jury impanelled by the court on its own motion or on recommendation of a regular grand jury shall file a report of its findings with the court, including therein any recommendations that it may deem appropriate, after which it shall be discharged. Such report shall be sealed and not open to public inspection, other than by order of the court.

A majority, but not less than five, of the members of a special grand jury convened upon request of the attorney for the Commonwealth must concur in order to return a "true bill" of indictment. A "true bill" may be returned upon the testimony of, or evidence produced by, any witness who was called by the grand jury, upon evidence presented or sent to it.

1975, c. 495; 1978, c. 638; 2001, c. 4.

§ 19.2-213.1. Discharge of special grand jury

If a special grand jury has not filed a report pursuant to § 19.2-213 within six months of its impanelling, the circuit court appointing it shall discharge it; provided, however, if such court, in its discretion, determines that the special grand jury is making progress in its investigation, the court may direct that special grand jury to continue its investigation pursuant to this article.

1978, c. 638.

§ 19.2-214. Prosecutions resulting from report

Any bill of indictment for alleged criminal offenses, which may follow as a result of the report of the special grand jury, shall be prepared by the attorney for the Commonwealth for presentation to a regular grand jury.

1975, c. 495.

§ 19.2-215. Costs of special grand jury

All costs incurred for services provided by the court for a special grand jury shall be paid by the Commonwealth.

1975, c. 495.

Article 4 - MULTI-JURISDICTION GRAND JURIES

§ 19.2-215.1. Functions of a multijurisdiction grand jury

The functions of a multijurisdiction grand jury are:

1. To investigate any condition that involves or tends to promote criminal violations of:

a. Title 10.1 for which punishment as a felony is authorized;

b. § 13.1-520;

c. §§ 18.2-47 and 18.2-48;

d. §§ 18.2-111 and 18.2-112;

e. Article 6 (§ 18.2-59 et seq.) of Chapter 4 of Title 18.2;

f. Article 7.1 (§ 18.2-152.1 et seq.) of Chapter 5 of Title 18.2;

g. Article 1 (§ 18.2-247 et seq.) and Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2;

h. Article 1 (§ 18.2-325 et seq.) and Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 or any other provision prohibiting, limiting, regulating, or otherwise affecting gaming or gambling activity;

i. § 18.2-434, when violations occur before a multijurisdiction grand jury;

j. Article 2 (§ 18.2-438 et seq.) and Article 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2;

k. § 18.2-460 for which punishment as a felony is authorized;

l. Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12 of Title 18.2;

m. Article 1 (§ 32.1-310 et seq.) of Chapter 9 of Title 32.1;

n. Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1;

o. Article 9 (§ 3.2-6570 et seq.) of Chapter 65 of Title 3.2;

p. Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;

q. Article 2.1 (§ 18.2-46.1 et seq.) and Article 2.2 (§ 18.2-46.4 et seq.) of Chapter 4 of Title 18.2;

r. Article 5 (§ 18.2-186 et seq.) and Article 6 (§ 18.2-191 et seq.) of Chapter 6 of Title 18.2;

s. Chapter 6.1 (§ 59.1-92.1 et seq.) of Title 59.1;

t. § 18.2-178 where the violation involves insurance fraud;

u. § 18.2-346 for which punishment as a felony is authorized or § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1;

v. Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of Title 18.2;

w. Article 2 (§ 18.2-38 et seq.) of Chapter 4 of Title 18.2;

x. Malicious felonious assault and malicious bodily wounding under Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2;

y. Article 5 (§ 18.2-58 et seq.) of Chapter 4 of Title 18.2;

z. Felonious sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

aa. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony violation of § 18.2-79;

bb. Chapter 13 (§ 18.2-512 et seq.) of Title 18.2;

cc. § 18.2-246.14 and Chapter 10 (§ 58.1-1000 et seq.) of Title 58.1; and

dd. Any other provision of law when such condition is discovered in the course of an investigation that a multijurisdiction grand jury is otherwise authorized to undertake and to investigate any condition that involves or tends to promote any attempt, solicitation or conspiracy to violate the laws enumerated in this section.

2. To report evidence of any criminal offense enumerated in subdivision 1 and for which a court reporter has recorded all oral testimony as provided by § 19.2-215.9 to the attorney for the Commonwealth or United States attorney of any jurisdiction where such offense could be prosecuted or investigated, or to the chief law-enforcement officer of any jurisdiction where such offense could be prosecuted or investigated, or to a sworn investigator designated pursuant to § 19.2-215.6, or, when appropriate, to the Attorney General.

3. To consider bills of indictment prepared by a special counsel to determine whether there is sufficient probable cause to return each such indictment as a "true bill." Only bills of indictment which allege an offense enumerated in subdivision 1 may be submitted to a multijurisdiction grand jury.

4. The provisions of this section shall not abrogate the authority of an attorney for the Commonwealth in a particular jurisdiction to determine the course of a prosecution in that jurisdiction.

1983, c. 543; 1991, c. 616; 1995, c. 552; 2000, c. 359; 2002, cc. 588, 623; 2004, cc. 396, 435; 2008, c. 704; 2009, c. 491; 2011, c. 504; 2013, cc. 83, 314, 459; 2014, cc. 389, 422, 534; 2015, cc. 690, 691.

§ 19.2-215.2. Application for such grand jury

Provided the Attorney General has approved the application in writing prior to submission, application for a multi-jurisdiction grand jury may be made to the Supreme Court of Virginia by two or more attorneys for the Commonwealth from jurisdictions which would be within the original scope of the investigation. The application shall be in writing and shall state (i) which jurisdictions will be involved in the original scope of the investigation, (ii) in which jurisdiction it is requested that the multi-jurisdiction grand jury be convened, (iii) the name or names of the attorneys for the Commonwealth or their assistants who will serve as special counsel to the grand jury, (iv) the name of the attorney who shall direct the grand jury proceedings. The presiding judge may extend or limit the jurisdictional territory of the investigation, for good cause shown, upon the motion of a grand jury already convened. Notice of every such application shall be given to the attorneys for the Commonwealth in the jurisdictions named in the application and, if the original scope of the investigation is extended into other jurisdictions, notice of such extension shall be given to the attorneys for the Commonwealth in the jurisdictions into which the investigation is extended.

1983, c. 543.

§ 19.2-215.3. When impaneled; impaneling order

Upon application by two or more attorneys for the Commonwealth, the Chief Justice of the Supreme Court, or any justice designated by the Chief Justice, may within twenty days thereafter order the impaneling of a multi-jurisdiction grand jury for a term of twelve months. The term of such a grand jury may be extended for successive periods of not more than six months by the Chief Justice, or by any justice designated by the Chief Justice, upon the petition of a majority of the members of the grand jury.

The impaneling order shall designate the jurisdiction requested on the application as the jurisdiction where the multi-jurisdiction grand jury shall be convened and shall, unless all judges of that circuit have recused themselves, appoint a judge of the circuit court of that jurisdiction as the presiding judge. The impaneling order shall also designate special counsel and each special counsel who will assist the multi-jurisdiction grand jury as listed in the application. The presiding judge shall substitute or appoint additional special counsel upon motion of special counsel.

1983, c. 543; 2010, c. 438.

§ 19.2-215.4. Number and qualifications of jurors; grand jury list; when convened; compensation of jurors

A. A multi-jurisdiction grand jury shall consist of not less than seven nor more than 11 members. Each member of a multi-jurisdiction grand jury shall be a citizen of this Commonwealth, 18 years of age or older, and a resident of this Commonwealth for one year and of one of the jurisdictions named in the application for six months.

B. The presiding judge shall determine the number of grand jurors to be drawn and shall draw them so that, to the extent practicable, each of the jurisdictions named in the application is represented by at least one juror residing in that jurisdiction, but in no event shall said panel have more than 11 members. The grand jurors shall be summoned from a list prepared by the presiding judge. In the preparation of this list, the presiding judge shall select only persons who have been selected as regular grand jurors pursuant to the provisions of § 19.2-194 in the jurisdiction named in the application. Members of a multi-jurisdiction grand jury shall possess the same qualifications as those prescribed for members of a regular grand jury, including indifference in the cause.

C. The provisions of § 19.2-192 dealing with secrecy in grand jury proceedings are incorporated herein by reference.

D. The presiding judge shall determine the time, date and place within the designated jurisdiction where the multi-jurisdiction grand jury is to be convened. The presiding judge shall also appoint one of the grand jurors to serve as foreman. Members of the multi-jurisdiction grand jury shall be compensated according to the provisions of § 19.2-205. The expense of a multi-jurisdiction grand jury shall be borne by the Commonwealth.

1983, c. 543; 2008, c. 644.

§ 19.2-215.5. Subpoena power; counsel for witness; oath

A multi-jurisdiction grand jury has statewide subpoena power and, through special counsel, may subpoena persons to appear before it to testify and may subpoena the production of evidence, with or without the custodian of records at the election of special counsel, in the form of specified records, papers, documents, or other tangible things. Such subpoenas shall be returnable for a specific meeting of the multi-jurisdiction grand jury. Mileage and such other reasonable expenses as are approved by the presiding judge shall be paid such persons from funds appropriated for such purpose.

A witness before a multi-jurisdiction grand jury shall be entitled to the presence of counsel in the grand jury room, but he may not participate in the proceedings.

The foreman shall administer the oath required by law for witnesses.

1983, c. 543; 2014, c. 389.

§ 19.2-215.6. Role and presence of special counsel; examination of witnesses; sworn investigators

Special counsel may be present during the investigatory stage of a multi-jurisdiction grand jury proceeding and may examine any witness who is called to testify or produce evidence. The examination of a witness by special counsel shall in no way affect the right of any grand juror to examine the witness.

At the request of special counsel, the presiding judge shall designate specialized personnel for investigative purposes. Such personnel shall be designated as a sworn investigator and shall be administered an oath to maintain the secrecy of all proceedings of the multi-jurisdiction grand jury. A sworn investigator is permitted to discuss multi-jurisdiction grand jury proceedings with any other sworn investigator or special counsel and may participate in multi-jurisdiction grand jury proceedings at the request of special counsel or the grand jury. Any specialized personnel who have been administered an oath to maintain the secrecy of all proceedings of the multi-jurisdiction grand jury before July 1, 2014, and who continue to serve in that position are deemed to be sworn investigators under this section.

Special counsel and sworn investigators, however, may not be present at any time during the deliberations of a multi-jurisdiction grand jury except when the grand jury requests the legal advice of special counsel as to specific questions of law.

1983, c. 543; 2014, c. 389.

§ 19.2-215.7. Warnings given to witnesses; when witness in contempt; use of testimony compelled after witness invokes right against self-incrimination

A. Every witness testifying before a multi-jurisdiction grand jury shall be warned by special counsel or by the foreman of the grand jury that he need not answer any question that would tend to incriminate him, and that he may later be called upon to testify in any case that may result from the grand jury proceedings.

B. A witness who has been called to testify or produce evidence before a multi-jurisdiction grand jury, and who refuses to testify or produce evidence by expressly invoking his right not to incriminate himself, may be compelled to testify or produce evidence by the presiding judge. A witness who refuses to testify or produce evidence after being ordered to do so by the presiding judge may be held in contempt and may be incarcerated until the contempt is purged by compliance with the order.

C. When a witness is compelled to testify or produce evidence after expressly invoking his right not to incriminate himself, and the presiding judge has determined that the assertion of the right is bona fide, the compelled testimony, or any information directly or indirectly derived from such testimony or other information, shall not be used against the witness in any criminal proceeding except a prosecution for perjury.

1983, c. 543.

§ 19.2-215.8. Returning a "true bill" of indictment; jurisdiction to be set out

In order to return a "true bill" of indictment, a majority, but in no instance less than five, of the multi-jurisdiction grand jurors must concur in that finding. A multi-jurisdiction grand jury may return a "true bill" of indictment upon the testimony of, or evidence produced by, any witness who was called by the grand jury, upon evidence presented to it by special counsel, or upon evidence sent to it by the presiding judge.

Every "true bill" of indictment returned by a multi-jurisdiction grand jury shall state in which jurisdiction or jurisdictions the offense is alleged to have occurred. Thereafter, when venue is proper in more than one jurisdiction, the presiding judge who directed the grand jury proceeding shall elect in which one of the jurisdictions named in the indictment the indictment is to be prosecuted.

1983, c. 543.

§ 19.2-215.9. Court reporter provided; safekeeping of transcripts, notes, etc.; when disclosure permitted; access to record of testimony and evidence

A. A court reporter shall be provided for a multi-jurisdiction grand jury to record, manually or electronically, and transcribe all oral testimony taken before a multi-jurisdiction grand jury, but such a reporter shall not be present during any stage of its deliberations. Such transcription shall include the original or copies of all documents, reports, or other evidence presented to the multi-jurisdiction grand jury. The notes, tapes, and transcriptions of the reporter are for the use of the multi-jurisdiction grand jury, and the contents thereof shall not be used or divulged by anyone except as provided in this article. After the multi-jurisdiction grand jury has completed its use of the notes, tapes, and transcriptions, the foreman shall cause them to be delivered to the clerk of the circuit court in whose jurisdiction the multi-jurisdiction grand jury sits, with copies provided to special counsel. Upon motion of special counsel, the presiding judge may order that such notes, tapes, and transcriptions be destroyed at the direction of special counsel by any means the

presiding judge deems sufficient, provided that at least seven years have passed from the date of the multi-jurisdiction grand jury proceeding where such notes, tapes, and transcriptions were made.

B. The clerk shall cause the notes, tapes, and transcriptions or other evidence to be kept safely. Upon motion to the presiding judge, special counsel or the attorney for the Commonwealth or United States attorney of any jurisdiction where the offense could be prosecuted or investigated shall be permitted to review any of the evidence which was presented to the multi-jurisdiction grand jury and shall be permitted to make notes and to duplicate portions of the evidence as he deems necessary for use in a criminal investigation or proceeding. Special counsel, the attorney for the Commonwealth, or the United States attorney shall maintain the secrecy of all information obtained from a review or duplication of the evidence presented to the multi-jurisdiction grand jury, except that this information may be disclosed pursuant to the provisions of subdivision 2 of § 19.2-215.1. A United States attorney satisfies his duty to maintain secrecy of information obtained from a review or duplication of evidence presented to the multi-jurisdiction grand jury if such information is maintained in accordance with the Federal Rules of Criminal Procedure. Upon motion to the presiding judge by a person indicted by a multi-jurisdiction grand jury or by a person being prosecuted with evidence presented to a multi-jurisdiction grand jury, similar permission to review, note, or duplicate evidence shall be extended.

C. If any witness who testified or produced evidence before the multi-jurisdiction grand jury is prosecuted on the basis of his testimony or the evidence he produced, or if any witness is prosecuted for perjury on the basis of his testimony or the evidence he produced before the multi-jurisdiction grand jury, the presiding judge, on motion of either special counsel or the defendant, shall permit the defendant access to the testimony of or evidence produced by the defendant before the multi-jurisdiction grand jury. The testimony and the evidence produced by the defendant before the multi-jurisdiction grand jury shall then be admissible in the trial of the criminal offense with which the defendant is charged (i) to establish a charge of perjury in the Commonwealth's case-in-chief on the basis of his testimony before the multi-jurisdiction grand jury and (ii) for the purpose of impeaching the defendant in the trial of any other criminal matter, provided the testimony or evidence being used for impeachment was produced by the defendant voluntarily before the multi-jurisdiction grand jury.

1983, c. 543; 2014, c. 389; 2016, c. 262.

§ 19.2-215.10. Participation by Office of Attorney General; assistance of special counsel permitted in certain prosecutions

Upon request by the applicants or upon motion to the presiding judge by special counsel, the Office of Attorney General may participate as special counsel in the multi-jurisdiction grand jury proceedings and any prosecutions arising therefrom. In any prosecution arising out of the multi-jurisdiction grand jury, the attorney for the Commonwealth may also obtain the assistance of the special counsel to the grand jury as a special assistant attorney for the Commonwealth.

1983, c. 543.

§ 19.2-215.11. Discharge of grand jury

At any time during the original or extended term of a multi-jurisdiction grand jury, the presiding judge may discharge the grand jury if, in the opinion of the presiding judge, the existence of the multi-jurisdiction grand jury is no longer necessary.

1983, c. 543.

Chapter 14 - PRESENTMENTS, INDICTMENTS AND INFORMATIONS

Article 1 - NECESSITY FOR INDICTMENT, ETC

§ 19.2-216. Definition of indictment, presentment and information

An indictment is a written accusation of crime, prepared by the attorney for the Commonwealth and returned "a true bill" upon the oath or affirmation of a legally impanelled grand jury.

A presentment is a written accusation of crime prepared and returned by a grand jury from their own knowledge or observation, without any bill of indictment laid before them.

An information is a written accusation of crime or a complaint for forfeiture of property or money or for imposition of a penalty, prepared and presented by a competent public official upon his oath of office.

1975, c. 495.

§ 19.2-217. When information filed; prosecution for felony to be by indictment or presentment; waiver; process to compel appearance of accused

An information may be filed by the attorney for the Commonwealth based upon a complaint in writing verified by the oath of a competent witness; but no person shall be put upon trial for any felony, unless an indictment or presentment shall have first been found or made by a grand jury in a court of competent jurisdiction or unless such person, by writing signed by such person before the court having jurisdiction to try such felony or before the judge of such court shall have waived such indictment or presentment, in which event he may be tried on a warrant or information. If the accused be in custody, or has been recognized or summoned to answer such information, presentment or indictment, no other process shall be necessary; but the court may, in its discretion, issue process to compel the appearance of the accused.

Code 1950, § 19.1-162; 1960, c. 366; 1975, c. 495.

§ 19.2-217.1. Central file of capital murder indictments

Upon the return by a grand jury of an indictment for capital murder and the arrest of the defendant, the clerk of the circuit court in which such indictment is returned shall forthwith file a certified copy of the indictment with the clerk of the Supreme Court of Virginia. All such indictments shall be maintained in a single place by the clerk of the Supreme Court, and shall be available to members of the public upon request. Failure to comply with the provisions of this section shall

not be (i) a basis upon which an indictment may be quashed or deemed invalid; (ii) deemed error upon which a conviction may be reversed or a sentence vacated; or (iii) a basis upon which a court may prevent or delay execution of a sentence.

1993, c. 319 .

§ 19.2-218. Preliminary hearing required for person arrested on charge of felony; waiver

No person who is arrested on a charge of felony shall be denied a preliminary hearing upon the question of whether there is reasonable ground to believe that he committed the offense and no indictment shall be returned in a court of record against any such person prior to such hearing unless such hearing is waived in writing by the accused.

Code 1950, § 19.1-163.1; 1960, c. 389; 1975, c. 495.

§ 19.2-218.1. Preliminary hearings involving certain sexual crimes against spouses

A. In any preliminary hearing of a charge for a violation under § 18.2-61, 18.2-67.1, or 18.2-67.2 where the complaining witness is the spouse of the accused, upon a finding of probable cause the court may request that its court services unit, in consultation with any appropriate social services organization, local community services board, or other community mental health services organization, prepare a report analyzing the feasibility of providing counseling or other forms of therapy for the accused and the probability such treatment will be successful. Based upon this report and any other relevant evidence, the court may, with the consent of the accused, the complaining witness and the attorney for the Commonwealth in any case involving a violation of § 18.2-61, 18.2-67.1, or 18.2-67.2, authorize the accused to submit to and complete a designated course of counseling or therapy. In such case, the hearing shall be adjourned until such time as counseling or therapy is completed or terminated. Upon the completion of counseling or therapy by the accused and after consideration of a final evaluation to be furnished to the court by the person responsible for conducting such counseling or therapy and such further report of the court services unit as the court may require, and after consideration of the views of the complaining witness, the court, in its discretion, may discharge the accused if the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

B. No statement or disclosure by the accused concerning the alleged offense made during counseling or any other form of therapy ordered pursuant to this section or § 18.2-61, 18.2-67.1, 18.2-67.2, or 19.2-218.2 may be used against the accused in any trial as evidence, nor shall any evidence against the accused be admitted which was discovered through such statement or disclosure.

1986, c. 516; 2005, c. 631; 2012, cc. 476, 507.

§ 19.2-218.2. Hearing before juvenile and domestic relations district court required for persons accused of certain violations against their spouses

A. In any case involving a violation of § 18.2-61, 18.2-67.1, or 18.2-67.2 where the complaining witness is the spouse of the accused, where a preliminary hearing pursuant to § 19.2-218.1 has not been held prior to indictment or trial, the court shall refer the case to the appropriate juvenile and

domestic relations district court for a hearing to determine whether counseling or therapy is appropriate prior to further disposition unless the hearing is waived in writing by the accused. The court conducting this hearing may order counseling or therapy for the accused in compliance with the guidelines set forth in § 19.2-218.1.

B. After such hearing pursuant to which the accused has completed counseling or therapy and upon the recommendation of the juvenile and domestic relations district court judge conducting the hearing, the judge of the circuit court may dismiss the charge with the consent of the attorney for the Commonwealth and if the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

1986, c. 516; 2005, c. 631.

§ 19.2-219. When capias need not be issued; summons; judgment

No capias need be issued on a presentment or indictment of an offense for which there is no punishment but a fine or forfeiture, limited to an amount not exceeding twenty dollars; but a summons to answer such presentment or indictment may be issued against the accused; and if it be served ten days before the return day thereof, and he does not appear, judgment may be rendered against him for the penalty. If he appear, the court may, unless he demand a jury, hear and determine the matter and give judgment thereon.

Code 1950, § 19.1-164; 1960, c. 366; 1975, c. 495.

Article 2 - FORM AND REQUISITES

§ 19.2-220. Contents of indictment in general

The indictment or information shall be a plain, concise and definite written statement, (1) naming the accused, (2) describing the offense charged, (3) identifying the county, city or town in which the accused committed the offense, and (4) reciting that the accused committed the offense on or about a certain date. In describing the offense, the indictment or information may use the name given to the offense by the common law, or the indictment or information may state so much of the common law or statutory definition of the offense as is sufficient to advise what offense is charged.

1975, c. 495.

§ 19.2-221. Form of prosecutions generally; murder and manslaughter

The prosecutions for offenses against the Commonwealth, unless otherwise provided, shall be by presentment, indictment or information. While any form of presentment, indictment or information which informs the accused of the nature and cause of the accusation against him shall be good the following shall be deemed sufficient for murder and manslaughter:

Commonwealth of Virginia _____ county (or city) to-wit: The grand jurors of the Commonwealth of Virginia, in and for the body of the county (or city) of _____, upon their oaths present that A _____ B _____, on the _____ day of _____, 20____, in the county

(or city) of _____ feloniously did kill and murder one C _____ D _____ against the peace and dignity of the Commonwealth.

A grand jury may, in case of homicide, which in their opinion amounts to manslaughter only, and not to murder, find an indictment against the accused for manslaughter and in such case the indictment shall be sufficient if it be in form or effect as follows:

Commonwealth of Virginia _____ county (or city) to-wit: The grand jurors of the Commonwealth of Virginia, in and for the body of the county (or city) of _____, upon their oaths present that A _____ B _____, on the _____ day of _____, 20____, in the county (or city) of _____ feloniously and unlawfully did kill and slay one C _____ D _____, against the peace and dignity of the Commonwealth.

Code 1950, § 19.1-166; 1960, c. 366; 1975, c. 495.

§ 19.2-222. Repealed

Repealed by Acts 1996, c. 676.

§ 19.2-223. Charging several acts of embezzlement; description of money

In a prosecution against a person accused of embezzling or fraudulently converting to his own use bullion, money, bank notes or other security for money or items of personal property subject to larceny it shall be lawful in the same indictment or accusation to charge and thereon to proceed against the accused for any number of distinct acts of such embezzlements or fraudulent conversions which may have been committed by him within six months from the first to the last of the acts charged in the indictment; and it shall be sufficient to allege the embezzlement or fraudulent conversion to be of money without specifying any particular money, gold, silver, note or security. Such allegation, so far as it regards the description of the property, shall be sustained if the accused be proved to have embezzled any bullion, money, bank note or other security for money or items of personal property subject to larceny although the particular species be not proved.

And in a prosecution for the larceny of United States currency or for obtaining United States currency by a false pretense or token, or for receiving United States currency knowing the same to have been stolen, it shall be sufficient if the accused be proved guilty of the larceny of national bank notes or United States treasury notes, certificates for either gold or silver coin, fractional coin, currency, or any other form of money issued by the United States government, or of obtaining the same by false pretense or token, or of receiving the same knowing it to have been stolen although the particular species be not proved.

Code 1950, § 19.1-168; 1960, c. 366; 1975, c. 495; 1989, c. 370 .

§ 19.2-224. In prosecution for forgery, unnecessary to set forth copy of forged instrument

In a prosecution for forging or altering any instrument or other thing, or attempting to employ as true any forged instrument or other thing, or for any of the offenses mentioned in Article 1 (§ 18.2-168 et seq.) of Chapter 6 of Title 18.2, it shall not be necessary to set forth any copy or

facsimile of such instrument or other thing; but it shall be sufficient to describe the same in such manner as would sustain an indictment for stealing such instrument or other thing, supposing it to be the subject of larceny.

Code 1950, § 19.1-169; 1960, c. 366; 1975, c. 495.

§ 19.2-225. Allegation of intent

Where an intent to injure, defraud or cheat is required to constitute an offense, it shall be sufficient, in an indictment or accusation therefor, to allege generally an intent to injure, defraud or cheat without naming the person intended to be injured, defrauded or cheated; and it shall be sufficient, and not be deemed a variance, if there appear to be an intent to injure, defraud or cheat the United States, or any state, or any county, corporation, officer or person.

Code 1950, § 19.1-170; 1960, c. 366; 1975, c. 495.

§ 19.2-226. What defects in indictments not to vitiate them

No indictment or other accusation shall be quashed or deemed invalid:

(1) For omitting to set forth that it is upon the oaths of the jurors or upon their oaths and affirmations;

(2) For the insertion of the words "upon their oath," instead of "upon their oaths";

(3) For not in terms alleging that the offense was committed "within the jurisdiction of the court" when the averments show that the case is one of which the court has jurisdiction;

(4) For the omission or misstatement of the title, occupation, estate, or degree of the accused or of the name or place of his residence;

(5) For omitting the words "with force and arms" or the statement of any particular kind of force and arms;

(6) For omitting to state, or stating imperfectly, the time at which the offense was committed when time is not the essence of the offense;

(7) For failing to allege the kind or value of an instrument which caused death or to allege that it was of no value;

(8) For omitting to charge the offense to be "against the form of the statute or statutes";

(9) For the omission or insertion of any other words of mere form or surplusage; or

(10) For omitting or stating incorrectly the Virginia crime code references for the particular offense or offenses covered.

Nor shall it be abated for any misnomer of the accused; but the court may, in case of a misnomer appearing before or in the course of a trial, forthwith cause the indictment or accusation to be amended according to the fact.

Code 1950, § 19.1-172; 1960, c. 366; 1975, c. 495; 2003, c. 148.

§ 19.2-227. When judgment not to be arrested or reversed

Judgment in any criminal case shall not be arrested or reversed upon any exception or objection made after a verdict to the indictment or other accusation, unless it be so defective as to be in violation of the Constitution.

Code 1950, § 19.1-165; 1960, c. 366; 1975, c. 495.

§ 19.2-228. Name and address of complaining witness to be written on indictment, etc., for misdemeanor

In a prosecution for a misdemeanor the name and address of the complaining witness, if there be one, shall be written at the foot of the presentment, indictment or information when it is made, found or filed. In case the grand jury that brings in such presentment or indictment or the attorney for the Commonwealth who files such information fail to write the name of a complaining witness at the foot of the presentment, indictment or information, then the name of a complaining witness may be entered of record as such by the court on the motion of the defendant or the attorney for the Commonwealth at any time before the judgment.

Code 1950, § 19.1-173; 1960, c. 366; 1975, c. 495.

§ 19.2-229. When complaining witness required to give security for costs

For good cause the court may require a complaining witness to give security for the costs and if he fails to do so dismiss the prosecution at his costs.

Code 1950, § 19.1-174; 1960, c. 366; 1975, c. 495.

§ 19.2-230. Bill of particulars

A court of record may direct the filing of a bill of particulars at any time before trial. A motion for a bill of particulars shall be made before a plea is entered and at least seven days before the day fixed for trial and the bill of particulars shall be filed within such time as is fixed by the court.

1975, c. 495.

Article 3 - AMENDMENTS

§ 19.2-231. Amendment of indictment, presentment or information

If there be any defect in form in any indictment, presentment or information, or if there shall appear to be any variance between the allegations therein and the evidence offered in proof thereof, the court may permit amendment of such indictment, presentment or information, at any time before the jury returns a verdict or the court finds the accused guilty or not guilty, provided the amendment does not change the nature or character of the offense charged. After any such amendment the accused shall be arraigned on the indictment, presentment or information as amended, and shall be allowed to plead anew thereto, if he so desires, and the trial shall proceed as if no amendment had been made; but if the court finds that such amendment operates as a surprise to the accused, he shall be entitled, upon request, to a continuance of the case for a reasonable time.

Code 1950, §§ 19.1-175 through 19.1-177; 1960, c. 366; 1975, c. 495.

Article 4 - PROCESS

§ 19.2-232. What process to be awarded against accused on indictment, etc

When an indictment or presentment is found or made, or information filed, the court, or the judge thereof, shall award process against the accused to answer the same, if he be not in custody. Such process, if the prosecution be for a felony, shall be a capias; if it be for a misdemeanor, for which imprisonment may be imposed, it may be a capias or summons, in the discretion of the court or judge; in all other cases, it shall be, in the first instance a summons, but if a summons be returned executed and the defendant does not appear, or be returned not found, the court or judge may award a capias. The officer serving the summons or capias shall also serve a copy of the indictment, presentment or information therewith.

Code 1950, § 19.1-178; 1960, c. 366; 1975, c. 495; 1980, c. 349.

§ 19.2-233. How awarded, directed, returnable and executed

Sections 8.01-292 and 8.01-295 shall apply to process in criminal, as well as in civil cases; and the court may, in the same case against the same person, award at the same time, or different times, several writs of summons or capias directed to officers of different counties or cities. An officer having a capias under which the accused is let to bail shall give a certificate of the fact, which shall protect him against any other capias which may have been issued for the same offense. A summons shall be served by delivering a copy thereof to the party in person and the clerk issuing such summons shall deliver or transmit therewith as many copies thereof as there are persons named therein on whom it is to be served.

Code 1950, § 19.1-179; 1960, c. 366; 1975, c. 495.

§ 19.2-234. Procedure when person arrested under capias

An officer who, under a capias from any court, arrests a person accused of an offense shall proceed in accordance with § 19.2-80 and Article 1 (§ 19.2-119 et seq.) of Chapter 9 of Title 19.2 regarding bail.

Code 1950, § 19.1-183; 1960, c. 366; 1975, c. 495; 1986, c. 327.

§ 19.2-235. Clerks to mail process to officers in other counties, etc

The clerk of every court shall forward, by mail, all process issued for the Commonwealth, directed to the officer of any county or city other than his own.

Code 1950, § 19.1-181; 1960, c. 366; 1975, c. 495.

§ 19.2-236. Where process of arrest may be executed

When process of arrest in a criminal prosecution is issued from a court, either against a party accused or a witness, the officer to whom it is directed or delivered may execute it in any part of the Commonwealth.

Code 1950, § 19.1-182; 1960, c. 366; 1975, c. 495.

§ 19.2-237. Process on indictment or presentment for misdemeanor

On any indictment or presentment for a misdemeanor process shall be issued immediately. If the accused appear and plead to the charge, the trial shall proceed without delay, unless good cause for continuance be shown. If, in any misdemeanor case the accused fails to appear and plead, when required the court may either award a capias or proceed to trial in the same manner as if the accused had appeared, plead not guilty and waived trial by jury, provided, that the court shall not in any such case enforce a jail sentence.

Code 1950, §§ 19.1-180, 19.1-184; 1960, c. 366; 1975, c. 495; 1979, c. 468.

§ 19.2-238. Summons against corporation; proceedings; expense of publication

A summons against a corporation to answer an indictment, presentment or information may be served as provided in §§ 8.01-299 through 8.01-301; and if the defendant after being so served fail to appear, the court may proceed to trial and judgment, without further process, as if the defendant had appeared, plead not guilty and waived trial by jury. And when, in any such case, publication of a copy of the process is required according to such sections, the expense of such publication may be certified by the court to the Comptroller, and shall be paid out of the state treasury; but the same shall be taxed with other costs and collected from the defendant, if judgment be for the Commonwealth, and be paid into the state treasury by the officer collecting the same.

Code 1950, § 19.1-186; 1960, c. 366; 1975, c. 495.

Chapter 15 - TRIAL AND ITS INCIDENTS

Article 1 - JURISDICTION

§ 19.2-239. Jurisdiction in criminal cases

The circuit courts, except where otherwise provided, shall have exclusive original jurisdiction for the trial of all presentments, indictments and informations for offenses committed within their respective circuits.

Code 1950, § 19.1-187; 1960, c. 366; 1975, c. 495.

§ 19.2-240. Clerks shall make out criminal docket

Before every term of any court in which criminal cases are to be tried the clerk of the court shall make out a separate docket of criminal cases then pending, in the following order, numbering the same:

1. Felony cases;

2. Misdemeanor cases.

He shall docket all felony cases in the order in which the indictments are found and all misdemeanor cases in the order in which the presentments or indictments are found or informations

are filed or appeals are allowed by magistrates and as soon as any presentments or indictments are made at a term of court he shall forthwith docket the same in the order required above.

Traffic infractions shall be docketed with misdemeanor cases.

Cases appealed from the juvenile and domestic relations district court shall not be placed on the criminal docket except for cases involving criminal offenses committed by adults as provided in § 16.1-302. Cases transferred to a circuit court from a juvenile and domestic relations district court pursuant to Article 7 (§ 16.1-269.1 et seq.) of Chapter 11 of Title 16.1 shall be docketed as provided in this section upon return of a true bill of indictment by the grand jury.

Code 1950, § 19.1-189; 1960, c. 366; 1975, c. 495; 1977, c. 585; 1990, c. 258; 1994, cc. 859, 949.

§ 19.2-241. Time within which court to set criminal cases for trial

The judge of each circuit court shall fix a day of his court when the trial of criminal cases will commence, and may make such general or special order in reference thereto, and to the summoning of witnesses, as may seem proper, but all criminal cases shall be disposed of before civil cases, unless the court shall direct otherwise.

When an indictment is found against a person for felony or when an appeal has been perfected from the conviction of a misdemeanor or traffic infraction, the accused, if in custody, or if he appear according to his recognizance, may be tried at the same term and shall be tried within the time limits fixed in § 19.2-243; provided that no trial shall be held on the first day of the term unless it be with consent of the attorney for the Commonwealth and the accused and his attorney.

Code 1950, §§ 19.1-188 through 19.1-190; 1960, c. 366; 1972, c. 705; 1975, c. 495; 1977, c. 585; 1978, c. 410.

§ 19.2-242. Accused discharged from jail if not indicted in time

A person in jail on a criminal charge shall be discharged from imprisonment if a presentment, indictment or information be not found or filed against him before the end of the second term of the court at which he is held to answer, unless it appear to the court that material witnesses for the Commonwealth have been enticed or kept away or are prevented from attendance by sickness or inevitable accident, and except, also, in the cases provided in §§ 19.2-168.1 and 19.2-169.1. A discharge under the provisions of this section shall not, however, prevent a reincarceration after a presentment or indictment has been found.

Code 1950, § 19.1-163; 1960, c. 366; 1975, c. 495.

§ 19.2-243. Limitation on prosecution of felony due to lapse of time after finding of probable cause; misdemeanors; exceptions

Where a district court has found that there is probable cause to believe that an adult has committed a felony, the accused, if he is held continuously in custody thereafter, shall be forever discharged from prosecution for such offense if no trial is commenced in the circuit court within five months from the date such probable cause was found by the district court; and if the accused is

not held in custody but has been recognized for his appearance in the circuit court to answer for such offense, he shall be forever discharged from prosecution therefor if no trial is commenced in the circuit court within nine months from the date such probable cause was found.

If there was no preliminary hearing in the district court, or if such preliminary hearing was waived by the accused, the commencement of the running of the five and nine months periods, respectively, set forth in this section, shall be from the date an indictment or presentment is found against the accused.

If an indictment or presentment is found against the accused but he has not been arrested for the offense charged therein, the five and nine months periods, respectively, shall commence to run from the date of his arrest thereon.

Where a case is before a circuit court on appeal from a conviction of a misdemeanor or traffic infraction in a district court, the accused shall be forever discharged from prosecution for such offense if the trial de novo in the circuit court is not commenced (i) within five months from the date of the conviction if the accused has been held continuously in custody or (ii) within nine months of the date of the conviction if the accused has been recognized for his appearance in the circuit court to answer for such offense.

The provisions of this section shall not apply to such period of time as the failure to try the accused was caused:

1. By his insanity or by reason of his confinement in a hospital for care and observation;

2. By the witnesses for the Commonwealth being enticed or kept away, or prevented from attending by sickness or accident;

3. By the granting of a separate trial at the request of a person indicted jointly with others for a felony;

4. By continuance granted on the motion of the accused or his counsel, or by concurrence of the accused or his counsel in such a motion by the attorney for the Commonwealth, or by the failure of the accused or his counsel to make a timely objection to such a motion by the attorney for the Commonwealth, or by reason of his escaping from jail or failing to appear according to his recognizance;

5. By continuance ordered pursuant to subsection I or J of § 18.2-472.1 or subsection C or D of § 19.2-187.1;

6. By the inability of the jury to agree in their verdict; or

7. By a natural disaster, civil disorder, or act of God.

But the time during the pendency of any appeal in any appellate court shall not be included as applying to the provisions of this section.

For the purposes of this section, an arrest on an indictment or warrant or information or presentment is deemed to have occurred only when such indictment, warrant, information, or presentment or the summons or capias to answer such process is served or executed upon the accused and a trial is deemed commenced at the point when jeopardy would attach or when a plea of guilty or nolo contendere is tendered by the defendant. The lodging of a detainer or its equivalent shall not constitute an arrest under this section.

Code 1950, § 19.1-191; 1960, c. 366; 1974, c. 391; 1975, c. 495; 1984, c. 618; 1988, c. 33; 1993, c. 425; 1995, cc. 37, 352; 2002, c. 743; 2005, c. 650; 2007, c. 944; 2009, Sp. Sess. I, cc. 1, 4.

Article 2 - VENUE

§ 19.2-244. Venue in general

A. Except as otherwise provided by law, the prosecution of a criminal case shall be had in the county or city in which the offense was committed. Except as to motions for a change of venue, all other questions of venue must be raised before verdict in cases tried by a jury and before the finding of guilty in cases tried by the court without a jury.

B. If an offense has been committed within the Commonwealth and it cannot readily be determined within which county or city the offense was committed, venue for the prosecution of the offense may be had in the county or city (i) in which the defendant resides; (ii) if the defendant is not a resident of the Commonwealth, in which the defendant is apprehended; or (iii) if the defendant is not a resident of the Commonwealth and is not apprehended in the Commonwealth, in which any related offense was committed.

1975, c. 495; 2015, cc. 632, 637.

§ 19.2-245. Offenses committed without and made punishable within Commonwealth; embezzlement or larceny committed within Commonwealth; where prosecuted

Prosecution for offenses committed wholly or in part without and made punishable within this Commonwealth may be in any county or city in which the offender is found or to which he is sent by any judge or court; and if any person shall commit larceny or embezzlement beyond the jurisdiction of this Commonwealth and bring the stolen property into the same he shall be liable to prosecution and punishment for larceny or embezzlement in any county or city into which he shall have taken the property as if the same had been wholly committed therein; and if any person shall commit larceny or embezzlement within this Commonwealth and take the stolen property into any county or city other than the county or city within which the same was committed he shall be liable to prosecution and punishment for such larceny or embezzlement in any such county or city into which he shall have taken the property as if the same had been wholly committed therein; provided, that if any person shall commit embezzlement within this Commonwealth he shall be liable as aforesaid or to prosecution and punishment for his offense in the county or city in which he was legally obligated to deliver the embezzled funds or property.

Code 1950, § 19.1-220; 1960, c. 366; 1975, c. 495; 1977, c. 216.

§ 19.2-245.01. Offenses involving reports or statements concerning cigarette sales or stamping

Any criminal violation of Chapter 42 (§ 3.2-4200 et seq.) of Title 3.2, Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 of Title 18.2, or § 18.2-514 involving reports or statements concerning cigarette sales or stamping may be prosecuted in the City of Richmond.

2009, c. 847; 2013, c. 625.

§ 19.2-245.1. Forgery; where prosecuted

If any person commits forgery, that forgery may be prosecuted in any county or city (i) where the writing was forged, or where the same was used or passed, or attempted to be used or passed, or deposited or placed with another person, firm, association, or corporation either for collection or credit for the account of any person, firm, association, or corporation or (ii) where the writing is found in the possession of the defendant.

1979, c. 30; 2000, c. 327.

§ 19.2-245.2. Tax offenses; where prosecuted

If an offense involving tax, as defined in Title 58.1, is committed, that offense may be prosecuted in either any county or city where a false or fraudulent tax return, document, or statement was filed, or the county or city where the offender resides. However, venue shall not be in the City of Richmond solely because a false or fraudulent tax return, document or statement was filed directly with the Department of Taxation.

1990, c. 631 .

§ 19.2-246. Injury inflicted by person within Commonwealth upon one outside Commonwealth

If a mortal wound or other violence or injury be inflicted by a person within this Commonwealth upon one outside of the same, or upon one in this Commonwealth who afterwards dies from the effect thereof out of the Commonwealth, the offender shall be amenable to prosecution and punishment for the offense in the courts of the county or city in which he was at the time of the commission thereof as if the same had been committed in such county or city.

Code 1950, § 19.1-221; 1960, c. 366; 1975, c. 495.

§ 19.2-247. Venue in certain homicide cases

Where evidence exists that a homicide has been committed either within or without the Commonwealth, under circumstances that make it unknown where such crime was committed, the homicide and any related offenses shall be amenable to prosecution in the courts of the county or city where the body or any part thereof of the victim may be found or, if the victim was removed from the Commonwealth for medical treatment prior to death and died outside the Commonwealth, in the courts of the county or city from which the victim was removed for medical treatment prior to death, as if the offense has been committed in such county or city. In a pro-

secution for capital murder pursuant to subdivision 8 of § 18.2-31, the offense may be prosecuted in any jurisdiction in the Commonwealth in which any one of the killings may be prosecuted.

Code 1950, § 19.1-221.1; 1973, c. 308; 1975, c. 495; 1996, c. 959; 2002, c. 503; 2015, cc. 632, 637.

§ 19.2-248. Venue when mortal wound, etc., inflicted in one county and death ensues in another

If a mortal wound, or other violence or injury, be inflicted, or poison administered in one county or city, and death ensues therefrom in another county or city, the offense may be prosecuted in either.

Code 1950, § 19.1-223; 1960, c. 366; 1975, c. 495.

§ 19.2-249. Offenses committed on boundary of two counties, two cities, or county and city, etc.; where prosecuted

An offense committed on the boundary of two counties, or on the boundary of two cities, or on the boundary of a county and city, or within 300 yards thereof, may be alleged to have been committed, and may be prosecuted and punished, in either county, in either city, or the county or city, and any sheriff, deputy sheriff, or other police officer shall have jurisdiction to make arrests and preserve the peace for a like distance on either side of the boundary line between such counties, such cities, or such county and city.

Code 1950, § 19.1-222; 1960, c. 366; 1975, c. 495; 1978, c. 354; 2003, c. 116.

§ 19.2-249.1. Offenses committed within towns situated in two or more counties; where prosecuted

An offense or traffic infraction committed within a town situated in two or more counties within the Commonwealth may be alleged to have been committed, and may be prosecuted and punished, in any one of such counties.

1984, c. 278.

§ 19.2-249.2. Venue for prosecution of computer and other crimes

For the purpose of venue, any violation of the Virginia Computer Crimes Act (§ 18.2-152.1 et seq.) or § 18.2-386.1 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 violated any provision listed above;

2. In which the owner has his principal place of business in the Commonwealth;

3. In which any offender had control or possession of any proceeds of the violation or of any books, records, documents, property, financial instrument, computer software, computer program, computer data, 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 computer or computer network was made whether by wires, electromagnetic waves, microwaves, optics or any other means of communication;

5. In which the offender resides; or

6. In which any computer that is an object or an instrument of the violation is located at the time of the alleged offense.

2005, cc. 746, 761, 827; 2015, c. 423.

§ 19.2-250. How far jurisdiction of corporate authorities extends

A. Notwithstanding any other provision of this article and except as provided in subsection B hereof, the jurisdiction of the corporate authorities of each town or city, in criminal cases involving offenses against the Commonwealth, shall extend within the Commonwealth one mile beyond the corporate limits of such town or city; except that such jurisdiction of the corporate authorities of towns situated in counties having a density of population in excess of 300 inhabitants per square mile, or in counties adjacent to cities having a population of 170,000 or more, shall extend for 300 yards beyond the corporate limits of such town or, in the case of the criminal jurisdiction of an adjacent county, for 300 yards within such town.

B. Notwithstanding any other provision of this article, the jurisdiction of the authorities of Chesterfield County and Henrico County, in criminal cases involving offenses against the Commonwealth, shall extend one mile beyond the limits of such county into the City of Richmond.

Code 1950, § 15.1-141; 1962, c. 623; 1975, c. 495; 1978, c. 379; 1998, c. 428; 2007, c. 813.

§ 19.2-251. When and how venue may be changed

A circuit court may, on motion of the accused or of the Commonwealth, for good cause, order the venue for the trial of a criminal case in such court to be changed to some other circuit court. Such motion when made by the accused may be made in his absence upon a petition signed and sworn to by him.

Whenever the mayor of any city, or the sheriff of any county, shall call on the Governor for military force to protect the accused from violence, the judge of the circuit court of the city or county having jurisdiction of the offense shall, upon a petition signed and sworn to by the accused, whether he be present or not, at once order the venue to be changed to the circuit court of a city or county sufficiently remote from the place where the offense was committed to insure the safe and impartial trial of the accused.

Code 1950, § 19.1-224; 1960, c. 366; 1975, c. 495.

§ 19.2-252. Court ordering change of venue may admit accused to bail and recognize witnesses; remand of accused not admitted to bail

When the venue is so changed, the court making the order may admit the accused to bail and shall recognize the witnesses and the accused if admitted to bail and the bail be given, to appear on

some certain day before the court to which the case is removed; if the accused be not admitted to bail or the bail required be not given, the court shall remand him to its own jail and order its officer to remove him thence to the jail of the court to which the case is removed, so that he shall be there before the day for the appearance of the witnesses.

Code 1950, § 19.1-225; 1960, c. 366; 1975, c. 495.

§ 19.2-253. Procedure upon and after change of venue

The clerk of the court which orders a change of venue shall certify copies of the recognizances aforesaid and of the record of the case to the clerk of the court to which the case is removed, who shall thereupon issue a venire facias, directed to the officer of such court; and such court shall proceed with the case as if the prosecution had been originally therein; and for that purpose the certified copies aforesaid shall be sufficient.

Code 1950, § 19.1-226; 1960, c. 366; 1975, c. 495.

Article 3 - ARRAIGNMENT; PLEAS; TRIAL WITHOUT JURY

§ 19.2-254. Arraignment; pleas; when court may refuse to accept plea; rejection of plea agreement; recusal

Arraignment shall be conducted in open court. It shall consist of reading to the accused the charge on which he will be tried and calling on him to plead thereto. In a felony case, arraignment is not necessary when waived by the accused. In a misdemeanor case, arraignment is not necessary when waived by the accused or his counsel, or when the accused fails to appear.

An accused may plead not guilty, guilty or nolo contendere. The court may refuse to accept a plea of guilty to any lesser offense included in the charge upon which the accused is arraigned; but, in misdemeanor and felony cases the court shall not refuse to accept a plea of nolo contendere.

With the approval of the court and the consent of the Commonwealth, a defendant may enter a conditional plea of guilty in a misdemeanor or felony case in circuit court, reserving the right, on appeal from the judgment, to a review of the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, he shall be allowed to withdraw his plea.

Upon rejecting a plea agreement in any criminal matter, a judge shall immediately recuse himself from any further proceedings on the same matter unless the parties agree otherwise.

1975, c. 495; 1987, c. 357; 2014, cc. 52, 165.

§ 19.2-254.1. Procedure in traffic infraction cases

In a traffic infraction case, as defined in § 46.2-100, involving an offense included in the uniform fine schedule established pursuant to § 16.1-69.40:1, a defendant may elect to enter a written appearance and waive court hearing, except in instances in which property damage or personal injury resulted. Arraignment is not necessary when waived by the accused or his counsel, when the accused fails to appear, or when such written appearance has been elected.

An accused may plead not guilty, guilty, or nolo contendere; and the court shall not refuse to accept a plea of nolo contendere. A plea of guilty may be entered in writing without court appearance.

When an accused tenders payment without executing a written waiver of court hearing and entry of guilty plea, such tender of payment shall itself be deemed a waiver of court hearing and entry of guilty plea.

In districts with traffic violations bureaus on July 1, 1977, the chief judge of the district may designate the traffic violations bureau for the receipt of a written appearance, waiver of court hearing and guilty plea.

1977, c. 585; 1978, c. 605; 1992, c. 54 .

§ 19.2-254.2. Procedure in nontraffic offenses for which prepayment is authorized

In any prepayable nontraffic offense case as defined in § 16.1-69.40:2 a defendant may elect to enter a written appearance and waive court hearing. Arraignment is not necessary when waived by the accused or his counsel, when the accused fails to appear, or when such written appearance has been elected.

An accused may plead not guilty, guilty, or nolo contendere; and the court shall not refuse to accept a plea of nolo contendere. A plea of guilty may be entered in writing without court appearance.

When an accused tenders payment without executing a written waiver of court hearing and entry of guilty plea, such tender of payment shall itself be deemed a waiver of court hearing and entry of guilty plea. Likewise when a person charged with a prepayable nontraffic offense fails to enter a written or court appearance, he shall be deemed to have waived court hearing and the case may be heard in his absence. In all other respects prepayable traffic offenses shall be treated as all other misdemeanors.

1978, c. 605; 1992, c. 54 .

§ 19.2-255. Defendant allowed to plead several matters of law or fact

The defendant in any criminal prosecution may plead as many several matters, whether of law or fact, as he shall think necessary, and he may file pleas in bar at the same time with pleas in abatement, or within a reasonable time thereafter; but the issues on the pleas in abatement shall be first tried.

Code 1950, § 19.1-242; 1960, c. 366; 1975, c. 495.

§ 19.2-256. Approvers

Approvers shall not be admitted in any case.

Code 1950, § 19.1-244; 1960, c. 366; 1975, c. 495.

§ 19.2-257. Trial without jury in felony cases

Upon a plea of guilty in a felony case, tendered in person by the accused after being advised by counsel, the court shall hear and determine the case without the intervention of a jury; or if the accused plead not guilty, with his consent after being advised by counsel and the concurrence of the attorney for the Commonwealth and of the court entered of record, the court shall hear and determine the case without the intervention of a jury. In such cases the court shall have and exercise all the powers, privileges and duties given to juries by any statute relating to crimes and punishments.

Code 1950, § 19.1-192; 1960, c. 366; 1975, c. 495.

§ 19.2-258. Trial of misdemeanors by court without jury; failure to appear deemed waiver of jury

In all cases of a misdemeanor upon a plea of guilty, tendered in person by the accused or his counsel, the court shall hear and determine the case without the intervention of a jury. If the accused plead not guilty, in person or by his counsel, the court, in its discretion, with the concurrence of the accused and the attorney for the Commonwealth, may hear and determine the case without the intervention of a jury. In each instance the court shall have and exercise all the powers and duties vested in juries by any statute relating to crimes and punishments.

When a person charged with a misdemeanor has been admitted to bail or released upon his own recognizance for his appearance before a court of record having jurisdiction of the case, for a hearing thereon and fails to appear in accordance with the condition of his bail or recognizance, he shall be deemed to have waived trial by a jury and the case may be heard in his absence as upon a plea of not guilty.

Code 1950, § 19.1-193; 1960, c. 366; 1975, c. 495.

§ 19.2-258.1. Trial of traffic infractions; measure of proof; failure to appear

For any traffic infraction cases tried in a district court, the court shall hear and determine the case without the intervention of a jury. For any traffic infraction case appealed to a circuit court, the defendant shall have the right to trial by jury. The defendant shall be presumed innocent until proven guilty beyond a reasonable doubt.

When a person charged with a traffic infraction fails to enter a written or court appearance, he shall be deemed to have waived court hearing and the case may be heard in his absence, after which he shall be notified of the court's finding. He shall be advised that if he fails to comply with any order of the court therein, the court may order suspension of his driver's license as provided in § 46.2-395 but the court shall not issue a warrant for his failure to appear pursuant to § 46.2-938.

1977, c. 585; 1978, c. 605; 1989, c. 705; 2001, c. 414.

§ 19.2-259. On trial for felony, accused to be present; when court may enter plea for him, and trial go on

A person tried for felony shall be personally present during the trial. If when arraigned he will not plead or answer and does not confess his guilt the court shall have the plea of not guilty entered and the trial shall proceed as if the accused had put in that plea. But for the purposes of this section a motion for a continuance, whether made before or after arraignment, shall not be deemed to be part of the trial.

Code 1950, § 19.1-240; 1960, c. 366; 1975, c. 495.

Article 4 - TRIAL BY JURY

§ 19.2-260. Provisions of Title 8.01 apply except as provided in this article

Except as otherwise provided in this article, trial by jury in criminal cases shall be regulated as provided for in Chapter 11 (§ 8.01-336 et seq.) of Title 8.01.

1975, c. 495; 1977, c. 624.

§ 19.2-261. Charging grand jury in presence of person selected as juror

The court shall not charge the grand jury in the presence of any person selected as a juror to try any person indicted by the said grand jury. A violation of this provision shall constitute reversible error in any criminal case tried by a jury composed of one or more such veniremen.

Code 1950, § 8-208.20; 1973, c. 439; 1975, c. 495.

§ 19.2-262. Waiver of jury trial; numbers of jurors in criminal cases; how jurors selected from panel

A. In any criminal case in which trial by jury is dispensed with as provided by law, the whole matter of law and fact shall be heard and judgment given by the court. In appeals from juvenile and domestic relations district courts, the infant, through his guardian ad litem or counsel, may waive a jury.

B. Twelve persons from a panel of not less than 20 shall constitute a jury in a felony case. Seven persons from a panel of not less than 13 shall constitute a jury in a misdemeanor case.

C. The parties or their counsel, beginning with the attorney for the Commonwealth, shall alternately strike off one name from the panel until the number remaining shall be reduced to the number required for a jury.

D. In any case in which persons indicted for felony are tried jointly, if counsel or the accused are unable to agree on the full number to be stricken, or, if for any other reason counsel or the accused fail or refuse to strike off the full number of jurors allowed such party, the clerk shall place in a box ballots bearing the names of the jurors whose names have not been stricken and shall cause to be drawn from the box such number of ballots as may be necessary to complete the number of strikes allowed the party or parties failing or refusing to strike. Thereafter, if the opposing side is entitled to further strikes, they shall be made in the usual manner.

Code 1950, § 8-208.21; 1973, c. 439; 1974, c. 611; 1975, cc. 495, 578; 1979, c. 230; 1997, cc. 516, 518; 2005, c. 356.

§ 19.2-262.1. Joinder of defendants

On motion of the Commonwealth, for good cause shown, the court shall order persons charged with participating in contemporaneous and related acts or occurrences or in a series of acts or occurrences constituting an offense or offenses, to be tried jointly unless such joint trial would constitute prejudice to a defendant. If the court finds that a joint trial would constitute prejudice to a defendant, the court shall order severance as to that defendant or provide such other relief justice requires.

1993, cc. 462, 489; 1997, c. 518.

§ 19.2-263. Repealed

Repealed by Acts 1993, cc. 462 and 489 .

§ 19.2-263.1. Contact between judge and juror prohibited

No judge shall communicate in any way with a juror in a criminal proceeding concerning the juror's conduct or any aspect of the case during the course of the trial outside the presence of the parties or their counsel.

1985, c. 176.

§ 19.2-263.2. Jury instructions

A proposed jury instruction submitted by a party, which constitutes an accurate statement of the law applicable to the case, shall not be withheld from the jury solely for its nonconformance with model jury instructions.

1992, c. 522 .

§ 19.2-263.3. Juror information confidential

A. The court may, upon motion of either party or its own motion, and for good cause shown, issue an order regulating the disclosure of the personal information of a juror who has been impaneled in a criminal trial to any person, other than to counsel for either party. Good cause shown includes, but is not limited to, a determination by the court that there is a likelihood of bribery, tampering, or physical injury to or harassment of a juror if his personal information is disclosed. An order regulating the disclosure of information may be modified, and the personal information of the jurors in a criminal case may be disseminated to a person having a legitimate interest or need for the information, with restrictions upon its use and further dissemination as may be deemed appropriate by the court.

B. In addition to the provisions of subsection A, the Supreme Court shall prescribe and publish rules that provide for the protection of the personal information of a juror in a criminal trial.

C. For purposes of this section, "personal information" means any information collected by the court, clerk, or jury commissioner at any time about a person who is selected to sit on a criminal

jury and includes, but is not limited to, a juror's name, age, occupation, home and business addresses, telephone numbers, email addresses, and any other identifying information that would assist another in locating or contacting the juror.

2008, c. 538.

§ 19.2-264. When jury need not be kept together in felony case; sufficient compliance with requirement that jury be kept together

In any case of a felony the jury shall not be kept together unless the court otherwise directs. Whenever a jury is required to be kept together, it shall be deemed sufficient compliance although the court for good cause permits one or more of such jurors to be separated from the others; provided all such jurors, whether separated or not, be kept in charge of officers provided therefor.

Code 1950, §§ 8-208.31, 8-208.32; 1973, c. 439; 1975, c. 495.

§ 19.2-264.1. Views by juries

The jury in any criminal case may, at the request of either the attorney for the Commonwealth or any defendant, be taken to view the premises or place in question, or any property, matter or thing relating to the case, when it shall appear to the court that such view is necessary to a just decision.

Code 1950, § 8-216; 1977, c. 624.

Article 4.1 - TRIAL OF CAPITAL CASES

§ 19.2-264.2. Conditions for imposition of death sentence

In assessing the penalty of any person convicted of an offense for which the death penalty may be imposed, a sentence of death shall not be imposed unless the court or jury shall (1) after consideration of the past criminal record of convictions of the defendant, find that there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing serious threat to society or that his conduct in committing the offense for which he stands charged was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind or an aggravated battery to the victim; and (2) recommend that the penalty of death be imposed.

1977, c. 492.

§ 19.2-264.3. Procedure for trial by jury

A. In any case in which the offense may be punishable by death which is tried before a jury the court shall first submit to the jury the issue of guilt or innocence of the defendant of the offense charged in the indictment, or any other offense supported by the evidence for which a lesser punishment is provided by law and the penalties therefor.

B. If the jury finds the defendant guilty of an offense for which the death penalty may not be imposed, it shall fix the punishment as provided in § 19.2-295.1.

C. If the jury finds the defendant guilty of an offense which may be punishable by death, then a separate proceeding before the same jury shall be held as soon as is practicable on the issue of the penalty, which shall be fixed as is provided in § 19.2-264.4.

If the sentence of death is subsequently set aside or found invalid, and the defendant or the Commonwealth requests a jury for purposes of resentencing, the court shall impanel a different jury on the issue of penalty.

1977, c. 492; 1983, c. 519; 1994, cc. 828, 860, 862, 881.

§ 19.2-264.3:1. Expert assistance when defendant's mental condition relevant to capital sentencing

A. Upon (i) motion of the attorney for a defendant charged with or convicted of capital murder and (ii) a finding by the court that the defendant is financially unable to pay for expert assistance, the court shall appoint one or more qualified mental health experts to evaluate the defendant and to assist the defense in the preparation and presentation of information concerning the defendant's history, character, or mental condition, including (i) whether the defendant acted under extreme mental or emotional disturbance at the time of the offense; (ii) whether the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was significantly impaired at the time of the offense; and (iii) whether there are any other factors in mitigation relating to the history or character of the defendant or the defendant's mental condition at the time of the offense. The mental health expert appointed pursuant to this section shall be (i) a psychiatrist, a clinical psychologist, or an individual with a doctorate degree in clinical psychology who has successfully completed forensic evaluation training as approved by the Commissioner of Behavioral Health and Developmental Services and (ii) qualified by specialized training and experience to perform forensic evaluations. The defendant shall not be entitled to a mental health expert of the defendant's own choosing or to funds to employ such expert.

B. Evaluations performed pursuant to subsection A may be combined with evaluations performed pursuant to § 19.2-169.5 and shall be governed by subsections B and C of § 19.2-169.5.

C. The expert appointed pursuant to subsection A shall submit to the attorney for the defendant a report concerning the history and character of the defendant and the defendant's mental condition at the time of the offense. The report shall include the expert's opinion as to (i) whether the defendant acted under extreme mental or emotional disturbance at the time of the offense, (ii) whether the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was significantly impaired, and (iii) whether there are any other factors in mitigation relating to the history or character of the defendant or the defendant's mental condition at the time of the offense.

D. The report described in subsection C shall be sent solely to the attorney for the defendant and shall be protected by the attorney-client privilege. However, the Commonwealth shall be given the report and the results of any other evaluation of the defendant's mental condition conducted

relative to the sentencing proceeding and copies of psychiatric, psychological, medical or other records obtained during the course of such evaluation, after the attorney for the defendant gives notice of an intent to present psychiatric or psychological evidence in mitigation pursuant to subsection E.

E. In any case in which a defendant charged with capital murder intends, in the event of conviction, to present testimony of an expert witness to support a claim in mitigation relating to the defendant's history, character or mental condition, he or his attorney shall give notice in writing to the attorney for the Commonwealth, at least 60 days before trial, of his intention to present such testimony. In the event that such notice is not given and the defendant tenders testimony by an expert witness at the sentencing phase of the trial, then the court may, in its discretion, upon objection of the Commonwealth, either allow the Commonwealth a continuance or, under appropriate circumstances, bar the defendant from presenting such evidence.

F.1. If the attorney for the defendant gives notice pursuant to subsection E and the Commonwealth thereafter seeks an evaluation concerning the existence or absence of mitigating circumstances relating to the defendant's mental condition at the time of the offense, the court shall appoint one or more qualified experts to perform such an evaluation. The court shall order the defendant to submit to such an evaluation, and advise the defendant on the record in court that a refusal to cooperate with the Commonwealth's expert could result in exclusion of the defendant's expert evidence. The qualification of the experts shall be governed by subsection A. The location of the evaluation shall be governed by subsection B of § 19.2-169.5. The attorney for the Commonwealth shall be responsible for providing the experts the information specified in subsection C of § 19.2-169.5. After performing their evaluation, the experts shall report their findings and opinions and provide copies of psychiatric, psychological, medical or other records obtained during the course of the evaluation to the attorneys for the Commonwealth and the defense.

2. If the court finds, after hearing evidence presented by the parties, out of the presence of the jury, that the defendant has refused to cooperate with an evaluation requested by the Commonwealth, the court may admit evidence of such refusal or, in the discretion of the court, bar the defendant from presenting his expert evidence.

G. [Repealed.]

1986, c. 535; 1987, c. 439; 1996, cc. 937, 980; 2003, cc. 1031, 1040; 2009, cc. 813, 840; 2010, c. 559.

§ 19.2-264.3:1.1. Capital cases; determination of mental retardation

A. As used in this section and § 19.2-264.3:1.2, the following definition applies:

"Mentally retarded" means a disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning administered in conformity with accepted

professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social and practical adaptive skills.

B. Assessments of mental retardation under this section and § 19.2-264.3:1.2 shall conform to the following requirements:

1. Assessment of intellectual functioning shall include administration of at least one standardized measure generally accepted by the field of psychological testing and appropriate for administration to the particular defendant being assessed, taking into account cultural, linguistic, sensory, motor, behavioral and other individual factors. All such measures shall be reported as a range of scores calculated by adding and subtracting the standard error of measurement identified by the test publisher to the defendant's earned score. Testing of intellectual functioning shall be carried out in conformity with accepted professional practice, and whenever indicated, the assessment shall include information from multiple sources. The Commissioner of Behavioral Health and Developmental Services shall maintain an exclusive list of standardized measures of intellectual functioning generally accepted by the field of psychological testing.

2. Assessment of adaptive behavior shall be based on multiple sources of information, including clinical interview, psychological testing and educational, correctional and vocational records. The assessment shall include at least one standardized measure generally accepted by the field of psychological testing for assessing adaptive behavior and appropriate for administration to the particular defendant being assessed, unless not feasible. In reaching a clinical judgment regarding whether the defendant exhibits significant limitations in adaptive behavior, the examiner shall give performance on standardized measures whatever weight is clinically appropriate in light of the defendant's history and characteristics and the context of the assessment.

3. Assessment of developmental origin shall be based on multiple sources of information generally accepted by the field of psychological testing and appropriate for the particular defendant being assessed, including, whenever available, educational, social service, medical records, prior disability assessments, parental or caregiver reports, and other collateral data, recognizing that valid clinical assessment conducted during the defendant's childhood may not have conformed to current practice standards.

C. In any case in which the offense may be punishable by death and is tried before a jury, the issue of mental retardation, if raised by the defendant in accordance with the notice provisions of subsection E of § 19.2-264.3:1.2, shall be determined by the jury as part of the sentencing proceeding required by § 19.2-264.4.

In any case in which the offense may be punishable by death and is tried before a judge, the issue of mental retardation, if raised by the defendant in accordance with the notice provisions of subsection E of § 19.2-264.3:1.2, shall be determined by the judge as part of the sentencing proceeding required by § 19.2-264.4.

The defendant shall bear the burden of proving that he is mentally retarded by a preponderance of the evidence.

D. The verdict of the jury, if the issue of mental retardation is raised, shall be in writing, and, in addition to the forms specified in § 19.2-264.4, shall include one of the following forms:

(1) "We the jury, on the issue joined, having found the defendant guilty of (here set out the statutory language of the offense charged), and that the defendant has proven by a preponderance of the evidence that he is mentally retarded, fix his punishment at (i) imprisonment for life or (ii) imprisonment for life and a fine of $_____.

Signed _____ foreman"

or

(2) "We the jury, on the issue joined, having found the defendant guilty of (here set out the statutory language of the offense charged) find that the defendant has not proven by a preponderance of the evidence that he is mentally retarded.

Signed _____ foreman"

2003, cc. 1031, 1040; 2009, cc. 813, 840; 2015, c. 360.

§ 19.2-264.3:1.2. Expert assistance when issue of defendant's mental retardation relevant to capital sentencing

A. Upon (i) motion of the attorney for a defendant charged with or convicted of capital murder and (ii) a finding by the court that the defendant is financially unable to pay for expert assistance, the court shall appoint one or more qualified mental health experts to assess whether or not the defendant is mentally retarded and to assist the defense in the preparation and presentation of information concerning the defendant's mental retardation. The mental health expert appointed pursuant to this section shall be (a) a psychiatrist, a clinical psychologist or an individual with a doctorate degree in clinical psychology, (b) skilled in the administration, scoring and interpretation of intelligence tests and measures of adaptive behavior and (c) qualified by experience and by specialized training, approved by the Commissioner of Behavioral Health and Developmental Services, to perform forensic evaluations. The defendant shall not be entitled to a mental health expert of the defendant's own choosing or to funds to employ such expert.

B. Evaluations performed pursuant to subsection A may be combined with evaluations performed pursuant to § 19.2-169.1, 19.2-169.5, or 19.2-264.3:1.

C. The expert appointed pursuant to subsection A shall submit to the attorney for the defendant a report assessing whether the defendant is mentally retarded. The report shall include the expert's opinion as to whether the defendant is mentally retarded.

D. The report described in subsection C shall be sent solely to the attorney for the defendant and shall be protected by the attorney-client privilege. However, the Commonwealth shall be given a

copy of the report, the results of any other evaluation of the defendant's mental retardation and copies of psychiatric, psychological, medical or other records obtained during the course of the evaluation, after the attorney for the defendant gives notice of an intent to present evidence of mental retardation pursuant to subsection E.

E. In any case in which a defendant charged with capital murder intends, in the event of conviction, to present testimony of an expert witness to support a claim that he is mentally retarded, he or his attorney shall give notice in writing to the attorney for the Commonwealth, at least 21 days before trial, of his intention to present such testimony. In the event that such notice is not given and the defendant tenders testimony by an expert witness at the sentencing phase of the trial, then the court may, in its discretion, upon objection of the Commonwealth, either allow the Commonwealth a continuance or, under appropriate circumstances, bar the defendant from presenting such evidence.

F. 1. If the attorney for the defendant gives notice pursuant to subsection E and the Commonwealth thereafter seeks an evaluation concerning the existence or absence of the defendant's mental retardation, the court shall appoint one or more qualified experts to perform such an evaluation. The court shall order the defendant to submit to such an evaluation, and advise the defendant on the record in court that a refusal to cooperate with the Commonwealth's experts could result in exclusion of the defendant's expert evidence. The qualification of the experts shall be governed by subsection A. The attorney for the Commonwealth shall be responsible for providing the experts the information specified in subsection C of § 19.2-169.5. After performing their evaluation, the experts shall report their findings and opinions and provide copies of psychiatric, psychological, medical or other records obtained during the course of the evaluation to the attorneys for the Commonwealth and the defense.

2. If the court finds, after hearing evidence presented by the parties, out of the presence of the jury, that the defendant has refused to cooperate with an evaluation requested by the Commonwealth, the court may admit evidence of such refusal or, in the discretion of the court, bar the defendant from presenting his expert evidence.

2003, cc. 1031, 1040; 2009, cc. 813, 840.

§ 19.2-264.3:1.3. Expert assistance for indigent defendants in capital cases

A. In any case in which an indigent defendant (i) is charged with a capital offense and (ii) is found by the court to be financially unable to pay for expert assistance, the defendant or his attorney may, upon notice to the Commonwealth, move in circuit court for the court to designate another judge in the same circuit to hear an ex parte request for the appointment of a qualified expert to assist in the preparation of the defendant's defense. No ex parte proceeding, communication, or request may be considered pursuant to this section unless a proper showing is made in an adversarial proceeding before the trial judge demonstrating a particularized need for con-

fidentiality. Any such proceeding, communication, or request shall be transcribed and made part of the record available for appellate review or any other post conviction review.

B. The motion for the appointment of a qualified expert shall be in writing, filed under seal, and shall be heard ex parte as soon as practicable by the designated judge. Upon hearing the ex parte request, the designated judge shall find, by clear and convincing evidence, a particularized need for confidentiality has been demonstrated before considering the request for expert services. After a hearing upon the motion, the court may order the appointment of a qualified expert upon a showing that the provision of the requested expert services would materially assist the defendant in preparing his defense and the lack of such confidential assistance would result in a fundamentally unfair trial. Any expert appointed pursuant to this subsection shall be compensated in accordance with § 19.2-332. The designated judge shall direct requests for scientific investigations to the Department of Forensic Science or Division of Consolidated Laboratory Services whenever practicable.

C. All ex parte hearings conducted under this section shall be on the record, and the record of the hearings, together with all papers filed and orders entered in connection with ex parte requests for expert assistance, shall be kept under seal as part of the record of the case. Following decision on the motion, whether it is granted or denied, the motion shall remain under seal. On motion of any party, and for good cause shown, the court may unseal the record after the trial is concluded. Following final judgment and after all appeals have been exhausted, the court shall unseal all records and other material sealed pursuant to this section. No ex parte ruling by a designated judge pursuant to this section in a proceeding where the Commonwealth is excluded shall be the subject of a claim of error on appeal, or form the basis for relief in any post-conviction litigation on behalf of the defendant.

D. This section does not apply to the appointment of a mental health expert pursuant to § 19.2-264.3:1 or 19.2-264.3:1.2 .

2010, c. 789.

§ 19.2-264.3:2. Notice to the defendant of intention to present evidence of unadjudicated criminal conduct

Upon motion of the defendant, in any case in which the offense for which the defendant is to be tried may be punishable by death, if the attorney for the Commonwealth intends to introduce during a sentencing proceeding held pursuant to § 19.2-264.4 evidence of defendant's unadjudicated criminal conduct, the attorney for the Commonwealth shall give notice in writing to the attorney for the defendant of such intention. The notice shall include a description of the alleged unadjudicated criminal conduct and, to the extent such information is available, the time and place such conduct will be alleged to have occurred.

The court shall specify the time by which such notice shall be given.

1993, c. 377 .

§ 19.2-264.3:3. Limitations on use of statements or disclosure by defendant during evaluations

No statement or disclosure by the defendant made during a competency evaluation performed pursuant to § 19.2-169.1, an evaluation performed pursuant to § 19.2-169.5 to determine sanity at the time of the offense, treatment provided pursuant to § 19.2-169.2 or § 19.2-169.6, a mental condition evaluation performed pursuant to § 19.2-264.3:1 or a mental retardation evaluation performed pursuant to § 19.2-264.3:1.2, and no evidence derived from any such statements or disclosures may be introduced against the defendant at the sentencing phase of a capital murder trial for the purpose of proving the aggravating circumstances specified in § 19.2-264.4. Such statements or disclosures shall be admissible in rebuttal only when relevant to issues in mitigation raised by the defense.

2003, cc. 1031, 1040.

§ 19.2-264.3:4. Notice of expert testimony in capital case

Whenever the defendant, the defendant's attorney, or the attorney for the Commonwealth in a capital case intends to introduce expert opinion testimony at trial, the defendant, defendant's attorney, or attorney for the Commonwealth shall notify the opposing party in writing of such party's intention to present such testimony at least 60 days before the trial. The written notice shall include copies of any written reports of the witness, a summary of the proposed expert testimony that describes the witness's opinions and the basis and reasons for those opinions, and the witness's qualifications and contact information.

2010, c. 789.

§ 19.2-264.4. Sentence proceeding

A. Upon a finding that the defendant is guilty of an offense which may be punishable by death, a proceeding shall be held which shall be limited to a determination as to whether the defendant shall be sentenced to death or life imprisonment. Upon request of the defendant, a jury shall be instructed that for all Class 1 felony offenses committed after January 1, 1995, a defendant shall not be eligible for parole if sentenced to imprisonment for life. In case of trial by jury, where a sentence of death is not recommended, the defendant shall be sentenced to imprisonment for life.

A1. In any proceeding conducted pursuant to this section, the court shall permit the victim, as defined in § 19.2-11.01, upon the motion of the attorney for the Commonwealth, and with the consent of the victim, to testify in the presence of the accused regarding the impact of the offense upon the victim. The court shall limit the victim's testimony to the factors set forth in clauses (i) through (vi) of subsection A of § 19.2-299.1.

B. In cases of trial by jury, evidence may be presented as to any matter which the court deems relevant to sentence, except that reports under the provisions of § 19.2-299, or under any rule of court, shall not be admitted into evidence.

Evidence which may be admissible, subject to the rules of evidence governing admissibility, may include the circumstances surrounding the offense, the history and background of the defendant, and any other facts in mitigation of the offense. Facts in mitigation may include, but shall not be limited to, the following: (i) the defendant has no significant history of prior criminal activity, (ii) the capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance, (iii) the victim was a participant in the defendant's conduct or consented to the act, (iv) at the time of the commission of the capital felony, the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was significantly impaired, (v) the age of the defendant at the time of the commission of the capital offense, or (vi) even if § 19.2-264.3:1.1 is inapplicable as a bar to the death penalty, the subaverage intellectual functioning of the defendant.

C. The penalty of death shall not be imposed unless the Commonwealth shall prove beyond a reasonable doubt that there is a probability based upon evidence of the prior history of the defendant or of the circumstances surrounding the commission of the offense of which he is accused that he would commit criminal acts of violence that would constitute a continuing serious threat to society, or that his conduct in committing the offense was outrageously or wantonly vile, horrible or inhuman, in that it involved torture, depravity of mind or aggravated battery to the victim.

D. In the event the jury cannot agree as to the penalty, the court shall dismiss the jury, and impose a sentence of imprisonment for life.

1977, c. 492; 1980, c. 160; 1990, cc. 316, 754; 1998, c. 485; 2000, c. 838; 2003, cc. 1031, 1040; 2010, c. 658.

§ 19.2-264.5. Post-sentence reports

When the punishment of any person has been fixed at death, the court shall, before imposing sentence, direct a probation officer of the court to thoroughly investigate the history of the defendant and any and all other relevant facts, to the end that the court may be fully advised as to whether the sentence of death is appropriate and just. Reports shall be made, presented and filed as provided in § 19.2-299 except that, notwithstanding any other provision of law, such reports shall in all cases contain a Victim Impact Statement. Such statement shall contain the same information and be prepared in the same manner as Victim Impact Statements prepared pursuant to § 19.2-299.1. After consideration of the report, and upon good cause shown, the court may set aside the sentence of death and impose a sentence of imprisonment for life. Notwithstanding any other provision of law, if the court sets aside the sentence of death and imposes a sentence of imprisonment for life, it shall include in the sentencing order an explanation for the reduction in sentence.

1977, c. 492; 1993, c. 978; 2004, c. 298.

Article 5 - MISCELLANEOUS PROVISIONS

§ 19.2-265. Opening statement of counsel

On the trial of any case of felony or misdemeanor and before any evidence is submitted on either side, the attorney for the Commonwealth and counsel for the accused, respectively, shall have the right to make an opening statement of their case.

Code 1950, § 19.1-245; 1960, c. 366; 1975, c. 495.

§ 19.2-265.01. Victims, certain members of the family and support persons not to be excluded

During the trial of every criminal case and in all court proceedings attendant to trial, whether before, during or after trial, including any proceedings occurring after an appeal by the defendant or the Commonwealth, at which attendance by the defendant is permitted, whether in a circuit or district court, any victim as defined in § 19.2-11.01 may remain in the courtroom and shall not be excluded unless the court determines, in its discretion, the presence of the victim would impair the conduct of a fair trial. In any case involving a minor victim, the court may permit an adult chosen by the minor to be present in the courtroom during any proceedings in addition to or in lieu of the minor's parent or guardian.

The attorney for the Commonwealth shall give prior notice when practicable of such trial and attendant proceedings and changes in the scheduling thereof to any known victim and to any known adult chosen in accordance with this section by a minor victim, at the address or telephone number, or both, provided in writing by such person.

1993, cc. 447, 452; 1994, cc. 361, 598; 1995, c. 687; 1996, c. 546; 1999, c. 844; 2000, c. 339.

§ 19.2-265.1. Exclusion of witnesses (Subsection (a) of Supreme Court Rule 2:615 derived in part from this section and subsection (c) of Supreme Court Rule 2:615 derived from this section)

In the trial of every criminal case, the court, whether a court of record or a court not of record, may upon its own motion and shall upon the motion of either the attorney for the Commonwealth or any defendant, require the exclusion of every witness to be called, including, but not limited to, police officers or other investigators; however, each defendant who is an individual and one officer or agent of each defendant which is a corporation or association shall be exempt from the rule of this section as a matter of right. Additionally, any victim as defined in § 19.2-11.01 who is to be called as a witness shall be exempt from the rule of this section as a matter of law unless, in accordance with the provisions of § 19.2-265.01, his exclusion is otherwise required.

Code 1950, § 8-211.1; 1966, c. 268; 1975, c. 652; 1977, c. 624; 1990, c. 572; 2004, c. 311.

§ 19.2-265.2. Judicial notice of laws (Supreme Court Rule 2:202 derived in part from this section)

A. Whenever, in any criminal case it becomes necessary to ascertain what the law, statutory or otherwise, of this Commonwealth, of another state, of the United States, of another country, or of any political subdivision or agency of the same is, or was, at any time, the court shall take judicial notice thereof whether specially pleaded or not.

B. The court, in taking such notice, shall consult any book, record, register, journal, or other official document or publication purporting to contain, state, or explain such law, and may consider any evidence or other information or argument that is offered on the subject.

1978, c. 328.

§ 19.2-265.3. Nolle prosequi; discretion of court upon good cause shown

Nolle prosequi shall be entered only in the discretion of the court, upon motion of the Commonwealth with good cause therefor shown.

1979, c. 641.

§ 19.2-265.4. Failure to provide discovery

A. In any criminal prosecution for a felony in a circuit court or for a misdemeanor brought on direct indictment, the attorney for the Commonwealth shall have a duty to adequately and fully provide discovery as provided under Rule 3A:11 of the Rules of the Supreme Court. Rule 3A:11 shall be construed to apply to such felony and misdemeanor prosecutions. This duty to disclose shall be continuing and shall apply to any additional evidence or material discovered by the Commonwealth prior to or during trial which is subject to discovery or inspection and has been previously requested by the accused. In any criminal prosecution for a misdemeanor by trial de novo in circuit court, the attorney for the Commonwealth shall have a duty to adequately and fully provide discovery as provided under Rule 7C:5 of the Rules of the Supreme Court.

B. If at any time during the course of the proceedings it is brought to the attention of the court that the attorney for the Commonwealth has failed to comply with this section, the court may order the Commonwealth to permit the discovery or inspection, grant a continuance, or prohibit the Commonwealth from introducing evidence not disclosed, or the court may enter such other order as it deems just under the circumstances.

1985, c. 538; 1995, c. 504; 2004, c. 348.

§ 19.2-265.5. Prosecuting misdemeanor cases without attorney

Notwithstanding any of the provisions of § 19.2-265.1, whenever in a misdemeanor case neither an attorney for the Commonwealth nor any other attorney for the prosecution is present, the complaining witness may be allowed to remain in court throughout the entire trial if necessary for the orderly presentation of witnesses for the prosecution.

1987, c. 659.

§ 19.2-265.6. Effect of dismissal of criminal charges

No dismissal of any criminal charge by a court shall bar subsequent prosecution of the charge unless jeopardy attached at the earlier proceeding or unless the dismissal order explicitly states that the dismissal is with prejudice.

2007, c. 419.

§ 19.2-266. Exclusion of persons from trial; photographs and broadcasting permitted under designated guidelines; exceptions

In the trial of all criminal cases, whether the same be felony or misdemeanor cases, the court may, in its discretion, exclude from the trial any persons whose presence would impair the conduct of a fair trial, provided that the right of the accused to a public trial shall not be violated.

A court may solely in its discretion permit the taking of photographs in the courtroom during the progress of judicial proceedings and the broadcasting of judicial proceedings by radio or television and the use of electronic or photographic means for the perpetuation of the record or parts thereof in criminal and in civil cases, but only in accordance with the rules set forth hereunder. In addition to such rules, the Supreme Court and the Court of Appeals shall have the authority to promulgate any other rules they deem necessary to govern electronic media and still photography coverage in their respective courts. The following rules shall serve as guidelines, and a violation of these rules may be punishable as contempt:

Coverage Allowed.

1. The presiding judge shall at all times have authority to prohibit, interrupt or terminate electronic media and still photography coverage of public judicial proceedings. The presiding judge shall advise the parties of such coverage in advance of the proceedings and shall allow the parties to object thereto. For good cause shown, the presiding judge may prohibit coverage in any case and may restrict coverage as he deems appropriate to meet the ends of justice.

2. Coverage of the following types of judicial proceedings shall be prohibited: adoption proceedings, juvenile proceedings, child custody proceedings, divorce proceedings, temporary and permanent spousal support proceedings, proceedings concerning sexual offenses, proceedings for the hearing of motions to suppress evidence, proceedings involving trade secrets, and in camera proceedings.

3. Coverage of the following categories of witnesses shall be prohibited: police informants, minors, undercover agents and victims and families of victims of sexual offenses.

4. Coverage of jurors shall be prohibited expressly at any stage of a judicial proceeding, including that portion of a proceeding during which a jury is selected. The judge shall inform all potential jurors at the beginning of the jury selection process of this prohibition.

5. To protect the attorney-client privilege and the right to counsel, there shall be no recording or broadcast of sound from such conferences which occur in a court facility between attorneys and their clients, between co-counsel of a client, between adverse counsel, or between counsel and the presiding judge held at the bench or in chambers.

Location of Equipment and Personnel.

1. The location of recording and camera equipment shall be strictly regulated so as not to be intrusive.

2. Media personnel shall not enter or leave the courtroom once the proceedings are in session except during a court recess or adjournment.

3. Electronic media equipment and still photography equipment shall not be taken into the courtroom or removed from the designated media area except at the following times:

a. Prior to the convening of proceedings;

b. During any luncheon recess;

c. During any court recess with the permission of the trial judge; and

d. After adjournment for the day of the proceedings.

Official Representatives of the Media.

The Virginia Association of Broadcasters and the Virginia Press Association may designate one person to represent the television media, one person to represent the radio broadcasters, and one person to represent still photographers in each jurisdiction in which electronic media and still photographic coverage is desired. The names of the persons so designated shall be forwarded to the chief judge of the court in the county or city in which coverage is desired so that arrangements can be made for the "pooling" of equipment and personnel. Such persons shall also be the only persons authorized to speak for the media to the presiding judge concerning the coverage of any judicial proceedings.

Equipment and Personnel.

1. No distracting lights or sounds shall be permitted.

2. Not more than two television cameras shall be permitted in any proceeding.

3. Not more than one still photographer, utilizing not more than two still cameras with not more than two lenses for each camera and related equipment for print purposes, shall be permitted in any proceeding.

4. Not more than one audio system for broadcast purposes shall be permitted in any proceeding.

Audio pickup for all media purposes shall be accomplished with existing audio systems present in the court facility. If no technically suitable audio system exists in the court facility, microphones and related wiring essential for media purposes may be installed and maintained at media expense. The microphones and wiring must be unobtrusive and shall be located in places designated in advance of any proceeding by the chief judge of the court in which coverage is desired.

5. Any "pooling" arrangements among the media required by these limitations on equipment and personnel shall be the sole responsibility of the media without calling upon the presiding judge to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. In the absence of advance media agreement on disputed equipment or personnel issues, the presiding judge may exclude all contesting media personnel from a proceeding.

6. In no event shall the number of personnel in the designated area exceed the number necessary to operate the designated equipment.

7. Only television photographic and audio equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. No artificial lighting device of any kind shall be employed in connection with the television camera.

8. Only still camera equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. No artificial lighting device of any kind shall be employed in connection with a still camera.

9. With the concurrence of the chief judge of the court in which coverage is desired, modifications and additions may be made in light sources existing in the facility, provided such modifications or additions are installed and maintained without public expense.

Impermissible Use of Media Material.

None of the film, video tape, still photographs or audio reproductions developed during or by virtue of coverage of a judicial proceeding shall be admissible as evidence (i) in the proceeding out of which it arose, (ii) in any proceeding subsequent and collateral thereto, or (iii) upon any retrial or appeal of such proceedings.

All electronic media and still photography coverage of public judicial proceedings authorized by this section, with the exception of electronic or photographic means authorized for the perpetuation of the record or parts thereof shall be conducted at no cost to the Commonwealth.

Code 1950, § 19.1-246; 1960, c. 366; 1971, Ex. Sess., c. 28; 1975, c. 495; 1978, c. 477; 1987, c. 580; 1989, c. 582; 1990, c. 243; 1992, c. 557 .

§ 19.2-266.1. Conviction of lesser offense on indictment for homicide

In any trial upon an indictment charging homicide, the jury or the court may find the accused not guilty of the specific offense charged in the indictment, but guilty of any degree of homicide supported by the evidence for which a lesser punishment is provided by law.

1975, c. 495.

§ 19.2-266.2. Defense objections to be raised before trial; hearing; bill of particulars

A. Defense motions or objections seeking (i) suppression of evidence on the grounds such evidence was obtained in violation of the provisions of the Fourth, Fifth or Sixth Amendments to the Constitution of the United States or Article I, Section 8, 10 or 11 of the Constitution of Virginia proscribing illegal searches and seizures and protecting rights against self-incrimination; (ii) dismissal of a warrant, information, or indictment or any count or charge thereof on the ground that: (a) the defendant would be deprived of a speedy trial in violation of the provisions of the Sixth Amendment to the Constitution of the United States, Article I, Section 8 of the Constitution of Virginia, or § 19.2-243; or (b) the defendant would be twice placed in jeopardy in violation of the provisions of the Fifth Amendment to the Constitution of the United States or Article I, Section 8 of

the Constitution of Virginia; or (iii) dismissal of a warrant, information, or indictment or any count or charge thereof on the ground that a statute upon which it was based is unconstitutional shall be raised by motion or objection.

B. Such a motion or objection in a proceeding in circuit court shall be raised in writing, before trial. The motions or objections shall be filed and notice given to opposing counsel not later than seven days before trial in circuit court or, if made under clause (ii) of subsection A, at such time prior to trial in circuit court as the grounds for the motion or objection shall arise, whichever occurs last. A hearing on all such motions or objections shall be held not later than three days prior to trial in circuit court, unless such period is waived by the accused, as set by the trial judge. The circuit court may, however, for good cause shown and in the interest of justice, permit the motions or objections to be raised at a later time.

C. To assist the defense in filing such motions or objections in a timely manner, the circuit court shall, upon motion of the defendant, direct the Commonwealth to file a bill of particulars pursuant to § 19.2-230. The circuit court shall fix the time within which such bill of particulars is to be filed. Upon further motion of the defendant, the circuit court may, upon a showing of good cause, direct the Commonwealth to supplement its bill of particulars. The attorney for the Commonwealth shall certify that the matters stated in the bill of particulars are true and accurate to the best of his knowledge and belief.

D. In a criminal proceeding in district court, any motion or objection as described in subsection A may be raised prior to or at such proceeding. In the event such a motion or objection is raised, the district court shall, upon motion of the Commonwealth grant a continuance for good cause shown.

1987, c. 710; 2005, cc. 622, 694; 2006, cc. 578, 862.

§ 19.2-266.3. Continuances; appearances of parties

When the court grants a continuance in advance of the date of a scheduled trial or hearing, if the defendant acknowledges in writing, on a form provided by the Office of the Executive Secretary of the Supreme Court, that he promises to appear in court on the date and time of the newly scheduled trial or hearing, the court shall not require counsel or the defendant to appear on the date when the trial or hearing was originally scheduled. However, if the defendant is in violation of the terms of his pretrial release or has failed to appear at any court proceeding, the court may require the defendant to appear on the date when the trial or hearing was originally scheduled as a condition of any continuance granted.

2013, c. 154.

Chapter 16 - EVIDENCE AND WITNESSES

Article 1 - IN GENERAL

§ 19.2-267. Provisions applicable to witnesses in criminal as well as civil cases; obligation to attend; summons

Sections 8.01-396.1, 8.01-402, 8.01-405, 8.01-407, and 8.01-408 to 8.01-410, inclusive, shall apply to a criminal as well as a civil case in all respects, except that a witness in a criminal case shall be obliged to attend, and may be proceeded against for failing to do so, although there may not previously have been any payment, or tender to him of anything for attendance, mileage, or tolls. In a criminal case a summons for a witness may be issued by the attorney for the Commonwealth or other attorney charged with the responsibility for the prosecution of a violation of any ordinance or by the attorney for the defendant; however, any attorney who issues such a summons shall, at the time of the issuance, file with the clerk of the court the names and addresses of such witnesses except to the extent protected under § 19.2-11.2.

Code 1950, § 19.1-262; 1960, c. 366; 1962, c. 374; 1975, c. 495; 1977, c. 624; 1991, c. 38; 1994, c. 543; 2007, c. 552; 2008, c. 124; 2014, c. 744.

§ 19.2-267.1. Authority of law-enforcement officer to issue summons to witness; failure to appear

A summons may be issued by a law-enforcement officer during the course of his immediate investigation of an alleged misdemeanor for which an arrest warrant is not required pursuant to § 19.2-81 to any person he reasonably believes was a witness to the offense. The summons shall command the person to appear and testify at the trial of any criminal charge brought against any person as the result of the offense.

A summons issued pursuant to this section shall have the same force as if issued by the court. The failure of any person so summoned to appear after receiving written notice of the date, time and place of the trial at least five days prior to the trial shall be punishable as contempt of the court in accordance with § 18.2-456 (5) .

1983, c. 224.

§ 19.2-267.2. Response to subpoena for information stored in electronic format

When a subpoena has been served pursuant to Rule 3A:12 of the Rules of the Supreme Court on a person who is not a party to the action requiring the production of information that is stored in an electronic format, the person shall produce a tangible copy of the information. If a tangible copy cannot be produced, the person shall permit the parties to review the information on a computer or by electronic means during normal business hours, provided that the information can be accessed and isolated. If a tangible copy cannot reasonably be produced and the information is commingled with information other than that requested in the subpoena and cannot reasonably be isolated, the person may file a motion for a protective order or motion to quash.

2002, c. 764.

§ 19.2-268. Right of accused to testify

In any case of felony or misdemeanor, the accused may be sworn and examined in his own behalf, and if so sworn and examined, he shall be deemed to have waived his privilege of not giving evidence against himself, and shall be subject to cross-examination as any other witness; but his

failure to testify shall create no presumption against him, nor be the subject of any comment before the court or jury by the prosecuting attorney.

Code 1950, § 19.1-264; 1960, c. 366; 1975, c. 495.

§ 19.2-268.1. Contradiction by prior inconsistent writing (Subdivision (b)(i) of Supreme Court Rule 2:613 derived in part from this section)

A witness in a criminal case may be cross-examined as to previous statements made by him in writing or reduced into writing, relative to the subject matter of the proceeding, without such writing being shown to him; but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to the particular occasion on which the writing is supposed to have been made, and he may be asked if he did not make a writing of the purport of the one to be offered to contradict him, and if he denies making it, or does not admit its execution, it shall then be shown to him, and if he admits its genuineness, he shall be allowed to make his own explanation of it; but it shall be competent for the court at any time during the trial to require the production of the writing for its inspection, and the court may thereupon make such use of it for the purpose of the trial as it may think best.

Code 1950, § 8-293; 1958, c. 380; 1960, c. 114; 1964, c. 356; 1977, c. 624.

§ 19.2-268.2. Recent complaint hearsay exception (Subdivision (23) of Supreme Court Rule 2:803 derived from this section)

Notwithstanding any other provision of law, in any prosecution for criminal sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, a violation of §§ 18.2-361, 18.2-366, 18.2-370 or § 18.2-370.1, the fact that the person injured made complaint of the offense recently after commission of the offense is admissible, not as independent evidence of the offense, but for the purpose of corroborating the testimony of the complaining witness.

1993, c. 592 .

§ 19.2-268.3. Admissibility of statements by children in certain cases

A. As used in this section, "offense against children" means a violation or an attempt to violate § 18.2-31, 18.2-32, or 18.2-35, subsection A of § 18.2-47, § 18.2-48, 18.2-51, 18.2-51.2, 18.2-51.6, 18.2-52, 18.2-54.1, 18.2-54.2, 18.2-61, 18.2-67.1, 18.2-67.2, or 18.2-67.3, subsection B of § 18.2-346 if punishable as a felony, § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1, subsection B of § 18.2-361, subsection B of § 18.2-366, § 18.2-370, 18.2-370.1, 18.2-371.1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, or 18.2-374.4, § 18.2-386.1 if punishable as a felony, or § 40.1-103.

B. An out-of-court statement made by a child who is under 13 years of age at the time of trial or hearing who is the alleged victim of an offense against children describing any act directed against the child relating to such alleged offense shall not be excluded as hearsay under Rule 2:802 of the Rules of Supreme Court of Virginia if both of the following apply:

1. The court finds, in a hearing conducted prior to a trial, that the time, content, and totality of circumstances surrounding the statement provide sufficient indicia of reliability so as to render it

inherently trustworthy. In determining such trustworthiness, the court may consider, among other things, the following factors:

a. The child's personal knowledge of the event;

b. The age, maturity, and mental state of the child;

c. The credibility of the person testifying about the statement;

d. Any apparent motive the child may have to falsify or distort the event, including bias or coercion;

e. Whether the child was suffering pain or distress when making the statement; and

f. Whether extrinsic evidence exists to show the defendant's opportunity to commit the act; and

2. The child:

a. Testifies; or

b. Is declared by the court to be unavailable as a witness; when the child has been declared unavailable, such statement may be admitted pursuant to this section only if there is corroborative evidence of the act relating to an alleged offense against children.

C. At least 14 days prior to the commencement of the proceeding in which a statement will be offered as evidence, the party intending to offer the statement shall notify the opposing party, in writing, of the intent to offer the statement and shall provide or make available copies of the statement to be introduced.

D. This section shall not be construed to limit the admission of any statement offered under any other hearsay exception or applicable rule of evidence.

2016, cc. 542, 553.

§ 19.2-269. Convicts as witnesses (Supreme Court Rule 2:609 derived from this section)
A person convicted of a felony or perjury shall not be incompetent to testify, but the fact of conviction may be shown in evidence to affect his credit.

Code 1950, § 19.1-265; 1960, c. 366; 1975, c. 495.

§ 19.2-269.1. Inmates as witnesses in criminal cases
Whenever the Commonwealth or a defendant in a criminal prosecution in any circuit court in this Commonwealth requires as a witness in his behalf, an inmate in a state or local correctional facility as defined in § 53.1-1, the court, on the application of such defendant or his attorney, or the attorney for the Commonwealth, shall issue an order to the Director of the Department of Corrections to deliver such witness to the sheriff of the jurisdiction of the court issuing the order. If authorized by the court, the clerk of the circuit court or a deputy clerk may issue these orders on behalf of the court. The sheriff shall go where such witness may then be and carry him to the court to testify as such witness, and after he has testified and been released as such witness, carry him

back to the place whence he came, for all of which service the sheriff shall be paid out of the criminal expense funds in the state treasury such compensation as the court in which the case is pending may certify to be reasonable.

Code 1950, § 8-300; 1966, c. 227; 1974, cc. 44, 45; 1977, c. 624; 2002, cc. 515, 544.

§ 19.2-269.2. Nondisclosure of addresses or telephone numbers of crime victims and witnesses

During any criminal proceeding, upon motion of the defendant or the attorney for the Commonwealth, a judge may prohibit testimony as to the current residential or business address or telephone number of a victim or witness if the judge determines that this information is not material under the circumstances of the case.

1989, c. 170; 1994, cc. 845, 931.

§ 19.2-270. When statement by accused as witness not received as evidence

In a criminal prosecution, other than for perjury, or in an action on a penal statute, evidence shall not be given against the accused of any statement made by him as a witness upon a legal examination, in a criminal or civil action, unless such statement was made when examined as a witness in his own behalf.

Code 1950, § 19.1-267; 1960, c. 366; 1975, c. 495; 1988, c. 366.

§ 19.2-270.1. Use of photographs as evidence in certain larceny and burglary prosecutions

In any prosecution for larceny under the provisions of §§ 18.2-95, 18.2-96 or § 18.2-98, or for shoplifting under the provisions of § 18.2-103, or for burglary under the provisions of §§ 18.2-89, 18.2-90, 18.2-91 or § 18.2-92, photographs of the goods, merchandise, money or securities alleged to have been taken or converted shall be deemed competent evidence of such goods, merchandise, money or securities and shall be admissible in any proceeding, hearing or trial of the case to the same extent as if such goods, merchandise, money or securities had been introduced as evidence. Such photographs shall bear a written description of the goods, merchandise, money or securities alleged to have been taken or converted, the name of the owner of such goods, merchandise, money or securities and the manner of the identification of same by such owner, or the name of the place wherein the alleged offense occurred, the name of the accused, the name of the arresting or investigating police officer or conservator of the peace, the date of the photograph and the name of the photographer. Such writing shall be made under oath by the arresting or investigating police officer or conservator of the peace, and the photographs identified by the signature of the photographer. Upon the filing of such photograph and writing with the police authority or court holding such goods and merchandise as evidence, such goods or merchandise shall be returned to their owner, or the proprietor or manager of the store or establishment wherein the alleged offense occurred.

1976, c. 577; 1985, c. 184; 1987, c. 493; 1995, c. 447.

§ 19.2-270.1:1. Computer and electronic data in obscenity, etc. cases; access to defendant

When computer data or electronic data, stored in any form, the possession of which is otherwise unlawful, are seized as evidence in a criminal prosecution of any offense involving obscenity or child pornography, neither the original data nor a copy thereof shall be released to the defendant or his counsel, nor shall a court order the release of such evidence to the defendant or his counsel except as provided herein. The defendant and his counsel shall be allowed the reasonable opportunity to review such evidence in accordance with the rules of discovery. Upon a finding that the production of the original data or a copy thereof to counsel or his designee is necessary and material to the defense of the accused, the court may order such production only under terms that restrict access to specifically identified recipients, prohibit any duplication of the data beyond what is reasonably necessary for the purpose of the production, and require the return of the data to the law-enforcement agency maintaining custody or control of the seized data for appropriate disposition.

2006, c. 601.

§ 19.2-270.2. Disposition of money, securities or documents seized upon arrest, etc., and pertinent as evidence

A. When in the course of investigation or arrest, the investigating or arresting officer shall seize or come into the possession of moneys, cash, or negotiable or nonnegotiable instruments or securities, hereinafter called "moneys or securities," taken or retained unlawfully from a financial institution or other person, and such moneys or securities, or a portion thereof, shall be pertinent evidence in a pending prosecution or appeal therefrom, the officer or agency having possession thereof, may retain, pending such prosecution or appeal thereof, sufficient of such moneys or securities as shall be necessary to prove the crime of grand larceny or other crimes requiring a specific amount in value. The court upon motion of the attorney for the Commonwealth and for good cause shown may order the release of all moneys or securities, subject to the provisions of this section. The remaining excess moneys or securities, if any, may be released to the owner thereof, upon proper receipt therefor, which release shall be with the consent of the attorney for the Commonwealth. The officer or agency authorizing such release shall make an appropriate record of such moneys or securities released, including designation or copying of serial numbers, and such record or receipt shall be admissible into evidence in any proceeding, hearing or trial of the case to the same extent as if such moneys or securities had been introduced. Such record or receipt shall contain the name of the financial institution or person from whom such moneys or securities were taken, the place from which taken, the name of the accused, and the name of the arresting officer or officers coming into initial possession of such moneys or securities. Pictures shall be taken of any instruments or securities and such pictures shall be attached to the receipt or record above and shall contain further, in the case of such copying, the date of the photograph and the name of the photographer.

B. When in the course of investigation or arrest, the investigating or arresting officer seizes or comes into the possession of moneys or securities under the provisions of this section, and such

moneys or securities, or a portion thereof, are introduced as an exhibit in a prosecution or appeal therefrom, the court may, with the consent of the attorney for the Commonwealth, authorize the clerk of the circuit court, upon all appeal rights being exhausted, to deposit such moneys or cash in an interest-bearing account.

1980, c. 423; 1991, c. 680; 1995, c. 447.

§ 19.2-270.3. Admissible evidence as to identity of party presenting bad check, draft or order

In any prosecution under § 18.2-181 or § 18.2-182 for the presentation of a bad check, draft or order, the following shall be admissible in any proceeding, hearing or trial of the case:

1. The unpaid or dishonored check, draft or order, bearing a notation thereon of the full name, residence address, home telephone number, and either the driver's license, social security or other governmentally issued identification number of the person who delivered such check, draft or order to the payee, the cashing party or its representative, and bearing the initials of the representative of the payee or cashing party to whom the check, draft or order was delivered, as evidence that such information was transcribed on such check, draft or order at the time of such delivery; or

2. A composite photograph of the check, draft or order, and of the person delivering such check, draft or order, and of other documentation identifying such person, such as a driver's license, social security card, or other governmentally issued identification card, taken together at the time the check, draft or order was delivered by such person to the payee, the cashing party or its representative.

If such evidence is introduced, it may invoke an inference sufficient for the trier of fact to find that the person whose identifying information appears on the check, draft or order was the person who delivered the check, draft or order in question to the payee, cashing party or its representative.

1981, c. 292; 1991, c. 633 .

§ 19.2-270.4. When donation, destruction, or return of exhibits received in evidence authorized

A. Except as provided in § 19.2-270.4:1 and unless objection with sufficient cause is made, the trial court in any criminal case may order the donation or destruction of any or all exhibits received in evidence during the course of the trial (i) in any misdemeanor case, at any time after the expiration of the time for filing an appeal from the final judgment of the court if no appeal is taken or if an appeal is taken, at any time after exhaustion of all appellate remedies and (ii) in any felony case, upon notice in the sentencing order or otherwise to the attorney for the Commonwealth, the defendant at his last known address, and attorney of record for the defendant in the case, after more than one year has expired from exhaustion of all appellate remedies, or, if no appeal is taken, after more than one year from the time for seeking appellate remedies has expired; and in the event the defendant is found not guilty by a court of law, the court may, upon

entry of the final order, order the destruction, donation, or return of the exhibits; provided, however, if a petition for writ of habeas corpus is filed within such one-year period, then such order shall not be entered until exhaustion of such habeas corpus proceedings. Notwithstanding the foregoing, in all cases concluded prior to July 1, 2005, the notice requirement in this section shall not apply. The order of donation or destruction may require that photographs be made of all exhibits ordered to be donated or destroyed and that such photographs be appropriately labeled for future identification. In addition, the order shall state the nature of the exhibit subject to donation or destruction, identify the case in which such exhibit was received and from whom such exhibit was received, if known, and the manner by which the exhibit is to be destroyed or to whom donated. However, any money introduced into evidence, unless it is stolen from a third party, shall be subject to forfeiture by law-enforcement officials as otherwise provided by law, and if no forfeiture action is taken or if funds remain after any such forfeiture, the clerk shall escheat such funds as otherwise provided by law. No notice to the defendant shall be required in the case of exhibits the disposal or destruction of which is controlled by § 19.2-386.23 or 19.2-386.24, in any case in which such exhibits may be seized and forfeited to the Commonwealth under Chapter 22.1 (§ 19.2-386.1 et seq.) or Chapter 22.2 (§ 19.2-386.15 et seq.), or any other forfeiture provisions, or in any case where such exhibits are deemed contraband.

B. Except as provided in § 19.2-270.4:1, a circuit court for good cause shown, on notice to the attorney for the Commonwealth and any attorney for a defendant in the case, may order the return of any or all exhibits to the owners thereof, notwithstanding the pendency of any appeal or petition for a writ of habeas corpus. The order may be upon such conditions as the court deems appropriate for future identification and inclusion in the record of a case subject to retrial. In addition, the owner shall acknowledge in a sworn affidavit to be filed with the record of the case, that he has retaken possession of such exhibit or exhibits.

C. Any photographs taken pursuant to an order of donation or destruction or an order returning exhibits to the owners shall be retained with the record in the case and, if necessary, shall be admissible in any subsequent trial of the same cause, subject to all other rules of evidence.

D. Upon petition of any organization which is exempt from taxation under § 501(c) (3) of the Internal Revenue Code, the court in its sound discretion may order the donation of an exhibit to such charitable organization.

1984, c. 621; 1989, c. 481; 1994, c. 536; 2001, cc. 873, 874, 875; 2008, c. 805; 2010, cc. 352, 366, 454.

§ 19.2-270.4:1. Storage, preservation and retention of human biological evidence in felony cases

A. Notwithstanding any provision of law or rule of court, upon motion of a person convicted of a felony but not sentenced to death or his attorney of record to the circuit court that entered the judgment for the offense, the court shall order the storage, preservation, and retention of

specifically identified human biological evidence or representative samples collected or obtained in the case for a period of up to 15 years from the time of conviction, unless the court determines, in its discretion, that the evidence should be retained for a longer period of time. Upon the filing of such a motion, the defendant may request a hearing for the limited purpose of identifying the human biological evidence or representative samples that are to be stored in accordance with the provisions of this section. Upon the granting of the motion, the court shall order the clerk of the circuit court to transfer all such evidence to the Department of Forensic Science. The Department of Forensic Science shall store, preserve, and retain such evidence. If the evidence is not within the custody of the clerk at the time the order is entered, the court shall order the governmental entity having custody of the evidence to transfer such evidence to the Department of Forensic Science. Upon the entry of an order under this subsection, the court may upon motion or upon good cause shown, with notice to the convicted person, his attorney of record and the attorney for the Commonwealth, modify the original storage order, as it relates to time of storage of the evidence or samples, for a period of time greater than or less than that specified in the original order.

B. In the case of a person sentenced to death, the court that entered the judgment shall, in all cases, order any human biological evidence or representative samples to be transferred by the governmental entity having custody to the Department of Forensic Science. The Department of Forensic Science shall store, preserve, and retain such evidence until the judgment is executed. If the person sentenced to death has his sentence reduced, then such evidence shall be transferred from the Department to the original investigating law-enforcement agency for storage as provided in this section.

C. Pursuant to standards and guidelines established by the Department of Forensic Science, the order shall state the method of custody, transfer and return of any evidence to insure and protect the Commonwealth's interest in the integrity of the evidence. Pursuant to standards and guidelines established by the Department of Forensic Science, the Department of Forensic Science, local law-enforcement agency or other custodian of the evidence shall take all necessary steps to preserve, store, and retain the evidence and its chain of custody for the period of time specified.

D. In any proceeding under this section, the court, upon a finding that the physical evidence is of such a nature, size or quantity that storage, preservation or retention of all of the evidence is impractical, may order the storage of only representative samples of the evidence. The Department of Forensic Science shall take representative samples, cuttings or swabbings and retain them. The remaining evidence shall be handled according to § 19.2-270.4 or as otherwise provided for in the Code.

E. An action under this section or the performance of any attorney representing the petitioner under this section shall not form the basis for relief in any habeas corpus or appellate proceeding. Nothing in this section shall create any cause of action for damages against the Commonwealth, or any of its political subdivisions or officers, employees or agents of the Commonwealth or its political subdivisions.

2001, cc. 873, 874, 875; 2002, c. 832; 2005, cc. 868, 881.

§ 19.2-270.5. DNA profile admissible in criminal proceeding

In any criminal proceeding, DNA (deoxyribonucleic acid) testing shall be deemed to be a reliable scientific technique and the evidence of a DNA profile comparison may be admitted to prove or disprove the identity of any person. This section shall not otherwise limit the introduction of any relevant evidence bearing upon any question at issue before the court, including the accuracy and reliability of the procedures employed in the collection and analysis of a particular DNA sample. The court shall, regardless of the results of the DNA analysis, if any, consider such other relevant evidence of the identity of the accused as shall be admissible in evidence.

At least twenty-one days prior to commencement of the proceeding in which the results of a DNA analysis will be offered as evidence, the party intending to offer the evidence shall notify the opposing party, in writing, of the intent to offer the analysis and shall provide or make available copies of the profiles and the report or statement to be introduced. In the event that such notice is not given, and the person proffers such evidence, then the court may in its discretion either allow the opposing party a continuance or, under appropriate circumstances, bar the person from presenting such evidence. The period of any such continuance shall not be counted for speedy trial purposes under § 19.2-243. If the opposing party intends to object to the admissibility of such evidence he shall give written notice of that fact and the basis for his objections at least ten days prior to commencement of the proceedings.

1990, c. 669; 1997, c. 315; 2002, cc. 627, 885.

§ 19.2-270.6. Evidence of abuse admissible in certain criminal trials (Supreme Court Rule 2:409 derived from this section)

In any criminal prosecution alleging personal injury or death, or the attempt to cause personal injury or death, relevant evidence of repeated physical and psychological abuse of the accused by the victim shall be admissible, subject to the general rules of evidence.

1993, c. 5 .

§ 19.2-270.7. Determining decibel level of sound with proper equipment; certificate as to accuracy of equipment

A law-enforcement officer may use equipment deemed proper pursuant to subsection C of § 2.2-1112 to determine the decibel level of any sound, including noise. The results of such determinations shall be accepted as prima facie evidence of the decibel level of the sound in any court or legal proceeding where the decibel level of the sound is at issue.

In any court or legal proceeding in which any question arises about the calibration or accuracy of such equipment used to determine the decibel level of sound, a certificate, or a true copy thereof, showing the calibration or testing for accuracy of the equipment, and when and by whom the calibration or test was made, shall be admissible as evidence of the facts therein stated. No calibration or testing of such equipment shall be valid for longer than 12 months.

2010, c. 558.

§ 19.2-271. Certain judicial officers incompetent to testify under certain circumstances; exceptions (Supreme Court Rule 2:605 derived from this section)

No judge shall be competent to testify in any criminal or civil proceeding as to any matter which came before him in the course of his official duties.

Except as otherwise provided in this section, no clerk of any court, magistrate, or other person having the power to issue warrants, shall be competent to testify in any criminal or civil proceeding as to any matter which came before him in the course of his official duties. Such person shall be competent to testify in any criminal proceeding wherein the defendant is charged with perjury or pursuant to the provisions of § 18.2-460 or in any proceeding authorized pursuant to § 19.2-353.3. Notwithstanding any other provision of this section, any judge, clerk of any court, magistrate, or other person having the power to issue warrants, who is the victim of a crime, shall not be incompetent solely because of his office to testify in any criminal or civil proceeding arising out of the crime.

Code 1950, §§ 19.1-267, 19.1-268; 1960, c. 366; 1975, c. 495; 1976, c. 269; 1989, c. 738; 1990, c. 602; 2015, c. 635.

§ 19.2-271.1. Competency of husband and wife to testify

Husband and wife shall be competent witnesses to testify for or against each other in criminal cases, except as otherwise provided.

Code 1950, § 8-287; 1977, c. 624.

§ 19.2-271.2. Testimony of husband and wife in criminal cases (Subsection (b) of Supreme Court Rule 2:504 derived from this section)

In criminal cases husband and wife shall be allowed, and, subject to the rules of evidence governing other witnesses, may be compelled to testify in behalf of each other, but neither shall be compelled to be called as a witness against the other, except (i) in the case of a prosecution for an offense committed by one against the other, against a minor child of either, or against the property of either; (ii) in any case where either is charged with forgery of the name of the other or uttering or attempting to utter a writing bearing the allegedly forged signature of the other; or (iii) in any proceeding relating to a violation of the laws pertaining to criminal sexual assault (§§ 18.2-61 through 18.2-67.10), crimes against nature (§ 18.2-361) involving a minor as a victim and provided the defendant and the victim are not married to each other, incest (§ 18.2-366), or abuse of children (§§ 18.2-370 through 18.2-371). The failure of either husband or wife to testify, however, shall create no presumption against the accused, nor be the subject of any comment before the court or jury by any attorney.

Except in the prosecution for a criminal offense as set forth in (i), (ii) or (iii) above, in any criminal proceeding, a person has a privilege to refuse to disclose, and to prevent anyone else from disclosing, any confidential communication between his spouse and him during their marriage,

regardless of whether he is married to that spouse at the time he objects to disclosure. For the purposes of this section, "confidential communication" means a communication made privately by a person to his spouse that is not intended for disclosure to any other person.

Code 1950, § 8-288; 1950, p. 664; 1958, c. 231; 1960, c. 469; 1977, c. 624; 1988, c. 482; 1993, c. 637; 1996, c. 423; 2005, c. 809.

§ 19.2-271.3. Communications between ministers of religion and persons they counsel or advise (Supreme Court Rule 2:503 derived in part from this section)

No regular minister, priest, rabbi or accredited practitioner over the age of eighteen years, of any religious organization or denomination usually referred to as a church, shall be required in giving testimony as a witness in any criminal action to disclose any information communicated to him by the accused in a confidential manner, properly entrusted to him in his professional capacity and necessary to enable him to discharge the functions of his office according to the usual course of his practice or discipline, where such person so communicating such information about himself or another is seeking spiritual counsel and advice relative to and growing out of the information so imparted.

1985, c. 570.

§ 19.2-271.4. Privileged communications by certain public safety personnel

A. A person who is a member of a critical incident stress management team, established pursuant to subdivision A 13 of § 32.1-111.3, shall not disclose nor be compelled to testify regarding any information communicated to him by emergency medical services or public safety personnel who are the subjects of peer support services regarding a critical incident. Such information shall also be exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

B. A person whose communications are privileged under subsection A may waive the privilege.

C. The provisions of this section shall not apply when:

1. Criminal activity is revealed;

2. A member of a critical incident stress management team is a witness or a party to a critical incident that prompted the peer support services;

3. A member of a critical incident stress management team reveals the content of privileged information to prevent a crime against any other person or a threat to public safety;

4. The privileged information reveals intent to defraud or deceive the investigation into the critical incident; or

5. A member of a critical incident stress management team reveals the content of privileged information to the employer of the emergency medical services or public safety personnel regarding criminal acts committed or information that would indicate that the emergency medical services or public safety personnel pose a threat to themselves or others.

2012, cc. 148, 320.

Article 2 - WITNESSES FROM OR FOR ANOTHER STATE

§ 19.2-272. Definitions

"Witness" as used in this article shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding.

The word "state" shall include any territory of the United States and the District of Columbia.

The word "summons" shall include a subpoena (both subpoena ad testificandum and subpoena duces tecum), order or other notice requiring the appearance of a witness or production of documents.

Code 1950, § 19.1-269; 1960, c. 366; 1975, c. 495; 1988, c. 34.

§ 19.2-273. Certificate that witness is needed in another state; hearing

If a judge of a court of record in any state which by its laws has made provisions for commanding persons within that state to attend and testify in this Commonwealth certifies under the seal of such court (1) that there is a criminal prosecution pending in such court or that a grand jury investigation has commenced or is about to commence, (2) that a person being within this Commonwealth is a material witness in such prosecution or grand jury investigation and (3) that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county or city in which such person is, such judge shall fix a time and place for hearing and shall make an order directing the witness to appear at a time and place certain for the hearing.

Code 1950, § 19.1-270; 1960, c. 366; 1975, c. 495.

§ 19.2-274. When court to order witness to attend

If at such hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or grand jury investigation in the other state and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence (and of any other state through which the witness may be required to pass by ordinary course of travel) will give to him protection from arrest and the service of civil and criminal process, the judge shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

Code 1950, § 19.1-271; 1960, c. 366; 1975, c. 495.

§ 19.2-275. Arrest of witness

If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for

the hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability, may, in lieu of issuing subpoena or summons, order that the witness be forthwith taken into custody and delivered to an officer of the requesting state.

Code 1950, § 19.1-272; 1960, c. 366; 1975, c. 495.

§ 19.2-276. Penalty for failure to attend and testify

If the witness who is summoned as above provided, after being paid or tendered by some properly authorized person reimbursement for reasonable travel and lodging expenses as provided in § 2.2-2823 for each day he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a Virginia circuit court summons.

Code 1950, § 19.1-273; 1960, c. 366; 1975, c. 495; 1987, c. 125.

§ 19.2-277. Summoning witnesses in another state to testify in this Commonwealth

If a person in any state which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions or grand jury investigations commenced or about to commence in this Commonwealth is a material witness in a prosecution pending in a court of record in this Commonwealth, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. The certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this Commonwealth to assure his attendance in this Commonwealth. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

Code 1950, § 19.1-274; 1960, c. 366; 1975, c. 495.

§ 19.2-278. Reimbursement for daily mileage to such witnesses; issuance of warrant necessary to make tender

If the witness is summoned to attend and testify in this Commonwealth he shall receive such reimbursement for his daily mileage as prescribed in § 2.2-2823 for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this Commonwealth a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court.

The judge issuing the certificate prescribed in § 19.2-277 may, by order, direct the clerk of the court involved to issue such warrant or warrants payable out of the state treasury, as may be necessary to make the tender hereinabove prescribed; and after the entry of such order, such clerk, upon application of the attorney for the Commonwealth of the county or city involved, or of the accused, if certificate for the attendance of witness has been issued by such judge on his behalf as authorized by § 19.2-330, shall issue such warrant or warrants and deliver them to the said attorney for the Commonwealth, who shall, forthwith, cause such tender to be made. Upon issuance of

any such warrant or warrants said clerk shall deliver a certified copy of the court's order to the Supreme Court, and the said warrant or warrants shall be paid out of the state treasury upon presentation.

Unless and until appropriate forms shall be obtained, such warrants may be issued on the regular forms provided for the payment of witness fees and allowances, but in such event the clerk issuing the same shall make a notation thereon that they were issued pursuant to the provisions of this section.

Code 1950, § 19.1-275; 1960, c. 366; 1972, c. 719; 1975, c. 495; 1976, c. 308; 1977, c. 483; 1978, c. 195.

§ 19.2-279. Penalty for failure of such witnesses to testify

If such witness, after coming into this Commonwealth, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this Commonwealth.

Code 1950, § 19.1-276; 1960, c. 366; 1975, c. 495.

§ 19.2-280. Exemption of such witnesses from arrest or service of process

If a person comes into this Commonwealth in obedience to a summons directing him to attend and testify in this Commonwealth he shall not while in this Commonwealth pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this Commonwealth under the summons.

If a person passes through this Commonwealth while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, he shall not while so passing through this Commonwealth be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this Commonwealth under the summons.

Code 1950, § 19.1-277; 1960, c. 366; 1975, c. 495.

§ 19.2-281. Construction of article

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

Code 1950, § 19.1-278; 1960, c. 366; 1975, c. 495.

§ 19.2-282. How article cited

This article may be cited as the "Uniform Act to Secure the Attendance of Witnesses from without a State in Criminal Proceedings."

Code 1950, § 19.1-279; 1960, c. 366; 1975, c. 495.

Chapter 17 - CONVICTIONS; EFFECT THEREOF

Article 1 - PROOF AND VERDICTS

§ 19.2-283. How accused may be convicted of felony

No person shall be convicted of felony, unless by his confession of guilt in court, or by his plea, or by the verdict of a jury, accepted and recorded by the court, or by judgment of the court trying the case without a jury according to law.

Code 1950, § 19.1-248; 1960, c. 366; 1975, c. 495.

§ 19.2-284. Proof of ownership in offense relating to property

In a prosecution for an offense committed upon, relating to or affecting real estate, or for stealing, embezzling, destroying, injuring or fraudulently receiving or concealing any personal estate it shall be sufficient to prove that when the offense was committed the actual or constructive possession, or a general or special property, in the whole or any part of such estate was in the person or entity alleged in the indictment or other accusation to be the owner thereof.

Code 1950, § 19.1-247; 1960, c. 366; 1975, c. 495.

§ 19.2-285. Accused guilty of part of offense charged; sentence; on new trial what tried

If a person indicted of a felony be by the jury acquitted of part of the offense charged, he shall be sentenced for such part as he is so convicted of, if the same be substantially charged in the indictment, whether it be felony or misdemeanor. If the verdict be set aside and a new trial granted the accused, he shall not be tried for any higher offense than that of which he was convicted on the last trial.

Code 1950, § 19.1-249; 1960, c. 366; 1975, c. 495.

§ 19.2-286. Conviction of attempt or as accessory on indictment for felony; effect of general verdict of not guilty

On an indictment for felony the jury may find the accused not guilty of the felony but guilty of an attempt to commit such felony, or of being an accessory thereto; and a general verdict of not guilty, upon such indictment, shall be a bar to a subsequent prosecution for an attempt to commit such felony, or of being an accessory thereto.

Code 1950, § 19.1-254; 1960, c. 366; 1975, c. 495.

§ 19.2-287. Verdict and judgment, when jury agree as to some and disagree as to others

When two or more persons are charged and tried jointly, the jury may render a verdict as to any of them as to whom they agree. Thereupon judgment shall be entered according to the verdict; and as to the others the case shall be tried by another jury.

Code 1950, § 19.1-256; 1960, c. 366; 1975, c. 495.

§ 19.2-288. Verdict when accused found guilty of punishable homicide

If a person indicted for murder be found by the jury guilty of any punishable homicide, they shall in their verdict fix the degree thereof and ascertain the extent of the punishment to be inflicted within the bounds prescribed by §§ 18.2-30 to 18.2-36.

Code 1950, § 19.1-250; 1960, c. 366; 1975, c. 495.

§ 19.2-289. Conviction of petit larceny

In a prosecution for grand larceny, if it be found that the thing stolen is of less value than $200, the jury may find the accused guilty of petit larceny.

Code 1950, § 19.1-252; 1960, c. 366; 1966, c. 247; 1975, c. 495; 1981, c. 197.

§ 19.2-290. Conviction of petit larceny though thing stolen worth more than $200

In a prosecution for petit larceny, though the thing stolen be of the value of $200 or more, the jury may find the accused guilty; and upon a conviction under this section or § 19.2-289 the accused shall be sentenced for petit larceny.

Code 1950, § 19.1-253; 1960, c. 366; 1966, c. 247; 1975, c. 495; 1981, c. 197.

§ 19.2-291. Faulty counts; motion to strike; general verdict of guilty

When there are several counts in the indictment one or more of which are faulty, the accused may move to strike the faulty count or counts or move the court to instruct the jury to disregard them. If he does neither and a general verdict of guilty is found, judgment shall be entered against the accused, if any count be good, though others be faulty, unless the court can plainly see that the verdict could not have been found on the good count. If the accused demurs to the faulty count or moves the court to instruct the jury to disregard it and his demurrer or motion is overruled and there is a general verdict of guilty and it cannot be seen on which count the verdict was founded, if the jury has been discharged, it shall be set aside; but if it is manifest that it could not have been found on the bad count, the verdict shall be allowed to stand.

Code 1950, § 19.1-255; 1960, c. 366; 1975, c. 495.

§ 19.2-291.1. Report of conviction of school employees for certain offenses

The clerk of any circuit court or any district court in the Commonwealth shall report to the Superintendent of Public Instruction and the division superintendent of any employing school division the conviction of any person, known by such clerk to hold a license issued by the Board of Education, for any felony involving the sexual molestation, physical or sexual abuse, or rape of a child or involving drugs pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2.

2008, cc. 474, 827.

Article 2 - FORMER JEOPARDY

§ 19.2-292. Acquittal by jury on merits bar to further prosecution for same offense

A person acquitted upon the facts and merits on a former trial, may plead such acquittal in bar of a second prosecution for the same offense, notwithstanding any defect in the form or substance of

the indictment or accusation on which he was acquitted, unless the case be for a violation of the law relating to the state revenue and the acquittal be reversed on a writ of error on behalf of the Commonwealth.

Code 1950, § 19.1-257; 1960, c. 366; 1975, c. 495.

§ 19.2-293. When acquittal not a bar to further prosecution for same offense

A person acquitted of an offense on the ground of a variance between the allegations and the proof of the indictment or other accusation, or upon an exception to the form or substance thereof, may be arraigned again on a new indictment or other proper accusation, and tried and convicted for the same offense, notwithstanding such former acquittal.

Code 1950, § 19.1-258; 1960, c. 366; 1975, c. 495.

§ 19.2-294. Offense against two or more statutes or ordinances

If the same act be a violation of two or more statutes, or of two or more ordinances, or of one or more statutes and also one or more ordinances, conviction under one of such statutes or ordinances shall be a bar to a prosecution or proceeding under the other or others. Furthermore, if the same act be a violation of both a state and a federal statute, a prosecution under the federal statute shall be a bar to a prosecution under the state statute. The provisions of this section shall not apply to any offense involving an act of terrorism as defined in § 18.2-46.4.

For purposes of this section, a prosecution under a federal statute shall be deemed to be commenced once jeopardy has attached.

Code 1950, § 19.1-259; 1960, c. 366; 1975, c. 495; 1987, c. 241; 2002, cc. 588, 623; 2003, c. 736.

§ 19.2-294.1. Dismissal of one of dual charges for driving while intoxicated and reckless driving upon conviction of other charge

Whenever any person is charged with a violation of § 18.2-266 or any similar ordinances of any county, city, or town and with reckless driving in violation of § 46.2-852 or any ordinance of any county, city or town incorporating § 46.2-852, growing out of the same act or acts and is convicted of one of these charges, the court shall dismiss the remaining charge.

Code 1950, § 19.1-259.1; 1960, c. 493; 1975, c. 495; 1997, c. 691; 2004, c. 937.

Article 3 - CONVICTION OF ALIENS

§ 19.2-294.2. Procedure when aliens convicted of certain felonies; duties of probation and parole officer

A. Whenever a person is (i) convicted in a circuit court of any felony and (ii) referred to a probation or parole officer for a report pursuant to § 19.2-299, or for probation supervision, the probation or parole officer shall inquire as to the citizenship of such person. If upon inquiry it is determined that the person may be an alien based upon his failure to produce evidence of United States citizenship, the probation or parole officer shall report this determination to the Central Criminal Records Exchange of the Department of State Police on forms provided by the Exchange.

B. The inquiry required by this section need not be made if it is apparent that a report on alien status has previously been made to the Central Criminal Records Exchange pursuant to this section.

C. It shall be the responsibility of the Central Criminal Records Exchange of the Department of State Police to review arrest reports submitted by law-enforcement agencies and reports of suspected alien-status inquiries made by probation or parole officers, and to report within sixty days of final disposition to the Law Enforcement Support Center of the United States Immigration and Customs Enforcement the identity of all convicted offenders suspected of being an alien.

1985, c. 247; 1994, c. 579; 2008, cc. 180, 415.

Chapter 18 - SENTENCE; JUDGMENT; EXECUTION OF SENTENCE

Article 1 - GENERAL PROVISIONS

§ 19.2-295. Ascertainment of punishment

A. Within the limits prescribed by law, the term of confinement in the state correctional facility or in jail and the amount of fine, if any, of a person convicted of a criminal offense, shall be ascertained by the jury, or by the court in cases tried without a jury.

B. In any case in which a jury has fixed a sentence as provided in this chapter and the sentence is modified by the court pursuant to the authority contained within this chapter, the court shall file with the record of the case a written explanation of such modification including the cause therefor.

Code 1950, §§ 19.1-291, 19.1-292; 1960, c. 366; 1975, c. 495; 2007, c. 259.

§ 19.2-295.1. Sentencing proceeding by the jury after conviction

In cases of trial by jury, upon a finding that the defendant is guilty of a felony or a Class 1 misdemeanor, or upon a finding in the trial de novo of an appealed misdemeanor conviction that the defendant is guilty of a Class 1 misdemeanor, a separate proceeding limited to the ascertainment of punishment shall be held as soon as practicable before the same jury. At such proceeding, the Commonwealth may present any victim impact testimony pursuant to § 19.2-295.3 and shall present the defendant's prior criminal history, including prior convictions and the punishments imposed, by certified, attested or exemplified copies of the final order, including adult convictions and juvenile convictions and adjudications of delinquency. Prior convictions shall include convictions and adjudications of delinquency under the laws of any state, the District of Columbia, the United States or its territories. 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 prior criminal history, including prior convictions and punishments imposed. Such notice shall include (i) the date of each prior conviction, (ii) the name and jurisdiction of the court where each prior conviction was had, (iii) each offense of which he was convicted, and (iv) the punishment imposed. Prior to commencement of the trial, the Commonwealth shall provide to the defendant photocopies of certified copies of the final orders which it intends to introduce at sentencing.

After the Commonwealth has introduced in its case-in-chief of the sentencing phase such evidence of prior convictions or victim impact testimony, or both, or if no such evidence is introduced, the defendant may introduce relevant, admissible evidence related to punishment. Nothing in this section shall prevent the Commonwealth or the defendant from introducing relevant, admissible evidence in rebuttal.

If the jury cannot agree on a punishment, the court shall impanel a different jury to ascertain punishment, unless the defendant, the attorney for the Commonwealth, and the court agree, in the manner provided in § 19.2-257, that the court shall fix punishment.

If the sentence imposed pursuant to this section is subsequently set aside or found invalid solely due to an error in the sentencing proceeding, the court shall impanel a different jury to ascertain punishment, unless the defendant, the attorney for the Commonwealth and the court agree, in the manner provided in § 19.2-257, that the court shall fix punishment.

1994, cc. 828, 860, 862, 881; 1995, c. 567; 1996, c. 664; 2001, c. 389; 2007, cc. 388, 478; 2012, c. 134.

§ 19.2-295.2. Postrelease supervision of felons sentenced for offenses committed on and after January 1, 1995, and on and after July 1, 2000

A. At the time the court imposes sentence upon a conviction for any felony offense committed (i) on or after January 1, 1995, the court may, and (ii) on or after July 1, 2000, shall, in addition to any other punishment imposed if such other punishment includes an active term of incarceration in a state or local correctional facility, except in cases in which the court orders a suspended term of confinement of at least six months, impose a term of postrelease supervision of not less than six months nor more than three years, as the court may determine. Such additional term shall be suspended and the defendant placed under postrelease supervision upon release from the active term of incarceration. The period of supervision shall be established by the court; however, such period shall not be less than six months nor more than three years. Periods of postrelease supervision imposed pursuant to this section upon more than one felony conviction may be ordered to run concurrently. Periods of postrelease supervision imposed pursuant to this section may be ordered to run concurrently with any period of probation the defendant may also be subject to serve.

B. The period of postrelease supervision shall be under the supervision and review of the Virginia Parole Board. The Board shall review each felon prior to release and establish conditions of postrelease supervision. Failure to successfully abide by such terms and conditions shall be grounds to terminate the period of postrelease supervision and recommit the defendant to the Department of Corrections or to the local correctional facility from which he was previously released. Procedures for any such termination and recommitment shall be conducted in the same manner as procedures for the revocation of parole.

C. Postrelease supervision programs shall be operated through the probation and parole districts established pursuant to § 53.1-141.

D. Nothing in this section shall be construed to prohibit the court from exercising any authority otherwise granted by law.

1994, 2nd Sp. Sess., cc. 1, 2; 1995, cc. 502, 574; 2000, c. 767.

§ 19.2-295.2:1. Postrelease supervision of felons sentenced for certain offenses committed on or after July 1, 2006

A. For offenses committed on or after July 1, 2006:

1. At the time the court imposes a sentence upon a conviction for a first violation of subsection A of § 18.2-472.1 the court shall impose an added term of postrelease supervision of six months.

2. For a second or subsequent violation of subsection A of § 18.2-472.1 when both violations occurred after July 1, 2006, or a first violation of subsection B of § 18.2-472.1, the court shall impose an added term of postrelease supervision by the Department of Corrections of two years.

3. For a second or subsequent violation of subsection B of § 18.2-472.1 when both violations occurred after July 1, 2006, the court shall impose an added term of postrelease supervision by the Department of Corrections of five years.

Any terms of postrelease supervision imposed pursuant to this section shall be in addition to any other punishment imposed, including any periods of active incarceration or suspended periods of incarceration, if any.

B. The court shall order that any term of postrelease supervision imposed pursuant to this section be suspended, and the defendant be placed on active supervision under a postrelease supervision program operated by the Department of Corrections. The court shall order that the defendant be subject to electronic monitoring by means of a GPS (Global Positioning System) tracking device, or other similar device during this period of postrelease supervision. Failure to successfully abide by the terms and conditions of the postrelease supervision program shall be grounds to terminate the period of postrelease supervision and recommit the defendant to the Department of Corrections or to a local correctional facility. Procedures for any such termination shall be conducted after a hearing in the court which originally sentenced the defendant, conducted in a manner consistent with a revocation hearing under § 19.2-306, mutatis mutandis.

C. Nothing in this section shall be construed to prohibit the court from exercising any authority otherwise granted by law.

2006, cc. 857, 914.

§ 19.2-295.3. Admission of victim impact testimony

Whether by trial or upon a plea of guilty, upon a finding that the defendant is guilty of a felony, the court shall permit the victim, as defined in § 19.2-11.01, upon motion of the attorney for the Commonwealth, to testify in the presence of the accused regarding the impact of the offense upon

the victim. The court shall limit the victim's testimony to the factors set forth in clauses (i) through (vi) of subsection A of § 19.2-299.1. In the case of trial by jury, the court shall permit the victim to testify at the sentencing hearing conducted pursuant to § 19.2-295.1 or in the case of trial by the court or a guilty plea, the court shall permit the victim to testify before the court prior to the imposition of a sentence. Victim impact testimony in all capital murder cases shall be admitted in accordance with § 19.2-264.4.

1998, c. 485; 2004, c. 310.

§ 19.2-296. Withdrawal of plea of guilty

A motion to withdraw a plea of guilty or nolo contendere may be made only before sentence is imposed or imposition of a sentence is suspended; but to correct manifest injustice, the court within twenty-one days after entry of a final order may set aside the judgment of conviction and permit the defendant to withdraw his plea.

1975, c. 495.

§ 19.2-297. Repealed

Repealed by Acts 1994, c. 706.

§ 19.2-297.1. Sentence of person twice previously convicted of certain violent felonies

A. Any person convicted of two or more separate acts of violence 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 a third or subsequent act of violence, 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 two or more such acts of violence. For the purposes of this section, "act of violence" means (i) any one of the following violations of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2:

a. First and second degree murder and voluntary manslaughter under Article 1 (§ 18.2-30 et seq.);

b. Mob-related felonies under Article 2 (§ 18.2-38 et seq.);

c. Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.);

d. Any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et seq.);

e. Robbery under § 18.2-58 and carjacking under § 18.2-58.1;

f. Except as otherwise provided in § 18.2-67.5:2 or § 18.2-67.5:3, criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.); or

g. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony violation of § 18.2-79.

(ii) conspiracy to commit any of the violations enumerated in clause (i) of this section; and (iii) violations as a principal in the second degree or accessory before the fact of the provisions enumerated in clause (i) of this section.

B. Prior convictions shall include convictions under the laws of any state or of the United States for any offense substantially similar to those listed under "act of violence" if such offense would be a felony if committed in the Commonwealth.

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.

C. Any person sentenced to life imprisonment pursuant to this section shall not be eligible for parole and shall not be eligible for any good conduct allowance or any earned sentence credits under Chapter 6 (§ 53.1-186 et seq.) of Title 53.1. However, any person subject to the provisions of this section, other than a person who was sentenced under subsection A of § 18.2-67.5:3 for criminal sexual assault convictions specified in subdivision f, (i) who has reached the age of sixty-five or older and who has served at least five years of the sentence imposed or (ii) who has reached the age of sixty or older and who has served at least ten years of the sentence imposed may petition the Parole Board for conditional release. The Parole Board shall promulgate regulations to implement the provisions of this subsection.

1994, cc. 828, 860, 862, 881; 1994, 2nd Sp. Sess., cc. 1, 2; 1995, c. 834; 1996, c. 539.

§ 19.2-298. Pronouncement of sentence

After a finding of guilty, sentence shall be pronounced, or decision to suspend the imposition of sentence shall be announced, without unreasonable delay. Pending pronouncement, the court may commit the accused to jail or may continue or alter the bail except that in those cases where the accused is convicted of a murder in the first degree, the court shall commit him to jail and he shall not be allowed bail pending the pronouncement of sentence. Before pronouncing the sentence, the court shall inquire of the accused if he desires to make a statement and if he desires to advance any reason why judgment should not be pronounced against him.

Whenever any person willfully and knowingly fails to surrender or submit to the custody of a sheriff as ordered by a court, any law-enforcement officer, with or without a warrant, may arrest such person anywhere in the Commonwealth. If the arrest is made in the county or city in which the person was ordered to surrender, or in an adjoining county or city, the officer may forthwith return the accused before the proper court. If the arrest is made beyond the foregoing limits, the officer shall proceed according to the provisions of § 19.2-76, and if such arrest is made without a warrant, the officer shall procure a warrant from the magistrate serving the county or city wherein the arrest was made, charging the accused with contempt of court.

1975, c. 495; 1976, c. 285; 2009, c. 192.

§ 19.2-298.01. Use of discretionary sentencing guidelines

A. In all felony cases, other than Class 1 felonies, the court shall (i) have presented to it the appropriate discretionary sentencing guidelines worksheets and (ii) review and consider the suitability of the applicable discretionary sentencing guidelines established pursuant to Chapter 8 (§ 17.1-800 et seq.) of Title 17.1. Before imposing sentence, the court shall state for the record that such review and consideration have been accomplished and shall make the completed worksheets a part of the record of the case and open for inspection. In cases tried by a jury, the jury shall not be presented any information regarding sentencing guidelines.

B. In any felony case, other than Class 1 felonies, in which the court imposes a sentence which is either greater or less than that indicated by the discretionary sentencing guidelines, the court shall file with the record of the case a written explanation of such departure.

C. In felony cases, other than Class 1 felonies, tried by a jury and in felony cases tried by the court without a jury upon a plea of not guilty, the court shall direct a probation officer of such court to prepare the discretionary sentencing guidelines worksheets. In felony cases tried upon a plea of guilty, including cases which are the subject of a plea agreement, the court shall direct a probation officer of such court to prepare the discretionary sentencing guidelines worksheets, or, with the concurrence of the accused, the court and the attorney for the Commonwealth, the worksheets shall be prepared by the attorney for the Commonwealth.

D. Except as provided in subsection E, discretionary sentencing guidelines worksheets prepared pursuant to this section shall be subject to the same distribution as presentence investigation reports prepared pursuant to subsection A of § 19.2-299.

E. Following the entry of a final order of conviction and sentence in a felony case, the clerk of the circuit court in which the case was tried shall cause a copy of such order or orders, the original of the discretionary sentencing guidelines worksheets prepared in the case, and a copy of any departure explanation prepared pursuant to subsection B to be forwarded to the Virginia Criminal Sentencing Commission within five days. Similarly, the statement required by §§ 19.2-295 and 19.2-303 and regarding departure from or modification of a sentence fixed by a jury shall be forwarded to the Virginia Criminal Sentencing Commission.

F. The failure to follow any or all of the provisions of this section or the failure to follow any or all of the provisions of this section in the prescribed manner shall not be reviewable on appeal or the basis of any other post-conviction relief.

G. The provisions of this section shall apply only to felony cases in which the offense is committed on or after January 1, 1995, and for which there are discretionary sentencing guidelines. For purposes of the discretionary sentencing guidelines only, a person sentenced to a boot camp incarceration program pursuant to § 19.2-316.1, a detention center incarceration program pursuant to § 19.2-316.2 or a diversion center incarceration program pursuant to § 19.2-316.3 shall be deemed to be sentenced to a term of incarceration.

1994, 2nd Sp. Sess., cc. 1, 2; 1996, c. 552; 1997, c. 345; 1998, cc. 200, 353; 1999, c. 286; 2007, c. 259.

§§ 19.2-298.1 through 19.2-298.4. Repealed

Repealed by Acts 2003, c. 584.

§ 19.2-299. Investigations and reports by probation officers in certain cases

A. When a person is tried in a circuit court (i) upon a charge of assault and battery in violation of § 18.2-57 or 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, or driving while intoxicated in violation of § 18.2-266, and is adjudged guilty of such charge, unless waived by the court and the defendant and the attorney for the Commonwealth, the court may, or on motion of the defendant shall; or (ii) upon a felony charge not set forth in subdivision (iii) below, the court may when there is a plea agreement between the defendant and the Commonwealth and shall when the defendant pleads guilty without a plea agreement or is found guilty by the court after a plea of not guilty; or (iii) the court shall when a person is charged and adjudged guilty of a felony violation, or conspiracy to commit or attempt to commit a felony violation, of § 18.2-46.2, 18.2-46.3, 18.2-48, clause (2) or (3) of § 18.2-49, § 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4:1, 18.2-67.5, 18.2-67.5:1, 18.2-355, 18.2-356, 18.2-357, 18.2-361, 18.2-362, 18.2-366, 18.2-368, 18.2-370, 18.2-370.1, or 18.2-370.2, or any attempt to commit or conspiracy to commit any felony violation of § 18.2-67.5, 18.2-67.5:2, or 18.2-67.5:3, direct a probation officer of such court to thoroughly investigate and report upon the history of the accused, including a report of the accused's criminal record as an adult and available juvenile court records, any information regarding the accused's participation or membership in a criminal street gang as defined in § 18.2-46.1, and all other relevant facts, to fully advise the court so the court may determine the appropriate sentence to be imposed. Unless the defendant or the attorney for the Commonwealth objects, the court may order that the report contain no more than the defendant's criminal history, any history of substance abuse, any physical or health-related problems as may be pertinent, and any applicable sentencing guideline worksheets. This expedited report shall be subject to all the same procedures as all other sentencing reports and sentencing guidelines worksheets. The probation officer, after having furnished a copy of this report at least five days prior to sentencing to counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his report in advance of the sentencing hearing to the judge in chambers, who shall keep such report confidential. Counsel for the accused may provide the accused with a copy of the presentence report. The probation officer shall be available to testify from this report in open court in the presence of the accused, who shall have been provided with a copy of the presentence report by his counsel or advised of its contents and be given the right to cross-examine the investigating officer as to any matter contained therein and to present any additional facts bearing upon the matter. The report of the investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part of the record in the case. Any report so filed shall be made available only by court order and shall be sealed upon final order by the court, except that such reports or copies

thereof shall be available at any time to any criminal justice agency, as defined in § 9.1-101, of this or any other state or of the United States; to any agency where the accused is referred for treatment by the court or by probation and parole services; and to counsel for any person who has been indicted jointly for the same felony as the person subject to the report. Subject to the limitations set forth in § 37.2-901, any report prepared pursuant to the provisions hereof shall without court order be made available to counsel for the person who is the subject of the report if that person (i) is charged with a felony subsequent to the time of the preparation of the report or (ii) has been convicted of the crime or crimes for which the report was prepared and is pursuing a post-conviction remedy. The presentence report shall be in a form prescribed by the Department of Corrections. In all cases where such report is not ordered, a simplified report shall be prepared on a form prescribed by the Department of Corrections. For the purposes of this subsection, information regarding the accused's participation or membership in a criminal street gang may include the characteristics, specific rivalries, common practices, social customs and behavior, terminology, and types of crimes that are likely to be committed by that criminal street gang.

B. As a part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony, the court probation officer shall advise any victim of such offense in writing that he may submit to the Virginia Parole Board a written request (i) to be given the opportunity to submit to the Board a written statement in advance of any parole hearing describing the impact of the offense upon him and his opinion regarding the defendant's release and (ii) to receive copies of such other notifications pertaining to the defendant as the Board may provide pursuant to subsection B of § 53.1-155.

C. As part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony drug offense set forth in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, the presentence report shall include any known association of the defendant with illicit drug operations or markets.

D. As a part of any presentence investigation conducted pursuant to subsection A, when the offense for which the defendant was convicted was a felony, not a capital offense, committed on or after January 1, 2000, the defendant shall be required to undergo a substance abuse screening pursuant to § 18.2-251.01.

Code 1950, § 53-278.1; 1952, c. 233; 1972, c. 516; 1974, c. 121; 1975, cc. 371, 495; 1979, c. 286; 1980, c. 733; 1981, c. 263; 1983, c. 541; 1987, c. 676; 1989, c. 169; 1991, cc. 43, 229; 1992, c. 77; 1993, cc. 466, 492; 1994, 2nd Sp. Sess., cc. 1, 2; 1995, cc. 687, 778; 1997, c. 691; 1998, cc. 783, 840; 1999, cc. 891, 903, 913; 2001, c. 647; 2003, cc. 146, 613; 2004, cc. 308, 459, 819; 2005, cc. 188, 219, 631; 2006, cc. 99, 863, 914, 916; 2010, c. 223.

§ 19.2-299.1. When Victim Impact Statement required; contents; uses

The presentence report prepared pursuant to § 19.2-299 shall, with the consent of the victim, as defined in § 19.2-11.01, in all cases involving offenses other than capital murder, include a Victim

Impact Statement. Victim Impact Statements in all cases involving capital murder shall be prepared and submitted in accordance with the provisions of § 19.2-264.5.

A Victim Impact Statement shall be kept confidential and shall be sealed upon entry of the sentencing order. If prepared by someone other than the victim, it shall (i) identify the victim, (ii) itemize any economic loss suffered by the victim as a result of the offense, (iii) identify the nature and extent of any physical or psychological injury suffered by the victim as a result of the offense, (iv) detail any change in the victim's personal welfare, lifestyle or familial relationships as a result of the offense, (v) identify any request for psychological or medical services initiated by the victim or the victim's family as a result of the offense, and (vi) provide such other information as the court may require related to the impact of the offense upon the victim.

If the court does not order a presentence investigation and report, the attorney for the Commonwealth shall, at the request of the victim, submit a Victim Impact Statement. In any event, a victim shall be advised by the local crime victim and witness assistance program that he may submit in his own words a written Victim Impact Statement prepared by the victim or someone the victim designates in writing.

The Victim Impact Statement may be considered by the court in determining the appropriate sentence. A copy of the statement prepared pursuant to this section shall be made available to the defendant or counsel for the defendant without court order at least five days prior to the sentencing hearing. The statement shall not be admissible in any civil proceeding for damages arising out of the acts upon which the conviction was based. The statement, however, may be utilized by the Virginia Workers' Compensation Commission in its determinations on claims by victims of crimes pursuant to Chapter 21.1 (§ 19.2-368.1 et seq.) of this title.

1983, c. 541; 1984, c. 282; 1987, c. 676; 1989, c. 374; 1993, cc. 436, 569; 1995, cc. 687, 720; 1996, c. 398.

§ 19.2-299.2. Alcohol and substance abuse screening and assessment for designated Class 1 misdemeanor convictions

A. When a person is convicted of any offense committed on or after January 1, 2000, under Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2, and such offense is punishable as a Class 1 misdemeanor, or when a person is convicted for a second offense of petit larceny, the court shall order the person to undergo a substance abuse screening as part of the sentence if the defendant's sentence includes probation supervision by a local community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1 or participation in a local alcohol safety action program. Whenever a court requires a person to enter into and successfully complete an alcohol safety action program pursuant to § 18.2-271.1 for a second offense of the type described therein, or orders an evaluation of a person to be conducted by an alcohol safety action program pursuant to any provision of § 46.2-391, the alcohol safety action program shall assess such person's degree of alcohol abuse before

determining the appropriate level of treatment to be provided or to be recommended for such person being evaluated pursuant to § 46.2-391.

The court may order such screening upon conviction as part of the sentence of any other Class 1 misdemeanor if the defendant's sentence includes probation supervision by a local community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, participation in a local alcohol safety action program or any other sanction and the court has reason to believe the defendant has a substance abuse or dependence problem.

B. A substance abuse screening ordered pursuant to this section shall be conducted by the local alcohol safety action program. When an offender is ordered to enter local community-based probation services established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, rather than the local alcohol safety action program, the local community-based probation services agency shall be responsible for the screening. However, if a local community-based probation services agency has not been established for the locality, the local alcohol safety action program shall conduct the screening as part of the sentence.

C. If the screening indicates that the person has a substance abuse or dependence problem, an assessment shall be completed and if the assessment confirms that the person has a substance abuse or dependence problem, as a condition of a suspended sentence and probation, the court shall order the person to complete the substance abuse education and intervention component, or both as appropriate, of the local alcohol safety action program or such other agency providing treatment programs or services, if available, such as in the opinion of the court would be best suited to the needs of the person. If the referral is to the local alcohol safety action program, the program may charge a fee for the education and intervention component, or both, not to exceed $300, based upon the defendant's ability to pay.

1998, cc. 783, 840; 1999, cc. 891, 913; 2000, cc. 958, 980, 1040; 2007, c. 133; 2008, c. 762.

§ 19.2-300. Deferring for mental examination sentence of person convicted of offense indicating sexual abnormality

In the case of the conviction in any circuit court of any person for any criminal offense which indicates sexual abnormality, the trial judge may on his own initiative, or shall upon application of the attorney for the Commonwealth, the defendant, or counsel for defendant or other person acting for the defendant, defer sentence until the report of a mental examination conducted as provided in § 19.2-301 of the defendant can be secured to guide the judge in determining what disposition shall be made of the defendant.

Code 1950, § 53-278.2; 1950, p. 897; 1970, c. 62; 1975, c. 495; 1990, c. 697 .

§ 19.2-301. Judge shall require examination under § 19.2-300; by whom made; report; expenses of psychiatrist

The judge shall order the defendant examined by at least one psychiatrist or clinical psychologist who is qualified by specialized training and experience to perform such evaluations. Upon a

finding by the court that a psychiatrist or clinical psychologist is not reasonably available for the instant case, the court may appoint a state licensed clinical social worker who has been certified by the Commonwealth as a sex offender treatment provider as defined in § 54.1-3600 and qualified by experience and by specialized training approved by the Commissioner of Behavioral Health and Developmental Services to perform such evaluations. The examination shall be performed on an outpatient basis at a mental health facility or in jail. However, if the court specifically finds that outpatient examination services are unavailable or if the results of outpatient examination indicate that hospitalization of the defendant for further examination is necessary, the court may order the defendant sent to a hospital designated by the Commissioner of Behavioral Health and Developmental Services as appropriate for examination of persons convicted of crimes. The defendant shall then be hospitalized for such time as the director of the hospital deems necessary to perform an adequate examination, but not to exceed 30 days from the date of admission to the hospital. Upon completion of the examination, the examiners shall prepare a written report of their findings and conclusions and shall furnish copies of such report to the defendant, counsel for the defendant, and the attorney for the Commonwealth at least five days prior to sentencing and shall furnish a copy of the report to the judge in advance of the sentencing hearing. The report of the examiners shall at all times be kept confidential by each recipient, except to the extent necessary for the prosecution or defense of any offense, and shall be filed as part of the record in the case and the defendant's copy shall be returned to the court at the conclusion of sentencing. Any report so filed shall be sealed upon the entry of the sentencing order by the court and made available only by court order, except that such report or copies thereof shall be available at any time to the office of the Attorney General for assessment for civil commitment as provided in Chapter 9 (§ 37.2-900 et seq.) of Title 37.2; any criminal justice agency, as defined in § 9.1-101, of this or any other state or of the United States; to any agency where the accused is referred for treatment by the court or by probation and parole services; and to counsel for any person who has been indicted jointly for the same felony as the person who is the subject of the report. Any such report shall without court order be made available to counsel for the person who is the subject of the report if that person is charged with a felony subsequent to the time of the preparation of the report.

Code 1950, § 53-278.3; 1950, p. 898; 1970, c. 62; 1975, cc. 286, 495; 1990, c. 697; 2002, c. 662; 2003, c. 886; 2007, c. 440; 2009, cc. 813, 840.

§ 19.2-302. Construction and administration of §§ 19.2-300 and 19.2-301

Nothing contained in § 19.2-300 or 19.2-301 shall be construed to conflict with or repeal any statute in regard to the Department of Behavioral Health and Developmental Services, and such sections shall be administered with due regard to the authority of, and in cooperation with, the Commissioner of Behavioral Health and Developmental Services.

Code 1950, § 53-278.4; 1950, p. 898; 1975, c. 495; 2009, cc. 813, 840.

§ 19.2-303. Suspension or modification of sentence; probation; taking of fingerprints and blood, saliva, or tissue sample as condition of probation

After conviction, whether with or without jury, the court may suspend imposition of sentence or suspend the sentence in whole or part and in addition may place the defendant on probation under such conditions as the court shall determine, including monitoring by a GPS (Global Positioning System) tracking device, or other similar device, or may, as a condition of a suspended sentence, require the defendant to make at least partial restitution to the aggrieved party or parties for damages or loss caused by the offense for which convicted, or to perform community service, or both, under terms and conditions which shall be entered in writing by the court. The defendant may be ordered by the court to pay the cost of the GPS tracking device or other similar device. If, however, the court suspends or modifies any sentence fixed by a jury pursuant to § 19.2-295, the court shall file a statement of the reasons for the suspension or modification in the same manner as the statement required pursuant to subsection B of § 19.2-298.01. The judge, after convicting the defendant of a felony, shall determine whether a copy of the defendant's fingerprints are on file at the Central Criminal Records Exchange. In any case where fingerprints are not on file, the judge shall require that fingerprints be taken as a condition of probation. Such fingerprints shall be submitted to the Central Criminal Records Exchange under the provisions of subsection D of § 19.2-390.

In those courts having electronic access to the Local Inmate Data System (LIDS) within the courtroom, prior to or upon sentencing, the clerk of court shall also determine by reviewing LIDS whether a blood, saliva, or tissue sample has been taken for DNA analysis and submitted to the DNA data bank maintained by the Department of Forensic Science pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of this title. In any case in which the clerk has determined that a DNA sample or analysis is not stored in the DNA data bank, or in any case in which electronic access to LIDS is not available in the courtroom, the court shall order that the defendant appear within 30 days before the sheriff or probation officer and allow the sheriff or probation officer to take the required sample. The order shall also require that, if the defendant has not appeared and allowed the sheriff or probation officer to take the required sample by the date stated in the order, then the sheriff or probation officer shall report to the court the defendant's failure to appear and provide the required sample.

After conviction and upon sentencing of an active participant or member of a criminal street gang, the court may, as a condition for suspending the imposition of the sentence in whole or in part or for placing the accused on probation, place reasonable restrictions on those persons with whom the accused may have contact. Such restrictions may include prohibiting the accused from having contact with anyone whom he knows to be a member of a criminal street gang, except that contact with a family or household member, as defined in § 16.1-228, shall be permitted unless expressly prohibited by the court.

In any case where a defendant is convicted of a violation of § 18.2-48, 18.2-61, 18.2-63, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-370, or 18.2-370.1, committed on or after July 1, 2006, and some portion of the sentence is suspended, the judge shall order that the period of suspension shall be for a length of time at least equal to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned, and the defendant shall be placed on probation for that period of suspension subject to revocation by the court. The conditions of probation may include such conditions as the court shall determine, including active supervision. Where the conviction is for a violation of clause (iii) of subsection A of § 18.2-61, subdivision A 1 of § 18.2-67.1, or subdivision A 1 of § 18.2-67.2, the court shall order that at least three years of the probation include active supervision of the defendant under a postrelease supervision program operated by the Department of Corrections, and for at least three years of such active supervision, the defendant shall be subject to electronic monitoring by means of a GPS (Global Positioning System) tracking device, or other similar device.

If a person is sentenced to jail upon conviction of a misdemeanor or a felony, the court may, at any time before the sentence has been completely served, suspend the unserved portion of any such sentence, place the person on probation for such time as the court shall determine, or otherwise modify the sentence imposed.

If a person has been sentenced for a felony to the Department of Corrections but has not actually been transferred to a receiving unit of the Department, the court which heard the case, if it appears compatible with the public interest and there are circumstances in mitigation of the offense, may, at any time before the person is transferred to the Department, suspend or otherwise modify the unserved portion of such a sentence. The court may place the person on probation for such time as the court shall determine.

1975, c. 495; 1982, cc. 458, 636; 1983, c. 431; 1984, c. 32; 1992, c. 391; 1993, c. 448; 2006, cc. 436, 483, 853, 914; 2007, cc. 259, 528; 2011, cc. 799, 837.

§ 19.2-303.1. Fixing period of suspension of sentence

In any case where a court suspends the imposition or execution of a sentence, it may fix the period of suspension for a reasonable time, having due regard to the gravity of the offense, without regard to the maximum period for which the defendant might have been sentenced.

1982, c. 636.

§ 19.2-303.2. Persons charged with first offense may be placed on probation

Whenever any person who has not previously been convicted of any felony pleads guilty to or enters a plea of not guilty to any crime against property constituting a misdemeanor, under Articles 5, 6, 7 and 8 of Chapter 5 (§ 18.2-119 et seq.) of Title 18.2, the court, upon such plea if the facts found by the court would justify a finding of guilt, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation subject to terms and conditions, which may include restitution for losses caused, set by the court.

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 purpose of applying this section in subsequent proceedings.

1985, c. 617.

§ 19.2-303.3. Sentence to local community-based probation services; services agency; requirements for participation; sentencing; and removal from probation; payment of costs towards supervision and services

A. Any offender who is (i) convicted on or after July 1, 1995, of a misdemeanor or a felony that is not a felony act of violence as defined in § 19.2-297.1, and for which the court imposes a total sentence of 12 months or less, and (ii) no younger than 18 years of age or is considered an adult at the time of conviction may be sentenced to a local community-based probation services agency established pursuant to § 9.1-174 by the local governing bodies within that judicial district or circuit.

B. In those courts having electronic access to the Local Inmate Data System (LIDS) within the courtroom, at the time of sentencing, the clerk of court shall determine by reviewing LIDS, in any case where there is a felony conviction, whether a sample of the offender's blood, saliva, or tissue or an analysis of the sample is stored in the DNA data bank maintained by the Department of Forensic Science pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of this title. If the clerk has determined that a DNA sample or analysis is not stored in the DNA data bank, or in any case in which electronic access to LIDS is not available in the courtroom, the court shall order that the offender appear within 30 days before the sheriff or community-based probation officer and allow the sheriff or community-based probation officer to take the required sample. The order shall also require that, if the offender has not appeared and allowed the sheriff or community-based probation officer to take the required sample by the date stated in the order, then the sheriff or community-based probation officer shall report to the court the offender's failure to appear and provide the required sample. The court may order the offender placed under local community-based probation services pursuant to § 9.1-174 upon a determination by the court that the offender may benefit from these services and is capable of returning to society as a productive citizen with a reasonable amount of supervision and intervention including services set forth in § 9.1-176. All or part of any sentence imposed that has been suspended, shall be conditioned upon the offender's successful completion of local community-based probation services established pursuant to § 9.1-174.

The court may impose terms and conditions of supervision as it deems appropriate, including that the offender abide by any additional requirements of supervision imposed or established by the local community-based probation services agency during the period of probation supervision.

C. Any sworn officer of a local community-based probation services agency established or operated pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) may seek a capias from any judicial officer for the arrest of any person on local community-based probation and under its supervision for (i) intractable behavior; (ii) refusal to comply with the terms and conditions imposed by the court; (iii) refusal to comply with the requirements of local community-based probation supervision established by the agency; or (iv) the commission of a new offense while on local community-based probation and under agency supervision. Upon arrest, the offender shall be brought for a hearing before the court of appropriate jurisdiction. After finding that the offender (a) exhibited intractable behavior as defined herein; (b) refused to comply with terms and conditions imposed by the court; (c) refused to comply with the requirements of local community-based probation supervision established by the agency; or (d) committed a new offense while on local community-based probation and under agency supervision, the court may revoke all or part of the suspended sentence and supervision, and commit the offender to serve whatever sentence was originally imposed or impose such other terms and conditions of probation as it deems appropriate or, in a case where the proceeding has been deferred, enter an adjudication of guilt and proceed as otherwise provided by law.

"Intractable behavior" is that behavior that, in the determination of the court, indicates an offender's unwillingness or inability to conform his behavior to that which is necessary for successful completion of local community-based probation or that the offender's behavior is so disruptive as to threaten the successful completion of the program by other participants.

D. An offender sentenced to or provided a deferred proceeding and placed on community-based probation pursuant to this section may be required to pay an amount towards the costs of his supervision and services received in accordance with subsection D of § 9.1-182.

1994, 2nd Sp. Sess., cc. 1, 2; 1995, cc. 502, 574; 1999, c. 372; 2000, c. 1040; 2006, c. 883; 2007, cc. 133, 528.

§ 19.2-303.4. Payment of costs when proceedings deferred and defendant placed on probation

A circuit or district court, which has deferred further proceedings, without entering a judgment of guilt, and placed a defendant on probation subject to terms and conditions pursuant to § 4.1-305, 16.1-278.8, 16.1-278.9, 18.2-57.3, 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-251 or 19.2-303.2, shall impose upon the defendant costs.

1995, c. 485; 2000, c. 186; 2002, c. 831; 2005, c. 631.

§ 19.2-303.5. (Expires July 1, 2017) Immediate sanction probation programs

There may be established in the Commonwealth up to four immediate sanction probation programs in accordance with the following provisions:

1. As a condition of a sentence suspended pursuant to § 19.2-303, a court may order a defendant convicted of a crime, other than a violent crime as defined in subsection C of § 17.1-805, to participate in an immediate sanction probation program.

2. If a participating offender fails to comply with any term or condition of his probation and the alleged probation violation is not that the offender committed a new crime or infraction, (i) his probation officer shall immediately issue a noncompliance letter pursuant to § 53.1-149 authorizing his arrest at any location in the Commonwealth and (ii) his probation violation hearing shall take priority on the court's docket. The probation officer may, in any event, exercise any other lawful authority he may have with respect to the offender.

3. When a participating offender is arrested pursuant to subdivision 2, the court shall conduct an immediate sanction hearing unless (i) the alleged probation violation is that the offender committed a new crime or infraction; (ii) the alleged probation violation is that the offender absconded for more than seven days; or (iii) the offender, attorney for the Commonwealth, or the court objects to such immediate sanction hearing. If the court conducts an immediate sanction hearing, it shall proceed pursuant to subdivision 4. Otherwise, the court shall proceed pursuant to § 19.2-306.

4. At the immediate sanction hearing, the court shall receive the noncompliance letter, which shall be admissible as evidence, and may receive other evidence. If the court finds good cause to believe that the offender has violated the terms or conditions of his probation, it may (i) revoke no more than 30 days of the previously suspended sentence and (ii) continue or modify any existing terms and conditions of probation. If the court does not modify the terms and conditions of probation or remove the defendant from the program, the previously ordered terms and conditions of probation shall continue to apply. The court may remove the offender from the immediate sanction probation program at any time.

5. The provisions of this section shall expire on July 1, 2017.

2010, c. 845; 2014, c. 314; 2016, c. 201.

§ 19.2-304. Increasing or decreasing probation period and modification of conditions

The court may subsequently increase or decrease the probation period and may revoke or modify any condition of probation, but only upon a hearing after reasonable notice to both the defendant and the attorney for the Commonwealth.

Code 1950, § 53-273; 1974, c. 205; 1975, c. 495.

§ 19.2-305. Requiring fines, costs, restitution for damages, support or community services from probationer

A. While on probation the defendant may be required to pay in one or several sums a fine or costs, or both such fine and costs, imposed at the time of being placed on probation as a condition of such probation, and the failure of the defendant to pay such fine or costs, or both such fine and costs, at the prescribed time or times may be deemed a breach of such probation. The

provisions of this subsection shall also apply to any person ordered to pay costs pursuant to § 19.2-303.3.

B. A defendant placed on probation following conviction may be required to make at least partial restitution or reparation to the aggrieved party or parties for damages or loss caused by the offense for which conviction was had, or may be required to provide for the support of his wife or others for whose support he may be legally responsible, or may be required to perform community services. The defendant may submit a proposal to the court for making restitution, for providing for support or for performing community services.

C. No defendant shall be kept under supervised probation solely because of his failure to make full payment of fines, fees, or costs, provided that, following notice by the probation and parole officer to each court and attorney for the Commonwealth in whose jurisdiction any fines, fees, or costs are owed by the defendant, no such court or attorney for the Commonwealth objects to his removal from supervised probation.

Code 1950, § 53-274; 1962, c. 143; 1975, c. 495; 1977, c. 682; 1978, c. 716; 1984, c. 32; 1995, c. 485; 2009, c. 240.

§ 19.2-305.1. Restitution for property damage or loss; community service

A. Notwithstanding any other provision of law, no person convicted of a crime in violation of any provision in Title 18.2, which resulted in property damage or loss, shall be placed on probation or have his sentence suspended unless such person shall make at least partial restitution for such property damage or loss, or shall be compelled to perform community services, or both, or shall submit a plan for doing that which appears to the court to be feasible under the circumstances.

B. Notwithstanding any other provision of law, any person who, on or after July 1, 1995, commits, and is convicted of, a crime in violation of any provision in Title 18.2 shall make at least partial restitution for any property damage or loss caused by the crime or for any medical expenses or expenses directly related to funeral or burial incurred by the victim or his estate as a result of the crime, may be compelled to perform community services and, if the court so orders, shall submit a plan for doing that which appears to be feasible to the court under the circumstances.

B1. Notwithstanding any other provision of law, any person, who on or after July 1, 2005 commits and is convicted of a crime in violation of § 18.2-248 involving the manufacture of any controlled substance, may be ordered, upon presentation of suitable evidence of such costs, by the court to reimburse the Commonwealth or the locality for the costs incurred by the jurisdiction, as the case may be, for the removal and remediation associated with the illegal manufacture of any controlled substance by the defendant.

B2. Notwithstanding any other provision of law, any person who, on or after July 1, 2015, commits and is convicted of a violation of § 18.2-138 for damage to the Capitol or any building, monument, statuary, artwork, or other state property in Capitol Square, or at any other property assigned to the Capitol Police, shall be ordered to pay restitution to the Commonwealth for the

full amount of damages. Any person who, on or after July 1, 2015, commits and is convicted of a violation of § 18.2-405, 18.2-407, or 18.2-408 in Capitol Square, or at any other property assigned to the Capitol Police, shall be ordered to pay restitution to the Commonwealth for the full amount of damages to the Capitol or any building, monument, statuary, artwork, or other state property in Capitol Square, or at any other property assigned to the Capitol Police, to which damage is caused during such riot or unlawful assembly. In any prosecution under § 18.2-138, 18.2-405, 18.2-407, or 18.2-408, testimony of the Division of Engineering and Buildings of the Department of General Services or the Division of Risk Management shall be admissible as evidence of value or extent of damages or cost of repairs to the Capitol or any building, monument, statuary, artwork, or other state property in Capitol Square, or at any other property assigned to the Capitol Police. For the purposes of this subsection, "Capitol Square" means the grounds and the interior and exterior of all buildings in that area in the City of Richmond bounded by Bank, Governor, Broad, and Ninth Streets. "Capitol Square" includes the exterior of all state buildings that are at least 50 years old and bordering the boundary streets.

C. At or before the time of sentencing, the court shall receive and consider any plan for making restitution submitted by the defendant. The plan shall include the defendant's home address, place of employment and address, social security number and bank information. If the court finds such plan to be reasonable and practical under the circumstances, it may consider probation or suspension of whatever portion of the sentence that it deems appropriate. By order of the court incorporating the defendant's plan or a reasonable and practical plan devised by the court, the defendant shall make restitution while he is free on probation or work release or following his release from confinement. Additionally, the court may order that the defendant make restitution during his confinement, if feasible, based upon both his earning capacity and net worth as determined by the court at sentencing.

D. At the time of sentencing, the court shall determine the amount to be repaid by the defendant and the terms and conditions thereof. If community service work is ordered, the court shall determine the terms and conditions upon which such work shall be performed. The court shall include such findings in the judgment order. The order shall specify that sums paid under such order shall be paid to the clerk, who shall disburse such sums as the court may, by order, direct. Any court desiring to participate in the Setoff Debt Collection Act (§§ 58.1-520 through 58.1-535) for the purpose of collecting fines or costs or providing restitution shall, at the time of sentencing, obtain the social security number of each defendant.

E. Unreasonable failure to execute the plan by the defendant shall result in revocation of the probation or imposition of the suspended sentence. A hearing shall be held in accordance with the provisions of this Code relating to revocation of probation or imposition of a suspended sentence before either such action is taken.

E1. A defendant convicted of an offense under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3 shall be ordered to pay mandatory restitution to the victim of the offense in an amount as determined by

the court. For purposes of this subsection, "victim" means a person who is depicted in a still or videographic image involved in an offense under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3.

The Commonwealth shall make reasonable efforts to notify victims of offenses under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3.

F. If restitution is ordered to be paid by the defendant to the victim of a crime and the victim can no longer be located or identified, the clerk shall deposit any such restitution collected to the Criminal Injuries Compensation Fund for the benefit of crime victims. The administrator shall reserve a sum sufficient in the Fund from which he shall make prompt payment to the victim for any proper claims. Before making the deposit he shall record the name, last known address and amount of restitution due each victim appearing from the clerk's report to be entitled to restitution.

G. If restitution pursuant to § 19.2-305 or this section is ordered to be paid by the defendant to the victim of a crime or other entity, and the Criminal Injuries Compensation Fund has made any payments to or on behalf of the victim for any loss, damage, or expenses included in the restitution order, then upon presentation by the Fund of a written request that sets forth the amount of payments made by the Fund to the victim or on the victim's behalf, the entity collecting restitution shall pay to the Fund as much of the restitution collected as will reimburse the Fund for its payments made to the victim or on the victim's behalf.

1977, c. 682; 1978, c. 131; 1981, c. 224; 1984, cc. 32, 269; 1994, c. 197; 1995, cc. 434, 687; 2000, c. 775; 2002, cc. 810, 818; 2003, c. 982; 2005, c. 591; 2011, cc. 575, 588; 2013, c. 273; 2015, cc. 312, 550.

§ 19.2-305.2. Amount of restitution; enforcement

A. The court, when ordering restitution pursuant to § 19.2-305.1, may require that such defendant, in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense (i) return the property to the owner or (ii) if return of the property is impractical or impossible, pay an amount equal to the greater of the value of the property at the time of the offense or the value of the property at the time of sentencing.

B. An order of restitution may be docketed as provided in § 8.01-446 when so ordered by the court or upon written request of the victim and may be enforced by a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.

1988, c. 679; 1989, c. 386 .

§ 19.2-305.3. Repealed

Repealed by Acts 1997, c. 140.

§ 19.2-305.4. When interest to be paid on award of restitution

The court, when ordering restitution pursuant to § 19.2-305 or 19.2-305.1, may provide in the order for interest on the restitution. If the court orders the payment of interest, it shall accrue

from the date of the loss or damage unless the court specifies a different date in the order, at the rate specified in § 6.2-302.

1996, c. 544; 2001, c. 122; 2005, cc. 14, 79.

§ 19.2-306. Revocation of suspension of sentence and probation

A. In any case in which the court has suspended the execution or imposition of sentence, the court may revoke the suspension of sentence for any cause the court deems sufficient that occurred at any time within the probation period, or within the period of suspension fixed by the court. If neither a probation period nor a period of suspension was fixed by the court, then the court may revoke the suspension for any cause the court deems sufficient that occurred within the maximum period for which the defendant might originally have been sentenced to be imprisoned.

B. The court may not conduct a hearing to revoke the suspension of sentence unless the court issues process to notify the accused or to compel his appearance before the court within one year after the expiration of the period of probation or the period of suspension or, in the case of a failure to pay restitution, within three years after such expiration. If neither a probation period nor a period of suspension was fixed by the court, then the court shall issue process within one year after the expiration of the maximum period for which the defendant might originally have been sentenced to be incarcerated. Such notice and service of process may be waived by the defendant, in which case the court may proceed to determine whether the defendant has violated the conditions of suspension.

C. If the court, after hearing, finds good cause to believe that the defendant has violated the terms of suspension, then: (i) if the court originally suspended the imposition of sentence, the court shall revoke the suspension, and the court may pronounce whatever sentence might have been originally imposed or (ii) if the court originally suspended the execution of the sentence, the court shall revoke the suspension and the original sentence shall be in full force and effect. The court may again suspend all or any part of this sentence and may place the defendant upon terms and conditions or probation.

D. If any court has, after hearing, found no cause to impose a sentence that might have been originally imposed, or to revoke a suspended sentence or probation, then any further hearing to impose a sentence or revoke a suspended sentence or probation, based solely on the alleged violation for which the hearing was held, shall be barred.

E. Nothing contained herein shall be construed to deprive any person of his right to appeal in the manner provided by law to the circuit court having criminal jurisdiction from a judgment or order revoking any suspended sentence.

Code 1950, § 53-275; 1958, c. 468; 1970, c. 275; 1975, c. 495; 1978, c. 687; 2002, c. 628; 2016, c. 718.

§ 19.2-307. Contents of judgment order

The judgment order shall set forth the plea, the verdict or findings and the adjudication and sentence, whether or not the case was tried by jury, and if not, whether the consent of the accused was concurred in by the court and the attorney for the Commonwealth. If the accused is found not guilty, or for any other reason is entitled to be discharged, judgment shall be entered accordingly. If an accused is tried at one time for two or more offenses, the court may enter one judgment order respecting all such offenses. The final judgment order shall be entered on a form promulgated by the Supreme Court.

1975, c. 495; 1996, c. 60.

§ 19.2-308. When two or more sentences run concurrently

When any person is convicted of two or more offenses, and sentenced to confinement, such sentences shall not run concurrently, unless expressly ordered by the court.

Code 1950, § 19.1-294; 1960, c. 366; 1975, c. 495.

§ 19.2-308.1. When sentence may run concurrently with sentence in another jurisdiction

Notwithstanding any other provision of law, in the event that a person is convicted of a criminal offense in any court of this Commonwealth and such person has also been sentenced to imprisonment for a term of one year or more by a court of the United States, or any other state or territory, and, at the time of sentencing in this Commonwealth, is incarcerated in a federal or state penal institution, the court may order the sentence to run concurrently with the sentence imposed by such other court.

1977, c. 344.

§ 19.2-309. Sentence of confinement for conviction of a combination of felony and misdemeanor offenses

When any person is convicted of a combination of felony and misdemeanor offenses and sentenced to confinement therefor, in determining the sequence of confinement, the felony sentence and commitment shall take precedence and such person shall first be committed to serve the felony sentence.

Code 1950, § 19.1-295; 1960, c. 366; 1975, c. 495.

§ 19.2-309.1. Sentence of confinement to jail farms maintained by the Cities of Danville, Martinsville and Newport News [Not set out]

Not set out. (1988, cc. 764, 785.)

§ 19.2-310. Transfer of prisoners to custody of Director of Department of Corrections

Every person sentenced by a court to the Department of Corrections upon conviction of a felony shall be conveyed to an appropriate receiving unit operated by the Department in the manner hereinafter provided. The clerk of the court in which the person is sentenced shall forthwith transmit to the Central Criminal Records Exchange the report of dispositions required by § 19.2-390. The clerk of the court within 30 days from the date of the judgment shall forthwith transmit to the

Director of the Department a certified copy or copies of the order of trial and a certified copy of the complete final order, and if he fails to do so shall forfeit $50. The clerk of the court may transmit or make available a copy or copies of such orders electronically. Such copy or copies shall contain, as nearly as ascertainable, the birth date of the person sentenced. The sheriff shall certify to the Director of the Department any jail credits to which the person to be confined is entitled at such time as that person is transferred to the custody of the Director of the Department.

Following receipt of the order of trial and a certified copy of the complete final order, the Director or his designee shall dispatch a correctional officer to the county or city with a warrant directed to the sheriff authorizing him to deliver the prisoner to the correctional officer whose duty it shall be to take charge of the person and convey him to an appropriate receiving unit designated by the Director or his designee. The Director or his designee shall allocate space available in the receiving unit or units by giving first priority to the transportation, as the transportation facilities of the Department may permit, of those persons held in jails who in the opinion of the Director or his designee except as required by § 53.1-20 require immediate transportation to a receiving unit. In making such a determination of priority, the Director shall give due regard to the capacity of local as well as state correctional facilities and, to the extent feasible, shall seek to balance between local and state correctional facilities the excess of prisoners requiring detention.

Code 1950, § 19.1-296; 1960, c. 366; 1966, c. 522; 1970, c. 67; 1972, c. 358; 1974, cc. 44, 45; 1975, c. 495; 1981, c. 529; 1982, cc. 476, 636; 1986, c. 606; 1990, cc. 676, 768; 2010, c. 352; 2011, c. 470.

§ 19.2-310.01. Transmission of sentencing documents

Within thirty days of the receipt of a request from the Department of Corrections for certified copies of sentencing documents for any misdemeanor conviction, the clerk of the court receiving such request shall transmit the requested documents to the Director of the Department. In accordance with the provisions of § 17.1-267, the requested documents shall be provided to the Director without the payment of any fee.

1992, c. 498 .

§ 19.2-310.1. Repealed

Repealed by Acts 1982, c. 636.

Article 1.1 - DNA ANALYSIS AND DATA BANK

§ 19.2-310.2. Blood, saliva, or tissue sample required for DNA analysis upon conviction of certain crimes; fee

A. Every person convicted of a felony on or after July 1, 1990, every person convicted of a felony offense under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 who was incarcerated on July 1, 1989, and every person convicted of a misdemeanor violation of § 16.1-253.2, 18.2-60.3, 18.2-60.4, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-67.5, 18.2-102, 18.2-121, 18.2-130, 18.2-370.6, 18.2-387, 18.2-387.1, or 18.2-479.1 shall have a sample of his blood, saliva or tissue taken for

DNA (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person. If a sample has been previously taken from the person as indicated by the Local Inmate Data System (LIDS), no additional sample shall be taken. The Department of Forensic Science shall provide to LIDS the most current information submitted to the DNA data bank on a weekly basis and shall remove from LIDS and the data bank persons no longer eligible to be in the data bank. A fee of $53 shall be charged for the withdrawal of this sample. The fee shall be taxed as part of the costs of the criminal case resulting in the conviction and $15 of the fee shall be paid into the general fund of the locality where the sample was taken and $38 of the fee shall be paid into the general fund of the state treasury. This fee shall only be taxed one time regardless of the number of samples taken. The assessment provided for herein shall be in addition to any other fees prescribed by law. The analysis shall be performed by the Department of Forensic Science or other entity designated by the Department. The identification characteristics of the profile resulting from the DNA analysis shall be stored and maintained by the Department in a DNA data bank and shall be made available only as provided in § 19.2-310.5.

B. After July 1, 1990, the blood, saliva, or tissue sample shall be taken prior to release from custody. Notwithstanding the provisions of § 53.1-159, any person convicted of an offense listed in subsection A who is in custody after July 1, 1990, shall provide a blood, saliva, or tissue sample prior to his release. Every person so convicted after July 1, 1990, who is not sentenced to a term of confinement shall provide a blood, saliva, or tissue sample as a condition of such sentence. A person required under this section to submit a sample for DNA analysis is not relieved from this requirement regardless of whether no blood, saliva, or tissue sample has been taken from the person or, if a sample has been taken, whether the sample or the results from the analysis of a sample cannot be found in the DNA data bank maintained by the Department of Forensic Science.

C. Nothing in this section shall prevent the Department of Forensic Science from including the identification characteristics of an individual's DNA profile in the DNA data bank as ordered by a circuit court pursuant to a lawful plea agreement.

D. A collection or placement of a sample for DNA analysis that was taken or retained in good faith does not invalidate the sample's use in the data bank pursuant to the provisions of this article. The detention, arrest, or conviction of a person based upon a data bank match or data bank information is not invalidated if it is determined that the sample was obtained, placed, or retained in the data bank in good faith, or if the conviction or juvenile adjudication that resulted in the collection of the DNA sample was subsequently vacated or otherwise altered in any future proceeding, including but not limited to post-trial or post-fact-finding motions, appeals, or collateral attacks.

E. The Virginia Department of Corrections and the Department of Forensic Science shall, on a quarterly basis, compare databases of offenders under the custody or supervision of the Department of Corrections with the DNA data bank of the Department of Forensic Science. The Virginia

Department of Corrections shall require a DNA sample of those offenders under its custody or supervision if they are not identified in the DNA data bank.

F. The Department of State Police shall verify that a DNA sample required to be taken for the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-903 has been received by the Department of Forensic Science. In any instance where a DNA sample has not been received, the Department of State Police or its designee shall obtain from the person required to register a sample for DNA analysis.

G. Each community-based probation services agency established pursuant to § 9.1-174 shall determine by reviewing the Local Inmate Data System upon intake and again prior to discharge whether a blood, saliva, or tissue sample has been taken for DNA analysis for each offender required to submit a sample pursuant to this section and, if no sample has been taken, require an offender to submit a sample for DNA analysis.

H. The sheriff or regional jailer shall determine by reviewing the Local Inmate Data System upon intake and again prior to release whether a blood, saliva, or tissue sample has been taken for DNA analysis for each offender required to submit a sample pursuant to this section and, if no sample has been taken, require an offender to submit a sample for DNA analysis.

1990, c. 669; 1993, c. 33; 1996, cc. 154, 952; 1998, c. 280; 2002, cc. 54, 753, 773; 2005, cc. 868, 881; 2007, c. 528; 2011, c. 247; 2015, cc. 193, 209, 437.

§ 19.2-310.2:1. Saliva or tissue sample required for DNA analysis after arrest for a violent felony

Every person arrested for the commission or attempted commission of a violent felony as defined in § 19.2-297.1 or a violation or attempt to commit a violation of § 18.2-31, 18.2-89, 18.2-90, 18.2-91, or 18.2-92, shall have a sample of his saliva or tissue taken for DNA (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person. After a determination by a magistrate or a grand jury that probable cause exists for the arrest, a sample shall be taken prior to the person's release from custody. The analysis shall be performed by the Department of Forensic Science or other entity designated by the Department. The identification characteristics of the profile resulting from the DNA analysis shall be stored and maintained by the Department in a DNA data bank and shall be made available as provided in § 19.2-310.5.

The clerk of the court shall notify the Department of final disposition of the criminal proceedings. If the charge for which the sample was taken is dismissed or the defendant is acquitted at trial, the Department shall destroy the sample and all records thereof, provided there is no other pending qualifying warrant or capias for an arrest or felony conviction that would otherwise require that the sample remain in the data bank.

2002, cc. 753, 773; 2003, c. 150; 2004, c. 445; 2005, cc. 868, 881; 2006, c. 182.

§ 19.2-310.3. Procedures for withdrawal of blood, saliva or tissue sample for DNA analysis

Each sample required pursuant to § 19.2-310.2 from persons who are to be incarcerated shall be withdrawn at the receiving unit or at such other place as is designated by the Department of Corrections or, in the case of a juvenile, the Department of Juvenile Justice. The required samples from persons who are not sentenced to a term of confinement shall be withdrawn at a time and place specified by the sentencing court. Only a correctional health nurse technician or a physician, registered nurse, licensed practical nurse, graduate laboratory technician, or phlebotomist shall withdraw any blood sample to be submitted for analysis. No civil liability shall attach to any person authorized to withdraw blood, saliva or tissue as provided herein as a result of the act of withdrawing blood, saliva or tissue from any person submitting thereto, provided the blood, saliva or tissue was withdrawn according to recognized medical procedures. However, no person shall be relieved from liability for negligence in the withdrawing of any blood, saliva or tissue sample.

Chemically clean sterile disposable needles and vacuum draw tubes or swabs shall be used for all samples. The tube or envelope containing the sample shall be sealed and labeled with the subject's name, social security number, date of birth, race and gender; the name of the person collecting the sample; and the date and place of collection. The tubes or envelopes containing the samples shall be secured to prevent tampering with the contents. The steps herein set forth relating to the taking, handling, identification, and disposition of blood, saliva or tissue samples are procedural and not substantive. Substantial compliance therewith shall be deemed to be sufficient. The samples shall be transported to the Department of Forensic Science not more than 15 days following withdrawal and shall be analyzed and stored in the DNA data bank in accordance with §§ 19.2-310.4 and 19.2-310.5.

1990, c. 669; 1997, c. 862; 1998, c. 280; 2003, c. 150; 2004, c. 440; 2005, cc. 868, 881.

§ 19.2-310.3:1. Procedures for taking saliva or tissue sample for DNA analysis

A. Each sample required pursuant to § 19.2-310.2:1 from persons arrested shall be taken before release from custody at such place as is designated by the law-enforcement agency responsible for arrest booking in the jurisdiction. Samples shall be taken in accordance with procedures adopted by the Department of Forensic Science. The sample shall be sealed and labeled with the subject's name, social security number, date of birth, race and gender; the name of the person collecting the sample; the date and place of collection; information identifying the arresting or accompanying officer; and the offense for which the person was arrested. The sample shall be secured to prevent tampering with the contents and be accompanied by a copy of the arrest warrant or capias. The steps herein set forth relating to the taking, handling, identification, and disposition of saliva or tissue samples are procedural and not substantive. The sample shall be transported to the Department of Forensic Science not more than 15 days following withdrawal and shall be analyzed and stored in the DNA data bank in accordance with §§ 19.2-310.4 and 19.2-310.5.

B. Substantial compliance therewith shall be deemed to be sufficient. If a sample has been previously taken from the individual as indicated by the Local Inmate Data System (LIDS), no additional sample shall be taken. No civil liability shall attach to any person authorized to take saliva

or tissue as provided herein as a result of the act of taking saliva or tissue from any person submitting thereto, provided the saliva or tissue was taken according to recognized medical procedures. However, no person shall be relieved from liability for negligence in the taking of any saliva or tissue sample.

2002, cc. 753, 773; 2003, c. 150; 2005, cc. 868, 881.

§ 19.2-310.4. Procedures for conducting DNA analysis of blood, saliva or tissue sample

Whether or not the results of an analysis are to be included in the data bank, the Department shall conduct the DNA analysis in accordance with procedures adopted by the Department to determine identification characteristics specific to the individual whose sample is being analyzed. The Director or his designated representative shall complete and maintain on file a form indicating the name of the person whose sample is to be analyzed, the date and by whom the blood, saliva or tissue sample was received and examined, and a statement that the seal on the tube or envelope containing the sample had not been broken or otherwise tampered with. The remainder of a blood, saliva or tissue sample submitted for analysis and inclusion in the data bank pursuant to § 19.2-310.2 or 19.2-310.2:1 may be divided, labeled as provided for the original sample, and securely stored by the Department in accordance with specific procedures adopted by regulation of the Department to ensure the integrity and confidentiality of the samples. All or part of the remainder of that sample may be used only (i) to create a statistical data base provided no identifying information on the individual whose sample is being analyzed is included or (ii) for retesting by the Department to validate or update the original analysis.

A report of the results of a DNA analysis conducted by the Department as authorized, including the profile and identifying information, shall be made and maintained at the Department. A certificate and the results of the analysis shall be admissible in any court as evidence of the facts therein stated. Except as specifically provided in this section and § 19.2-310.5, the results of the analysis shall be securely stored and shall remain confidential.

1990, c. 669; 1998, c. 280; 2002, cc. 753, 773; 2003, c. 150; 2005, cc. 868, 881.

§ 19.2-310.5. DNA data bank

A. It shall be the duty of the Department to receive samples of human biological evidence and to analyze, classify, and file the results of DNA identification characteristics profiles of samples of human biological evidence submitted pursuant to § 19.2-310.2 or 19.2-310.2:1 and to make such information available as provided in this section. The results of an analysis and comparison of evidence submitted to the Department pursuant to § 9.1-1101 to the identification characteristics of human biological evidence so analyzed, classified, and filed shall be made available directly to duly authorized members of federal, state, and local law-enforcement agencies or private police departments that have been designated as criminal justice agencies by the Department of Criminal Justice Services as defined by § 9.1-101, attorneys for the Commonwealth or attorneys for the United States Department of Justice, or the Office of the Chief Medical Examiner upon request made in furtherance of an official investigation or prosecution of any criminal offense, or to an

accused or his attorney pursuant to § 9.1-1104. The Department shall confirm whether or not there is a DNA profile on file for a specific individual if a federal, state or local law-enforcement officer requests that information in furtherance of an official investigation of any criminal offense. The name of the requestor and the purpose for which the information is requested shall be maintained on file with the Department.

B. The Department shall adopt regulations governing (i) the methods of obtaining information from the data bank in accordance with this section and (ii) procedures for verification of the identity and authority of the requestor. The Department shall specify the positions in that agency which require regular access to the data bank and samples submitted as a necessary function of the job.

C. The Department shall create a separate statistical data base comprised of DNA profiles of samples of human biological evidence of persons whose identity is unknown. Nothing in this section or § 19.2-310.6 shall prohibit the Department from sharing or otherwise disseminating the information in the statistical data base with law-enforcement or criminal justice agencies within or without the Commonwealth.

D. The Department may charge a reasonable fee to search and provide a comparative analysis of DNA profiles in the data bank to any authorized law-enforcement agency outside of the Commonwealth.

1990, c. 669; 1998, c. 280; 2000, c. 284; 2002, cc. 753, 773; 2005, cc. 868, 881; 2010, c. 502; 2011, cc. 66, 171, 638.

§ 19.2-310.6. Unauthorized uses of DNA data bank; forensic samples; penalties

Any person who, without authority, disseminates information contained in the data bank shall be guilty of a Class 3 misdemeanor. Any person who disseminates, receives, or otherwise uses or attempts to so use information in the data bank, knowing that such dissemination, receipt, or use is for a purpose other than as authorized by law, shall be guilty of a Class 1 misdemeanor.

Except as authorized by law, any person who, for purposes of having DNA analysis performed, obtains or attempts to obtain any sample submitted to the Department of Forensic Science for analysis shall be guilty of a Class 5 felony.

1990, c. 669; 2005, cc. 868, 881.

§ 19.2-310.7. Expungement when DNA taken for a conviction

A person whose DNA profile has been included in the data bank pursuant to § 19.2-310.2 may request expungement on the grounds that the conviction on which the authority for including his DNA profile was based has been reversed and the case dismissed. Provided that the person's DNA profile is not otherwise required to be included in the data bank pursuant to § 9.1-903, 16.1-299.1, 19.2-310.2, or 19.2-310.2:1, the Department of Forensic Science shall purge all records and identifiable information in the data bank pertaining to the person and destroy all samples from

the person upon receipt of (i) a written request for expungement pursuant to this section and (ii) a certified copy of the court order reversing and dismissing the conviction.

1990, c. 669; 2002, cc. 753, 773; 2005, cc. 868, 881; 2015, cc. 209, 437.

Article 2 - INDETERMINATE COMMITMENT

§ 19.2-311. Indeterminate commitment to Department of Corrections in certain cases; duration and character of commitment; concurrence by Department

A. The judge, after a finding of guilt, when fixing punishment in those cases specifically enumerated in subsection B of this section, may, in his discretion, in lieu of imposing any other penalty provided by law and, with consent of the person convicted, commit such person for a period of four years, which commitment shall be indeterminate in character. In addition, the court shall impose a period of confinement which shall be suspended. Subject to the provisions of subsection C hereof, such persons shall be committed to the Department of Corrections for confinement in a state facility for youthful offenders established pursuant to § 53.1-63. Such confinement shall be followed by at least one and one-half years of supervisory parole, conditioned on good behavior. The sentence of indeterminate commitment and eligibility for continuous evaluation and parole under § 19.2-313 shall remain in effect but eligibility for use of programs and facilities established pursuant to § 53.1-63 shall lapse if such person (i) exhibits intractable behavior as defined in § 53.1-66 or (ii) is convicted of a second criminal offense which is a felony. A sentence imposed for any second criminal offense shall run consecutively with the indeterminate sentence.

B. The provisions of subsection A of this section shall be applicable to first convictions in which the person convicted:

1. Committed the offense of which convicted before becoming twenty-one years of age;

2. Was convicted of a felony offense other than any of the following: capital murder, murder in the first degree or murder in the second degree or a violation of §§ 18.2-61, 18.2-67.1, 18.2-67.2 or subdivision A 1 of § 18.2-67.3; and

3. Is considered by the judge to be capable of returning to society as a productive citizen following a reasonable amount of rehabilitation.

C. Subsequent to a finding of guilt and prior to fixing punishment, the Department of Corrections shall, concurrently with the evaluation required by § 19.2-316, review all aspects of the case to determine whether (i) such defendant is physically and emotionally suitable for the program, (ii) such indeterminate sentence of commitment is in the best interest of the Commonwealth and of the person convicted, and (iii) facilities are available for the confinement of such person. After the review such person shall be again brought before the court, which shall review the findings of the Department. The court may impose a sentence as authorized in subsection A, or any other penalty provided by law.

D. Upon the defendant's failure to complete the program established pursuant to § 53.1-63 or to comply with the terms and conditions through no fault of his own, the defendant shall be brought before the court for hearing. Notwithstanding the provisions for pronouncement of sentence as set forth in § 19.2-306, the court, after hearing, may pronounce whatever sentence was originally imposed, pronounce a reduced sentence, or impose such other terms and conditions of probation as it deems appropriate.

Code 1950, § 19.1-295.1; 1966, c. 579; 1974, cc. 44, 45; 1975, c. 495; 1976, c. 498; 1980, c. 531; 1988, c. 38; 1990, c. 701; 1994, cc. 859, 949; 1996, cc. 755, 914; 1997, c. 387; 2000, cc. 668, 690.

§ 19.2-312. Repealed

Repealed by Acts 1990, c. 701 .

§ 19.2-313. Eligibility for release

Any person committed under the provisions of § 19.2-311 shall be eligible for release at the discretion of the Parole Board upon certification by the Director of the Department of Corrections that the person has successfully completed the program established pursuant to § 53.1-63 and a determination that he has demonstrated that such release is compatible with the interests of society and of such person and his successful rehabilitation to that extent. The Department and Parole Board shall make continuous evaluation of his progress to determine his readiness for release. All such persons, in any event, shall be released after four years' confinement. Any person committed under § 19.2-311 who was convicted of a misdemeanor and is determined to be unsuitable for the program established pursuant to § 53.1-63 shall be released after one year of confinement or the maximum confinement for the misdemeanor whichever is less.

Code 1950, § 19.1-295.3; 1966, c. 579; 1975, cc. 495, 571; 2000, cc. 668, 690.

§ 19.2-314. Supervision of persons released

Every person released under § 19.2-313 shall receive intensive parole supervision for a period of at least one and one-half years and may have parole supervision continued for a longer period, if the Parole Board deems it advisable.

Code 1950, § 19.1-295.4; 1966, c. 579; 1975, c. 495; 2000, cc. 668, 690.

§ 19.2-315. Compliance with terms and conditions of parole; time on parole not counted as part of commitment period

Every person on parole under § 19.2-314 shall comply with such terms and conditions as may be prescribed by the Board according to § 53.1-157 and shall be subject to the penalties imposed by law for a violation of such terms and conditions. Notwithstanding any other provision of the Code, if parole is revoked as a result of any such violation, such person may be returned to the institution established pursuant to § 53.1-63 upon the direction of the Parole Board with the concurrence of the Department of Corrections, provided such person has not been convicted since his release on parole of an offense constituting a felony under the laws of the Commonwealth. Time on parole shall not be counted as part of the four-year period of commitment under this section.

In addition, such person may be brought before the sentencing court for imposition of all or part of the suspended sentence.

Code 1950, § 19.1-295.5; 1966, c. 579; 1975, c. 495; 1984, c. 33; 2000, cc. 668, 690.

§ 19.2-316. Evaluation and report prior to determining punishment

Following conviction and prior to sentencing, the court shall order such defendant committed to the Department of Corrections for a period not to exceed 60 days from the date of referral for evaluation and diagnosis by the Department to determine the person's potential for rehabilitation through confinement and treatment in the facilities and programs established pursuant to § 53.1-63. The evaluation and diagnosis shall include a complete physical and mental examination of the defendant and may be conducted by the Department of Corrections at any state or local facility, probation and parole office, or other location deemed appropriate by the Department. The Department of Corrections shall conduct the evaluation and diagnosis and shall review all aspects of the case within 60 days from the date of conviction or revocation of ordinary probation and shall recommend that the defendant be committed to the facility established pursuant to § 53.1-63 upon finding that (i) such defendant is physically and emotionally suitable for the program, (ii) such commitment is in the best interest of the Commonwealth and the defendant, and (iii) facilities are available for confinement of the defendant.

If the Director of the Department of Corrections determines such person should be confined in a facility other than one established pursuant to § 53.1-63, a written report giving the reasons for such decision shall be submitted to the sentencing court. The court shall not be bound by such written report in the matter of determining punishment. Additionally, the person may be committed or transferred to a state hospital operated by the Department of Behavioral Health and Developmental Services or other mental health hospital, as provided by law, during such 60-day period.

Code 1950, § 19.1-295.6; 1966, c. 579; 1974, cc. 44, 1975, c. 495; 1990, c. 701; 2000, cc. 668, 690; 2012, cc. 476, 507.

Article 3 - BOOT CAMP INCARCERATION PROGRAM

§ 19.2-316.1. Eligibility for participation; evaluation; sentencing; withdrawal or removal from program

An individual may be eligible to be sentenced as provided herein if he (i) is convicted on or after January 1, 1991, of a nonviolent felony, or is deemed by the court to be nonviolent in character, (ii) is no older than twenty-four at the time of conviction for the offense, (iii) has never before been incarcerated upon a felony conviction in a correctional facility of any state, the District of Columbia, the United States or its territories, and (iv) has not been confined for more than twelve months nor for more than one term of confinement in a local correctional facility of any such jurisdiction; however, confinement for misdemeanor traffic convictions shall not be considered in determining eligibility.

Following conviction and prior to sentencing, upon motion of the defendant, the court may order such defendant committed to the Department of Corrections for a period not to exceed sixty days from the date of referral or the date of revocation of ordinary probation, as the case may be, for evaluation and diagnosis by the Department to determine suitability for participation in the Boot Camp Incarceration Program established pursuant to § 53.1-67.1. The evaluation and diagnosis shall include a complete physical and mental examination of the defendant and may be conducted by the Department of Corrections at any state or local facility, probation and parole office, or other location deemed appropriate by the Department.

The Department of Corrections shall conduct the evaluation and diagnosis and shall review all aspects of the case within sixty days from the date of conviction or revocation of ordinary probation and shall recommend that the defendant be committed to the Boot Camp Incarceration Program upon finding that (i) such defendant is physically and emotionally suitable for the program, (ii) such commitment is in the best interest of the Commonwealth and the defendant, and (iii) facilities are available for confinement of the defendant.

Upon receipt of such a recommendation and written consent of the defendant to participate in the program, and a determination by the court that the defendant will benefit from the program and is capable of returning to society as a productive citizen following a reasonable amount of intensive supervision and rehabilitation including program components set forth in § 53.1-67.1, and the defendant would otherwise be committed to the Department of Corrections for a period of confinement, the court shall impose such sentence of confinement as authorized by law and suspend the sentence and place the defendant on probation. Such probation shall be conditioned upon the defendant's entry into and successful completion of a Boot Camp Incarceration Program established by the Department of Corrections pursuant to § 53.1-67.1. The court may impose such other terms and conditions of probation as it deems appropriate.

Upon the defendant's (i) voluntary withdrawal from the program, (ii) removal from the program by the Department of Corrections for intractable behavior, or (iii) refusal to comply with the terms and conditions of probation imposed by the court, the defendant shall be brought before the court for hearing. Upon a finding that the defendant voluntarily chooses to withdraw from the program, exhibited intractable behavior as defined herein, or refused to comply with terms and conditions of probation, the court may revoke all or part of the suspended sentence and probation. Upon revocation of the suspension and probation, the provisions of §§ 53.1-191, 53.1-196 and 53.1-198 through 53.1-201 shall apply retroactively to the date of sentencing.

Upon the defendant's failure to complete the program or to comply with the terms and conditions of probation imposed by the court through no fault of his own, the defendant shall be brought before the court for hearing. Notwithstanding the provisions for pronouncement of sentence as set forth in § 19.2-306, the court, after hearing, may pronounce whatever sentence was originally imposed, pronounce a reduced sentence, or impose such other terms and conditions of probation as it deems appropriate.

"Intractable behavior" means that behavior which, in the determination of the Department of Corrections, (i) indicates an inmate's unwillingness or inability to conform his behavior to that necessary to his successful completion of the program or (ii) is so disruptive as to threaten the successful completion of the program by other participants.

"Nonviolent felony" means any felony except those considered an "act of violence" pursuant to § 19.2-297.1 or any attempt to commit any of those crimes.

1990, c. 474; 1992, c. 861; 1994, c. 926; 1995, c. 117; 1996, cc. 809, 938; 2000, c. 769.

Article 4 - DETENTION CENTER INCARCERATION PROGRAM

§ 19.2-316.2. Eligibility for participation in detention center incarceration program; evaluation; sentencing; withdrawal or removal from program

A. A defendant who otherwise would have been sentenced to incarceration for a nonviolent felony as defined in § 19.2-316.1 or who has been previously incarcerated for a nonviolent felony as defined in § 19.2-316.1 but otherwise meets the following criteria and (i) who is determined by the court to need more security or supervision than provided by the diversion center incarceration program under § 53.1-67.7, (ii) whose age or physical condition disqualifies him from the Boot Camp Incarceration Program under § 53.1-67.1, and (iii) who can benefit from a regimented environment and structured program, may be considered for commitment to a detention center established under § 53.1-67.8 as follows:

1. Following conviction and prior to imposition of sentence or following a finding that the defendant's probation should be revoked, upon motion of the defendant or the attorney for the Commonwealth or upon the court's own motion, the court may order such defendant committed to the Department of Corrections for a period not to exceed 60 days from the date of commitment for evaluation and diagnosis by the Department to determine suitability for participation in the Detention Center Incarceration Program. The evaluation and diagnosis shall include a complete physical and mental examination of the defendant and may be conducted by the Department at any state or local correctional facility, probation and parole office, or other location deemed appropriate by the Department. When a defendant who has not been charged with a new criminal offense and who may be subject to a revocation of probation, scores incarceration on the probation violation guidelines and agrees to participate, the probation and parole officer, with the approval of the court, may commit the defendant to the Department for such evaluation, for a period not to exceed 60 days.

2. Upon determination that (i) such defendant is physically and emotionally suited for the program, (ii) such commitment is in the best interest of the Commonwealth and the defendant, and (iii) facilities are available for the confinement of the defendant, the Department shall recommend to the court in writing that the defendant be committed to the Detention Center Incarceration Program.

3. Upon receipt of such a recommendation and a determination by the court that the defendant will benefit from the program and is capable of returning to society as a productive citizen following successful completion of the program, and if the defendant would otherwise be committed to the Department, the court (i) shall impose sentence, suspend the sentence, and place the defendant on probation or (ii) following a finding that the defendant has violated the terms and conditions of his probation previously ordered, shall place the defendant on probation pursuant to this section. Such probation shall be conditioned upon the defendant's entry into and successful completion of the Detention Center Incarceration Program. The court shall order that, upon successful completion of the program, the defendant shall be released from confinement and be under intensive probation supervision for a period to be specified by the court followed by an additional period of regular probation of not less than one year. The court shall further order that the defendant, following release from confinement, shall (a) make reasonable efforts to secure and maintain employment, (b) comply with a plan of restitution or community service, (c) comply with a plan for payment of fines, if any, and costs of court, and (d) undergo appropriate substance abuse treatment, if necessary. The court may impose such other terms and conditions of probation as it deems appropriate. A sentence to the Detention Center Incarceration Program shall not be imposed as an addition to an active sentence to a state correctional facility.

4. Upon the defendant's (i) voluntary withdrawal from the program, (ii) removal from the program by the Department for intractable behavior as defined in § 19.2-316.1, or (iii) failure to comply with the terms and conditions of probation, the court shall cause the defendant to show cause why his probation and suspension of sentence should not be revoked. Upon a finding that the defendant voluntarily withdrew from the program, was removed from the program by the Department for intractable behavior, or failed to comply with the terms and conditions of probation, the court may revoke all or part of the probation and suspended sentence and commit the defendant as otherwise provided in this chapter.

B. Any offender as described in § 19.2-316.1 paroled under § 53.1-155 or mandatorily released under § 53.1-159 and for whom probable cause that a violation of parole or of the terms and conditions of mandatory release, other than for the occurrence of a new felony or Class 1 or Class 2 misdemeanor, has been determined under § 53.1-165, may be considered by the Parole Board for commitment to a detention center as established under § 53.1-67.8 as follows:

1. The Parole Board or its authorized hearing officer, with the violator's consent, may order the violator to be evaluated and diagnosed by the Department of Corrections to determine suitability for participation in the Detention Center Incarceration Program. The evaluation and diagnosis may be conducted by the Department at any state or local correctional facility, probation or parole office, or other location deemed appropriate by the Department.

2. Upon determination that (i) such commitment is in the best interest of the Commonwealth and the violator and (ii) facilities are available for the confinement of the violator, or upon receipt of a defendant's voluntary participation form from the probation and parole officer and a

determination that (i) and (ii) have been met, the Department shall recommend to the Parole Board in writing that the violator be committed to the Detention Center Incarceration Program. The Department shall have the final authority to determine an individual's suitability for the program.

3. Upon receipt of such a recommendation and a determination by the Parole Board that the violator will benefit from the program and is capable of returning to society as a productive citizen following successful completion of the program, the violator shall be placed under parole supervision for a period of not less than one year. The Parole Board may impose such other terms and conditions of parole or mandatory release as it deems appropriate.

4. Upon the violator's (i) voluntary withdrawal from the program, (ii) removal from the program for intractable behavior as defined in § 19.2-316.1, or (iii) failure to comply with the terms and conditions of parole or mandatory release, the Department shall conduct a preliminary parole violation hearing to determine if probable cause exists to revoke his parole or mandatory release. Upon a finding that the violator voluntarily withdrew from the program, was removed from the program by the Department for intractable behavior, or failed to comply with the terms and conditions of parole or mandatory release, the Parole Board shall revoke parole or mandatory release and recommit the violator as provided in § 53.1-165.

1994, 2nd Sp. Sess., cc. 1, 2; 1995, cc. 502, 574; 2000, c. 338; 2002, c. 604; 2005, cc. 512, 580; 2008, cc. 362, 761.

Article 5 - DIVERSION CENTER INCARCERATION PROGRAM

§ 19.2-316.3. Eligibility for participation in diversion center incarceration program; evaluation; sentencing; withdrawal or removal from program; payment for costs

A. A defendant (i) who otherwise would have been sentenced to incarceration for a nonviolent felony as defined in § 19.2-316.1 and who the court determines requires more security or supervision than provided by intensive probation supervision or (ii) whose suspension of sentence would otherwise be revoked after a finding that the defendant has violated the terms and conditions of probation for a nonviolent felony as defined in § 19.2-316.1, may be considered for commitment to a diversion center established under § 53.1-67.7 as follows:

1. Following conviction and prior to imposition of sentence or following a finding that the defendant's probation should be revoked, upon motion of the defendant or the attorney for the Commonwealth or upon the court's own motion, the court may order such defendant committed to the Department of Corrections for a period not to exceed 45 days from the date of commitment for evaluation and diagnosis by the Department to determine suitability for participation in the Diversion Center Incarceration Program. The evaluation and diagnosis may be conducted by the Department at any state or local correctional facility, probation and parole office, or other location deemed appropriate by the Department. When a defendant who has not been charged with a new criminal offense and who may be subject to a revocation of probation, scores incarceration on the

probation violation guidelines and agrees to participate, the probation and parole officer, with the approval of the court, may commit the defendant to the Department for such evaluation, for a period not to exceed 45 days.

2. Upon determination that (i) such commitment is in the best interest of the Commonwealth and the defendant and (ii) facilities are available for the confinement of the defendant, the Department shall recommend to the court in writing that the defendant be committed to the Diversion Center Incarceration Program.

3. Upon receipt of such a recommendation and a determination by the court that the defendant will benefit from the program and is capable of returning to society as a productive citizen following successful completion of the program, and if the defendant would otherwise be committed to the Department, the court (i) shall impose sentence, suspend the sentence, and place the defendant on probation pursuant to this section or (ii) following a finding that the defendant has violated the terms and conditions of his probation previously ordered, shall place the defendant on probation pursuant to this section. Such probation shall be conditioned upon the defendant's entry into and successful completion of the Diversion Center Incarceration Program. The court shall order that, upon successful completion of the program, the defendant shall be released from confinement and be under intensive probation supervision for a period to be specified by the court followed by an additional period of regular probation of not less than one year. The court shall further order that the defendant, prior to release from confinement, shall (a) make reasonable efforts to secure and maintain employment, (b) comply with a plan of restitution or community service, (c) comply with a plan for payment of fines, if any, and costs of court, and (d) undergo substance abuse treatment, if necessary. The court may impose such other terms and conditions of probation as it deems appropriate. A sentence to the Diversion Center Incarceration Program shall not be imposed in addition to an active sentence to a state correctional facility.

4. Upon the defendant's (i) voluntary withdrawal from the program, (ii) removal from the program by the Department for intractable behavior as defined in § 19.2-316.1, or (iii) failure to comply with the terms and conditions of probation, the court shall cause the defendant to show cause why his probation and suspension of sentence should not be revoked. Upon a finding that the defendant voluntarily withdrew from the program, was removed from the program by the Department for intractable behavior, or failed to comply with the terms and conditions of probation, the court may revoke all or part of the probation and suspended sentence, and commit the defendant as otherwise provided in this chapter.

B. Any offender as described in § 19.2-316.1 paroled under § 53.1-155 or mandatorily released under § 53.1-159 and for whom probable cause that a violation of parole or of the terms and conditions of mandatory release, other than the occurrence of a new felony or Class 1 or Class 2 misdemeanor, has been determined under § 53.1-165, may be considered by the Parole Board for commitment to a diversion center as established under § 53.1-67.7 as follows:

1. The Parole Board or its authorized hearing officer, with the violator's consent or upon receipt of a defendant's written voluntary agreement to participate form from the probation and parole officer, may order the violator to be evaluated and diagnosed by the Department of Corrections to determine suitability for participation in the Diversion Center Incarceration Program. The evaluation and diagnosis may be conducted by the Department at any state or local correctional facility, probation or parole office, or other location deemed appropriate by the Department.

2. Upon determination that (i) such commitment is in the best interest of the Commonwealth and the violator and (ii) facilities are available for the confinement of the violator, the Department shall recommend to the Parole Board in writing that the violator be committed to the Diversion Center Incarceration Program. The Department shall have the final authority to determine an individual's suitability for the program.

3. Upon receipt of such a recommendation and a determination by the Parole Board that the violator will benefit from the program and is capable of returning to society as a productive citizen following successful completion of the program and if the violator would otherwise be committed to the Department, the Parole Board shall restore the violator to parole supervision conditioned upon entry into and successful completion of the Diversion Center Incarceration Program. The Parole Board shall order that, upon successful completion of the program, the violator shall be placed under parole supervision for a period of not less than one year. The Parole Board may impose such other terms and conditions of parole or mandatory release as it deems appropriate. The time spent in the program shall not be counted as service of any part of a term of imprisonment for which he was sentenced upon his conviction.

4. Upon the violator's (i) voluntary withdrawal from the program, (ii) removal from the program by the Department for intractable behavior as defined in § 19.2-316.1, or (iii) failure to comply with the terms and conditions of parole or mandatory release, the Parole Board may revoke parole or mandatory release and recommit the violator as provided in § 53.1-165.

C. A person sentenced pursuant to this article shall be required to pay an amount to be determined by the Board of Corrections pursuant to regulation to defray the cost of his keep.

1994, 2nd Sp. Sess., cc. 1, 2; 1995, cc. 502, 574; 2000, c. 338; 2002, c. 604; 2005, c. 604; 2008, cc. 384, 757.

Chapter 19 - EXCEPTIONS AND WRITS OF ERROR

§ 19.2-317. When writ of error lies in criminal case for accused; when for Commonwealth; when for county, city or town

A. A writ of error shall lie in a criminal case to the judgment of a circuit court or the judge thereof, from the Court of Appeals as provided in § 17.1-406. It shall lie in any such case for the accused and if the case is for the violation of any law relating to the state revenue, it shall lie also for the Commonwealth.

B. A writ of error shall also lie for any county, city or town from the Supreme Court to the judgment of any circuit court declaring an ordinance of such county, city or town to be unconstitutional or otherwise invalid, except when the violation of any such ordinance is made a misdemeanor by state statute.

C. A writ of error shall also lie for the Commonwealth from the Supreme Court to a judgment of the Court of Appeals in a criminal case, except where the decision of the Court of Appeals is made final under § 17.1-410 or § 19.2-408.

Code 1950, § 19.1-282; 1960, c. 366; 1975, c. 495; 1984, c. 703; 1997, c. 358.

§ 19.2-317.1. Repealed

Repealed by Acts 1990, c. 74 .

§ 19.2-318. Appeal on writ of error to judgment for contempt

From a judgment for any civil contempt of court an appeal may be taken to the Court of Appeals. A writ of error shall lie from the Court of Appeals to a judgment for criminal contempt of court. This section shall also be construed to authorize an appeal from or writ of error to a judgment of a circuit court rendered on appeal from a judgment of a district court for civil or criminal contempt.

Code 1950, § 19.1-283; 1960, c. 366; 1968, c. 639; 1975, c. 495; 1979, c. 649; 1984, c. 703.

§ 19.2-319. When execution of sentence to be suspended; bail; appeal from denial

If a person sentenced by a circuit court to death or confinement in the state correctional facility indicates an intention to apply for a writ of error, the circuit court shall postpone the execution of such sentence for such time as it may deem proper.

In any other criminal case wherein judgment is given by any court to which a writ of error lies, and in any case of judgment for any civil or criminal contempt, from which an appeal may be taken or to which a writ of error lies, the court giving such judgment may postpone the execution thereof for such time and on such terms as it deems proper.

In any case after conviction if the sentence, or the execution thereof, is suspended in accordance with this section, or for any other cause, the court, or the judge thereof, may, and in any case of a misdemeanor shall, set bail in such penalty and for appearance at such time as the nature of the case may require; provided that, if the conviction was for a violent felony as defined in § 19.2-297.1 and the defendant was sentenced to serve a period of incarceration not subject to suspension, then the court shall presume, subject to rebuttal, that no condition or combination of conditions of bail will reasonably assure the appearance of the convicted person or the safety of the public.

In any case in which the court denies bail, the reason for such denial shall be stated on the record of the case. A writ of error from the Court of Appeals shall lie to any such judgment refusing bail or requiring excessive bail, except that in any case where a person has been sentenced to death, a writ of error shall lie from the Supreme Court. Upon review by the Court of Appeals or the

Supreme Court, if the decision by the trial court to deny bail is overruled, the appellate court shall either set bail or remand the matter to circuit court for such further action regarding bail as the appellate court directs.

Code 1950, § 19.1-281; 1960, c. 366; 1975, c. 495; 1979, c. 649; 1984, c. 703; 1987, c. 175; 1988, c. 524; 1999, c. 821; 2008, cc. 126, 146.

§ 19.2-320. Petitioner for writ of error to comply with Rules of Court

Any party for whom a writ of error lies may apply therefor by complying with the provisions of the Rules of the Supreme Court of Virginia relative to the appeal of criminal cases to the Court of Appeals, or where an appeal is taken to the Supreme Court, with the Rules of the Supreme Court relative to appeal of criminal cases to the Supreme Court.

Code 1950, § 19.1-284; 1960, c. 366; 1975, c. 495; 1984, c. 703.

§ 19.2-321. With whom petition for writ of error filed

A. The petition to the Court of Appeals shall be filed with the Clerk of the Court in the manner and within the time provided by law.

B. The petition in a case wherein a writ of error lies from the Supreme Court shall be filed with the Clerk of that Court in the manner and within the time provided by law.

Code 1950, § 19.1-285; 1960, c. 366; 1975, c. 495; 1976, c. 615; 1984, c. 703.

§ 19.2-321.1. Motion in the Court of Appeals for delayed appeal in criminal cases

A. Filing and content of motion. When, due to the error, neglect, or fault of counsel representing the appellant, or of the court reporter, or of the circuit court or an officer or employee thereof, an appeal in a criminal case has (i) never been initiated; (ii) been dismissed for failure to adhere to proper form, procedures, or time limits in the perfection of the appeal; or (iii) been denied or the conviction has been affirmed, for failure to file or timely file the indispensable transcript or written statement of facts as required by law or by the Rules of the Supreme Court; then a motion for leave to pursue a delayed appeal may be filed in the Court of Appeals within six months after the appeal has been dismissed or denied, the conviction has been affirmed, or the circuit court judgment sought to be appealed has become final, whichever is later. Such motion shall identify the circuit court and the style, date, and circuit court record number of the judgment sought to be appealed, and, if one was assigned in a prior attempt to appeal the judgment, shall give the Court of Appeals record number in that proceeding, and shall set forth the specific facts establishing the said error, neglect, or fault. If the error, neglect, or fault is alleged to be that of an attorney representing the appellant, the motion shall be accompanied by the affidavit of the attorney whose error, neglect, or fault is alleged, verifying the specific facts alleged in the motion, and certifying that the appellant is not personally responsible, in whole or in part, for the error, neglect, or fault causing loss of the original opportunity for appeal.

B. Service, response, and disposition. Such motion shall be served on the attorney for the Commonwealth or, if a petition for appeal was granted in the original attempt to appeal, upon the

Attorney General, in accordance with the Rules of the Supreme Court. If the Commonwealth disputes the facts alleged in the motion, or contends that those facts do not entitle the appellant to a delayed appeal under this section, the motion shall be denied without prejudice to the appellant's right to seek a delayed appeal by means of petition for a writ of habeas corpus. Otherwise, the Court of Appeals shall, if the motion meets the requirements of this section, grant appellant leave to initiate or re-initiate pursuit of the appeal.

C. Time limits when motion granted. If the motion is granted, all computations of time under the Rules of the Supreme Court shall run from the date of the order of the Court of Appeals granting the motion, or if the appellant has been determined to be indigent, from the date of the order by the circuit court appointing counsel to represent the appellant in the delayed appeal, whichever is later.

D. Applicability. The provisions of this section shall not apply to cases in which the appellant is responsible, in whole or in part, for the error, neglect, or fault causing loss of the original opportunity for appeal, nor shall it apply in cases where the claim of error, neglect, or fault has already been alleged and rejected in a prior judicial proceeding.

2005, c. 836; 2011, c. 278.

§ 19.2-321.2. Motion in the Supreme Court for delayed appeal in criminal cases

A. Filing and content of motion. When, due to the error, neglect, or fault of counsel representing the appellant, or of the court reporter, or of the Court of Appeals or the circuit court or an officer or employee of either, an appeal from the Court of Appeals to the Supreme Court in a criminal case has (i) never been initiated; (ii) been dismissed for failure to adhere to proper form, procedures, or time limits in the perfection of the appeal; or (iii) been denied or the conviction has been affirmed, for failure to file or timely file the indispensable transcript or written statement of facts as required by law or by the Rules of the Supreme Court; then a motion for leave to pursue a delayed appeal may be filed in the Supreme Court within six months after the appeal has been dismissed or denied, the conviction has been affirmed, or the Court of Appeals judgment sought to be appealed has become final, whichever is later. Such motion shall identify by the style, date, and Court of Appeals record number of the judgment sought to be appealed, and, if one was assigned in a prior attempt to appeal the judgment to the Supreme Court, shall give the record number assigned in the Supreme Court in that proceeding, and shall set forth the specific facts establishing the said error, neglect, or fault. If the error, neglect, or fault is alleged to be that of an attorney representing the appellant, the motion shall be accompanied by the affidavit of the attorney whose error, neglect, or fault is alleged, verifying the specific facts alleged in the motion, and certifying that the appellant is not personally responsible, in whole or in part, for the error, neglect, or fault causing loss of the original opportunity for appeal.

B. Service, response, and disposition. Such motion shall be served on the attorney for the Commonwealth or, if a petition for appeal was granted in the Court of Appeals or in the Supreme

Court in the original attempt to appeal, upon the Attorney General, in accordance with Rule 5:4 of the Supreme Court. If the Commonwealth disputes the facts alleged in the motion, or contends that those facts do not entitle the appellant to a delayed appeal under this section, the motion shall be denied without prejudice to the appellant's right to seek a delayed appeal by means of petition for a writ of habeas corpus. Otherwise, the Supreme Court shall, if the motion meets the requirements of this section, grant appellant leave to initiate or re-initiate pursuit of the appeal from the Court of Appeals to the Supreme Court.

C. Time limits when motion granted. If the motion is granted, all computations of time under the Rules of the Supreme Court shall run from the date of the order of the Supreme Court granting the motion, or if the appellant has been determined to be indigent, from the date of the order by the circuit court appointing counsel to represent the appellant in the delayed appeal, whichever is later.

D. Applicability. The provisions of this section shall not apply to cases in which the appellant is responsible, in whole or in part, for the error, neglect, or fault causing loss of the original opportunity for appeal, nor shall it apply in cases where the claim of error, neglect, or fault has already been alleged and rejected in a prior judicial proceeding, nor shall it apply in cases in which a sentence of death has been imposed.

2005, c. 836; 2011, c. 278.

§ 19.2-322. Repealed

Repealed by Acts 1984, c. 703.

§ 19.2-322.1. Suspension of execution of judgment on appeal

Execution of a judgment from which an appeal to the Court of Appeals or the Supreme Court is sought may be suspended during an appeal provided the appeal is timely prosecuted and an appeal bond is filed as provided in § 8.01-676.1.

1984, c. 703.

§ 19.2-323. Denial by judge or justice no bar to allowance by Court

The denial of a writ of error by a judge or justice of an appellate court, in the vacation of that court, shall not prevent the allowance of the writ by the Court, if by it deemed proper, on presentation of the petition to that Court at its next term.

Code 1950, § 19.1-287; 1960, c. 366; 1975, c. 495; 1976, c. 615; 1984, c. 703.

§ 19.2-324. Decision of appellate court

The court from which a writ of error lies shall affirm the judgment, if there be no error therein, and reverse the same in whole or in part, if erroneous, and enter such judgment as the court whose error is sought to be corrected ought to have entered; or remand the cause and direct a new trial; affirming in those cases where the voices on both sides are equal.

Code 1950, § 19.1-288; 1960, c. 366; 1975, c. 495.

§ 19.2-324.1. Erroneously admitted evidence; appeal

In appeals to the Court of Appeals or the Supreme Court, when a challenge to a conviction rests on a claim that the evidence was insufficient because the trial court improperly admitted evidence, the reviewing court shall consider all evidence admitted at trial to determine whether there is sufficient evidence to sustain the conviction. If the reviewing court determines that evidence was erroneously admitted and that such error was not harmless, the case shall be remanded for a new trial if the Commonwealth elects to have a new trial.

2013, c. 675.

§ 19.2-325. Provisions which apply to criminal as well as civil cases; when plaintiff in error unable to pay printing costs

Sections 8.01-675.1, 8.01-675.2, 8.01-675.3, 8.01-684 and 17.1-328 shall apply as well to criminal cases as to civil cases. In a felony case in the Court of Appeals or the Supreme Court, if the plaintiff in error files with the Clerk of the Court an affidavit that he is unable to pay or secure to be paid the costs of printing the record in the case, together with a certificate of the judge of the trial court to the effect that he has investigated the matter and is of opinion that the plaintiff in error is unable to pay, or secure to be paid, such costs, the printing shall be done as if the costs had been paid and the clerk shall not be required to account for and pay the same into the state treasury. However, if the costs are not paid or secured to be paid and upon the hearing of the case the judgment of the court below is wholly affirmed by the Court of Appeals and no appeal granted by the Supreme Court, or wholly affirmed by the Supreme Court where appeal is granted, the Court in affirming the judgment shall also give judgment in behalf of the Commonwealth against the plaintiff in error for the amount of the costs to be taxed by its clerk.

Code 1950, § 19.1-289; 1960, c. 366; 1975, c. 495; 1984, c. 703.

§ 19.2-326. Payment of expenses of appeals of indigent defendants

In any felony or misdemeanor case wherein the judge of the circuit court, from the affidavit of the defendant or any other evidence certifies that the defendant is financially unable to pay his attorneys' fees, costs and expenses incident to an appeal, the court to which an appeal is taken shall order the payment of such attorneys' fees in an amount not less than $300, costs or necessary expenses of such attorneys in an amount deemed reasonable by the court, by the Commonwealth out of the appropriation for criminal charges. If the conviction is upheld on appeal, the attorney's fees, costs and necessary expenses of such attorney paid by the Commonwealth under the provisions hereof shall be assessed against the defendant.

Code 1950, § 17-30.2; 1962, c. 419; 1964, c. 651; 1975, c. 495; 1980, c. 626; 1984, c. 703.

§ 19.2-327. How judgment of appellate court certified and entered

The judgment of the Court of Appeals or of the Supreme Court shall be certified to the court to whose judgment the writ of error was allowed. The court or the clerk thereof shall cause the same to be entered on its order book as its own judgment.

Code 1950, § 19.1-290; 1960, c. 366; 1975, c. 495; 1984, c. 703.

Chapter 19.1 - SCIENTIFIC ANALYSIS OF NEWLY DISCOVERED OR UNTESTED SCIENTIFIC EVIDENCE

§ 19.2-327.01. Repealed

Repealed by Acts 2004, c. 337.

§ 19.2-327.1. Motion by a convicted felon or person adjudicated delinquent for scientific analysis of newly discovered or previously untested scientific evidence; procedure

A. Notwithstanding any other provision of law or rule of court, any person convicted of a felony or any person who was adjudicated delinquent by a circuit court of an offense that would be a felony if committed by an adult may, by motion to the circuit court that entered the original conviction or the adjudication of delinquency, apply for a new scientific investigation of any human biological evidence related to the case that resulted in the felony conviction or adjudication of delinquency if: (i) the evidence was not known or available at the time the conviction or adjudication of delinquency became final in the circuit court or the evidence was not previously subjected to testing because the testing procedure was not available at the Department of Forensic Science at the time the conviction or adjudication of delinquency became final in the circuit court; (ii) the evidence is subject to a chain of custody sufficient to establish that the evidence has not been altered, tampered with, or substituted in any way; (iii) the testing is materially relevant, noncumulative, and necessary and may prove the actual innocence of the convicted person or the person adjudicated delinquent; (iv) the testing requested involves a scientific method employed by the Department of Forensic Science; and (v) the person convicted or adjudicated delinquent has not unreasonably delayed the filing of the petition after the evidence or the test for the evidence became available at the Department of Forensic Science.

B. The petitioner shall assert categorically and with specificity, under oath, the facts to support the items enumerated in subsection A and (i) the crime for which the person was convicted or adjudicated delinquent, (ii) the reason or reasons the evidence was not known or tested by the time the conviction or adjudication of delinquency became final in the circuit court, and (iii) the reason or reasons that the newly discovered or untested evidence may prove the actual innocence of the person convicted or adjudicated delinquent. Such motion shall contain all relevant allegations and facts that are known to the petitioner at the time of filing and shall enumerate and include all previous records, applications, petitions, and appeals and their dispositions.

C. The petitioner shall serve a copy of such motion upon the attorney for the Commonwealth. The Commonwealth shall file its response to the motion within 30 days of the receipt of service. The court shall, no sooner than 30 and no later than 90 days after such motion is filed, hear the motion. Motions made by a petitioner under a sentence of death shall be given priority on the docket.

D. The court shall, after a hearing on the motion, set forth its findings specifically as to each of the items enumerated in subsections A and B and either (i) dismiss the motion for failure to comply with the requirements of this section or (ii) dismiss the motion for failure to state a claim upon which relief can be granted or (iii) order that the testing be done by the Department of Forensic Science based on a finding of clear and convincing evidence that the requirements of subsection A have been met.

E. The court shall order the tests to be performed by the Department of Forensic Science and prescribe in its order, pursuant to standards and guidelines established by the Department, the method of custody, transfer, and return of evidence submitted for scientific investigation sufficient to insure and protect the Commonwealth's interest in the integrity of the evidence. The results of any such testing shall be furnished simultaneously to the court, the petitioner and his attorney of record and the attorney for the Commonwealth. The Department of Forensic Science shall give testing priority to cases in which a sentence of death has been imposed. The results of any tests performed and any hearings held pursuant to this section shall become a part of the record.

F. Nothing in this section shall constitute grounds to delay setting an execution date pursuant to § 53.1-232.1 or to grant a stay of execution that has been set pursuant to clause (iii) or (iv) of § 53.1-232.1.

G. An action under this section or the performance of any attorney representing the petitioner under this section shall not form the basis for relief in any habeas corpus proceeding or any other appeal. Nothing in this section shall create any cause of action for damages against the Commonwealth or any of its political subdivisions or any officers, employees or agents of the Commonwealth or its political subdivisions.

H. In any petition filed pursuant to this chapter, the petitioner is entitled to representation by counsel subject to the provisions of Article 3 (§ 19.2-157 et seq.) of Chapter 10.

2001, cc. 873, 874; 2005, cc. 868, 881; 2013, c. 170.

Chapter 19.2 - ISSUANCE OF WRIT OF ACTUAL INNOCENCE

§ 19.2-327.2. Issuance of writ of actual innocence based on biological evidence

Notwithstanding any other provision of law or rule of court, upon a petition of a person who was convicted of a felony upon a plea of not guilty or who was adjudicated delinquent upon a plea of not guilty by a circuit court of an offense that would be a felony if committed by an adult, or for any person, regardless of the plea, sentenced to death, or convicted or adjudicated delinquent of (i) a Class 1 felony, (ii) a Class 2 felony, or (iii) any felony for which the maximum penalty is imprisonment for life, the Supreme Court shall have the authority to issue writs of actual innocence under this chapter. The writ shall lie to the circuit court that entered the felony conviction or adjudication of delinquency and that court shall have the authority to conduct hearings, as provided for in § 19.2-327.5, on such a petition as directed by order from the Supreme Court.

2001, cc. 873, 874; 2009, cc. 139, 320; 2013, c. 170.

§ 19.2-327.2:1. Petition for writ of actual innocence joined by Attorney General; release of prisoner; bond hearing

The Attorney General may join in a petition for a writ of actual innocence made pursuant to § 19.2-327.2. When such petition is so joined, the petitioner may file a copy of the petition and attachments thereto and the Attorney General's answer with the circuit court that entered the felony conviction and move the court for a hearing to consider release of the person on bail pursuant to Chapter 9 (§ 19.2-119 et seq.). Upon hearing and for good cause shown, the court may order the person released from custody subject to the terms and conditions of bail so established, pending a ruling by the Supreme Court on the writ under § 19.2-327.5.

2015, c. 66.

§ 19.2-327.3. Contents and form of the petition based on previously unknown or untested human biological evidence of actual innocence

A. The petitioner shall allege categorically and with specificity, under oath, the following: (i) the crime for which the petitioner was convicted or the offense for which the petitioner was adjudicated delinquent, and that such conviction or adjudication of delinquency was upon a plea of not guilty or that the person is under a sentence of death or convicted of (a) a Class 1 felony, (b) a Class 2 felony, or (c) any felony for which the maximum penalty is imprisonment for life; (ii) that the petitioner is actually innocent of the crime for which he was convicted or adjudicated delinquent; (iii) an exact description of the human biological evidence and the scientific testing supporting the allegation of innocence; (iv) that the evidence was not previously known or available to the petitioner or his trial attorney of record at the time the conviction or adjudication of delinquency became final in the circuit court, or if known, the reason that the evidence was not subject to the scientific testing set forth in the petition; (v) the date the test results under § 19.2-327.1 became known to the petitioner or any attorney of record; (vi) that the petitioner or his attorney of record has filed the petition within 60 days of obtaining the test results under § 19.2-327.1; (vii) the reason or reasons the evidence will prove that no rational trier of fact would have found proof of guilt or delinquency beyond a reasonable doubt; and (viii) for any conviction or adjudication of delinquency that became final in the circuit court after June 30, 1996, that the evidence was not available for testing under § 9.1-1104. The Supreme Court may issue a stay of execution pending proceedings under the petition. Nothing in this chapter shall constitute grounds to delay setting an execution date pursuant to § 53.1-232.1 or to grant a stay of execution that has been set pursuant to clause (iii) or (iv) of § 53.1-232.1.

B. Such petition shall contain all relevant allegations of facts that are known to the petitioner at the time of filing and shall enumerate and include all previous records, applications, petitions, and appeals and their dispositions. A copy of any test results shall be filed with the petition. The petition shall be filed on a form provided by the Supreme Court. If the petitioner fails to submit a completed form, the Court may dismiss the petition or return the petition to the prisoner pending the completion of such form. The petitioner shall be responsible for all statements contained in

the petition. Any false statement in the petition, if such statement is knowingly or willfully made, shall be a ground for prosecution and conviction of perjury as provided for in § 18.2-434.

C. The Supreme Court shall not accept the petition unless it is accompanied by a duly executed return of service in the form of a verification that a copy of the petition and all attachments has been served on the attorney for the Commonwealth of the jurisdiction where the conviction or adjudication of delinquency occurred and the Attorney General or an acceptance of service signed by these officials, or any combination thereof. The Attorney General shall have 30 days after receipt of the record by the clerk of the Supreme Court in which to file a response to the petition. The response may contain a proffer of any evidence pertaining to the guilt or delinquency or innocence of the petitioner that is not included in the record of the case, including evidence that was suppressed at trial.

D. The Supreme Court may, when the case has been before a trial or appellate court, inspect the record of any trial or appellate court action, and the Court may, in any case, award a writ of certiorari to the clerk of the respective court below, and have brought before the Court the whole record or any part of any record.

E. In any petition filed pursuant to this chapter, the petitioner is entitled to representation by counsel subject to the provisions of Article 3 (§ 19.2-157 et seq.) of Chapter 10.

2001, cc. 873, 874; 2003, c. 131; 2005, cc. 868, 881; 2009, cc. 139, 320; 2013, cc. 170, 180.

§ 19.2-327.4. Determination by the Supreme Court for findings of fact by the circuit court

If the Supreme Court determines from the petition, from any hearing on the petition, from a review of the records of the case, including the record of any hearing on a motion to test evidence pursuant to § 9.1-1104, or from any response from the Attorney General that a resolution of the case requires further development of the facts under this chapter, the court may order the circuit court to conduct a hearing within 90 days after the order has been issued to certify findings of fact with respect to such issues as the Supreme Court shall direct. The record and certified findings of fact of the circuit court shall be filed in the Supreme Court within 30 days after the hearing is concluded. The petitioner or his attorney of record, the attorney for the Commonwealth and the Attorney General shall be served a copy of the order stating the specific purpose and evidence for which the hearing has been ordered.

2001, cc. 873, 874; 2005, cc. 868, 881.

§ 19.2-327.5. Relief under writ

Upon consideration of the petition, the response by the Commonwealth, previous records of the case, the record of any hearing held under this chapter and the record of any hearings held pursuant to § 19.2-327.1, and if applicable, any findings certified from the circuit court pursuant to § 19.2-327.4, the Supreme Court shall either dismiss the petition for failure to state a claim or assert grounds upon which relief shall be granted; or upon a hearing the Court shall (i) dismiss the petition for failure to establish allegations sufficient to justify the issuance of the writ or (ii) only

upon a finding of clear and convincing evidence that the petitioner has proven all of the allegations contained in clauses (iv) through (viii) of subsection A of § 19.2-327.3, and upon a finding that no rational trier of fact would have found proof of guilt or delinquency beyond a reasonable doubt, grant the writ, and vacate the conviction or adjudication of delinquency, or in the event that the Court finds that no rational trier of fact would have found sufficient evidence beyond a reasonable doubt as to one or more elements of the offense for which the petitioner was convicted or adjudicated delinquent, but the Court finds that there remains in the original trial record evidence sufficient to find the petitioner guilty or delinquent beyond a reasonable doubt of a lesser included offense, the Court shall modify the conviction or adjudication of delinquency accordingly and remand the case to the circuit court for resentencing. The burden of proof in a proceeding brought pursuant to this chapter shall be upon the convicted or delinquent person seeking relief. If a writ vacating a conviction or adjudication of delinquency is granted, the Court shall forward a copy of the writ to the circuit court, where an order of expungement shall be immediately granted.

2001, cc. 873, 874; 2007, cc. 465, 824, 883, 905; 2009, cc. 139, 320; 2013, cc. 170, 180.

§ 19.2-327.6. Claims of relief

An action under this chapter or the performance of any attorney representing the petitioner under this chapter shall not form the basis for relief in any habeas corpus or appellate proceeding. Nothing in this chapter shall create any cause of action for damages against the Commonwealth or any of its political subdivisions or any officers, employees or agents of the Commonwealth or its political subdivisions.

2001, cc. 873, 874.

Chapter 19.3 - ISSUANCE OF WRIT OF ACTUAL INNOCENCE BASED ON NONBIOLOGICAL EVIDENCE

§ 19.2-327.10. Issuance of writ of actual innocence based on nonbiological evidence

Notwithstanding any other provision of law or rule of court, upon a petition of a person who was convicted of a felony upon a plea of not guilty, or the petition of a person who was adjudicated delinquent, upon a plea of not guilty, by a circuit court of an offense that would be a felony if committed by an adult, the Court of Appeals shall have the authority to issue writs of actual innocence under this chapter. Only one such writ based upon such conviction or adjudication of delinquency may be filed by a petitioner. The writ shall lie to the circuit court that entered the conviction or the adjudication of delinquency and that court shall have the authority to conduct hearings, as provided for in this chapter, on such a petition as directed by order from the Court of Appeals. In accordance with §§ 17.1-411 and 19.2-317, either party may appeal a final decision of the Court of Appeals to the Supreme Court of Virginia. Upon an appeal from the Court of Appeals, the Supreme Court of Virginia shall have the authority to issue writs in accordance with the provisions of this chapter.

2004, c. 1024; 2013, c. 170.

§ 19.2-327.10:1. Petition for writ of actual innocence joined by Attorney General; release of prisoner; bond hearing

The Attorney General may join in a petition for a writ of actual innocence made pursuant to § 19.2-327.10. When such petition is so joined, the petitioner may file a copy of the petition and attachments thereto and the Attorney General's answer with the circuit court that entered the felony conviction and move the court for a hearing to consider release of the person on bail pursuant to Chapter 9 (§ 19.2-119 et seq.). Upon hearing and for good cause shown, the court may order the person released from custody subject to the terms and conditions of bail so established, pending a ruling by the Court of Appeals on the writ under § 19.2-327.13.

2015, c. 66.

§ 19.2-327.11. Contents and form of the petition based on previously unknown or unavailable evidence of actual innocence

A. The petitioner shall allege categorically and with specificity, under oath, all of the following: (i) the crime for which the petitioner was convicted or the offense for which the petitioner was adjudicated delinquent, and that such conviction or adjudication of delinquency was upon a plea of not guilty; (ii) that the petitioner is actually innocent of the crime for which he was convicted or the offense for which he was adjudicated delinquent; (iii) an exact description of the previously unknown or unavailable evidence supporting the allegation of innocence; (iv) that such evidence was previously unknown or unavailable to the petitioner or his trial attorney of record at the time the conviction or adjudication of delinquency became final in the circuit court; (v) the date the previously unknown or unavailable evidence became known or available to the petitioner, and the circumstances under which it was discovered; (vi) that the previously unknown or unavailable evidence is such as could not, by the exercise of diligence, have been discovered or obtained before the expiration of 21 days following entry of the final order of conviction or adjudication of delinquency by the circuit court; (vii) the previously unknown or unavailable evidence is material and, when considered with all of the other evidence in the current record, will prove that no rational trier of fact would have found proof of guilt or delinquency beyond a reasonable doubt; and (viii) the previously unknown or unavailable evidence is not merely cumulative, corroborative or collateral. Nothing in this chapter shall constitute grounds to delay setting an execution date pursuant to § 53.1-232.1 or to grant a stay of execution that has been set pursuant to clause (iii) or (iv) of § 53.1-232.1 or to delay or stay any other appeals following conviction or adjudication of delinquency, or petitions to any court. Human biological evidence may not be used as the sole basis for seeking relief under this writ but may be used in conjunction with other evidence.

B. Such petition shall contain all relevant allegations of facts that are known to the petitioner at the time of filing, shall be accompanied by all relevant documents, affidavits and test results, and shall enumerate and include all relevant previous records, applications, petitions, and appeals and their dispositions. The petition shall be filed on a form provided by the Supreme Court. If the petitioner fails to submit a completed form, the Court of Appeals may dismiss the petition or return

the petition to the petitioner pending the completion of such form. Any false statement in the petition, if such statement is knowingly or willfully made, shall be a ground for prosecution of perjury as provided for in § 18.2-434.

C. In cases brought by counsel for the petitioner, the Court of Appeals shall not accept the petition unless it is accompanied by a duly executed return of service in the form of a verification that a copy of the petition and all attachments have been served on the attorney for the Commonwealth of the jurisdiction where the conviction or adjudication of delinquency occurred and the Attorney General, or an acceptance of service signed by these officials, or any combination thereof. In cases brought by petitioners pro se, the Court of Appeals shall not accept the petition unless it is accompanied by a certificate that a copy of the petition and all attachments have been sent, by certified mail, to the attorney for the Commonwealth of the jurisdiction where the conviction or adjudication of delinquency occurred and the Attorney General. If the Court of Appeals does not summarily dismiss the petition, it shall so notify in writing the Attorney General, the attorney for the Commonwealth, and the petitioner. The Attorney General shall have 60 days after receipt of such notice in which to file a response to the petition that may be extended for good cause shown; however, nothing shall prevent the Attorney General from filing an earlier response. The response may contain a proffer of any evidence pertaining to the guilt or delinquency or innocence of the petitioner that is not included in the record of the case, including evidence that was suppressed at trial.

D. The Court of Appeals may inspect the record of any trial or appellate court action, and the Court may, in any case, award a writ of certiorari to the clerk of the respective court below, and have brought before the Court the whole record or any part of any record. If, in the judgment of the Court, the petition fails to state a claim, or if the assertions of previously unknown or unavailable evidence, even if true, would fail to qualify for the granting of relief under this chapter, the Court may dismiss the petition summarily, without any hearing or a response from the Attorney General.

E. In any petition filed pursuant to this chapter that is not summarily dismissed, the petitioner is entitled to representation by counsel subject to the provisions of Article 3 (§ 19.2-157 et seq.) and Article 4 (§ 19.2-163.3 et seq.) of Chapter 10. The Court of Appeals may, in its discretion, appoint counsel prior to deciding whether a petition should be summarily dismissed.

2004, c. 1024; 2013, cc. 170, 180.

§ 19.2-327.12. Determination by Court of Appeals for findings of fact by the circuit court

If the Court of Appeals determines from the petition, from any hearing on the petition, from a review of the records of the case, or from any response from the Attorney General that a resolution of the case requires further development of the facts, the court may order the circuit court in which the order of conviction or the adjudication of delinquency was originally entered to conduct a hearing within 90 days after the order has been issued to certify findings of fact with

respect to such issues as the Court of Appeals shall direct. The record and certified findings of fact of the circuit court shall be filed in the Court of Appeals within 30 days after the hearing is concluded. The petitioner or his attorney of record, the attorney for the Commonwealth and the Attorney General shall be served a copy of the order stating the specific purpose and evidence for which the hearing has been ordered.

2004, c. 1024; 2013, c. 170.

§ 19.2-327.13. Relief under writ

Upon consideration of the petition, the response by the Commonwealth, previous records of the case, the record of any hearing held under this chapter and, if applicable, any findings certified from the circuit court pursuant to an order issued under this chapter, the Court of Appeals, if it has not already summarily dismissed the petition, shall either dismiss the petition for failure to state a claim or assert grounds upon which relief shall be granted; or the Court shall (i) dismiss the petition for failure to establish previously unknown or unavailable evidence sufficient to justify the issuance of the writ, or (ii) only upon a finding that the petitioner has proven by clear and convincing evidence all of the allegations contained in clauses (iv) through (viii) of subsection A of § 19.2-327.11, and upon a finding that no rational trier of fact would have found proof of guilt or delinquency beyond a reasonable doubt, grant the writ, and vacate the conviction or finding of delinquency, or in the event that the Court finds that no rational trier of fact would have found sufficient evidence beyond a reasonable doubt as to one or more elements of the offense for which the petitioner was convicted or adjudicated delinquent, but the Court finds that there remains in the original trial record evidence sufficient to find the petitioner guilty or delinquent beyond a reasonable doubt of a lesser included offense, the Court shall modify the order of conviction or delinquency accordingly and remand the case to the circuit court that entered the conviction or adjudication of delinquency for resentencing. The burden of proof in a proceeding brought pursuant to this chapter shall be upon the convicted or delinquent person seeking relief. If a writ vacating a conviction or adjudication of delinquency is granted, and no appeal is made to the Supreme Court, or the Supreme Court denies the Commonwealth's petition for appeal or upholds the decision of the Court of Appeals to grant the writ, the Court of Appeals shall forward a copy of the writ to the circuit court, where an order of expungement shall be immediately granted.

2004, c. 1024; 2007, cc. 465, 824, 883, 905; 2013, cc. 170, 180.

§ 19.2-327.14. Claims of relief

An action under this chapter or the actions of any attorney representing the petitioner under this chapter shall not form the basis for relief in any habeas corpus proceeding. Nothing in this chapter shall create any cause of action for damages against the Commonwealth or any of its political subdivisions.

2004, c. 1024.

Chapter 20 - TAXATION AND ALLOWANCE OF COSTS

§ 19.2-328. When jailers and sheriffs to summon or employ guards and other persons; allowances therefor

Whenever in the discretion of the court it is necessary for the safekeeping of a prisoner under charge of, or sentence for, crime, whether the prisoner be in jail, hospital, court or elsewhere, the court may order the jailer to summon a sufficient guard, and whenever ordered by the court to do so, the sheriff of any county or city shall summon or employ temporarily such person or persons as may be needed to preserve proper order or otherwise to aid the court in its proper operation and functioning, and for such guard or other service the court may allow therefor so much as it deems proper, not exceeding the hourly equivalent of the minimum annual salary paid a full-time deputy sheriff who performs like services in the same county or city; in addition, mileage and other expenses for rendering the services shall be paid for each person, the same to be paid out of the budget allotted to the sheriff as approved by the Compensation Board, except when payment for such guard is otherwise provided under the provisions of § 53.1-94 of the Code of Virginia .

Code 1950, § 19.1-308; 1960, c. 366; 1972, c. 225; 1973, c. 401; 1975, c. 495; 1981, c. 386; 1985, c. 321.

§ 19.2-329. Allowance to witnesses

Sections 17.1-612 to 17.1-616, inclusive, shall apply to a person attending as a witness, under a recognizance or summons in a criminal case, as well as to a person attending under a summons in a civil case, except that a person residing out of this Commonwealth, who attends a court therein as a witness, shall be allowed by the court a proper compensation for attendance and travel to and from the place of his abode, the amount of the same to be fixed by the court.

Code 1950, § 19.1-312; 1960, c. 366; 1975, c. 495; 1977, c. 483.

§ 19.2-330. Compensation to witnesses from out of Commonwealth

Any witness from without the Commonwealth whose attendance is compelled under the provisions of Chapter 16, Article 2 (§ 19.2-272 et seq.) of this title shall be deemed to render a service within the meaning of § 19.2-332 and the compensation and expenses of such witness, whether on behalf of the Commonwealth or the accused, may be paid out of the state treasury in accordance with the provisions of such section. But the compensation and expenses of any witness summoned on behalf of an accused shall not be certified to the state treasury as a compensation under such section except in cases when the court or judge thereof is satisfied that the defendant is without means to pay same and is unable to provide the costs incident thereto.

Code 1950, § 19.1-313; 1960, c. 366; 1975, c. 495.

§ 19.2-331. When Commonwealth pays witnesses in case of misdemeanor

Payment shall not be made out of the state treasury to a witness attending for the Commonwealth in any prosecution for a misdemeanor unless it appears that the sum to which the witness is entitled cannot be obtained:

(1) If it be a case wherein there is a prosecutor and the defendant is convicted, by reason of the insolvency of the defendant, or

(2) If it be a case in which there is no prosecutor, by reason of the acquittal or insolvency of the defendant or other cause.

Code 1950, § 19.1-314; 1960, c. 366; 1975, c. 495.

§ 19.2-332. Compensation to officer or other person for services not otherwise compensable
Whenever in a criminal case an officer or other person renders any service required by law for which no specific compensation is provided, or whenever any other service has been rendered pursuant to the request or prior approval of the court, the court shall allow therefor such sum as it deems reasonable, including mileage at a rate provided by law, and such allowance shall be paid out of the state treasury from the appropriation for criminal charges on the certificate of the court stating the nature of the service. This section shall not prevent any payment under § 2.2-816, which could have been made if this section had not been enacted.

This section shall not be construed to authorize the payment of any additional compensation to an officer or other employee of the Commonwealth who is compensated for his services exclusively by salary unless it be otherwise expressly provided by law.

Code 1950, § 19.1-315; 1960, c. 366; 1972, c. 719; 1975, c. 495.

§ 19.2-333. No state fees to attorney for the Commonwealth
No fee to an attorney for the Commonwealth shall be payable out of the state treasury, unless it be expressly so provided.

Code 1950, § 19.1-316; 1960, c. 366; 1975, c. 495.

§ 19.2-334. By whom certificate of allowance to be made; vouchers to accompany it; proof of correctness; what entry to state
Any other expense incident to a proceeding in a criminal case which is payable out of the state treasury otherwise than under §§ 2.2-816, 19.2-330 or § 19.2-332 shall be certified by the court. If it be a judge of a district court exercising jurisdiction, it shall be certified by such judge to the Supreme Court. With the certificate of allowance there shall be transmitted to the Supreme Court the vouchers on which it is made. The court, in passing upon any account for fees or expenses required to be certified by it under this section, before certifying the account, may, in its discretion, require proof of the correctness of any item thereof.

The entry of such certificate of allowance shall state how much thereof is on account of each person prosecuted.

Code 1950, §§ 19.1-317, 19.1-318; 1960, c. 366; 1975, c. 495; 1978, c. 195; 1979, c. 465.

§ 19.2-335. Judge of district court to certify to clerk of circuit court costs of proceedings in criminal cases before him

A judge of a district court before whom there is any proceeding in a criminal case, including any proceeding which has been deferred upon probation of the defendant pursuant to § 16.1-278.8, 16.1-278.9, 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-251 or 19.2-303.2, shall certify to the clerk of the circuit court of his county or city, and a judge or court before whom there is, in a criminal case, any proceeding preliminary to conviction in another court, upon receiving information of the conviction from the clerk of the court wherein it is, shall certify to such clerk, all the expenses incident to such proceedings which are payable out of the state treasury.

Code 1950, § 19.1-319; 1960, c. 366; 1968, c. 639; 1975, c. 495; 1995, c. 485; 2005, c. 631.

§ 19.2-336. Clerk to make up statement of whole cost, and issue execution therefor

In every criminal case the clerk of the circuit court in which the accused is found guilty or is placed on probation during deferral of the proceedings pursuant to § 16.1-278.8, 16.1-278.9, 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-251 or 19.2-303.2, or, if the conviction is in a district court, the clerk to which the judge thereof certifies as aforesaid, shall, as soon as may be, make up a statement of all the expenses incident to the prosecution, including such as are certified under § 19.2-335, and execution for the amount of such expenses shall be issued and proceeded with. Chapter 21 (§ 19.2-339 et seq.) shall apply thereto in like manner as if, on the day of completing the statement, there was a judgment in such court in favor of the Commonwealth against the accused for such amount as a fine. However, in any case in which an accused waives trial by jury, at least 10 days before trial, but the Commonwealth or the court trying the case refuses to so waive, then the cost of the jury shall not be included in such statement or judgment recorded pursuant to § 17.1-275.5.

Code 1950, § 19.1-320; 1960, c. 366; 1970, c. 429; 1975, c. 495; 1978, c. 716; 1995, c. 485; 2005, c. 631; 2012, c. 714.

§ 19.2-337. Claims not presented in time to be disallowed

If by reason of the failure of a person to present his claim in due time a sum be not included in such execution which would have been included if so presented, such claim, unless there be good cause for the failure, shall be disallowed.

Code 1950, § 19.1-321; 1960, c. 366; 1975, c. 495.

§ 19.2-338. Collection by town of cost of transporting prisoners

(1) Notwithstanding any provision of any charter or any law to the contrary, any town may provide that any person convicted of violating any ordinance of the town may be charged, in addition to all other costs, fines, fees and charges, the costs of transporting such person so convicted to and from a jail or other penal institution outside the corporate limits of such town designated by the town as a place of confinement for persons arrested for violating the ordinances of the town and required to be held in jail pending trial upon such charge. The cost of such transportation shall be taxed as a part of the costs payable by persons convicted of violating such ordinances.

(2) No officer transporting any person convicted of violating any ordinance of the town, as provided in subsection (1) hereof, shall charge or be paid, nor shall such town receive directly or indirectly, more than the cost of transporting such person when more than one person is transported.

Code 1950, § 19.1-322; 1960, c. 366; 1975, c. 495; 1995, c. 51.

Chapter 21 - RECOVERY OF FINES AND PENALTIES

Article 1 - PROCEEDINGS TO RECOVER

§ 19.2-339. Word "fine" construed

Whenever the word "fine" is used in this chapter, it shall be construed to refer solely to the pecuniary penalty imposed by a court or jury upon a defendant who has been found guilty of a crime. The word "fine" shall not include other forfeitures, penalties, costs, amercements or the like, even though they follow as a consequence of conviction of crime.

Code 1950, § 19.1-323; 1960, c. 366; 1975, c. 495.

§ 19.2-340. Fines; how recovered; in what name

When any statute or ordinance prescribes a fine, unless it is otherwise expressly provided or would be inconsistent with the manifest intention of the General Assembly, it shall be paid to the Commonwealth if prescribed by a statute and recoverable by presentment, indictment, information or warrant and paid to the locality if prescribed by an ordinance and recoverable by warrant. Fines imposed and costs taxed in a criminal or traffic prosecution, including a prosecution for a violation of an ordinance adopted pursuant to § 46.2-1220, for committing an offense shall constitute a judgment and, if not paid at the time they are imposed, execution may issue thereon in the same manner as upon any other monetary judgment, subject to the period of limitations provided by § 19.2-341.

Code 1950, § 19.1-324; 1960, c. 366; 1975, c. 495; 1995, c. 438.

§ 19.2-340.1. Disposition of fines in criminal cases

When a law-enforcement officer of (i) the Department of State Police or (ii) any other division of the state government makes an arrest or issues a summons for a violation of a provision of the Code of Virginia, the person arrested or summoned shall be charged with a violation of that Code provision and shall not be charged with a substantially similar local ordinance. All fines collected upon conviction of any person so arrested or summoned shall be credited to the Literary Fund.

2012, c. 749.

§ 19.2-341. Penalties other than fines; how recovered; in what name; limitation of actions

When any statute or ordinance prescribes a monetary penalty other than a fine, unless it is otherwise expressly provided or would be inconsistent with the manifest intention of the General Assembly, it shall be paid to the Commonwealth if prescribed by a statute and paid to the locality

if prescribed by an ordinance and recoverable by warrant, presentment, indictment, or information. Penalties imposed and costs taxed in any such proceeding shall constitute a judgment and, if not paid at the time they are imposed, execution may issue thereon in the same manner as upon any other monetary judgment. No such proceeding of any nature, however, shall be brought or had for the recovery of such a penalty or costs due the Commonwealth or any political subdivision thereof, unless within twenty years from the date of the offense or delinquency giving rise to imposition of such penalty if imposed by a circuit court, or within ten years if imposed by a general district court.

Code 1950, § 19.1-324; 1960, c. 366; 1975, c. 495; 1983, c. 499; 1995, c. 438.

§ 19.2-342. Where and in what court proceeding to be
In a proceeding under § 19.2-341, such warrant, presentment, indictment or information shall be in the county or city wherein the offense was committed or the delinquency occurred.

Code 1950, § 19.1-325; 1960, c. 366; 1975, c. 495.

§§ 19.2-343, 19.2-344. Reserved
Reserved.

Article 2 - REPORTS, ETC., OF FINES AND COSTS

§§ 19.2-345, 19.2-346. Repealed
Repealed by Acts 1988, c. 509.

§ 19.2-347. Repealed
Repealed by Acts 1983, c. 499.

Article 3 - COLLECTION AND DISPOSITION OF FINES

§ 19.2-348. Attorneys for Commonwealth or clerks to superintend issue of executions, etc
The attorney for the Commonwealth or the clerk of the circuit court shall superintend the issuing of all executions or judgments for fines and penalties going wholly or in part to the Commonwealth or a county, city or town, in the circuit court or appropriate district court of his county or city.

Code 1950, § 19.1-341.1; 1960, c. 366; 1975, c. 495; 1983, c. 499; 1992, c. 623; 1994, c. 811.

§ 19.2-349. Responsibility for collections; clerks to report unsatisfied fines, etc.; duty of attorneys for Commonwealth; duties of Department of Taxation
A. The clerk of the circuit court and district court of every county and city shall submit to the judge of his court, the Department of Taxation, the State Compensation Board and the attorney for the Commonwealth of his county or city a monthly report of all fines, costs, forfeitures and penalties which are delinquent more than 30 days, including court-ordered restitution of a sum certain, imposed in his court for a violation of state law or a local ordinance which remain unsatisfied, including those which are delinquent in installment payments. The monthly report shall

include the social security number or driver's license number of the defendant, if known, and such other information as the Department of Taxation and the Compensation Board deem appropriate. The Executive Secretary shall make the report required by this subsection on behalf of those clerks who participate in the Supreme Court's automated information system.

B. It shall be the duty of the attorney for the Commonwealth to cause proper proceedings to be instituted for the collection and satisfaction of all fines, costs, forfeitures, penalties and restitution. The attorney for the Commonwealth shall determine whether it would be impractical or uneconomical for such service to be rendered by the office of the attorney for the Commonwealth. If the defendant does not enter into an installment payment agreement under § 19.2-354, the attorney for the Commonwealth and the clerk may agree to a process by which collection activity may be commenced 30 days after judgment.

If the attorney for the Commonwealth does not undertake collection, he shall contract with (i) private attorneys or private collection agencies, (ii) enter into an agreement with a local governing body, (iii) enter into an agreement with the county or city treasurer, or (iv) use the services of the Department of Taxation, upon such terms and conditions as may be established by guidelines promulgated by the Office of the Attorney General, the Executive Secretary of the Supreme Court with the Department of Taxation and the Compensation Board. If the attorney for the Commonwealth undertakes collection, he shall follow the procedures established by the Department of Taxation and the Compensation Board. Such guidelines shall not supersede contracts between attorneys for the Commonwealth and private attorneys and collection agencies when active collection efforts are being undertaken. As part of such contract, private attorneys or collection agencies shall be given access to the social security number of the defendant in order to assist in the collection effort. Any such private attorney shall be subject to the penalties and provisions of § 18.2-186.3.

The fees of any private attorneys or collection agencies shall be paid on a contingency fee basis out of the proceeds of the amounts collected. However, in no event shall such attorney or collection agency receive a fee for amounts collected by the Department of Taxation under the Setoff Debt Collection Act (§ 58.1-520 et seq.). A local treasurer undertaking collection pursuant to an agreement with the attorney for the Commonwealth may collect the administrative fee authorized by § 58.1-3958.

C. The Department of Taxation and the State Compensation Board shall be responsible for the collection of any judgment which remains unsatisfied or does not meet the conditions of § 19.2-354. Persons owing such unsatisfied judgments or failing to comply with installment payment agreements under § 19.2-354 shall be subject to the delinquent tax collection provisions of Title 58.1. The Department of Taxation and the State Compensation Board shall establish procedures to be followed by clerks of courts, attorneys for the Commonwealth, other state agencies and any private attorneys or collection agents and may employ private attorneys or collection agencies, or engage other state agencies to collect the judgment. The Department of Taxation and the Com-

monwealth shall be entitled to deduct a fee for services from amounts collected for violations of local ordinances.

The Department of Taxation and the State Compensation Board shall annually report to the Governor and the General Assembly the total of fines, costs, forfeitures and penalties assessed, collected, and unpaid and those which remain unsatisfied or do not meet the conditions of § 19.2-354 by each circuit and district court. The report shall include the procedures established by the Department of Taxation and the State Compensation Board pursuant to this section and a plan for increasing the collection of unpaid fines, costs, forfeitures and penalties. The Auditor of Public Accounts shall annually report to the Governor, the Executive Secretary of the Supreme Court and the General Assembly as to the adherence of clerks of courts, attorneys for the Commonwealth and other state agencies to the procedures established by the Department of Taxation and the State Compensation Board.

Code 1950, § 19.1-341.2; 1960, c. 366; 1975, c. 495; 1979, c. 469; 1983, cc. 415, 499; 1988, cc. 742, 750, 770, 852; 1991, c. 202; 1992, c. 623; 1993, c. 269; 1994, cc. 841, 945; 2001, c. 414; 2003, c. 262; 2006, c. 359; 2007, c. 551; 2012, c. 615.

§ 19.2-349.1. Receipt of unpaid fines, costs, forfeitures, penalties, or restitution by Department of Motor Vehicles

At the direction of the Committee on District Courts or at the request of a circuit court clerk, the Executive Secretary of the Supreme Court may enter into an agreement with the Commissioner of the Department of Motor Vehicles authorizing the Department of Motor Vehicles to receive, on behalf of a district or circuit court, payment of any delinquent fines, costs, forfeitures, and penalties, including any court-ordered restitution of a sum certain, imposed by a court for the violation of a state law or a local ordinance. However, in no case shall the Department of Motor Vehicles be authorized to establish an installment plan for any such payments or to receive partial payment of the full amount imposed by the court for the violation of a state law or a local ordinance.

For each such payment it receives, the Department of Motor Vehicles may impose and collect a processing fee, to be used to defray the costs of the transaction to the Department. Such transaction fee shall be $2, unless payment is made by credit card or debit card and the merchant's fees and other transaction costs imposed by the card issuer are charged to the Department of Motor Vehicles, in which case the processing fee shall be the greater of (i) $2 or (ii) an amount not to exceed four percent of the amount of the payment. The Department may also collect any processing fee charged by a private vendor operating under contract to distribute to the court payments received by the Department. All processing fees imposed and collected by the Department of Motor Vehicles under this section shall be in addition to the other fees specified in this chapter. All such processing fees collected by the Department of Motor Vehicles shall be paid into the state treasury as provided in § 46.2-206 and used to meet the expenses of the Department of Motor Vehicles. The service charge provided under § 46.2-212.1 shall not be added to the processing fee

authorized under this section. Other fees specified in this chapter, including those payable pursuant to collections contracts made by attorneys for the Commonwealth, shall not be diminished or offset due to receipt of payments by the Department of Motor Vehicles.

2015, c. 228.

§ 19.2-350. When sheriff not to receive fines

No sheriff or other law-enforcement officer shall receive any fine, penalty or costs imposed by a court not of record, except under process duly issued.

Code 1950, § 19.1-342; 1960, c. 366; 1975, c. 495.

§ 19.2-351. How fines disposed of; informer

Although a law may allow an informer or person prosecuting to have part of a fine or penalty, the whole thereof shall go to the Commonwealth, unless the name of such informer or prosecutor be endorsed on, or written at the foot of, the presentment at the time it is made, or of the indictment before it is presented to the grand jury, or of the information before it is filed, or of the writ issued in the action, or the process on the warrant, or the notice of the motion before service of such writ, process, or notice.

Code 1950, § 19.1-344; 1960, c. 366; 1975, c. 495.

§ 19.2-352. Officers to pay fines to clerks; default; forfeiture, etc

Every sheriff or other officer receiving money under a writ of fieri facias or capias pro fine shall pay the same to the clerk of the court from which such process issued, on or before the return day of such process; and if such sheriff or other officer fail to pay the money, or fail to return such writ of fieri facias or capias pro fine, he shall, for every such failure, unless good cause be shown therefor, forfeit twenty dollars; and the clerk shall, within ten days from the return day of such process, report the failure to pay such money, or to return such process, to the attorney for the Commonwealth, who shall proceed at once against such officer in default to recover such money and the forfeiture aforesaid.

Code 1950, § 19.1-345; 1960, c. 366; 1975, c. 495.

§ 19.2-353. Certain fines paid into Literary Fund

The proceeds of all fines and penalties collected for offenses committed against the Commonwealth, and directed by Article VIII, Section 8 of the Constitution of Virginia to be set apart as a part of a perpetual and permanent literary fund, shall be paid and collected only in lawful money of the United States, and shall be paid into the state treasury to the credit of the Literary Fund, and shall be used for no other purpose whatsoever.

Code 1950, § 19.1-346; 1960, c. 366; 1971, Ex. Sess., c. 1; 1975, c. 495.

§ 19.2-353.1. Fieri facias and proceedings thereon

Any writ of fieri facias issued under this chapter and the proceedings on the same shall conform to the writ of fieri facias and proceedings thereon under Article 19 (§ 8.01-196 et seq.) of Chapter 3 of Title 8.01.

Code 1950, § 19.1-347; 1960, c. 366; 1975, c. 495.

§ 19.2-353.2. Repealed

Repealed by Acts 1988, cc. 770, 852.

§ 19.2-353.3. Acceptance of checks and credit or debit cards in lieu of money; additional fee

Notwithstanding the provisions of § 19.2-353, personal checks and credit or debit cards shall be accepted in lieu of money to collect and secure all fees, fines, restitution, forfeiture, penalties and costs collected for offenses tried in a district court, including motor vehicle violations, committed against the Commonwealth or against any county, city or town. Notwithstanding the provisions of § 19.2-353, personal checks shall be accepted in lieu of money to collect and secure all fees, fines, restitution, forfeiture, penalties and costs collected for offenses tried in a circuit court, including motor vehicle violations, committed against the Commonwealth or against any county, city or town. The clerk of any circuit court shall not be required to but may, in his discretion, accept credit or debit card payment in lieu of money to collect and secure all fees, including filing fees, fines, restitution, forfeitures, penalties, and costs collected. The Committee on District Courts shall devise a procedure for approving and accepting checks and credit or debit cards that shall be accepted by the district courts. Court personnel shall not be held to be guarantors of the payment made in such manner and shall not be personally liable for any sums uncollected. The clerk of the court, in addition to any fees, fines, restitution, forfeiture, penalties or costs, may add to such payment a sum not to exceed four percent of the amount paid for the transaction, or a flat fee not to exceed $2 per transaction, as a reasonable convenience fee for the acceptance of a credit or debit card.

If a check is returned unpaid by the financial institution on which it is drawn or notice is received from the credit or debit card issuer that payment will not be made, for any reason, the fees, fine, restitution, forfeiture, penalty or costs shall be treated as unpaid, and the court may pursue all available remedies to obtain payment. The clerk of the court to whom the dishonored check or credit or debit card was tendered may impose a fee of $50 or 10 percent of the value of the payment, whichever is greater, in addition to the fine and costs already imposed.

The clerk of court may refuse acceptance of checks or credit or debit cards of an individual if (i) he has been convicted of a violation of Chapter 6 (§ 18.2-168 et seq.) of Title 18.2 in which a check, credit or debit card, or credit or debit card information was used to commit the offense, (ii) he has previously tendered to the court a check which was not ultimately honored or a credit or debit card or credit or debit card information which did not ultimately result in payment by the credit or debit card issuer, (iii) authorization of payment is not given by the bank or credit or debit card issuer, (iv) the validity of the check or credit or debit card cannot be verified, or (v) the payee of the check is other than the court.

1979, c. 525; 1988, cc. 770, 852; 1990, c. 899; 1994, cc. 432, 841, 945; 1997, c. 819; 1998, cc. 720, 731; 2001, cc. 481, 501; 2009, c. 594; 2012, cc. 420, 714.

§ 19.2-353.4. Repealed

Repealed by Acts 1988, cc. 770, 852.

§ 19.2-353.5. Interest on fines and costs

No interest shall accrue on any fine or costs imposed in a criminal case or in a case involving a traffic infraction for a period of 40 days from the date of the final judgment imposing such fine or costs or during any period the defendant is incarcerated. A person who owes fines and costs on which interest has accrued during a period of incarceration may move any court in which he owes fines and costs to waive the interest that accrued on such fines and costs during such period of incarceration. Upon certification of the period of incarceration by the superintendent, warden, or other official in charge of a correctional facility on a form developed by the Office of the Executive Secretary of the Supreme Court, such interest shall be waived. In no event shall interest accrue in such cases during any period in which a fine, costs, or both a fine and costs are being paid in deferred or installment payments pursuant to an order of the court. Whenever interest on any unpaid fine or costs accrues, it shall accrue at the judgment rate of interest set forth in § 6.2-302.

1987, c. 648; 1988, cc. 106, 508; 1995, cc. 375, 566; 1996, c. 226; 2016, c. 282.

Article 4 - PAYMENT OF FINES AND COSTS ON INSTALLMENT BASIS, ETC.

§ 19.2-354. Authority of court to order payment of fine, costs, forfeitures, penalties or restitution in installments or upon other terms and conditions; community work in lieu of payment

A. Whenever (i) a defendant, convicted of a traffic infraction or a violation of any criminal law of the Commonwealth or of any political subdivision thereof, or found not innocent in the case of a juvenile, is sentenced to pay a fine, restitution, forfeiture or penalty and (ii) the defendant is unable to make payment of the fine, restitution, forfeiture, or penalty and costs within 30 days of sentencing, the court shall order the defendant to pay such fine, restitution, forfeiture or penalty and any costs which the defendant may be required to pay in deferred payments or installments. The court assessing the fine, restitution, forfeiture, or penalty and costs may authorize the clerk to establish and approve individual deferred or installment payment agreements. Any payment agreement authorized under this section shall be consistent with the Rules of Supreme Court of Virginia, including any required minimum payments or other required conditions. The requirements established by the Rules of Supreme Court of Virginia shall be posted in the clerk's office and on the court's website, if a website is available. As a condition of every such agreement, a defendant who enters into an installment or deferred payment agreement shall promptly inform the court of any change of mailing address during the term of the agreement. If the defendant is unable to make payment within 30 days of sentencing, the court may assess a one-time fee not to exceed $10 to cover the costs of management of the defendant's account until such account is paid in full.

This one-time fee shall not apply to cases in which costs are assessed pursuant to § 17.1-275.1, 17.1-275.2, 17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8, or 17.1-275.9. Installment or deferred payment agreements shall include terms for payment if the defendant participates in a program as provided in subsection B or C. The court, if such sum or sums are not paid in full by the date ordered, shall proceed in accordance with § 19.2-358.

B. When a person sentenced to the Department of Corrections or a local correctional facility owes any fines, costs, forfeitures, restitution or penalties, he shall be required as a condition of participating in any work release, home/electronic incarceration or nonconsecutive days program as set forth in § 53.1-60, 53.1-131, 53.1-131.1, or 53.1-131.2 to either make full payment or make payments in accordance with his installment or deferred payment agreement while participating in such program. If, after the person has an installment or deferred payment agreement, the person fails to pay as ordered, his participation in the program may be terminated until all fines, costs, forfeitures, restitution and penalties are satisfied. The Director of the Department of Corrections and any sheriff or other administrative head of any local correctional facility shall withhold such ordered payments from any amounts due to such person. Distribution of the money collected shall be made in the following order of priority to:

1. Meet the obligation of any judicial or administrative order to provide support and such funds shall be disbursed according to the terms of such order;

2. Pay any fines, restitution or costs as ordered by the court;

3. Pay travel and other such expenses made necessary by his work release employment or participation in an education or rehabilitative program, including the sums specified in § 53.1-150; and

4. Defray the offender's keep.

The balance shall be credited to the offender's account or sent to his family in an amount the offender so chooses.

The Board of Corrections shall promulgate regulations governing the receipt of wages paid to persons participating in such programs, the withholding of payments and the disbursement of appropriate funds.

C. The court shall establish a program and may provide an option to any person upon whom a fine and costs have been imposed to discharge all or part of the fine or costs by earning credits for the performance of community service work before or after imprisonment. The program shall specify the rate at which credits are earned and provide for the manner of applying earned credits against the fine or costs. The court shall have such other authority as is reasonably necessary for or incidental to carrying out this program.

D. When the court has authorized deferred payment or installment payments, the clerk shall give notice to the defendant that upon his failure to pay as ordered he may be fined or imprisoned

pursuant to § 19.2-358 and his privilege to operate a motor vehicle will be suspended pursuant to § 46.2-395.

E. The failure of the defendant to enter into a deferred payment or installment payment agreement with the court or the failure of the defendant to make payments as ordered by the agreement shall allow the Tax Commissioner to act in accordance with § 19.2-349 to collect all fines, costs, forfeitures and penalties.

Code 1950, § 19.1-347.1; 1971 Ex. Sess., c. 250; 1975, c. 495; 1977, c. 585; 1982, c. 244; 1984, c. 32; 1986, c. 230; 1988, cc. 770, 852; 1994, cc. 841, 945; 1995, cc. 380, 441; 1996, c. 273; 1998, c. 831; 1999, c. 9; 2001, c. 414; 2002, c. 831; 2009, c. 741; 2012, c. 615; 2015, c. 265; 2016, c. 282.

§ 19.2-355. Petition of defendant

(a) In determining whether the defendant is unable to pay such fine forthwith, the court may require such defendant to file a petition, under oath, with the court, upon a form provided by the court, setting forth the financial condition of the defendant.

(b) Such form shall be a questionnaire, and shall include, but shall not be limited to: the name and residence of the defendant; his occupation, if any; his family status and the number of persons dependent upon him; his monthly income; whether or not his dependents are employed and, if so, their approximate monthly income; his banking accounts, if any; real estate owned by the defendant, or any interest he may have in real estate; income produced therefrom; any independent income accruing to the defendant; tangible and intangible personal property owned by the defendant, or in which he may have an interest; and a statement listing the approximate indebtedness of the defendant to other persons. Such form shall also include a payment plan of the defendant, if the court should exercise its discretion in permitting the payment of such fine and costs in installments or other conditions to be fixed by the court. At the end of such form there shall be printed in bold face type, in a distinctive color the following: THIS STATEMENT IS MADE UNDER OATH, ANY FALSE STATEMENT OF A MATERIAL FACT TO ANY QUESTION CONTAINED HEREIN SHALL CONSTITUTE PERJURY UNDER THE PROVISIONS OF § 18.2-434 OF THE CODE OF VIRGINIA . THE MAXIMUM PENALTY FOR PERJURY IS CONFINEMENT IN THE PENITENTIARY FOR A PERIOD OF TEN YEARS. A copy of the petition shall be retained by the defendant.

(c) If the defendant is unable to read or write, the court, or the clerk, may assist the defendant in completing the petition and require him to affix his mark thereto. The consequences of the making of a false statement shall be explained to such defendant.

Code 1950, § 19.1-347.2; 1971, Ex. Sess., c. 250; 1975, c. 495.

§ 19.2-356. Payment of fine or costs as condition of probation or suspension of sentence

If a defendant is placed on probation, or imposition or execution of sentence is suspended, or both, the court may make payment of any fine, or costs, or fine and costs, either on a certain date or on an installment basis, a condition of probation or suspension of sentence.

Code 1950, § 19.1-347.3; 1971, Ex. Sess., c. 250; 1975, c. 495; 1987, c. 238.

§ 19.2-357. Requiring that defendant be of peace and good behavior until fine and costs are paid

If a defendant is permitted to pay a fine or fine and costs on an installment basis, or under such other conditions as the court shall fix under the provisions of § 19.2-354, the court may require as a condition that the defendant be of peace and good behavior until the fine and costs are paid.

Code 1950, § 19.1-347.4; 1971, Ex. Sess., c. 250; 1975, c. 495.

§ 19.2-358. Procedure on default in deferred payment or installment payment of fine, costs, forfeiture, restitution or penalty

A. When an individual obligated to pay a fine, costs, forfeiture, restitution or penalty defaults in the payment or any installment payment, the court upon the motion of the Commonwealth in the case of a conviction of a violation of a state law, or attorney for a locality or for the Commonwealth in the event of a conviction of a violation of a local law or ordinance, or upon its own motion, may require him to show cause why he should not be confined in jail or fined for nonpayment. A show cause proceeding shall not be required prior to issuance of a capias if an order to appear on a date certain in the event of nonpayment was issued pursuant to subsection A of § 19.2-354 and the defendant failed to appear.

B. Following the order to show cause or following a capias issued for a defendant's failure to comply with a court order to appear issued pursuant to subsection A of § 19.2-354, unless the defendant shows that his default was not attributable to an intentional refusal to obey the sentence of the court, or not attributable to a failure on his part to make a good faith effort to obtain the necessary funds for payment, or unless the defendant shows that any failure to appear was not attributable to an intentional refusal to obey the order of the court, the court may order the defendant confined as for a contempt for a term not to exceed sixty days or impose a fine not to exceed $500. The court may provide in its order that payment or satisfaction of the amounts in default at any time will entitle the defendant to his release from such confinement or, after entering the order, may at any time reduce the sentence for good cause shown, including payment or satisfaction of such amounts.

C. If it appears that the default is excusable under the standards set forth in subsection B hereof, the court may enter an order allowing the defendant additional time for payment, reducing the amount due or of each installment, or remitting the unpaid portion in whole or in part.

D. Nothing in this section shall be deemed to alter or interfere with the collection of fines by any means authorized for the enforcement of money judgments rendered in favor of the Commonwealth or any locality within the Commonwealth.

Code 1950, § 19.1-347.6; 1973, c. 342; 1975, c. 495; 1977, c. 223; 1987, c. 238; 1988, cc. 770, 852; 1992, c. 485; 1994, c. 546.

Article 5 - RECEIPTS FOR FINES

§ 19.2-359. Official receipts to be given for fines

Every officer collecting a fine, fine and costs or costs when no fine is imposed shall give an official receipt therefor to the person making the payment, and the clerk of the court shall use the official receipt in receipting to a court not of record for payments made to the clerk; and when the fine, fine and costs or costs are collected by execution, the clerk shall receipt to the officer making payment to him upon the official receipts.

Code 1950, § 19.1-348; 1960, c. 366; 1975, c. 495.

§ 19.2-360. Forms of receipts; distribution; record of disposition

The Executive Secretary of the Supreme Court shall prescribe and prepare forms of official receipts for fines and distribute them to the clerks of the circuit courts and to the clerks of the district courts for their use. A record of the disposition of each receipt form shall be maintained as prescribed by the Executive Secretary.

Code 1950, § 19.1-349; 1960, c. 366; 1972, c. 97; 1975, c. 495; 1977, c. 465.

§ 19.2-361. Misuse, misappropriation or willful failure to account for fines is embezzlement

If any officer misuse, misappropriate, or willfully fail to return or account for, a fine collected by him he shall be deemed guilty of embezzlement and shall be punished as for the embezzlement of public funds and the failure, without good cause, to produce or account for any receipt form received by him shall be prima facie evidence of his embezzlement of the amount represented thereby.

Code 1950, § 19.1-350; 1960, c. 366; 1975, c. 495.

Article 6 - RELIEF FROM FINES AND PENALTIES

§ 19.2-362. Court not to remit fine or penalty, other than fine for contempt, except as provided in § 19.2-358

No court shall remit any fine or penalty, except for a contempt, which the court during the same term may remit either wholly or in part, and except as provided in § 19.2-358. This section shall not impair the judicial power of the court to set aside a verdict or judgment, or to grant a new trial.

Code 1950, § 19.1-351; 1960, c. 366; 1971, Ex. Sess., c. 250; 1975, c. 495.

§ 19.2-363. Authority of Governor to grant relief from fines and penalties

The Governor shall have power, in his discretion, to remit, in whole or in part, fines and penalties, in all cases of felony or misdemeanor, after conviction, whether paid into the state treasury or not, except when judgment shall have been rendered against any person for contempt of court, for nonperformance of or disobedience to some order, decree or judgment of such court, or when the fine or penalty has been imposed by the State Corporation Commission, or when the

prosecution has been carried on by the House of Delegates. The Governor may, in his discretion, remit, refund or release, in whole or in part, any forfeited recognizance or any judgment rendered thereon, provided, in the opinion of the Governor, the evidence accompanying such application warrants the granting of the relief asked for. But the provisions of the three following sections and § 19.2-368 shall be complied with as a condition precedent to such action by the Governor; provided, that when the party against whom the fine or penalty has been imposed and judgment rendered therefor has departed this life leaving a spouse or children surviving, the Governor may remit such fine or penalty upon the certificate of the judge of the circuit court of the county or city wherein such fine or penalty was imposed and judgment rendered, that to enforce the same against the estate, real or personal, of the decedent, would impose hardship upon the spouse or children. In any case when the Governor remits, in whole or in part, a fine or penalty, if the same has been paid into the state treasury, on the order of the Governor such fine or penalty or so much thereof as is remitted shall be paid by the State Treasurer, on the warrant of the Comptroller, out of the fund into which the fine or penalty was paid.

Code 1950, § 19.1-352; 1960, c. 366; 1975, c. 495.

§ 19.2-364. Petition for relief; in what court filed; notice to attorney for Commonwealth

Such person or his personal representative, as the case may be, shall file a petition in the clerk's office of the circuit court of the county or city wherein such fine or penalty was imposed, or such liability established, at least fifteen days before the term of the court at which the same is to be heard, and shall set forth the grounds upon which relief is asked. Ten days' notice thereof in writing shall be given to the attorney for the Commonwealth of the county or city.

Code 1950, § 19.1-353; 1960, c. 366; 1975, c. 495.

§ 19.2-365. Duties of attorney for Commonwealth upon filing of such petition

The attorney for the Commonwealth, at or before the hearing of such petition, shall file an answer to the same. He shall cause to be summoned such witnesses and shall introduce all such testimony as may be necessary and proper to protect the interest of the Commonwealth; and the petitioner may cause to be summoned such witnesses and shall introduce all such testimony as may be necessary and proper to protect his interest.

Code 1950, § 19.1-354; 1960, c. 366; 1975, c. 495.

§ 19.2-366. Duty of court in which petition filed; certificate and opinion

The court wherein such petition is filed shall hear all such testimony as may be offered, either by the petitioner or attorney for the Commonwealth, and after the evidence has been heard shall cause to be made out by the clerk of the court a certificate of the facts proved, and file with the same an opinion, in writing, as to the propriety of granting the relief prayed for.

Code 1950, § 19.1-355; 1960, c. 366; 1975, c. 495.

§ 19.2-367. Proceedings to be according to common law

All proceedings had before the court under the provisions of the three preceding sections shall be according to the course of the common-law practice, except that no formal pleadings shall be necessary.

Code 1950, § 19.1-356; 1960, c. 366; 1975, c. 495.

§ 19.2-368. Course of proceeding when relief asked of the Governor

Whenever application shall be made to the Governor by or on behalf of any person desiring to be relieved, in whole or in part, of any such fine or penalty, the petition, answer, certificate of facts, and opinion of the court provided for in §§ 19.2-364, 19.2-365 and 19.2-366, duly authenticated by the clerk of the court, shall accompany the application, which shall be in writing. In all cases in which the Governor shall remit a fine or penalty he shall issue his order to the clerk of the court by which such fine or penalty was imposed; or if such fine or penalty was imposed by a court not of record, to the clerk of the circuit court of the county or city in which the judge of such court not of record holds office, and such court shall, at its next term, or immediately, if then in session, cause such order to be spread upon the law order book of its court; and the clerk of such court shall immediately, upon the receipt of such order, mark the judgment for such fine or penalty, and costs, or so much thereof as the person may have been relieved of, "remitted by the Governor," upon the Judgment Lien Docket of the court of the county or city in which it may have been recorded. The Governor shall communicate to the General Assembly at each session the particulars of every case of fine or penalty remitted, with his reason for remitting the same.

Code 1950, § 19.1-357; 1960, c. 366; 1975, c. 495.

Chapter 21.1 - COMPENSATING VICTIMS OF CRIME

§ 19.2-368.1. Findings; legislative intent

The General Assembly finds that many innocent persons suffer personal physical injury or death as a result of criminal acts or in their efforts to prevent crime or apprehend persons committing or attempting to commit crimes. Such persons or their dependents may thereby suffer disability, incur financial hardships or become dependent upon public assistance. The General Assembly finds and determines that there is a need for governmental financial assistance for such victims of crime. Therefore, it is the intent of the General Assembly that aid, care and support be provided by the Commonwealth as a matter of moral responsibility for such victims of crime.

1976, c. 605.

§ 19.2-368.2. Definitions

For the purpose of this chapter:

"Claimant" means the person filing a claim pursuant to this chapter.

"Commission" means the Virginia Workers' Compensation Commission.

"Crime" means an act committed by any person in the Commonwealth of Virginia which would constitute a crime as defined by the Code of Virginia or at common law. However, no act

involving the operation of a motor vehicle which results in injury shall constitute a crime for the purpose of this chapter unless the injuries (i) were intentionally inflicted through the use of such vehicle or (ii) resulted from a violation of § 18.2-51.4 or 18.2-266 or from a felony violation of § 46.2-894.

"Family," when used with reference to a person, means (i) any person related to such person within the third degree of consanguinity or affinity, (ii) any person residing in the same household with such person, or (iii) a spouse.

"Sexual abuse" means sexual abuse as defined in subdivision 6 of § 18.2-67.10 and acts constituting rape, sodomy, object sexual penetration or sexual battery as defined in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2.

"Victim" means a person who suffers personal physical injury or death as a direct result of a crime including a person who is injured or killed as a result of foreign terrorism or who suffers personal emotional injury as a direct result of being the subject of a violent felony offense as defined in subsection C of § 17.1-805, or stalking as described in § 18.2-60.3, or attempted robbery or abduction.

1976, c. 605; 1984, c. 619; 1988, c. 748; 1990, c. 620; 1997, cc. 528, 691; 1998, c. 484; 1999, c. 286; 2001, c. 855; 2008, c. 590; 2012, c. 38.

§ 19.2-368.3. Powers and duties of Commission

The Commission shall have the following powers and duties in the administration of the provisions of this chapter:

1. To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of this chapter, to include a distinct policy (i) for the payment of physical evidence recovery kit examinations and (ii) to require each health care provider as defined in § 8.01-581.1 that provides services under this chapter to negotiate with the Commission or its designee to establish prospective agreements relating to rates for payment of claims for such services allowed under § 19.2-368.11:1, such rates to discharge the obligation to the provider in full except where the provider is an agency of the Commonwealth and the claimant receives a third party recovery in addition to the payment from the Fund.

2. Notwithstanding the provisions of § 2.2-3706, to acquire from the attorneys for the Commonwealth, State Police, local police departments, sheriffs' departments, and the Chief Medical Examiner such investigative results, information and data as will enable the Commission to determine if, in fact, a crime was committed or attempted, and the extent, if any, to which the victim or claimant was responsible for his own injury. These data shall include prior adult arrest records and juvenile court disposition records of the offender. For such purposes and in accordance with § 16.1-305, the Commission may also acquire from the juvenile and domestic relations district courts a copy of the order of disposition relating to the crime. The use of any information received by the Commission pursuant to this subdivision shall be limited to carrying out the

purposes set forth in this section, and this information shall be confidential and shall not be disseminated further. The agency from which the information is requested may submit original reports, portions thereof, summaries, or such other configurations of information as will comply with the requirements of this section.

3. To hear and determine all claims for awards filed with the Commission pursuant to this chapter, and to reinvestigate or reopen cases as the Commission deems necessary.

4. To require and direct medical examination of victims.

5. To hold hearings, administer oaths or affirmations, examine any person under oath or affirmation and to issue summonses requiring the attendance and giving of testimony of witnesses and require the production of any books, papers, documentary or other evidence. The powers provided in this subsection may be delegated by the Commission to any member or employee thereof.

6. To take or cause to be taken affidavits or depositions within or without the Commonwealth.

7. To render each year to the Governor and to the General Assembly a written report of its activities.

8. To accept from the government of the United States grants of federal moneys for disbursement under the provisions of this chapter.

1976, c. 605; 1984, c. 619; 1986, c. 422; 1990, c. 551; 1992, c. 547; 1998, c. 484; 1999, cc. 703, 726; 2008, cc. 203, 251; 2010, c. 780.

§ 19.2-368.3:1. Crime victims' ombudsman

A. The Commission shall employ a crime victims' ombudsman and adequate staff to facilitate the prompt review and resolution of crime victim compensation claims and to assure that crime victims' rights are safeguarded and protected during the claims process. The ombudsman shall report directly to the Commission.

B. The ombudsman shall ensure that all parties, including service providers and Criminal Injuries Compensation Fund personnel, are acting in the best interests of the crime victim. The ombudsman shall also provide assistance to crime victims in filling out the necessary forms for compensation and obtaining necessary documentation.

1998, c. 484.

§ 19.2-368.4. Persons eligible for awards

A. The following persons shall be eligible for awards pursuant to this chapter unless the award would directly and unjustly benefit the person who is criminally responsible:

1. A victim of a crime or the parent or guardian of a minor who is the victim of a crime.

2. A surviving spouse, parent, grandparent, sibling or child, including posthumous children, of a victim of a crime who died as a direct result of such crime.

3. Any person, except a law-enforcement officer engaged in the performance of his duties, who is injured or killed while trying to prevent a crime or an attempted crime from occurring in his presence, or trying to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony.

4. A surviving spouse, parent, grandparent, sibling or child, including posthumous children, of any person who dies as a direct result of trying to prevent a crime or attempted crime from occurring in his presence, or trying to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony.

5. Any other person legally dependent for his principal support upon a victim of crime who dies as a result of such crime, or legally dependent for his principal support upon any person who dies as a direct result of trying to prevent a crime or an attempted crime from occurring in his presence or trying to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony.

B. A person who is criminally responsible for the crime upon which a claim is based, or an accomplice or accessory of such person, shall not be eligible to receive an award with respect to such claim.

C. A resident of Virginia who is the victim of a crime occurring outside Virginia and any other person as defined in subsection A who is injured as a result of a crime occurring outside Virginia shall be eligible for an award pursuant to this chapter if (i) the person would be eligible for benefits had the crime occurred in Virginia and (ii) the state, country or territory in which the crime occurred does not have a crime victims' compensation program deemed eligible pursuant to the provisions of the federal Victims of Crime Act and does not compensate nonresidents.

1976, c. 605; 1977, c. 215; 1978, c. 210; 1981, c. 592; 1984, c. 747; 1985, c. 446; 1986, c. 422; 1988, c. 406; 1990, c. 550; 1996, c. 86; 2002, c. 665.

§ 19.2-368.5. Filing of claims; deferral of proceedings; restitution

A. A claim may be filed by a person eligible to receive an award, as provided in § 19.2-368.4, or if such person is a minor, by his parent or guardian. In any case in which the person entitled to make a claim is incapacitated, the claim may be filed on his behalf by his guardian, conservator or such other individual authorized to administer his estate.

B. A claim shall be filed by the claimant not later than one year after the occurrence of the crime upon which such claim is based, or not later than one year after the death of the victim. However, (i) in cases involving claims made on behalf of a minor or a person who is incapacitated, the provisions of subsection A of § 8.01-229 shall apply to toll the one-year period; (ii) in cases involving claims made by a victim against profits of crime held in escrow pursuant to Chapter 21.2 (§ 19.2-368.19 et seq.) of this title, the claim shall be filed within five years of the date of the special order of escrow; and (iii) in cases involving claims of sexual abuse of a minor, the claim shall be filed

within 10 years after the minor's eighteenth birthday. For good cause shown, the Commission may extend the time for filing for a crime committed on or after July 1, 2001.

In the case of a crime committed on or after July 1, 1977, and before July 1, 2001, for which a claim was not filed in a timely manner, the Commission may, for good cause shown, extend the time for filing if the attorney for the Commonwealth sends written notification to the Commission that the crime is being investigated as a result of newly discovered evidence. For any claim filed pursuant to this paragraph, the Commission shall only consider expenses and loss of earnings that the claimant accrues after the date of newly discovered evidence as stipulated in the written notification by the attorney for the Commonwealth.

C. Claims shall be filed in the office of the Commission in person, by mail, or by electronic means in accordance with standards approved by the Commission. The Commission shall accept for filing all claims submitted by persons eligible under subsection A of this section and alleging the jurisdictional requirements set forth in this chapter and meeting the requirements as to form in the rules and regulations of the Commission.

D. Upon filing of a claim pursuant to this chapter, the Commission shall promptly notify the attorney for the Commonwealth of the jurisdiction wherein the crime is alleged to have occurred. If, within 10 days after such notification, the attorney for the Commonwealth so notified advises the Commission that a criminal prosecution is pending upon the same alleged crime, the Commission shall defer all proceedings under this chapter until such time as such criminal prosecution has been concluded in the circuit court unless notification is received from the attorney for the Commonwealth that no objection is made to a continuation of the investigation and determination of the claim. When such criminal prosecution has been concluded in the circuit court the attorney for the Commonwealth shall promptly so notify the Commission. Nothing in this section shall be construed to mean that the Commission is to defer proceedings upon the filing of an appeal, nor shall this section be construed to limit the authority of the Commission to grant emergency awards as hereinafter provided. Upon awarding a claim pursuant to this chapter, the Commission shall promptly notify the attorney for the Commonwealth of the jurisdiction wherein the crime is alleged to have occurred. If a criminal prosecution occurs regarding the same alleged crime, the attorney for the Commonwealth shall request the court to order restitution. However, neither the lack of a restitution order, nor the failure of the attorney for the Commonwealth to request such an order, shall preclude the Fund from exercising its subrogation rights pursuant to § 19.2-368.15. Any such restitution shall be paid over to the Comptroller for deposit into the Criminal Injuries Compensation Fund to the extent of the amount of the award paid from the Fund.

1976, c. 605; 1977, c. 215; 1978, c. 122; 1986, c. 457; 1992, c. 681; 1997, c. 801; 1998, c. 484; 2001, cc. 363, 855; 2002, c. 665; 2005, c. 683; 2006, c. 414; 2009, c. 381; 2014, cc. 251, 665; 2016, c. 456.

§ 19.2-368.5:1. Failure to perfect claim; denial

Notwithstanding the provisions of § 19.2-368.5, if, following the initial filing of a claim, a claimant fails to take such further steps to support or perfect the claim as may be required by the Commission within 180 days after written notice of such requirement is sent by the Commission to the claimant, the claimant shall be deemed in default. If the claimant is in default, the Commission shall notify the claimant that the claim is denied and the claimant shall be forever barred from reasserting it; however, the Commission may reopen the proceeding upon a showing by claimant that the failure to do the acts required by the Commission was beyond the control of the claimant.

1981, c. 302; 1998, c. 484.

§ 19.2-368.5:2. Effect of filing a claim; stay of debt collection activities by health care providers

A. Whenever a person files a claim under this chapter, all health care providers, as defined in § 8.01-581.1 that have been given notice of a pending claim, shall refrain from all debt collection activities relating to medical treatment received by the person in connection with such claim until an award is made on the claim or until a claim is determined to be noncompensable pursuant to § 19.2-368.11:1. The statute of limitations for collection of such debt shall be tolled during the period in which the applicable health care provider is required to refrain from debt collection activities hereunder.

B. For the purpose of this section, "debt collection activities" means repeatedly calling or writing to the claimant and threatening either to turn the matter over to a debt collection agency or to an attorney for collection, enforcement or filing of other process. The term shall not include routine billing or inquiries about the status of the claim.

2005, c. 683.

§ 19.2-368.6. Assignment of claims; investigation; hearing; confidentiality of records; decisions

A. A claim, when accepted for filing, shall be properly investigated, and, if necessary, assigned by the chairman to a commissioner, deputy commissioner or other proper party for disposition. All claims arising from the death of an individual shall be considered together by the same person.

B. The person to whom such claim is assigned shall examine the papers filed in support of the claim and shall thereupon cause an investigation to be conducted into the validity of the claim. The investigation shall include, but not be limited to, an examination of police, court and official records and reports concerning the crime, and an examination of medical and hospital reports relating to the injury upon which the claim is based. Health care providers, as defined in § 8.01-581.1, shall provide medical and hospital reports relating to the diagnosis and treatment of the injury upon which the claim is based to the Commission, upon request.

C. Claims shall be investigated and determined, regardless of whether the alleged criminal has been apprehended or prosecuted for, or convicted of, any crime based upon the same incident, or

has been acquitted, or found not guilty of the crime in question owing to a lack of criminal responsibility or other legal exemption.

D. There shall be a rebuttable presumption that the claimant did not contribute to and was not responsible for the infliction of his injury.

E. The person to whom a claim is assigned may decide the claim in favor of a claimant on the basis of the papers filed in support thereof and the report of the investigation of the claim. If he is unable to decide the claim, upon the basis of the said papers and report, he shall order a hearing. At the hearing any relevant evidence, not legally privileged, shall be admissible. The hearing of any claim involving a claimant or victim who is a juvenile shall be closed. All records, papers, and reports involving such claim shall be confidential except as to the amount of the award and nonidentifying information concerning the claimant or victim.

F. For purposes of this chapter, confidentiality provided for by law applicable to a claimant's or victim's juvenile court records shall not be applicable to the extent that the Commission shall have access to those records only for the purposes set forth in this chapter.

G. After examining the papers filed in support of the claim, and the report of investigation, and after a hearing, if any, a decision shall be made either granting an award pursuant to § 19.2-368.11:1 of this chapter or denying the claim.

H. The person making a decision shall issue a written report setting forth such decision and his reasons therefor, and shall notify the claimant and furnish him a copy of such report.

1976, c. 605; 1977, c. 215; 1994, c. 834; 1997, c. 528; 1998, c. 484.

§ 19.2-368.7. Review by Commission

A. The claimant may, within forty-five days from the date of the report, apply in writing to the Commission for review of the decision by the full Commission. The Commission may extend the time for filing under this section for good cause shown.

B. Upon receipt of an application pursuant to subsection A of this section, or upon its own motion, the Commission shall review the record and affirm or modify the decision of the person to whom the claim was assigned. The action of the Commission in affirming or modifying such decision shall be final. If the Commission receives no application pursuant to subsection A of this section, or takes no action upon its own motion, the decision of the person to whom the claim was assigned shall become the final decision of the Commission.

C. The Commission shall promptly notify the claimant and the Comptroller of the final decision of the Commission and furnish each with a copy of the report setting forth the decision.

1976, c. 605; 1977, c. 215; 1986, c. 457; 1989, c. 335; 2000, c. 455; 2001, c. 363.

§ 19.2-368.8. Reinvestigation of decision; reconsideration of award; judicial review

A. The Commission, on its own motion, or upon request of the claimant, may reinvestigate or reopen a decision making or denying an award. Except for claims of sexual abuse that occurred

while the victim was a minor, the Commission shall not reopen or reinvestigate a case after the expiration of two years from the date of submission of the original claim. Any claim involving the sexual abuse of a minor that has been denied before July 1, 2001, because it was not timely filed may, upon application filed with the Commission, be reconsidered provided the application for reconsideration is filed within ten years after the minor's eighteenth birthday.

B. The Commission shall reconsider, at least annually, every award upon which periodic payments are being made. An order or reconsideration of an award shall not require refund of amounts previously paid unless the award was obtained by fraud. The right of reconsideration does not affect the finality of a Commission decision for the purposes of judicial review.

C. Within thirty days of the date of the report containing the final decision of the Commission, the claimant may, if in his judgment the award is improper, appeal such decision to the Court of Appeals, as provided in § 65.2-706. The Attorney General may appear in such proceedings as counsel for the Commission.

1976, c. 605; 1977, c. 215; 1984, c. 703; 2001, c. 855; 2002, c. 665.

§ 19.2-368.9. Emergency awards

Notwithstanding any other provisions of this chapter, if it appears to the Commission, that (1) such claim is one with respect to which an award probably will be made, and (2) undue hardship will result to the claimant if immediate payment is not made, the Commission may make an emergency award to the claimant, pending a final decision in the case, provided that (i) the amount of such emergency award shall not exceed $3,000, (ii) the amount of such emergency award shall be deducted from any final award made to the claimant, and (iii) the excess of the amount of such emergency award over the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the claimant to the Commission.

1976, c. 605; 1977, c. 215; 1985, c. 446; 2014, c. 665.

§ 19.2-368.10. When awards to be made; reporting crime and cooperation with law enforcement

No award shall be made unless the Commission finds that:

1. A crime was committed;

2. Such crime directly resulted in an individual becoming a victim as defined in § 19.2-368.2, on whose behalf a claim is filed; and

3. Police records show that such crime was promptly reported to the proper authorities. In no case may an award be made where the police records show that such report was made more than 120 hours after the occurrence of such crime, unless the Commission, for good cause shown, finds the delay to have been justified. The provisions of this subdivision shall not apply to claims of sexual abuse that occurred while the victim was a minor.

The Commission, upon finding that any claimant or award recipient has not fully cooperated with all law-enforcement agencies, may deny, reduce or withdraw any award, as the case may be.

1976, c. 605; 1977, c. 215; 1985, c. 446; 2001, c. 855; 2005, c. 683.

§ 19.2-368.11. Repealed

Repealed by Acts 1986, c. 457.

§ 19.2-368.11:1. Amount of award

A. Compensation for Total Loss of Earnings: An award made pursuant to this chapter for total loss of earnings which results directly from incapacity incurred by a crime victim shall be payable during total incapacity to the victim or to such other eligible person, at a weekly compensation rate equal to 66 2/3 percent of the victim's average weekly wages. The total amount of weekly compensation shall not exceed $600. The victim's average weekly wages shall be determined as provided in § 65.2-101.

B. Compensation for Partial Loss of Earnings: An award made pursuant to this chapter for partial loss of earnings which results directly from incapacity incurred by a crime victim shall be payable during incapacity at a weekly rate equal to 66 2/3 percent of the difference between the victim's average weekly wages before the injury and the weekly wages which the victim is able to earn thereafter. The combined total of actual weekly earnings and compensation for partial loss of earnings shall not exceed $600 per week.

C. Compensation for Loss of Earnings of Parent of Minor Victim: The parent or guardian of a minor crime victim may receive compensation for loss of earnings, calculated as specified in subsections A and B, for time spent obtaining medical treatment for the child and for accompanying the child to, attending or participating in investigative, prosecutorial, judicial, adjudicatory and post-conviction proceedings.

D. Compensation for Dependents of a Victim Who Is Killed: If death results to a victim of crime entitled to benefits, dependents of the victim shall be entitled to compensation in accordance with the provisions of §§ 65.2-512 and 65.2-515 in an amount not to exceed the maximum aggregate payment or the maximum weekly compensation which would have been payable to the deceased victim under this section.

E. Compensation for Unreimbursed Medical Costs, Funeral Expenses, Services, etc.: Awards may also be made on claims or portions of claims based upon the claimant's actual expenses incurred as are determined by the Commission to be appropriate, for (i) unreimbursed medical expenses or indebtedness reasonably incurred for medical expenses; (ii) expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the victim would have performed, for the benefit of himself and his family, if he had not been a victim of crime; (iii) expenses directly related to funeral or burial, not to exceed $5,000; (iv) expenses attributable to pregnancy resulting from forcible rape; (v) mental health counseling for survivors as defined under subdivisions A 2 and A 4 of § 19.2-368.4, not to exceed $3,500 per claim; (vi) reasonable and necessary moving

expenses, not to exceed $2,000, incurred by a victim or survivors as defined under subdivisions A 2 and A 4 of § 19.2-368.4; and (vii) any other reasonable and necessary expenses and indebtedness incurred as a direct result of the injury or death upon which such claim is based, not otherwise specifically provided for. Notwithstanding any other provision of law, a person who is not eligible for an award under subsection A of § 19.2-368.4 who pays expenses directly related to funeral or burial is eligible for reimbursement subject to the limitations of this section.

F. Notwithstanding the provisions of subdivision 3 of § 19.2-368.10, §§ 19.2-368.5, 19.2-368.5:1, 19.2-368.6, 19.2-368.7, 19.2-368.8, subsection G of this section, and § 19.2-368.16, the Criminal Injuries Compensation Fund shall pay for physical evidence recovery kit examinations conducted on victims of sexual assault. Any individual that submits to and completes a physical evidence recovery kit examination shall be considered to have met the reporting and cooperation requirements of this chapter. Funds paid for physical evidence recovery kit collection shall not be offset against the Fund's maximum allowable award as provided in subsection H. Payments may be subject to negotiated agreements with the provider. Healthcare providers that complete physical evidence recovery kit examinations may bill the Fund directly subject to the provisions of § 19.2-368.5:2. The Commission shall develop policies for a distinct payment process for physical evidence recovery kit examination expenses as required under subdivision 1 of § 19.2-368.3.

In order for the Fund to consider additional crime-related expenses, victims shall file with the Fund following the provisions of this chapter and Criminal Injuries Compensation Fund policy.

G. Any claim made pursuant to this chapter shall be reduced by the amount of any payments received or to be received as a result of the injury from or on behalf of the person who committed the crime or from any other public or private source, including an emergency award by the Commission pursuant to § 19.2-368.9.

H. To qualify for an award under this chapter, a claim must have a minimum value of $100, and payments for injury or death to a victim of crime, to the victim's dependents or to others entitled to payment for covered expenses, after being reduced as provided in subsection G, shall not exceed $25,000 in the aggregate.

1986, c. 457; 1988, c. 748; 1989, c. 335; 1990, c. 552; 1992, c. 687; 1996, c. 86; 1998, c. 484; 2000, c. 847; 2002, c. 665; 2005, c. 683; 2007, c. 381; 2008, cc. 203, 251; 2014, c. 665.

§ 19.2-368.12. Awards not subject to execution or attachment; apportionment; reductions

A. No award made pursuant to this chapter shall be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim.

B. If there are two or more persons entitled to an award as a result of the death of a person which is the direct result of a crime, the award shall be apportioned among the claimants.

C. In determining the amount of an award, the Commission shall determine whether, because of his conduct, the victim of such crime contributed to the infliction of his injury, and the

Commission shall reduce the amount of the award or reject the claim altogether, in accordance with such determination; provided, however, that the Commission may disregard for this purpose the responsibility of the victim for his own injury where the record shows that such responsibility was attributable to efforts by the victim to prevent a crime or an attempted crime from occurring in his presence, or to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony.

1976, c. 605; 1977, c. 215; 1989, c. 335 .

§ 19.2-368.13. Repealed

Repealed by Acts 1984, c. 619.

§ 19.2-368.14. Public record; exception

Except as provided in § 19.2-368.6 concerning juvenile claimants or victims, the record of any proceedings under this chapter shall be a public record; provided, however, that any record or report obtained by the Commission, the confidentiality of which is protected by any other law or regulation, shall remain confidential, subject to such law or regulation.

1976, c. 605; 1994, c. 834.

§ 19.2-368.15. Subrogation of Commonwealth to claimant's right of action; lien in favor of the Commonwealth; disposition of funds collected

Acceptance of an award made pursuant to this chapter shall subrogate the Commonwealth, to the extent of such award, to any right or right of action accruing to the claimant or the victim to recover payments on account of losses resulting from the crime with respect to which the award is made. However, except as otherwise provided in subsection G of § 19.2-305.1, the Commonwealth shall not institute any proceedings in connection with its right of subrogation under this section within one year from the date of commission of the crime, unless any claimant or victim's right or action shall have been previously terminated. All funds collected by the Commonwealth in a proceeding instituted pursuant to this section shall be paid over to the Comptroller for deposit into the Criminal Injuries Compensation Fund.

Whenever any person receives an award from the Criminal Injuries Compensation Fund, the Commonwealth shall have a lien for the total amount paid by the Fund, or any portion thereof compromised pursuant to the authority granted under § 2.2-514, on the claim of such injured person or his personal representative against the person, firm, or corporation who is alleged to have caused such injuries. The Fund's lien shall be inferior to any lien for payment of reasonable attorney fees and costs, but shall be superior to all other liens created by § 8.01-66.2. The injured person may file a petition or motion to reduce the lien and apportion the recovery pursuant to § 8.01-66.9. The Fund's lien shall become effective when notice is provided pursuant to § 8.01-66.5 and liability shall attach pursuant to § 8.01-66.6.

1976, c. 605; 1983, c. 227; 2013, c. 273.

§ 19.2-368.16. Claims to be made under oath

All claims shall be made under oath. Any person who asserts a false claim under the provisions of this chapter shall be guilty of perjury and, in addition, shall be subject to prosecution under the provisions of Article 3 (§ 18.2-95 et seq.) of Chapter 5 of Title 18.2, and shall further forfeit any benefit received and shall reimburse and repay the Commonwealth for payments received or paid on his behalf pursuant to any of the provisions hereunder.

1976, c. 605.

§ 19.2-368.17. Public information program

The Commission shall establish and conduct a public information program to assure extensive and continuing publicity and public awareness of the provisions of this chapter. The public information program shall include brochures, posters and public service advertisements for television, radio and print media for dissemination to the public of information regarding the right to compensation for innocent victims of crime, including information on the right to file a claim, the scope of coverage, and the procedures to be utilized incident thereto.

Whenever a crime which directly resulted in personal physical injury to, or death of, an individual is reported within the time required by § 19.2-368.10, the law-enforcement agency to which the report is made shall make reasonable efforts, where practicable, to notify the victim or other potential claimant in writing on forms prepared by the Commission of his or her possible right to file a claim under this chapter. In any event, no liability or cause of action shall arise from the failure to so notify a victim of crime or other potential claimant.

1976, c. 605; 1986, cc. 457, 472.

§ 19.2-368.18. Criminal Injuries Compensation Fund

A. There is hereby created a special fund to be administered by the Comptroller, known as the Criminal Injuries Compensation Fund.

B. Whenever the costs provided for in §§ 17.1-275.1, 17.1-275.2, 17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8, or § 17.1-275.9 or subsections B or C of § 16.1-69.48:1 are assessed, a portion of the costs, as specified in those sections, shall be paid over to the Comptroller to be deposited into the Criminal Injuries Compensation Fund. Under no condition shall a political subdivision be held liable for the payment of this sum.

C. No claim shall be accepted under the provisions of this chapter when the crime that gave rise to such claim occurred prior to July 1, 1977.

D. Sums available in the Criminal Injuries Compensation Fund shall be used for the purpose of payment of the costs and expenses necessary for the administration of this chapter and for the payment of claims pursuant to this chapter.

E. All revenues deposited into the Criminal Injuries Compensation Fund, and appropriated for the purposes of this chapter, shall be immediately available for the payment of claims.

1976, c. 605; 1978, c. 413; 1980, c. 521; 1985, c. 230; 1988, c. 748; 1993, c. 434; 1996, cc. 760, 976; 2002, c. 831.

Chapter 21.2 - PROFITS FROM CRIME

§ 19.2-368.19. Definitions

For purposes of this chapter, the following terms shall have the following meanings unless the context requires otherwise:

"Defendant" means any person who pleads guilty to, is convicted of, or is found not guilty by reason of insanity with respect to a felony resulting in physical injury to or death of another person.

"Division" means the Division of Crime Victims' Compensation.

"Interested party" means the victim, the defendant, and any transferee of proceeds due the defendant under a contract, the person with whom the defendant has contracted, the prosecuting attorney for the Commonwealth, and the Division of Crime Victims' Compensation.

"Victim" means a person who suffers personal, physical, mental, emotional, or pecuniary loss as a direct result of a crime and includes the spouse, parent, child, or sibling of the victim.

1990, c. 549; 1992, c. 681 .

§ 19.2-368.20. Special order of escrow

A. Any proceeds or profits received or to be received directly or indirectly, except property that may be forfeited to the Commonwealth pursuant to §§ 19.2-386.15 through 19.2-386.31, by a defendant or a transferee of that defendant from any source, as a direct or indirect result of his crime or sentence, or the notoriety which such crime or sentence has conferred upon him, shall be subject to a special order of escrow.

B. Income from the defendant's employment in a position unrelated to his crime or the notoriety which such crime has conferred upon him but obtained through the assistance of or rehabilitative training by correctional or mental health programs or personnel shall not be subject to a special order of escrow under this section, and nothing in this section shall be construed to prohibit or hinder the return of property belonging to victims of crime to its rightful owners. Any proceeds from a contract relating to a depiction or discussion of the defendant's crime in a movie, book, newspaper, magazine, radio or television production, or live entertainment or publication of any kind shall not be subject to a special order of escrow unless an integral part of the work is a depiction or discussion of the defendant's crime or an impression of the defendant's thoughts, opinions, or emotions regarding such crime.

C. Upon petition of the attorney for the Commonwealth filed at any time after conviction of such defendant or his acquittal by reason of insanity and after notice to the interested parties, a hearing upon the motion and a finding for the Commonwealth, for good cause shown, any circuit court in which the petition is filed shall order that such proceeds be subject to a special order of escrow.

1. The petition shall be filed in the circuit court of the jurisdiction where the defendant was convicted or acquitted by reason of insanity.

2. The petition shall set forth in general terms the causes for entry of the special order of escrow, and be signed by the attorney for the Commonwealth.

3. Upon the filing of the petition, the clerk shall forthwith issue a warrant directed to the sheriff or other law-enforcement officer of the county or city, commanding him to take the property into his possession and hold the same subject to further proceedings in the cause. If for any cause the warrant was not executed, other like warrants may be successively issued until one is executed. The officer serving the warrant shall take the property into his possession and forthwith return the warrant and report to the clerk in writing.

4. Any person concerned in interest may appear and make defense to the petition, which may be done by answer on oath.

5. When the case is ready for trial, such issues of fact as are made by the pleadings, or as the court may direct, the court shall determine the whole matter of law and fact.

6. Expenses and costs incurred in the proceedings shall be paid as the court, in its discretion, shall determine; except that no costs shall be adjudged against the Commonwealth.

An order issued under this section shall require that the defendant and the person with whom the defendant contracts pay to the Division any proceeds due the defendant under the contract and the proceeds shall be placed in a special escrow account for the victims of the defendant's crime.

1990, c. 549; 1992, c. 681; 2006, c. 414.

§ 19.2-368.21. Distribution

A. Proceeds paid to the Division under § 19.2-368.20 shall be retained in escrow in the Criminal Injuries Compensation Fund for five years after the date of the order, but during that five-year period may be levied upon to satisfy a money judgment rendered by a court or award of the Workers' Compensation Commission in favor of a victim of an offense for which the defendant has been convicted or acquitted by reason of insanity, or a legal representative of the victim.

B. If ordered by a circuit court in the interest of justice, after motion, notice to all interested parties, and opportunity for hearing, such escrow fund shall be used to:

1. First, satisfy court ordered restitution against a defendant and in favor of a victim;

2. Satisfy a money judgment rendered in the court hearing the matter, in favor of a victim of any offense for which the defendant has been convicted;

3. Pay for legal representation of the defendant in criminal proceedings, including the appeals process, to the extent the defendant's representation was paid for by the Commonwealth or an agency thereof. No more than 25% of the total proceeds in escrow may be used for legal representation; and

4. Pay any fines or costs assessed against the defendant by a court of the Commonwealth.

C. At the end of the five-year period, the remaining proceeds shall be paid into the Literary Fund. However, (i) if a civil action under this section is pending against the defendant, the proceeds shall be held in escrow until completion of the action or (ii) if the defendant has appealed his conviction and the appeals process is not final, the proceeds shall be held in escrow until the appeals process is final, and upon disposition of the charges favorable to the defendant, the Division shall immediately pay any money in the escrow account to the defendant.

1990, c. 549; 1992, c. 681; 2006, c. 414.

§ 19.2-368.22. Actions to defeat chapter void

Any action taken by any person convicted of a felony, whether by way of execution of a power of attorney, creation of corporate entities, or otherwise, to defeat the purpose of this chapter shall be void.

1990, c. 549; 1992, c. 59 .

Chapter 22 - ENFORCEMENT OF FORFEITURES

§§ 19.2-369 through 19.2-386. Repealed

Repealed by Acts 2012, cc. 283 and 756, cl. 2.

Chapter 22.1 - ENFORCEMENT OF FORFEITURES

§ 19.2-386.1. Commencing an action of forfeiture

Except as otherwise specifically provided by law, whenever any property is forfeited to the Commonwealth by reason of the violation of any law, or if any statute provides for the forfeiture of any property or money, or if any property or money be seized as forfeited for a violation of any of the provisions of this Code, the Commonwealth shall follow the procedures set forth in this chapter.

An action against any property subject to seizure under the provisions of Chapter 22.2 (§ 19.2-386.15 et seq.) shall be commenced by the filing of an information in the clerk's office of the circuit court. Any information shall be filed in the name of the Commonwealth by the attorney for the Commonwealth or may be filed by the Attorney General if so requested by the attorney for the Commonwealth. Venue for an action of forfeiture shall lie in the county or city where (i) the property is located, (ii) the property is seized, or (iii) an owner of the property could be prosecuted for the illegal conduct alleged to give rise to the forfeiture. Such information shall (a) name as parties defendant all owners and lienholders then known or of record and the trustees named in any deed of trust securing such lienholder, (b) specifically describe the property, (c) set forth in general terms the grounds for forfeiture of the named property, (d) pray that the same be condemned and sold or otherwise be disposed of according to law, and (e) ask that all persons concerned or interested be notified to appear and show cause why such property should not be forfeited. In all cases, an information shall be filed within three years of the date of actual discovery by the

Commonwealth of the last act giving rise to the forfeiture or the action for forfeiture will be barred.

1989, c. 690; 1991, c. 560; 2002, cc. 588, 623; 2004, c. 995; 2012, cc. 283, 756.

§ 19.2-386.2. Seizure of named property

A. When any property subject to seizure under Chapter 22.2 (§ 19.2-386.15 et seq.) or other provision under the Code has not been seized at the time an information naming that property is filed, the clerk of the circuit court or a judge of the circuit court, upon motion of the attorney for the Commonwealth wherein the information is filed, shall issue a warrant to the sheriff or other state or local law-enforcement officer authorized to serve criminal process in the jurisdiction where the property is located, describing the property named in the complaint and authorizing its immediate seizure.

B. In all cases of seizure of real property, a notice of lis pendens shall be filed with the clerk of the circuit court of the county or city wherein the property is located and shall be indexed in the land records in the name or names of those persons whose interests appear to be affected thereby.

C. When any property is seized for the purposes of forfeiture under Chapter 22.2 (§ 19.2-386.15 et seq.) or other forfeiture provision under the Code, the agency seizing the property shall, as soon as practicable after the seizure, conduct an inventory of the seized property and shall, as soon as practicable, provide a copy of the inventory to the owner. An agency's failure to provide a copy of an inventory pursuant to this subsection shall not invalidate any forfeiture.

D. When any property is seized for the purposes of forfeiture under Chapter 22.2 (§ 19.2-386.15 et seq.) or other forfeiture provision under the Code, and an information naming that property has not been filed, neither the agency seizing the property nor any other law-enforcement agency may request, require, or in any manner induce any person who asserts ownership, lawful possession, or any lawful right to the property to waive his interest in or rights to the property until an information has been filed.

1989, c. 690; 2002, cc. 588, 623; 2004, c. 995; 2006, c. 766; 2012, cc. 283, 756; 2015, c. 769; 2016, cc. 203, 423.

§ 19.2-386.2:1. Notice to Commissioner of Department of Motor Vehicles; duties of Commissioner

If the property seized is a motor vehicle required by the motor vehicle laws of Virginia to be registered, the attorney for the Commonwealth shall forthwith notify the Commissioner of the Department of Motor Vehicles, by certified mail, or electronically in a format prescribed by the Commissioner, of such seizure and the motor number of the vehicle so seized, and the Commissioner shall promptly certify to such attorney for the Commonwealth the name and address of the person in whose name such vehicle is registered, together with the name and address of any person holding a lien thereon. The Commissioner shall also forthwith notify such registered owner

and lienor, in writing, of the reported seizure and the county or city wherein such seizure was made.

The certificate of the Commissioner, concerning such registration and lien, shall be received in evidence in any proceeding, either civil or criminal, under any provision of this chapter, in which such facts may be material to the issue involved.

2012, cc. 283, 756; 2016, cc. 203, 423.

§ 19.2-386.3. Notice of seizure for forfeiture and notice of motion for judgment

A. If an information has not been filed, then upon seizure of any property under Chapter 22.2 (§ 19.2-386.15 et seq.) or other provision under the Code, the agency seizing the property shall forthwith notify in writing the attorney for the Commonwealth in the county or city in which the seizure occurred, who shall, within 21 days of receipt of such notice, file a notice of seizure for forfeiture with the clerk of the circuit court. Such notice of seizure for forfeiture shall specifically describe the property seized, set forth in general terms the grounds for seizure, identify the date on which the seizure occurred, and identify all owners and lien holders then known or of record, including the treasurer of the locality in which the seized property is located. The clerk shall forthwith mail by first-class mail notice of seizure for forfeiture to the last known address of all identified owners and lien holders. When property has been seized under Chapter 22.2 (§ 19.2-386.15 et seq.) or other provision under the Code prior to filing an information, then an information against that property shall be filed within 90 days of the date of seizure or the property shall be released to the owner or lien holder.

B. Except as to corporations, all parties defendant shall be served, in accordance with § 8.01-296, with a copy of the information and a notice to appear prior to any motion for default judgment on the information. The notice shall contain a statement warning the party defendant that his interest in the property shall be subject to forfeiture to the Commonwealth unless within 30 days after service on him of the notice, or before the date set forth in the order of publication with respect to the notice, an answer under oath is filed in the proceeding setting forth (i) the nature of the defendant's claim, (ii) the exact right, title or character of the ownership or interest in the property and the evidence thereof, and (iii) the reason, cause, exemption or defense he may have against the forfeiture of his interest in the property, including but not limited to the exemptions set forth in § 19.2-386.8. Service upon corporations shall be made in accordance with § 8.01-299 or subdivision 1 or 2 of § 8.01-301; however, if such service cannot be thus made, it shall be made by publication in accordance with § 8.01-317.

1989, c. 690; 1991, c. 560; 1996, c. 673; 2002, cc. 588, 623; 2004, c. 995; 2011, c. 83; 2012, cc. 283, 756.

§ 19.2-386.4. Records and handling of seized property

Any agency seizing property under § 19.2-386.2, Chapter 22.2 (§ 19.2-386.15 et seq.), or other provision under the Code, pending forfeiture and final disposition, may do any of the following:

1. Place the property under constructive seizure by posting notice of seizure for forfeiture on the property or by filing notice of seizure for forfeiture in any appropriate public record relating to property;

2. Remove the property to a storage area for safekeeping or, if the property is a negotiable instrument or money, deposit it in an interest-bearing account;

3. Remove the property to a place designated by the circuit court in the county or city wherein the property was seized; or

4. Provide for another custodian or agency to take custody of the property and remove it to an appropriate location within or without the jurisdiction of the circuit court in the county or city wherein the property was seized or in which the complaint was filed.

A report regarding the type of property subject to forfeiture and its handling pursuant to this section and § 19.2-386.5, and the final disposition of the property shall be filed by the seizing agency with the Department of Criminal Justice Services in accordance with regulations promulgated by the Board.

1989, c. 690; 1991, c. 560; 2002, cc. 588, 623; 2004, c. 995; 2012, cc. 283, 756.

§ 19.2-386.5. Release of seized property

At any time prior to the filing of an information, the attorney for the Commonwealth in the county or city in which the property has been seized pursuant to Chapter 22.2 (§ 19.2-386.15 et seq.) or other provision under the Code may, in his discretion, upon the payment of costs incident to the custody of the seized property, return the seized property to an owner or lien holder, without requiring that the owner or lien holder post bond as provided in § 19.2-386.6, if he believes the property is properly exempt from forfeiture pursuant to § 19.2-386.8.

1989, c. 690; 2002, cc. 588, 623; 2004, c. 995; 2012, cc. 283, 756.

§ 19.2-386.6. Bond to secure possession

If the owner or lien holder of the named property desires to obtain possession thereof before the hearing on the information filed against the same, such property shall be appraised by the clerk of the court where such information is filed. The clerk shall promptly cause the property to be appraised at its fair cash value, and forthwith make return thereof in writing to the court. Any appraisal fee shall be taxed as costs as provided in § 19.2-386.12. Upon the return of the appraisal, the owner or lien holder may give a bond payable to the Commonwealth, in a penalty of the amount equal to the appraised value of the property plus the court costs which may accrue, with security to be approved by the clerk and conditioned for the performance of the final judgment of the court, on the trial of the information. A further condition shall be that, if upon the hearing on the information, the judgment of the court is that such property, or any part thereof, or such interest and equity as the owner or lien holder may have therein, is forfeited, judgment may thereupon be entered against the obligors on such bond for the penalty thereof, without further or other proceedings against them thereon, to be discharged by the payment of the appraised value of

the property so seized and forfeited, and costs. Upon such judgment, execution may issue, on which the clerk shall endorse, "No security to be taken." Upon giving of the bond, the property shall be delivered to the owner or lien holder.

1989, c. 690 .

§ 19.2-386.7. Sale of property liable to deterioration

If the property seized is perishable or liable to deterioration, decay, or injury by being detained in custody pending the proceedings, the circuit court for the county or city in which the information is filed or in which the property is located, may order the same to be sold upon such notice as the court, in its discretion, may deem proper and hold the proceeds of sale pending the final disposition of such proceedings.

1989, c. 690 .

§ 19.2-386.8. Exemptions

The following exemptions shall apply to property otherwise subject to forfeiture:

1. No conveyance used by any person as a lawfully certified common carrier in the transaction of business as a common carrier may be forfeited under the provisions of this section unless the owner of the conveyance was a consenting party or privy to the conduct giving rise to forfeiture or knew or had reason to know of it.

2. No conveyance may be forfeited under the provisions of this section for any conduct committed by a person other than the owner while the conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof.

3. No owner's interest may be forfeited under this chapter if the court finds that:

a. He did not know and had no reason to know of the conduct giving rise to forfeiture;

b. He was a bona fide purchaser for value without notice;

c. The conduct giving rise to forfeiture occurred without his connivance or consent, express or implied; or

d. The conduct giving rise to forfeiture was committed by a tenant of a residential or commercial property owned by a landlord, and the landlord did not know or have reason to know of the tenant's conduct.

4. No lien holder's interest may be forfeited under this chapter if the court finds that:

a. The lien holder did not know of the conduct giving rise to forfeiture at the time the lien was granted;

b. The lien holder held a bona fide lien on the property subject to forfeiture and had perfected the same in the manner prescribed by law prior to seizure of the property; and

c. The conduct giving rise to forfeiture occurred without his connivance or consent, express or implied.

In the event the interest has been sold to a bona fide purchaser for value in order to avoid the provisions of this chapter, the Commonwealth shall have a right of action against the seller of the property for the proceeds of the sale.

1989, c. 690; 2005, c. 883.

§ 19.2-386.9. Appearance by owner or lien holder

Any person claiming to be an owner or lien holder of the named property may appear at any time within thirty days after service on him of notice to appear or on or before the date certain set forth in any order of publication under § 8.01-317 or such longer time as the court in its discretion may allow to prevent a miscarriage of justice. Any person without actual or constructive notice of the forfeiture proceedings claiming to be an owner or lienholder may appear at any time before final judgment of the trial court and be made a party to the action. Such appearance shall be by answer, under oath, which shall clearly set forth (i) the nature of the defendant's claim; (ii) the exact right, title or character of the ownership or interest in the property and the evidence thereof; and (iii) the reason, cause, exemption or defense he may have against the forfeiture of the property.

1989, c. 690; 1991, c. 560 .

§ 19.2-386.10. Forfeiture; default judgment; remission; trial

A. A party defendant who fails to appear as provided in § 19.2-386.9 shall be in default. The forfeiture shall be deemed established as to the interest of any party in default upon entry of judgment as provided in § 19.2-386.11. Within 21 days after entry of judgment, any party defendant against whom judgment has been so entered may petition the Department of Criminal Justice Services for remission of his interest in the forfeited property. For good cause shown and upon proof by a preponderance of the evidence that the party defendant's interest in the property is exempt under subdivision 2, 3, or 4 of § 19.2-386.8, the Department of Criminal Justice Services shall grant the petition and direct the state treasury to either (i) remit to the party defendant an amount not exceeding the party defendant's interest in the proceeds of sale of the forfeited property after deducting expenses incurred and payable pursuant to subsection B of § 19.2-386.12 or (ii) convey clear and absolute title to the forfeited property in extinguishment of such interest.

If any party defendant appears in accordance with § 19.2-386.9, the court shall proceed to trial of the case, unless trial by jury is demanded by the Commonwealth or any party defendant. At trial, the Commonwealth has the burden of proving by clear and convincing evidence that the property is subject to forfeiture under this chapter. Upon such a showing by the Commonwealth, the claimant has the burden of proving by a preponderance of the evidence that the claimant's interest in the property is exempt under subdivision 2, 3, or 4 of § 19.2-386.8.

B. The information and trial thereon shall be independent of any criminal proceeding against any party or other person for violation of law. However, upon motion and for good cause shown, the court may stay a forfeiture proceeding that is related to any warrant, indictment, or information.

1989, c. 690; 1991, c. 560; 2016, cc. 203, 423, 664.

§ 19.2-386.11. Judgment of condemnation; destruction

A. If the forfeiture is established, the judgment shall be that the property be condemned as forfeited to the Commonwealth subject to any remission granted under subsection A of § 19.2-386.10 and further that the same be sold, unless (i) a sale thereof has been already made under § 19.2-386.7, (ii) the court determines that the property forfeited is of such minimal value that the sale would not be in the best interest of the Commonwealth or (iii) the court finds that the property may be subject to return to a participating agency. If the court finds that the property may be subject to return to an agency participating in the seizure in accordance with subsection C of § 19.2-386.14, the order shall provide for storage of the property until the determination to return it is made or, if return is not made, for sale of the property as provided in this section and § 19.2-386.12. If sale has been made, the judgment shall be against the proceeds of sale, subject to the rights of any lien holder whose interest is not forfeited. If the property condemned has been delivered to the claimant under § 19.2-386.6, further judgment shall be against the obligors in the bond for the penalty thereof, to be discharged by the payment of the appraised value of the property, upon which judgment, process of execution shall be awarded and the clerk shall endorse thereon, "No security is to be taken."

B. Forfeited cash and negotiable instruments shall be disposed of pursuant to the provisions of § 19.2-386.12.

C. Contraband, the sale or possession of which is unlawful, weapons and property not sold because of the minimal value thereof, may be ordered destroyed by the court.

1989, c. 690; 1991, c. 560; 1993, c. 484 .

§ 19.2-386.12. Sale of forfeited property

A. Any sale of forfeited property shall be made for cash, after due advertisement. The sale shall be by public sale or other commercially feasible means authorized by the court in the order of forfeiture and shall vest in the purchaser a clear and absolute title to the property sold subject to the rights of any lien holder whose interest is not forfeited. The proceeds of sale, and whatever may be realized on any bond given under § 19.2-386.6, and any money forfeited shall be paid over to the state treasury into a special fund of the Department of Criminal Justice Services in accordance with § 19.2-386.14.

B. In all cases of forfeiture under this section, the actual expenses incident to the custody, preservation, and management of the seized property prior to forfeiture, the actual expenses incident to normal legal proceedings to perfect the Commonwealth's interest in the seized property through forfeiture, and the actual expenses incident to the sale thereof, including commissions,

shall be taxed as costs and shall be paid to the person or persons who incurred these costs out of the net proceeds from the sale of such property. If there are no proceeds, the actual expenses shall be paid by the Commonwealth from the Criminal Fund. Actual expenses in excess of the available net proceeds shall be paid by the Commonwealth from the Criminal Fund. The party or parties in interest to any forfeiture proceeding commenced under this section shall be entitled to reasonable attorney's fees and costs if the forfeiture proceeding is terminated in favor of such party or parties. Such fees and costs shall be paid by the Commonwealth from the Criminal Fund.

The residue, if any, shall be paid and disbursed as provided in subsection A of § 19.2-386.10 and § 19.2-386.14 and regulations promulgated by the Criminal Justice Services Board.

1989, c. 690; 1991, c. 560 .

§ 19.2-386.13. Writ of error and supersedeas

For the purpose of review on a writ of error or supersedeas, a final judgment or order in the cause shall be deemed a final judgment or order within the meaning of subsection A of § 8.01-670.

1989, c. 690; 2005, c. 681.

§ 19.2-386.14. Sharing of forfeited assets

A. All cash, negotiable instruments, and proceeds from a sale conducted pursuant to § 19.2-386.7 or 19.2-386.12, after deduction of expenses, fees, and costs as provided in § 19.2-386.12, shall, as soon after entry of the forfeiture as is practicable, be distributed in a manner consistent with this chapter and Article VIII, Section 8 of the Constitution of Virginia.

A1. All cash, negotiable instruments and proceeds from a sale conducted pursuant to § 19.2-386.7 or 19.2-386.12, after deduction of expenses, fees and costs as provided in § 19.2-386.12, shall, as soon after entry of the forfeiture as is practicable, be paid over to the state treasury into a special fund of the Department of Criminal Justice Services for distribution in accordance with this section. The forfeited property and proceeds, less 10 percent, shall be made available to federal, state and local agencies to promote law enforcement in accordance with this section and regulations adopted by the Criminal Justice Services Board to implement the asset-sharing program.

The 10 percent retained by the Department shall be held in a nonreverting fund, known as the Asset Sharing Administrative Fund. Administrative costs incurred by the Department to manage and operate the asset-sharing program shall be paid from the Fund. Any amounts remaining in the Fund after payment of these costs shall be used to promote state or local law-enforcement activities. Distributions from the Fund for these activities shall be based upon need and shall be made from time to time in accordance with regulations promulgated by the Board.

B. Any federal, state or local agency or office that directly participated in the investigation or other law-enforcement activity which led, directly or indirectly, to the seizure and forfeiture shall be eligible for, and may petition the Department for, return of the forfeited asset or an equitable share of the net proceeds, based upon the degree of participation in the law-enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law-

enforcement effort with respect to the violation of law on which the forfeiture is based. Upon finding that the petitioning agency is eligible for distribution and that all participating agencies agree on the equitable share of each, the Department shall distribute each share directly to the appropriate treasury of the participating agency.

If all eligible participating agencies cannot agree on the equitable shares of the net proceeds, the shares shall be determined by the Criminal Justice Services Board in accordance with regulations which shall specify the criteria to be used by the Board in assessing the degree of participation in the law-enforcement effort resulting in the forfeiture.

C. After the order of forfeiture is entered concerning any motor vehicle, boat, aircraft, or other tangible personal property, any seizing agency may (i) petition the Department for return of the property that is not subject to a grant or pending petition for remission or (ii) request the circuit court to order the property destroyed. Where all the participating agencies agree upon the equitable distribution of the tangible personal property, the Department shall return the property to those agencies upon finding that (a) the agency meets the criteria for distribution as set forth in subsection B and (b) the agency has a clear and reasonable law-enforcement need for the forfeited property.

If all eligible participating agencies cannot agree on the distribution of the property, distribution shall be determined by the Criminal Justice Services Board as in subsection B, taking into consideration the clear and reasonable law-enforcement needs for the property which the agencies may have. In order to equitably distribute tangible personal property, the Criminal Justice Services Board may require the agency receiving the property to reimburse the Department in cash for the difference between the fair market value of the forfeited property and the agency's equitable share as determined by the Criminal Justice Services Board.

If a seizing agency has received property for its use pursuant to this section, when the agency disposes of the property (1) by sale, the proceeds shall be distributed as set forth in this section; or (2) by destruction pursuant to a court order, the agency shall do so in a manner consistent with this section.

D. All forfeited property, including its proceeds or cash equivalent, received by a participating state or local agency pursuant to this section shall be used to promote law enforcement but shall not be used to supplant existing programs or funds. The Board shall promulgate regulations establishing an audit procedure to ensure compliance with this section.

E. On or after July 1, 2012, but before July 1, 2014, local seizing agencies may contribute cash funds and proceeds from forfeited property to the Virginia Public Safety Foundation to support the construction of the Commonwealth Public Safety Memorial. Any funds contributed by seizing agencies shall be contributed only after an internal analysis to determine that such contributions will not negatively impact law-enforcement training or operations.

F. The Department shall report annually on or before December 31 to the Governor and the General Assembly the amount of all cash, negotiable instruments, and proceeds from sales conducted

pursuant to § 19.2-386.7 or 19.2-386.12 that were forfeited to the Commonwealth, including the amount of all forfeitures distributed to the Literary Fund. Such report shall also detail the amount distributed by the Department to each federal, state, or local agency or office pursuant to this section, and the amount each state or local agency or office received from federal asset forfeiture proceedings. The Department shall ensure that such report is available to the public.

1991, c. 560; 2012, cc. 126, 283, 373, 756; 2016, cc. 203, 423.

Chapter 22.2 - MISCELLANEOUS FORFEITURE PROVISIONS

§ 19.2-386.15. Seizure of property used in connection with or derived from terrorism

A. The following property shall be subject to lawful seizure by any law-enforcement officer charged with enforcing the provisions of Article 2.2 (§ 18.2-46.4 et seq.) of Chapter 4 of Title 18.2: all moneys or other property, real or personal, together with any interest or profits derived from the investment of such money and used in substantial connection with an act of terrorism as defined in § 18.2-46.4.

B. All seizures and forfeitures under this section shall be governed by the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of this title.

2002, cc. 588, 623, § 18.2-46.9; 2004, c. 995.

§ 19.2-386.16. Forfeiture of motor vehicles used in commission of certain crimes

A. Any vehicle knowingly used by the owner thereof or used by another with his knowledge of and during the commission of, or in an attempt to commit, a second or subsequent offense of § 18.2-346, 18.2-347, 18.2-348, 18.2-349, 18.2-355, 18.2-356 or 18.2-357 or of a similar ordinance of any county, city or town or knowingly used for the transportation of any stolen goods, chattels or other property, when the value of such stolen goods, chattels or other property is $200 or more, or any stolen property obtained as a result of a robbery, without regard to the value of the property, shall be forfeited to the Commonwealth. The vehicle shall be seized by any law-enforcement officer arresting the operator of such vehicle for the criminal offense, and delivered to the sheriff of the county or city in which the offense occurred. The officer shall take a receipt therefor.

B. Any vehicle knowingly used by the owner thereof or used by another with his knowledge of and during the commission of, or in an attempt to commit, a misdemeanor violation of subsection D of § 18.2-47 or a felony violation of (i) Article 3 (§ 18.2-47 et seq.) of Chapter 4 of Title 18.2 or (ii) § 18.2-357 where the prostitute is a minor, shall be forfeited to the Commonwealth. The vehicle shall be seized by any law-enforcement officer arresting the operator of such vehicle for the criminal offense, and delivered to the sheriff of the county or city in which the offense occurred. The officer shall take a receipt therefor.

C. Forfeiture of such vehicle shall be enforced as is provided in Chapter 22.1 (§ 19.2-386.1 et seq.).

Code 1950, §§ 18.1-103, 18.1-107.1; 1960, c. 358; 1966, c. 247; 1970, c. 353; 1975, cc. 14, 15, § 18.2-110; 1981, c. 188; 1982, c. 509; 1992, cc. 310, 725; 1993, cc. 609, 866; 2004, c. 995; 2010, c. 710; 2011, cc. 818, 852; 2012, cc. 283, 756.

§ 19.2-386.17. Forfeitures for computer crimes

All moneys and other income, including all proceeds earned but not yet received by a defendant from a third party as a result of the defendant's violations of Article 7.1 (§ 18.2-152.1 et seq.) of Chapter 5 of Title 18.2, and all computer equipment, all computer software, and all personal property used in connection with any violation of such article known by the owner thereof to have been used in violation of such article, shall be subject to lawful seizure by a law-enforcement officer and forfeiture by the Commonwealth in accordance with the procedures set forth in Chapter 22.1 (§ 19.2-386.1 et seq.) of this title, applied mutatis mutandis.

2003, cc. 987, 1016, § 18.2-152.16; 2004, c. 995.

§ 19.2-386.18. Forfeiture of unlawful electronic communication devices

Any unlawful electronic communication device possessed, manufactured or sold in violation of §§ 18.2-190.2, 18.2-190.3 or § 18.2-190.4 may be seized and forfeited to the Commonwealth, and turned over to the circuit court in the city or county in which it was seized and such property shall be disposed of as provided by law.

2002, c. 671, § 18.2-190.7; 2003, c. 354; 2004, c. 995.

§ 19.2-386.19. Seizure of property used in connection with money laundering

The following property shall be subject to lawful seizure by any officer charged with enforcing the provisions of Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of Title 18.2: (i) all money, equipment, motor vehicles, and all other personal and real property of any kind or character used in substantial connection with the laundering of proceeds of some form of activity 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; (ii) all money or other property, real or personal, traceable to the proceeds of some form of activity 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, together with any interest or profits derived from the investment of such proceeds or other property; and (iii) all money, equipment, motor vehicles, and all other personal and real property of any kind or character used to or intended to be used to promote money laundering. Real property shall not be subject to seizure unless the minimum prescribed punishment for the violation is a term of imprisonment of not less than five years. All seizures and forfeitures under this section shall be governed by Chapter 22.1 (§ 19.2-386.1 et seq.), and the procedures specified therein shall apply, mutatis mutandis, to all forfeitures under Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of Title 18.2.

1999, c. 348, § 18.2-246.4; 2003, cc. 541, 549; 2004, c. 995; 2012, cc. 283, 756.

§ 19.2-386.20. Forfeiture of cigarettes sold or attempted to be sold in an unlawful delivery sale

Any cigarettes sold or attempted to be sold in a delivery sale in violation of Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 of Title 18.2 shall be forfeited to the Commonwealth and destroyed. All fixtures, equipment, materials and personal property used in substantial connection with a delivery sale or attempted delivery sale in a knowing and intentional violation of such article shall be subject to seizure and forfeiture according to the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of this title, applied mutatis mutandis.

2004, c. 995.

§ 19.2-386.21. (Effective until July 1, 2018) Forfeiture of counterfeit and contraband cigarettes

Counterfeit cigarettes possessed in violation of § 18.2-246.14 and cigarettes possessed in violation of § 58.1-1017 or 58.1-1017.1 shall be subject to seizure, forfeiture, and destruction or court-ordered assignment for use by a law-enforcement undercover operation by the Virginia Alcoholic Beverage Control Board or any law-enforcement officer of the Commonwealth. However, any undercover operation that makes use of counterfeit cigarettes shall ensure that the counterfeit cigarettes remain under the control and command of law enforcement and shall not be distributed to a member of the general public who is not the subject of a criminal investigation. All fixtures, equipment, materials, and personal property used in substantial connection with (i) the sale or possession of counterfeit cigarettes in a knowing and intentional violation of Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 of Title 18.2 or (ii) the sale or possession of cigarettes in a knowing and intentional violation of § 58.1-1017 or 58.1-1017.1 shall be subject to seizure and forfeiture according to the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.), applied mutatis mutandis.

2004, c. 995; 2013, c. 627; 2014, cc. 422, 458.

§ 19.2-386.21. (Effective July 1, 2018) Forfeiture of counterfeit and contraband cigarettes

Counterfeit cigarettes possessed in violation of § 18.2-246.14 and cigarettes possessed in violation of § 58.1-1017 or 58.1-1017.1 shall be subject to seizure, forfeiture, and destruction or court-ordered assignment for use by a law-enforcement undercover operation by the Virginia Alcoholic Beverage Control Authority or any law-enforcement officer of the Commonwealth. However, any undercover operation that makes use of counterfeit cigarettes shall ensure that the counterfeit cigarettes remain under the control and command of law enforcement and shall not be distributed to a member of the general public who is not the subject of a criminal investigation. All fixtures, equipment, materials, and personal property used in substantial connection with (i) the sale or possession of counterfeit cigarettes in a knowing and intentional violation of Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 of Title 18.2 or (ii) the sale or possession of cigarettes in a knowing and intentional violation of § 58.1-1017 or 58.1-1017.1 shall be subject to seizure and forfeiture

according to the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.), applied mutatis mutandis.

2004, c. 995; 2013, c. 627; 2014, cc. 422, 458; 2015, cc. 38, 730.

§ 19.2-386.22. Seizure of property used in connection with or derived from illegal drug transactions

A. The following property shall be subject to lawful seizure by any officer charged with enforcing the provisions of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2: (i) all money, medical equipment, office equipment, laboratory equipment, motor vehicles, and all other personal and real property of any kind or character, used in substantial connection with (a) the illegal manufacture, sale or distribution of controlled substances or possession with intent to sell or distribute controlled substances in violation of § 18.2-248, (b) the sale or distribution of marijuana or possession with intent to distribute marijuana in violation of subdivisions (a)(2), (a)(3) and (c) of § 18.2-248.1, or (c) a drug-related offense in violation of § 18.2-474.1; (ii) everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of § 18.2-248 or for marijuana in violation of § 18.2-248.1 or for a controlled substance or marijuana in violation of § 18.2-474.1; and (iii) all moneys or other property, real or personal, traceable to such an exchange, together with any interest or profits derived from the investment of such money or other property. Under the provisions of clause (i), real property shall not be subject to lawful seizure unless the minimum prescribed punishment for the violation is a term of not less than five years.

B. All seizures and forfeitures under this section shall be governed by the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.).

Code 1950, § 18.1-346; 1960, c. 358; 1970, c. 650; 1972, c. 799; 1973, c. 171; 1975, cc. 14, 15, § 18.2-249; 1976, c. 132; 1979, c. 435; 1982, c. 462; 1985, c. 569; 1986, cc. 449, 485; 1988, cc. 575, 753; 1989, cc. 638, 690; 1993, c. 825; 1999, c. 269; 2004, c. 995; 2011, cc. 384, 410; 2014, cc. 674, 719.

§ 19.2-386.23. Disposal of seized controlled substances, marijuana, and paraphernalia

A. All controlled substances, imitation controlled substances, marijuana, or paraphernalia, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer or have been seized in connection with violations of Chapter 7 (§ 18.2-247 et seq.) of Title 18.2, shall be forfeited and disposed of as follows:

1. Upon written application by (i) the Department of Forensic Science, (ii) the Department of State Police, or (iii) any police department or sheriff's office in a locality, the court may order the forfeiture of any such substance or paraphernalia to the Department of Forensic Science, the Department of State Police, or to such police department or sheriff's office for research and training purposes and for destruction pursuant to regulations of the United States Department of Justice

Drug Enforcement Administration and of the Board of Pharmacy once these purposes have been fulfilled.

2. In the event no application is made under subdivision 1, the court shall order the destruction of all such substances or paraphernalia, which order shall state the existence and nature of the substance or paraphernalia, the quantity thereof, the location where seized, the person or persons from whom the substance or paraphernalia was seized, if known, and the manner whereby such item shall be destroyed. However, the court may order that paraphernalia identified in subdivision 5 of § 18.2-265.1 not be destroyed and that it be given to a person or entity that makes a showing to the court of sufficient need for the property and an ability to put the property to a lawful and publicly beneficial use. A return under oath, reporting the time, place and manner of destruction shall be made to the court by the officer to whom the order is directed. A copy of the order and affidavit shall be made a part of the record of any criminal prosecution in which the substance or paraphernalia was used as evidence and shall, thereafter, be prima facie evidence of its contents. In the event a law-enforcement agency recovers, seizes, finds, is given or otherwise comes into possession of any such substances or paraphernalia that are not evidence in a trial in the Commonwealth, the chief law-enforcement officer of the agency or his designee may, with the written consent of the appropriate attorney for the Commonwealth, order destruction of same; provided that a statement under oath, reporting a description of the substances and paraphernalia destroyed and the time, place and manner of destruction, is made to the chief law-enforcement officer by the officer to whom the order is directed.

B. No such substance or paraphernalia used or to be used in a criminal prosecution under Chapter 7 (§ 18.2-247 et seq.) of Title 18.2 shall be disposed of as provided by this section until all rights of appeal have been exhausted, except as provided in § 19.2-386.24.

C. The amount of any specific controlled substance, or imitation controlled substance, retained by any law-enforcement agency pursuant to a court order issued under this section shall not exceed five pounds, or 25 pounds in the case of marijuana. Any written application to the court for controlled substances, imitation controlled substances, or marijuana, shall certify that the amount requested shall not result in the requesting agency's exceeding the limits allowed by this subsection.

D. A law-enforcement agency that retains any controlled substance, imitation controlled substance, or marijuana, pursuant to a court order issued under this section shall (i) be required to conduct an inventory of such substance on a monthly basis, which shall include a description and weight of the substance, and (ii) destroy such substance pursuant to subdivision A 1 when no longer needed for research and training purposes. A written report outlining the details of the inventory shall be made to the chief law-enforcement officer of the agency within 10 days of the completion of the inventory, and the agency shall detail the substances that were used for research and training pursuant to a court order in the immediately preceding fiscal year. Destruction of such substance shall be certified to the court along with a statement prepared under oath,

reporting a description of the substance destroyed, and the time, place, and manner of destruction.

Code 1950, § 54-524.101:5; 1973, c. 470; 1974, c. 113; 1975, cc. 14, 15, 607, § 18.2-253; 1979, cc. 435, 646; 1982, c. 462; 1990, c. 825; 1995, c. 578; 2001, c. 195; 2004, c. 995; 2005, cc. 868, 881; 2006, c. 107; 2011, cc. 384, 410; 2014, cc. 99, 254, 674, 686, 719; 2015, c. 429.

§ 19.2-386.24. Destruction of seized controlled substances or marijuana prior to trial

Where seizures of controlled substances or marijuana are made in excess of 10 pounds in connection with any prosecution or investigation under Chapter 7 (§ 18.2-247 et seq.) of Title 18.2, the appropriate law-enforcement agency may retain 10 pounds of the substance randomly selected from the seized substance for representative purposes as evidence and destroy the remainder of the seized substance.

Before any destruction is carried out under this section, the law-enforcement agency shall cause the material seized to be photographed with identification case numbers or other means of identification and shall prepare a report identifying the seized material. It shall also notify the accused, or other interested party, if known, or his attorney, at least five days in advance that the photography will take place and that they may be present. Prior to any destruction under this section, the law-enforcement agency shall also notify the accused or other interested party, if known, and his attorney at least seven days prior to the destruction of the time and place the destruction will occur. Any notice required under the provisions of this section shall be by first-class mail to the last known address of the person required to be notified. In addition to the substance retained for representative purposes as evidence, all photographs and records made under this section and properly identified shall be admissible in any court proceeding for any purposes for which the seized substance itself would have been admissible.

1979, c. 646, § 18.2-253.1; 1980, c. 179; 2004, c. 995; 2011, cc. 384, 410; 2014, cc. 674, 719.

§ 19.2-386.25. Judge may order law-enforcement agency to maintain custody of controlled substances, etc

Upon request of the clerk of any court, a judge of the court may order a law-enforcement agency to take into its custody or to maintain custody of substantial quantities of any controlled substances, imitation controlled substances, chemicals, marijuana, or paraphernalia used or to be used in a criminal prosecution under Chapter 7 (§ 18.2-247 et seq.) of Title 18.2. The court in its order may make provision for ensuring integrity of these items until further order of the court.

1985, c. 377, § 18.2-253.2; 2004, c. 995; 2011, cc. 384, 410; 2014, cc. 674, 719.

§ 19.2-386.26. Seizure and forfeiture of drug paraphernalia

All drug paraphernalia as defined in Article 1.1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 shall be forfeited to the Commonwealth and may be seized and disposed of in the same manner as provided in § 19.2-386.23, subject to the rights of an innocent lienor, to be recognized as under § 19.2-386.8.

1981, c. 598, § 18.2-265.4; 1993, c. 866; 2004, c. 995; 2012, cc. 283, 756.

§ 19.2-386.27. Forfeiture of firearms carried in violation of Article 6.1 (§ 18.2-307.1 et seq.)
Any weapon used in the commission of a violation of Article 6.1 (§ 18.2-307.1 et seq.) of Chapter 7 of Title 18.2 shall be forfeited to the Commonwealth and may be seized by an officer as forfeited, and such as may be needed for police officers, conservators of the peace, and the Department of Forensic Science shall be devoted to that purpose, subject to any registration requirements of federal law, and the remainder shall be disposed of as provided in § 19.2-386.29.

2004, c. 995; 2005, cc. 868, 881; 2013, c. 746.

§ 19.2-386.28. Forfeiture of weapons that are concealed, possessed, transported or carried in violation of law
Any firearm, stun weapon as defined by § 18.2-308.1, or any weapon concealed, possessed, transported or carried in violation of § 18.2-283.1, 18.2-287.01, 18.2-287.4, 18.2-308.1:2, 18.2-308.1:3, 18.2-308.1:4, 18.2-308.2, 18.2-308.2:01, 18.2-308.2:1, 18.2-308.4, 18.2-308.5, 18.2-308.7, or 18.2-308.8 shall be forfeited to the Commonwealth and disposed of as provided in § 19.2-386.29.

2004, c. 995; 2007, c. 519; 2013, c. 746.

§ 19.2-386.29. Forfeiture of certain weapons used in commission of criminal offense
All pistols, shotguns, rifles, dirks, bowie knives, switchblade knives, ballistic knives, razors, slingshots, brass or metal knucks, blackjacks, stun weapons, and other weapons used by any person in the commission of a criminal offense, shall, upon conviction of such person, be forfeited to the Commonwealth by order of the court trying the case. The court shall dispose of such weapons as it deems proper by entry of an order of record. Such disposition may include the destruction of the weapons or, subject to any registration requirements of federal law, sale of the firearms to a licensed dealer in such firearms in accordance with the provisions of Chapter 22.1 (§ 19.2-386.1 et seq.) regarding sale of property forfeited to the Commonwealth.

The court may authorize the seizing law-enforcement agency to use the weapon for a period of time as specified in the order. When the seizing agency ceases to so use the weapon, it shall be disposed of as otherwise provided in this section.

However, upon petition to the court and notice to the attorney for the Commonwealth, the court, upon good cause shown, shall return any such weapon to its lawful owner after conclusion of all relevant proceedings if such owner (i) did not know and had no reason to know of the conduct giving rise to the forfeiture and (ii) is not otherwise prohibited by law from possessing the weapon. The owner shall acknowledge in a sworn affidavit to be filed with the record in the case or cases that he has retaken possession of the weapon involved.

Code 1950, § 18.1-270; 1960, c. 358; 1975, cc. 14, 15, § 18.2-310; 1986, cc. 445, 641; 1988, c. 359; 1990, cc. 556, 944; 2004, c. 995; 2007, c. 519; 2012, cc. 283, 756.

§ 19.2-386.30. Forfeiture of money, gambling devices, etc., seized from illegal gambling enterprise; innocent owners or lienors

All money, gambling devices, office equipment and other personal property used in connection with an illegal gambling enterprise or activity, and all money, stakes and things of value received or proposed to be received by a winner in any illegal gambling transaction, which are lawfully seized by any law-enforcement officer or which shall lawfully come into his custody, shall be forfeited to the Commonwealth in accordance with the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.).

Code 1950, §§ 18.1-321, 18.1-323, 18.1-333, 18.1-341; 1960, c. 358; 1975, cc. 14, 15, 576, § 18.2-336; 2004, c. 995; 2012, cc. 283, 756.

§ 19.2-386.31. Seizure and forfeiture of property used in connection with the exploitation and solicitation of children

All audio and visual equipment, electronic equipment, devices and other personal property used in connection with the possession, production, distribution, publication, sale, possession with intent to distribute or making of child pornography that constitutes a violation of § 18.2-374.1 or 18.2-374.1:1, or in connection with the solicitation of a person less than 18 years of age that constitutes a violation of § 18.2-374.3 shall be subject to lawful seizure by a law-enforcement officer and shall be subject to forfeiture to the Commonwealth pursuant to Chapter 22.1 (§ 19.2-386.1 et seq.). The Commonwealth shall file an information and notice of seizure in accordance with the procedures in Chapter 22.1 (§ 19.2-386.1 et seq.); however, any forfeiture action shall be stayed until conviction of the person whose property is subject to forfeiture. Upon his conviction, the court may dispose of the issue of forfeiture or may continue the civil case allowing the defendant time to answer, at the court's discretion.

1986, c. 596, § 18.2-374.2; 1999, c. 659; 2004, c. 995; 2007, cc. 134, 386; 2012, cc. 283, 756.

§ 19.2-386.32. Seizure and forfeiture of property used in connection with the abduction of children

All moneys and other property, real and personal, owned by a person and used to further the abduction of a child in violation of § 18.2-47, 18.2-48, or 18.2-48.1 are subject to lawful seizure by a law-enforcement officer and are subject to forfeiture to the Commonwealth pursuant to Chapter 22.1 (§ 19.2-386.1 et seq.) by order of the court in which a conviction under § 18.2-47, 18.2-48, or 18.2-48.1 is obtained.

2011, cc. 818, 852; 2012, cc. 283, 756.

§ 19.2-386.33. Forfeiture of money, etc, derived from violation of §§ 2.2-3103 through 2.2-3112

In addition to any other fine or penalty provided by law, any money or other thing of value derived by an officer or employee from a violation of §§ 2.2-3103 through 2.2-3112 shall be forfeited, in accordance with the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.). If the

thing of value received by the officer or employee in violation of §§ 2.2-3103 through 2.2-3112 increases in value between the time of the violation and the time of discovery of the violation, the greater value shall determine the amount of forfeiture.

2012, cc. 283, 756.

§ 19.2-386.34. Forfeiture of vehicle used in a felony violation of § 18.2-266

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 upon a felony violation of § 18.2-266, the vehicle may be forfeited to the Commonwealth pursuant to the procedures set forth in Chapter 22.1 (§ 19.2-386.1 et seq.). Any seizure shall be stayed until conviction and the exhaustion of all appeals at which time, if the information has been filed, the Commonwealth shall give notice of seizure to all appropriate parties pursuant to § 19.2-386.3.

An immediate family member of the owner of any motor vehicle for which an information has been filed under this section who was not the driver at the time of the violation may petition the court in which such information was filed for the release of the motor vehicle. If the immediate family member proves by a preponderance of the evidence that his immediate family has only one motor vehicle and will suffer a substantial hardship if that motor vehicle is seized and forfeited, the court, in its discretion, may release the vehicle.

In the event the vehicle was sold to a bona fide purchaser subsequent to the arrest but prior to seizure in order to avoid seizure and forfeiture, the Commonwealth shall have a right of action against the seller for the proceeds of the sale.

2012, cc. 283, 756.

§ 19.2-386.35. Seizure of property used in connection with certain offenses

All money, equipment, motor vehicles, and other personal and real property of any kind or character together with any interest or profits derived from the investment of such proceeds or other property that (i) was used in connection with the commission of, or in an attempt to commit, a violation of subsection B of § 18.2-47, § 18.2-48 or 18.2-59, subsection B of § 18.2-346, or § 18.2-347, 18.2-348, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 18.2-357.1, 40.1-29, 40.1-100.2, or 40.1-103; (ii) is traceable to the proceeds of some form of activity that violates subsection B of § 18.2-47, § 18.2-48 or 18.2-59, subsection B of § 18.2-346, or § 18.2-347, 18.2-348, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 40.1-29, 40.1-100.2, or 40.1-103; or (iii) was used to or intended to be used to promote some form of activity that violates subsection B of § 18.2-47, § 18.2-48 or 18.2-59, subsection B of § 18.2-346, or § 18.2-347, 18.2-348, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 40.1-29, 40.1-100.2, or 40.1-103 is subject to lawful seizure by a law-enforcement officer and subject to forfeiture to the Commonwealth pursuant to Chapter 22.1 (§ 19.2-386.1 et seq.). Any forfeiture action under this section shall be stayed until conviction, and property eligible for forfeiture pursuant to this section shall be forfeited only upon the entry of a final judgment of con-

viction for an offense listed in this section; if no such judgment is entered, all property seized pursuant to this section shall be released from seizure.

Real property shall not be subject to seizure unless the minimum prescribed punishment for the violation is a term of imprisonment of not less than five years.

All seizures and forfeitures under this section shall be governed by Chapter 22.1 (§ 19.2-386.1 et seq.), and the procedures specified therein shall apply, mutatis mutandis, to all forfeitures under this section.

2014, c. 658; 2015, cc. 690, 691.

Chapter 23 - CENTRAL CRIMINAL RECORDS EXCHANGE

§ 19.2-387. Exchange to operate as a division of Department of State Police; authority of Superintendent of State Police

A. The Central Criminal Records Exchange shall operate as a separate division within the Department of State Police and shall be the sole criminal record-keeping agency of the Commonwealth, except for (i) the Department of Juvenile Justice pursuant to Chapter 10 (§ 16.1-222 et seq.) of Title 16.1, (ii) the Department of Motor Vehicles, (iii) for purposes of the DNA data bank, the Department of Forensic Science and (iv) for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3 and 5 of § 53.1-136, the Virginia Parole Board.

B. The Superintendent of State Police is hereby authorized to employ such personnel, establish such offices, and acquire such equipment as shall be necessary to carry out the purposes of this chapter and is also authorized to enter into agreements with other state agencies for services to be performed for it by employees of such other agencies.

Code 1950, § 19.1-19.1:1; 1970, c. 101; 1975, c. 495; 1988, c. 541; 1990, c. 669; 1993, c. 313; 2001, cc. 203, 215; 2003, c. 431; 2005, cc. 868, 881.

§ 19.2-387.1. Protective Order Registry; maintenance; access

A. The Department of State Police shall keep and maintain a computerized Protective Order Registry. The purpose of the Registry shall be to assist the efforts of law-enforcement agencies to protect their communities and their citizens. The Department of State Police shall make Registry information available, upon request, to criminal justice agencies, including local law-enforcement agencies, through the Virginia Criminal Information Network (VCIN). Registry information provided under this section shall be used only for the purposes of the administration of criminal justice.

B. No liability shall be imposed upon any law-enforcement official who disseminates information or fails to disseminate information in good faith compliance with the requirements of this section, but this provision shall not be construed to grant immunity for gross negligence or willful misconduct.

2002, cc. 810, 818.

§ 19.2-388. Duties and authority of Exchange

A. It shall be the duty of the Central Criminal Records Exchange to receive, classify and file criminal history record information as defined in § 9.1-101 and other records required to be reported to it by §§ 16.1-299 and 19.2-390. The Exchange is authorized to prepare and furnish to all state and local law-enforcement officials and agencies; to clerks of circuit courts, general district courts, and juvenile and domestic relations district courts; and to corrections and penal officials, forms which shall be used for the making of such reports.

B. Juvenile records received pursuant to § 16.1-299 shall be maintained separately from adult records.

Code 1950, § 19.1-19.2; 1966, c. 669; 1968, c. 537; 1970, c. 118; 1975, c. 495; 1976, c. 771; 1982, c. 33; 1993, cc. 468, 926; 1996, cc. 755, 914.

§ 19.2-389. Dissemination of criminal history record information

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For purposes of this subdivision, criminal history record information includes information sent to the Central Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time or part-time employee of the State Police, a police department or sheriff's office that 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 for the purposes of the administration of criminal justice;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement

which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth, public transportation companies owned, operated or controlled by any political subdivision, and any public service corporation that operates a public transit system owned by a local government for the conduct of investigations of applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a position of employment whenever, in the interest of public welfare or safety and as authorized in the Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment under consideration;

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of that individual's household, with whom the agency is considering placing a child or from whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that the data shall not be further disseminated to any party other than a federal or state authority or court as may be required to comply with an express requirement of law;

9. To the extent permitted by federal law or regulation, public service companies as defined in § 56-1, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;

10. The appropriate authority for purposes of granting citizenship and for purposes of international travel, including, but not limited to, issuing visas and passports;

11. A person requesting a copy of his own criminal history record information as defined in § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day homes or homes approved by family day systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719, 63.2-1720, 63.2-1720.1, 63.2-1721, and 63.2-1721.1, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a report of arrest has been made pursuant to § 19.2-83.1;

14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to the limitations set out in subsection E;

16. Licensed assisted living facilities and licensed adult day care centers for the conduct of investigations of applicants for compensated employment in licensed assisted living facilities and licensed adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

17. (Effective until July 1, 2018) The Alcoholic Beverage Control Board for the conduct of investigations as set forth in § 4.1-103.1;

17. (Effective July 1, 2018) The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set forth in § 4.1-103.1;

18. The State Board of Elections and authorized officers and employees thereof and general registrars appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to voter registration, limited to any record of felony convictions;

19. The Commissioner of Behavioral Health and Developmental Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2, 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Behavioral Health and Developmental Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;

22. The Department of Behavioral Health and Developmental Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;

23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;

24. Public and nonprofit private colleges and universities for the purpose of screening individuals who are offered or accept employment;

25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4, by a public institution of higher education pursuant to § 23-9.2:10, or by a private nonprofit institution of higher education, for the purpose of assessing or intervening with an individual whose behavior may present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal history record information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose that such disclosure was made to the threat assessment team;

25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4, by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of higher education, for the purpose of assessing or intervening with an individual

whose behavior may present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal history record information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose that such disclosure was made to the threat assessment team;

26. Executive directors of community services boards or the personnel director serving the community services board for the purpose of determining an individual's fitness for employment, approval as a sponsored residential service provider, or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver pursuant to §§ 37.2-506 and 37.2-607;

27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of determining an individual's fitness for employment, approval as a sponsored residential service provider, or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver pursuant to §§ 37.2-506 and 37.2-607;

28. The Commissioner of Social Services for the purpose of locating persons who owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided that only the name, address, demographics and social security number of the data subject shall be released;

29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the purpose of determining if any applicant who accepts employment in any direct care position or requests approval as a sponsored residential service provider or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver has been convicted of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime;

32. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to § 2.2-1201.1. Dissemination of criminal history record information to the agencies shall be limited to those positions generally described as directly responsible for the health, safety and welfare of the general populace or protection of critical infrastructures;

33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.);

34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design, construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary companies, for the conduct of investigations of applications for employment or for access to facilities, by contractors, leased laborers, and other visitors;

35. Any employer of individuals whose employment requires that they enter the homes of others, for the purpose of screening individuals who apply for, are offered, or have accepted such employment;

36. Public agencies when and as required by federal or state law to investigate (i) applicants as providers of adult foster care and home-based services or (ii) any individual with whom the agency is considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination, subject to limitations set out in subsection G;

37. The Department of Medical Assistance Services, or its designee, for the purpose of screening individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or have accepted a position related to the provision of transportation services to enrollees in the Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program administered by the Department of Medical Assistance Services;

38. The State Corporation Commission for the purpose of investigating individuals who are current or proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter 16 (§ 6.2-1600 et seq.) or Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on information obtained from the Central Criminal Records Exchange pursuant to Chapter 16 or 19 of Title 6.2, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant or its designee;

39. The Department of Professional and Occupational Regulation for the purpose of investigating individuals for initial licensure pursuant to § 54.1-2106.1;

40. The Department for Aging and Rehabilitative Services and the Department for the Blind and Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

42. The State Treasurer for the purpose of determining whether a person receiving compensation for wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

43. The Department of Social Services and directors of local departments of social services for the purpose of screening individuals seeking to enter into a contract with the Department of Social Services or a local department of social services for the provision of child care services for which child care subsidy payments may be provided;

44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of a juvenile's household when completing a predispositional or postdispositional report required by § 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233; and

45. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been

made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

F. Criminal history information provided to licensed assisted living facilities and licensed adult day care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.2-1720.

G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.2-1719.

H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request, provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

Code 1950, § 19.1-19.2; 1966, c. 669; 1968, c. 537; 1970, c. 118; 1975, c. 495; 1976, c. 771; 1977, c. 626; 1978, c. 350; 1979, c. 480; 1981, c. 207; 1985, c. 360; 1987, cc. 130, 131; 1988, c. 851; 1989, c. 544; 1990, c. 766; 1991, c. 342; 1992, cc. 422, 641, 718, 746, 791, 844; 1993, cc. 48, 313, 348; 1994, cc. 34, 670, 700, 830; 1995, cc. 409, 645, 731, 781, 809; 1996, cc. 428, 432, 747, 881, 927, 944; 1997, cc. 169, 177, 606, 691, 721, 743, 796, 895; 1998, cc. 113, 405, 445, 882; 1999, cc. 383, 685; 2001, cc. 552, 582; 2002, cc. 370, 587, 606; 2003, c. 731; 2005, cc. 149, 914, 928; 2006, cc. 257, 277, 644; 2007, cc. 12, 361, 495, 572; 2008, cc. 387, 689, 863; 2009, cc. 667, 813, 840; 2010, cc. 189, 340, 406, 456, 524, 563, 862; 2011, cc. 432, 449; 2012, cc. 40, 189, 386, 476, 507, 803, 835; 2013, cc. 165, 176, 261, 407, 491, 582; 2014, cc. 225, 454; 2015, cc. 38, 343, 540, 730, 758, 770; 2016, cc. 454, 554, 574.

§ 19.2-389.1. (Effective until October 1, 2016) Dissemination of juvenile record information

Record information maintained in the Central Criminal Records Exchange pursuant to the provisions of § 16.1-299 shall be disseminated only (i) to make the determination as provided in §§ 18.2-308.2 and 18.2-308.2:2 of eligibility to possess or purchase a firearm; (ii) to aid in the preparation of a pretrial investigation report prepared by a local pretrial services agency established

pursuant to Article 5 (§ 19.2-152.2 et seq.) of Chapter 9, a presentence or post-sentence investigation report pursuant to § 19.2-264.5 or 19.2-299 or in the preparation of the discretionary sentencing guidelines worksheets pursuant to subsection C of § 19.2-298.01; (iii) to aid local community-based probation services agencies established pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) with investigating or serving adult local-responsible offenders and all court service units serving juvenile delinquent offenders; (iv) for fingerprint comparison utilizing the fingerprints maintained in the Automated Fingerprint Information System (AFIS) computer; (v) to attorneys for the Commonwealth to secure information incidental to sentencing and to attorneys for the Commonwealth and probation officers to prepare the discretionary sentencing guidelines worksheets pursuant to subsection C of § 19.2-298.01; (vi) to any full-time or part-time employee of the State Police, a police department or sheriff's office that 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, for purposes of the administration of criminal justice as defined in § 9.1-101; (vii) to the Department of Forensic Science to verify its authority to maintain the juvenile's sample in the DNA data bank pursuant to § 16.1-299.1; (viii) to the Office of the Attorney General, for all criminal justice activities otherwise permitted and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.); (ix) to the Virginia Criminal Sentencing Commission for research purposes; (x) to members of a threat assessment team established by a school board pursuant to § 22.1-79.4, by a public institution of higher education pursuant to § 23-9.2:10, or by a private nonprofit institution of higher education, to aid in the assessment or intervention with individuals whose behavior may present a threat to safety; however, no member of a threat assessment team shall redisclose any juvenile record information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose that such disclosure was made to the threat assessment team; and (xi) to any full-time or part-time employee of the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof for the purpose of screening any person for full-time or part-time employment with the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof.

1993, cc. 468, 926; 1996, cc. 755, 870, 914; 2002, c. 701; 2003, cc. 107, 432; 2005, cc. 868, 881, 914; 2006, c. 502; 2007, c. 133; 2010, cc. 456, 524; 2011, c. 622; 2012, c. 386; 2016, c. 554.

§ 19.2-389.1. (Effective October 1, 2016) Dissemination of juvenile record information

Record information maintained in the Central Criminal Records Exchange pursuant to the provisions of § 16.1-299 shall be disseminated only (i) to make the determination as provided in §§ 18.2-308.2 and 18.2-308.2:2 of eligibility to possess or purchase a firearm; (ii) to aid in the preparation of a pretrial investigation report prepared by a local pretrial services agency established pursuant to Article 5 (§ 19.2-152.2 et seq.) of Chapter 9, a presentence or post-sentence

investigation report pursuant to § 19.2-264.5 or 19.2-299 or in the preparation of the discretionary sentencing guidelines worksheets pursuant to subsection C of § 19.2-298.01; (iii) to aid local community-based probation services agencies established pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) with investigating or serving adult local-responsible offenders and all court service units serving juvenile delinquent offenders; (iv) for fingerprint comparison utilizing the fingerprints maintained in the Automated Fingerprint Information System (AFIS) computer; (v) to attorneys for the Commonwealth to secure information incidental to sentencing and to attorneys for the Commonwealth and probation officers to prepare the discretionary sentencing guidelines worksheets pursuant to subsection C of § 19.2-298.01; (vi) to any full-time or part-time employee of the State Police, a police department or sheriff's office that 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, for purposes of the administration of criminal justice as defined in § 9.1-101; (vii) to the Department of Forensic Science to verify its authority to maintain the juvenile's sample in the DNA data bank pursuant to § 16.1-299.1; (viii) to the Office of the Attorney General, for all criminal justice activities otherwise permitted and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.); (ix) to the Virginia Criminal Sentencing Commission for research purposes; (x) to members of a threat assessment team established by a school board pursuant to § 22.1-79.4, by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of higher education, to aid in the assessment or intervention with individuals whose behavior may present a threat to safety; however, no member of a threat assessment team shall redisclose any juvenile record information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose that such disclosure was made to the threat assessment team; and (xi) to any full-time or part-time employee of the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof for the purpose of screening any person for full-time or part-time employment with the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof.

1993, cc. 468, 926; 1996, cc. 755, 870, 914; 2002, c. 701; 2003, cc. 107, 432; 2005, cc. 868, 881, 914; 2006, c. 502; 2007, c. 133; 2010, cc. 456, 524; 2011, c. 622; 2012, c. 386; 2016, c. 554.

§ 19.2-389.2. Background checks of applicants of the Metropolitan Washington Airports Authority

The police department of the Metropolitan Washington Airports Authority as established in Chapter 10 (§ 5.1-152 et seq.) of Title 5.1 may require an applicant, upon conditional offer of employment with the Authority, to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal

Records Exchange and the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall make a report to the chief of the police department of the Authority or his designee, provided the designee is an employee of the police department of the Authority. In determining whether a criminal conviction directly relates to a position, the Authority shall consider the following criteria: (i) the nature and seriousness of the crime; (ii) the relationship of the crime to the work to be performed in the position applied for; (iii) the extent to which the position applied for might offer an opportunity to engage in further criminal activity of the same type as that in which the applicant had been involved; (iv) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the position being sought; (v) the extent and nature of the applicant's past criminal activity; (vi) the age of the applicant at the time of the commission of the crime; (vii) the amount of time that has elapsed since the applicant's last involvement in the commission of a crime; (viii) the conduct and work activity of the applicant prior to and following the criminal activity; and (ix) evidence of the applicant's rehabilitation or rehabilitative effort while incarcerated or following release.

If an applicant is denied employment because of information appearing in his criminal history record, the Authority shall notify the applicant that information obtained from the Central Criminal Records Exchange contributed to such denial. The criminal history record information obtained pursuant to this section shall be used solely to determine an applicant's eligibility for employment by the Authority and access to restricted areas of Ronald Reagan Washington National Airport and Washington Dulles International Airport in compliance with 49 U.S.C. § 44936 and shall otherwise be confidential.

2014, c. 57.

§ 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace, clerks of court, Secretary of the Commonwealth and Corrections officials to State Police; material submitted by other agencies

A. 1. Every state official or agency having the power to arrest, the sheriffs of counties, the police officials of cities and towns, and any other local law-enforcement officer or conservator of the peace having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange, on forms provided by it, of any arrest, including those arrests involving the taking into custody of, or service of process upon, any person on charges resulting from an indictment, presentment or information, the arrest on capias or warrant for failure to appear, and the service of a warrant for another jurisdiction, on any of the following charges:

a. Treason;

b. Any felony;

c. Any offense punishable as a misdemeanor under Title 54.1; or

d. Any misdemeanor punishable by confinement in jail (i) under Title 18.2 or 19.2, except an arrest for a violation of § 18.2-119, Article 2 (§ 18.2-415 et seq.) of Chapter 9 of Title 18.2, or any similar ordinance of any county, city or town, (ii) under § 20-61, or (iii) under § 16.1-253.2.

The reports shall contain such information as is required by the Exchange and shall be accompanied by fingerprints of the individual arrested. Effective January 1, 2006, the corresponding photograph of the individual arrested shall accompany the report. Fingerprint cards prepared by a law-enforcement agency for inclusion in a national criminal justice file shall be forwarded to the Exchange for transmittal to the appropriate bureau. Nothing in this section shall preclude each local law-enforcement agency from maintaining its own separate photographic database. Fingerprints and photographs required to be taken pursuant to this subsection or subdivision A 3c of § 19.2-123 may be taken at the facility where the magistrate is located, including a regional jail, even if the accused is not committed to jail.

2. For persons arrested and released on summonses in accordance with § 19.2-74, such report shall not be required until (i) a conviction is entered and no appeal is noted or if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; (ii) the court dismisses the proceeding pursuant to § 18.2-251; or (iii) an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered. Upon such conviction or acquittal, the court shall remand the individual to the custody of the office of the chief law-enforcement officer of the county or city. It shall be the duty of the chief law-enforcement officer, or his designee who may be the arresting officer, to ensure that such report is completed after a determination of guilt or acquittal by reason of insanity. The court shall require the officer to complete the report immediately following the person's conviction or acquittal, and the individual shall be discharged from custody forthwith, unless the court has imposed a jail sentence to be served by him or ordered him committed to the custody of the Commissioner of Behavioral Health and Developmental Services.

B. Within 72 hours following the receipt of (i) a warrant or capias for the arrest of any person on a charge of a felony or (ii) a Governor's warrant of arrest of a person issued pursuant to § 19.2-92, the law-enforcement agency which received the warrant shall enter the person's name and other appropriate information required by the Department of State Police into the "information systems" known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the National Crime Information Center (NCIC), maintained by the Federal Bureau of Investigation. The report shall include the person's name, date of birth, social security number and such other known information which the State Police or Federal Bureau of Investigation may require. Where feasible and practical, the magistrate or court issuing the warrant or capias may transfer information electronically into VCIN. When the information is electronically transferred to VCIN, the court or magistrate shall forthwith forward the warrant or capias to the local police department or sheriff's office. When criminal process has been ordered destroyed pursuant to § 19.2-76.1, the law-enforce-

ment agency destroying such process shall ensure the removal of any information relating to the destroyed criminal process from the VCIN and NCIC.

B1. Within 72 hours following the receipt of a written statement issued by a parole officer pursuant to § 53.1-149 or 53.1-162 authorizing the arrest of a person who has violated the provisions of his post-release supervision or probation, the law-enforcement agency that received the written statement shall enter, or cause to be entered, the person's name and other appropriate information required by the Department of State Police into the "information systems" known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52.

C. The clerk of each circuit court and district court shall make an electronic report to the Central Criminal Records Exchange of (i) any dismissal, indefinite postponement or continuance, charge still pending due to mental incompetency or incapacity, nolle prosequi, acquittal, or conviction of, including any sentence imposed, or failure of a grand jury to return a true bill as to, any person charged with an offense listed in subsection A, including any action which may have resulted from an indictment, presentment or information, and (ii) any adjudication of delinquency based upon an act which, if committed by an adult, would require fingerprints to be filed pursuant to subsection A. In the case of offenses not required to be reported to the Exchange by subsection A, the reports of any of the foregoing dispositions shall be filed by the law-enforcement agency making the arrest with the arrest record required to be maintained by § 15.2-1722. Upon conviction of any person, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, whether sentenced as adults or juveniles, for an offense for which registration is required as defined in § 9.1-902, the clerk shall within seven days of sentencing submit a report to the Sex Offender and Crimes Against Minors Registry. The report to the Registry shall include the name of the person convicted and all aliases which he is known to have used, the date and locality of the conviction for which registration is required, his date of birth, social security number, last known address, and specific reference to the offense for which he was convicted. No report of conviction or adjudication in a district court shall be filed unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show that any conviction or adjudication has been nullified in any manner, he shall also make a report of that fact to the Exchange and, if appropriate, to the Registry. In addition, each clerk of a circuit court, upon receipt of certification thereof from the Supreme Court, shall report to the Exchange or the Registry, or to the law-enforcement agency making the arrest in the case of offenses not required to be reported to the Exchange, on forms provided by the Exchange or Registry, as the case may be, any reversal or other amendment to a prior sentence or disposition previously reported. When criminal process is ordered destroyed pursuant to § 19.2-76.1, the clerk shall report such action to the law-enforcement agency that entered the warrant or capias into the VCIN.

D. In addition to those offenses enumerated in subsection A of this section, the Central Criminal Records Exchange may receive, classify and file any other fingerprints, photographs, and records of

arrest or confinement submitted to it by any law-enforcement agency or any correctional institution.

E. Corrections officials, sheriffs, and jail superintendents of regional jails, responsible for maintaining correctional status information, as required by the regulations of the Department of Criminal Justice Services, with respect to individuals about whom reports have been made under the provisions of this chapter shall make reports of changes in correctional status information to the Central Criminal Records Exchange. The reports to the Exchange shall include any commitment to or release or escape from a state or local correctional facility, including commitment to or release from a parole or probation agency.

F. Any pardon, reprieve or executive commutation of sentence by the Governor shall be reported to the Exchange by the office of the Secretary of the Commonwealth.

G. Officials responsible for reporting disposition of charges, and correctional changes of status of individuals under this section, including those reports made to the Registry, shall adopt procedures reasonably designed at a minimum (i) to ensure that such reports are accurately made as soon as feasible by the most expeditious means and in no instance later than 30 days after occurrence of the disposition or correctional change of status and (ii) to report promptly any correction, deletion, or revision of the information.

H. Upon receiving a correction, deletion, or revision of information, the Central Criminal Records Exchange shall notify all criminal justice agencies known to have previously received the information.

As used in this section:

"Chief law-enforcement officer" means the chief of police of cities and towns and sheriffs of counties, unless a political subdivision has otherwise designated its chief law-enforcement officer by appropriate resolution or ordinance, in which case the local designation shall be controlling.

"Electronic report" means a report transmitted to, or otherwise forwarded to, the Central Criminal Records Exchange in an electronic format approved by the Exchange. The report shall contain the name of the person convicted and all aliases which he is known to have used, the date and locality of the conviction, his date of birth, social security number, last known address, and specific reference to the offense including the Virginia Code section and any subsection, the Virginia crime code for the offense, and the offense tracking number for the offense for which he was convicted.

Code 1950, § 19.1-19.3; 1966, c. 669; 1968, c. 724; 1970, c. 191; 1971, Ex. Sess., c. 107; 1974, c. 575; 1975, cc. 495, 584; 1976, cc. 336, 572, 771; 1978, cc. 467, 825; 1979, c. 378; 1981, c. 529; 1982, cc. 33, 535; 1990, cc. 100, 692; 1992, c. 391; 1993, cc. 448, 468, 926; 1994, cc. 362, 428, 432; 1996, cc. 429, 755, 806, 914; 1997, cc. 27, 509, 747, 801; 2001, cc. 516, 536, 565; 2003, cc. 27, 584, 727; 2004, cc. 284, 406; 2005, cc. 187, 229; 2008, cc. 73, 246; 2009, cc. 249, 813, 840; 2010, c. 273; 2013, c. 614.

§ 19.2-390.01. Use of Virginia crime code references required

If any criminal warrant, indictment, information, presentment, petition, summons, charging document issued by a magistrate, or dispositional document from a criminal trial, involves a jailable offense, it shall include the Virginia crime code references for the particular offense or offenses covered. When Virginia crime codes are provided on charging and dispositional documents, the Virginia crime codes shall be recorded and stored for adult offenders in: criminal history computer systems maintained by the State Police; court case management computer systems maintained by the Supreme Court of Virginia; probation and parole case management computer systems maintained by the Department of Corrections and the Virginia Parole Board; pretrial and community-based probation case management computer systems maintained by the Department of Criminal Justice Services; and jail management computer systems maintained by the State Compensation Board. The Department of Juvenile Justice shall record and store Virginia crime codes for particular offenses related to juveniles in case management computer systems.

Virginia crime codes shall only be used to facilitate administration and research, and shall not have any legal standing as they relate to a particular offense or offenses.

2003, c. 148; 2007, c. 133.

§ 19.2-390.02. Policies and procedures for law enforcement to conduct in-person and photo lineups

The Department of State Police and each local police department and sheriff's office shall establish a written policy and procedure for conducting in-person and photographic lineups.

2005, cc. 187, 229.

§ 19.2-390.1. Sex Offender and Crimes Against Minors Registry; maintenance; access

The Department of State Police shall keep and maintain a Sex Offender and Crimes Against Minors Registry, separate and apart from all other records maintained by it.

The Superintendent of State Police shall organize, equip, and staff, within the Department of State Police, the Sex Offender and Crimes Against Minors Registry. The Superintendent shall appoint and designate personnel as he deems necessary to carry out all duties and assignments related to the Sex Offender and Crimes Against Minors Registry as required by Chapter 9 (§ 9.1-900 et seq.) of Title 9.1.

1994, c. 362; 1996, cc. 418, 542, 880; 1997, cc. 670, 672, 747; 1998, cc. 785, 834; 2000, c. 250; 2003, c. 584; 2006, cc. 857, 914.

§ 19.2-390.2. Repealed

Repealed by Acts 2003, c. 584, cl. 2.

§ 19.2-390.3. Child Pornography Images Registry; maintenance; access

A. The Office of the Attorney General, in cooperation with the Department of State Police, shall keep and maintain a Child Pornography Registry to be located within the State Police, separate

and apart from all other records maintained by either department. The purpose of the Registry shall be to assist the efforts of law-enforcement agencies statewide to protect their communities from repeat child pornographers and to protect children from becoming victims of criminal offenders by aiding in identifying victims and perpetrators. Criminal justice agencies, including law-enforcement agencies, may request of the State Police a search and comparison of child pornography images contained within the Registry with those images obtained by criminal justice agencies during the course of official investigations.

B. The Registry shall include images of sexually explicit visual material in any form including any picture, photograph, drawing, sculpture, motion picture film, digital image or similar visual representation, presented as evidence and used in any conviction for any offense enumerated in §§ 18.2-374.1 and 18.2-374.1:1.

C. Registry information provided under this section shall be used for the purposes of the administration of criminal justice or for the protection of the public in general and children in particular. Use of the information or the images contained therein for purposes not authorized by this section is prohibited and a willful violation of this section with the intent to harass or intimidate another shall be punished as a Class 6 felony.

D. The Virginia Criminal Information Network and any form or document used by the Department of State Police to disseminate information from the Registry shall provide notice that any unauthorized possession, use or dissemination of the information or images is a crime punishable as a Class 6 felony.

2003, cc. 935, 938.

§ 19.2-391. Records to be made available to Exchange by state officials and agencies; duplication of records

Each state official and agency shall make available to the Central Criminal Records Exchange such of their records as are pertinent to its functions and shall cooperate with the Exchange in the development and use of equipment and facilities on a joint basis, where feasible. No state official or agency shall maintain records which are a duplication of the records on deposit in the Central Criminal Records Exchange, except to the extent necessary for efficient internal administration of such agency. Furthermore, the Virginia Parole Board may receive and use electronically disseminated criminal history record information from the Central Criminal Records Exchange as required to make parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136, provided the data is (i) temporarily stored with the Board solely for operational purposes, (ii) purged within thirty days of receipt of updated data by the Board, and (iii) accessed and viewed solely by Parole Board members and authorized staff pursuant to § 9.1-101 and § 9.1-130.

Code 1950, § 19.1-19.4; 1966, c. 669; 1975, c. 495; 1993, c. 313 .

§ 19.2-392. Fingerprints and photographs by police authorities

A. All duly constituted police authorities having the power of arrest may take the fingerprints and photographs of: (i) any person arrested by them and charged with a felony or a misdemeanor an arrest for which is to be reported by them to the Central Criminal Records Exchange, or (ii) any person who pleads guilty or is found guilty after being summoned in accordance with § 19.2-74. Such authorities shall make such records available to the Central Criminal Records Exchange. Such authorities are authorized to provide, on the request of duly appointed law-enforcement officers, copies of any fingerprint records they may have, and to furnish services and technical advice in connection with the taking, classifying and preserving of fingerprints and fingerprint records.

B. Such police authorities may establish and collect a reasonable fee not to exceed $10 for the first card and $5 for each successive card for the taking of fingerprints when voluntarily requested by any person for purposes other than criminal violations.

Code 1950, § 19.1-19.6; 1968, c. 722; 1975, c. 495; 1978, c. 825; 1985, c. 306; 2005, c. 347.

§ 19.2-392.01. Judges may require taking of fingerprints and photographs in certain misdemeanor cases

The judge of a district court may, in his discretion, on motion of the attorney for the Commonwealth, require the duly constituted police officers of the county, city or town within the territorial jurisdiction of the court to take the fingerprints and photograph of any person who has been arrested and charged with a misdemeanor other than a misdemeanor which is a violation of any provision of Title 46.2.

1995, c. 407; 1996, cc. 755, 914.

§ 19.2-392.02. National criminal background checks by businesses and organizations regarding employees or volunteers providing care to children, or the elderly or disabled

A. For purposes of this section:

"Barrier crime" means any offense set forth in § 63.2-1719 or 63.2-1726.

"Barrier crime information" means the following facts concerning a person who has been arrested for, or has been convicted of, a barrier crime, regardless of whether the person was a juvenile or adult at the time of the arrest or conviction: full name, race, sex, date of birth, height, weight, fingerprints, a brief description of the barrier crime or offenses for which the person has been arrested or has been convicted, the disposition of the charge, and any other information that may be useful in identifying persons arrested for or convicted of a barrier crime.

"Care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children or the elderly or disabled.

"Department" means the Department of State Police.

"Employed by" means any person who is employed by, volunteers for, seeks to be employed by, or seeks to volunteer for a qualified entity.

"Identification document" means a document made or issued by or under the authority of the United States government, a state, a political subdivision of a state, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization that, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

"Provider" means a person who (i) is employed by a qualified entity and has, seeks to have, or may have unsupervised access to a child or to an elderly or disabled person to whom the qualified entity provides care; (ii) is a volunteer of a qualified entity and has, seeks to have, or may have unsupervised access to a child to whom the qualified entity provides care; or (iii) owns, operates, or seeks to own or operate a qualified entity.

"Qualified entity" means a business or organization that provides care to children or the elderly or disabled, whether governmental, private, for profit, nonprofit or voluntary, except organizations exempt pursuant to subdivision A 10 of § 63.2-1715.

B. A qualified entity may request the Department of State Police to conduct a national criminal background check on any provider who is employed by such entity. No qualified entity may request a national criminal background check on a provider until such provider has:

1. Been fingerprinted; and

2. Completed and signed a statement, furnished by the entity, that includes (i) his name, address, and date of birth as it appears on a valid identification document; (ii) a disclosure of whether or not the provider has ever been convicted of or is the subject of pending charges for a criminal offense within or outside the Commonwealth, and if the provider has been convicted of a crime, a description of the crime and the particulars of the conviction; (iii) a notice to the provider that the entity may request a background check; (iv) a notice to the provider that he is entitled to obtain a copy of any background check report, to challenge the accuracy and completeness of any information contained in any such report, and to obtain a prompt determination as to the validity of such challenge before a final determination is made by the Department; and (v) a notice to the provider that prior to the completion of the background check the qualified entity may choose to deny the provider unsupervised access to children or the elderly or disabled for whom the qualified entity provides care.

C. Upon receipt of (i) a qualified entity's written request to conduct a background check on a provider, (ii) the provider's fingerprints, and (iii) a completed, signed statement as described in subsection B, the Department shall make a determination whether the provider has been convicted of or is the subject of charges of a barrier crime. To conduct its determination regarding the provider's barrier crime information, the Department shall access the national criminal history background check system, which is maintained by the Federal Bureau of Investigation and is based on fingerprints and other methods of identification, and shall access the Central Criminal Records

Exchange maintained by the Department. If the Department receives a background report lacking disposition data, the Department shall conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data. The Department shall make reasonable efforts to respond to a qualified entity's inquiry within 15 business days.

D. Any background check conducted pursuant to this section for a provider employed by a private entity shall be screened by the Department of State Police. If the provider has been convicted of or is under indictment for a barrier crime, the qualified entity shall be notified that the provider is not qualified to work or volunteer in a position that involves unsupervised access to children or the elderly or disabled.

E. Any background check conducted pursuant to this section for a provider employed by a governmental entity shall be provided to that entity.

F. In the case of a provider who desires to volunteer at a qualified entity and who is subject to a national criminal background check, the Department and the Federal Bureau of Investigation may each charge the provider the lesser of $18 or the actual cost to the entity of the background check conducted with the fingerprints.

G. The failure to request a criminal background check pursuant to subsection B shall not be considered negligence per se in any civil action.

2000, c. 860; 2005, c. 217; 2015, cc. 758, 770.

Chapter 23.1 - EXPUNGEMENT OF CRIMINAL RECORDS

§ 19.2-392.1. Statement of policy

The General Assembly finds that arrest records can be a hindrance to an innocent citizen's ability to obtain employment, an education and to obtain credit. It further finds that the police and court records of those of its citizens who have been absolutely pardoned for crimes for which they have been unjustly convicted can also be a hindrance. This chapter is intended to protect such persons from the unwarranted damage which may occur as a result of being arrested and convicted.

1977, c. 675; 1984, c. 642.

§ 19.2-392.2. Expungement of police and court records

A. If a person is charged with the commission of a crime or any offense defined in Title 18.2, and

1. Is acquitted, or

2. A nolle prosequi is taken or the charge is otherwise dismissed, including dismissal by accord and satisfaction pursuant to § 19.2-151, he may file a petition setting forth the relevant facts and requesting expungement of the police records and the court records relating to the charge.

B. If 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, he may file a petition with the court disposing of the charge for relief pursuant to this section. Such

person shall not be required to pay any fees for the filing of a petition under this subsection. A petition filed under this subsection shall include one complete set of the petitioner's fingerprints obtained from a law-enforcement agency.

C. The petition with a copy of the warrant or indictment if reasonably available shall be filed in the circuit court of the county or city in which the case was disposed of by acquittal or being otherwise dismissed and shall contain, except where not reasonably available, the date of arrest and the name of the arresting agency. Where this information is not reasonably available, the petition shall state the reason for such unavailability. The petition shall further state the specific criminal charge to be expunged, the date of final disposition of the charge as set forth in the petition, the petitioner's date of birth, and the full name used by the petitioner at the time of arrest.

D. A copy of the petition shall be served on the attorney for the Commonwealth of the city or county in which the petition is filed. The attorney for the Commonwealth may file an objection or answer to the petition or may give written notice to the court that he does not object to the petition within 21 days after it is served on him.

E. The petitioner shall obtain from a law-enforcement agency one complete set of the petitioner's fingerprints and shall provide that agency with a copy of the petition for expungement. The law-enforcement agency shall submit the set of fingerprints to the Central Criminal Records Exchange (CCRE) with a copy of the petition for expungement attached. The CCRE shall forward under seal to the court a copy of the petitioner's criminal history, a copy of the source documents that resulted in the CCRE entry that the petitioner wishes to expunge, and the set of fingerprints. Upon completion of the hearing, the court shall return the fingerprint card to the petitioner. If no hearing was conducted, upon the entry of an order of expungement or an order denying the petition for expungement, the court shall cause the fingerprint card to be destroyed unless, within 30 days of the date of the entry of the order, the petitioner requests the return of the fingerprint card in person from the clerk of the court or provides the clerk of the court a self-addressed, stamped envelope for the return of the fingerprint card.

F. After receiving the criminal history record information from the CCRE, the court shall conduct a hearing on the petition. If the court finds that the continued existence and possible dissemination of information relating to the arrest of the petitioner causes or may cause circumstances which constitute a manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and court records, including electronic records, relating to the charge. Otherwise, it shall deny the petition. However, if the petitioner has no prior criminal record and the arrest was for a misdemeanor violation, the petitioner shall be entitled, in the absence of good cause shown to the contrary by the Commonwealth, to expungement of the police and court records relating to the charge, and the court shall enter an order of expungement. If the attorney for the Commonwealth of the county or city in which the petition is filed (i) gives written notice to the court pursuant to subsection D that he does not object to the petition and (ii) when the charge to be expunged is a felony, stipulates in such written notice that the continued existence and possible

dissemination of information relating to the arrest of the petitioner causes or may cause circumstances which constitute a manifest injustice to the petitioner, the court may enter an order of expungement without conducting a hearing.

G. The Commonwealth shall be made party defendant to the proceeding. Any party aggrieved by the decision of the court may appeal, as provided by law in civil cases.

H. Notwithstanding any other provision of this section, when the charge is dismissed because the court finds that the person arrested or charged is not the person named in the summons, warrant, indictment or presentment, the court dismissing the charge shall, upon motion of the person improperly arrested or charged, enter an order requiring expungement of the police and court records relating to the charge. Such order shall contain a statement that the dismissal and expungement are ordered pursuant to this subsection and shall be accompanied by the complete set of the petitioner's fingerprints filed with his petition. Upon the entry of such order, it shall be treated as provided in subsection K.

I. Notwithstanding any other provision of this section, when a person has been granted an absolute pardon for the commission of a crime that he did not commit, he may file in the circuit court of the county or city in which the conviction occurred a petition setting forth the relevant facts and requesting expungement of the police records and the court records relating to the charge and conviction, and the court shall enter an order requiring expungement of the police and court records relating to the charge and conviction. Such order shall contain a statement that the expungement is ordered pursuant to this subsection. Upon the entry of such order, it shall be treated as provided in subsection K.

J. Upon receiving a copy of a writ vacating a conviction pursuant to § 19.2-327.5 or 19.2-327.13, the court shall enter an order requiring expungement of the police and court records relating to the charge and conviction. Such order shall contain a statement that the expungement is ordered pursuant to this subsection. Upon the entry of the order, it shall be treated as provided in subsection K.

K. Upon the entry of an order of expungement, the clerk of the court shall cause a copy of such order to be forwarded to the Department of State Police, which shall, pursuant to rules and regulations adopted pursuant to § 9.1-134, direct the manner by which the appropriate expungement or removal of such records shall be effected.

L. Costs shall be as provided by § 17.1-275, but shall not be recoverable against the Commonwealth. If the court enters an order of expungement, the clerk of the court shall refund to the petitioner such costs paid by the petitioner.

M. Any order entered where (i) the court or parties failed to strictly comply with the procedures set forth in this section or (ii) the court enters an order of expungement contrary to law, shall be voidable upon motion and notice made within three years of the entry of such order.

1977, c. 675; 1983, c. 394; 1984, c. 642; 1990, c. 603; 1992, c. 697; 2001, cc. 40, 345; 2007, cc. 465, 824, 883, 905; 2009, c. 618; 2011, c. 362; 2015, c. 426; 2016, c. 617.

§ 19.2-392.3. Disclosure of expunged records

A. It shall be unlawful for any person having or acquiring access to an expunged court or police record to open or review it or to disclose to another person any information from it without an order from the court which ordered the record expunged.

B. Upon a verified petition filed by the attorney for the Commonwealth alleging that the record is needed by a law-enforcement agency for purposes of employment application as an employee of a law-enforcement agency or for a pending criminal investigation and that the investigation will be jeopardized or that life or property will be endangered without immediate access to the record, the court may enter an ex parte order, without notice to the person, permitting such access. An ex parte order may permit a review of the record, but may not permit a copy to be made of it.

C. Any person who willfully violates this section is guilty of a Class 1 misdemeanor.

1977, c. 675; 1978, c. 713.

§ 19.2-392.4. Prohibited practices by employers, educational institutions, agencies, etc., of state and local governments

A. An employer or educational institution shall not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest or criminal charge against him that has been expunged. An applicant need not, in answer to any question concerning any arrest or criminal charge that has not resulted in a conviction, include a reference to or information concerning arrests or charges that have been expunged.

B. Agencies, officials, and employees of the state and local governments shall not, in any application, interview, or otherwise, require an applicant for a license, permit, registration, or governmental service to disclose information concerning any arrest or criminal charge against him that has been expunged. An applicant need not, in answer to any question concerning any arrest or criminal charge that has not resulted in a conviction, include a reference to or information concerning charges that have been expunged. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any arrest or criminal charge against him that has been expunged.

C. A person who willfully violates this section is guilty of a Class 1 misdemeanor for each violation.

1977, c. 675.

Chapter 24 - INSPECTION WARRANTS

§ 19.2-393. Definitions

An "inspection warrant" is an order in writing, made in the name of the Commonwealth, signed by any judge of the circuit court whose territorial jurisdiction encompasses the property or

premises to be inspected or entered, and directed to a state or local official, commanding him to enter and to conduct any inspection, testing or collection of samples for testing required or authorized by state or local law or regulation in connection with the manufacturing, emitting or presence of a toxic substance, and which describes, either directly or by reference to any accompanying or attached supporting affidavit, the property or premises where the inspection, testing or collection of samples for testing is to occur. Such warrant shall be sufficiently accurate in description so that the official executing the warrant and the owner or custodian of the property or premises can reasonably determine from the warrant the activity, condition, circumstance, object or property of which inspection, testing or collection of samples for testing is authorized.

For the purposes of this chapter, "manufacturing" means producing, formulating, packaging, or diluting any substance for commercial sale or resale; "emitting" means the release of any substance, whether or not intentional or avoidable, into the work environment, into the air, into the water, or otherwise into the human environment; and "toxic substance" means any substance, including (i) any raw material, intermediate product, catalyst, final product and by-product of any operation conducted in a commercial establishment and (ii) any biological organism, that has the capacity, through its physical, chemical, or biological properties, to pose a substantial risk to humans, aquatic organisms or any other animal of illness, death or impairment of normal functions, either immediately or over a period of time.

1976, c. 625; 1979, c. 122.

§ 19.2-394. Issuance of warrant

An inspection warrant may be issued for any inspection, testing or collection of samples for testing or for any administrative search authorized by state or local law or regulation in connection with the presence, manufacturing or emitting of toxic substances, whether or not such warrant be constitutionally required. Nothing in this chapter shall be construed to require issuance of an inspection warrant where a warrant is not constitutionally required or to exclude any other lawful means of search, inspection, testing or collection of samples for testing, whether without warrant or pursuant to a search warrant issued under any other provision of the Code of Virginia. No inspection warrant shall be issued pursuant to this chapter except upon probable cause, supported by affidavit, particularly describing the place, things or persons to be inspected or tested and the purpose for which the inspection, testing or collection of samples for testing is to be made. Probable cause shall be deemed to exist if either reasonable legislative or administrative standards for conducting such inspection, testing or collection of samples for testing are satisfied with respect to the particular place, things or persons or there exists probable cause to believe that there is a condition, object, activity or circumstance which legally justifies such inspection, testing or collection of samples for testing. The supporting affidavit shall contain either a statement that consent to inspect, test or collect samples for testing has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent in order to enforce effectively the state or local law or regulation which authorizes such inspection, testing or collection of

samples for testing. The issuing judge may examine the affiant under oath or affirmation to verify the accuracy of any matter indicated by the statement in the affidavit. After issuing a warrant under this section, the judge shall file the affidavit in the manner prescribed by § 19.2-54.

1976, c. 625; 1979, c. 122; 2014, c. 354.

§ 19.2-395. Duration of warrant

An inspection warrant shall be effective for the time specified therein, for a period of not more than ten days, unless extended or renewed by the judicial officer who signed and issued the original warrant, upon satisfying himself that such extension or renewal is in the public interest. Such warrant shall be executed and returned to the clerk of the circuit court of the city or county wherein the inspection was made within the time specified in the warrant or within the extended or renewed time. After the expiration of such time, the warrant, unless executed shall be void.

1976, c. 625; 2014, c. 354.

§ 19.2-396. Conduct of inspection, testing or collection of samples for testing; special procedure for dwelling

An inspection, testing or collection of samples for testing pursuant to such warrant may not be made in the absence of the owner, custodian or possessor of the particular place, things or persons unless specifically authorized by the issuing judge upon a showing that such authority is reasonably necessary to effectuate the purpose of the law or regulation being enforced. An entry pursuant to this warrant shall not be made forcibly, except that the issuing judge may expressly authorize a forcible entry where facts are shown sufficient to create a reasonable suspicion of an immediate threat to public health or safety, or where facts are shown establishing that reasonable attempts to serve a previous warrant have been unsuccessful. In the case of entry into a dwelling, prior consent must be sought and refused and notice that a warrant has been issued must be given at least twenty-four hours before the warrant is executed, unless the issuing judge finds that failure to seek consent is justified and that there is a reasonable suspicion of an immediate threat to public health or safety.

1976, c. 625; 1979, c. 122.

§ 19.2-397. Refusal to permit authorized inspection; penalty

Any person who willfully refuses to permit an inspection, testing or collection of samples for testing lawfully authorized by warrant issued pursuant to this chapter shall be guilty of a Class 3 misdemeanor.

1976, c. 625; 1979, c. 122.

Chapter 25 - APPEALS BY THE COMMONWEALTH

§ 19.2-398. When appeal by the Commonwealth allowed

A. In a felony case a pretrial appeal from a circuit court may be taken by the Commonwealth from:

1. An order of a circuit court dismissing a warrant, information or indictment, or any count or charge thereof on the ground that (i) the defendant was deprived of a speedy trial in violation of the provisions of the Sixth Amendment to the Constitution of the United States, Article I, Section 8 of the Constitution of Virginia, or § 19.2-243; or (ii) the defendant would be twice placed in jeopardy in violation of the provisions of the Fifth Amendment to the Constitution of the United States or Article I, Section 8 of the Constitution of Virginia; or

2. An order of a circuit court prohibiting the use of certain evidence at trial on the grounds such evidence was obtained in violation of the provisions of the Fourth, Fifth or Sixth Amendments to the Constitution of the United States or Article I, Section 8, 10 or 11 of the Constitution of Virginia prohibiting illegal searches and seizures and protecting rights against self-incrimination, provided the Commonwealth certifies that the appeal is not taken for purpose of delay and that the evidence is substantial proof of a fact material in the proceeding.

B. A petition for appeal may be taken by the Commonwealth in a felony case from any order of release on conditions pursuant to Article 1 (§ 19.2-119 et seq.) of Chapter 9 of this title.

C. A petition for appeal may be taken by the Commonwealth in a felony case after conviction where the sentence imposed by the circuit court is contrary to mandatory sentencing or restitution terms required by statute.

D. Nothing in this chapter shall affect the Commonwealth's right to appeal in civil matters or cases involving a violation of law relating to the state revenue or appeals pursuant to § 17.1-411 or subsection C of § 19.2-317.

E. A pretrial appeal may be taken in any criminal case from an order of a circuit court dismissing a warrant, information, summons, delinquency petition, or indictment, or any count or charge thereof, on the ground that a statute or local ordinance on which the order is based is unconstitutional.

1985, c. 510; 1987, c. 710; 1998, c. 251; 1999, cc. 829, 846; 2002, cc. 611, 692; 2003, c. 109; 2005, cc. 622, 694; 2006, cc. 571, 876.

§ 19.2-399. Defense objections to be raised before trial; hearing; bill of particulars

§ 19.2-400. Appeal lies to the Court of Appeals; time for filing notice

An appeal taken pursuant to § 19.2-398, including such an appeal in a capital murder case, shall lie to the Court of Appeals of Virginia.

No appeal shall be allowed the Commonwealth pursuant to subsection A of § 19.2-398 unless within seven days after entry of the order of the circuit court from which the appeal is taken, and before a jury is impaneled and sworn if there is to be trial by jury or, in cases to be tried without a jury, before the court begins to hear or receive evidence or the first witness is sworn, whichever occurs first, the Commonwealth files a notice of appeal with the clerk of the trial court. If the appeal relates to suppressed evidence, the attorney for the Commonwealth shall certify in the notice of appeal that the appeal is not taken for the purpose of delay and that the evidence is

substantial proof of a fact material to the proceeding. All other requirements related to the notice of appeal shall be governed by Part Five A of the Rules of the Supreme Court. Upon the filing of a timely notice of appeal, the order from which the pretrial appeal is taken and further trial proceedings in the circuit court, except for a bail hearing, shall thereby be suspended pending disposition of the appeal.

An appeal by the Commonwealth pursuant to subsection C of § 19.2-398 shall be governed by Part Five A of the Rules of the Supreme Court.

1987, c. 710; 2003, c. 109.

§ 19.2-401. Cross appeal; when allowed; time for filing

The defendant shall have no independent right of appeal pursuant to § 19.2-398. If the Commonwealth appeals, the defendant may cross appeal from any orders from which the Commonwealth may appeal, pursuant to § 19.2-398. The defendant shall be under no obligation to defend an appeal filed by the Commonwealth. However, when an appeal is taken by the Commonwealth, and the defendant wishes to defend or cross appeal, the circuit court shall, where the defendant is indigent, appoint counsel to represent the defendant on appeal. The remuneration to be awarded appointed counsel shall be governed by § 19.2-326.

In pretrial appeals, the defendant shall file a notice of cross appeal with the clerk of the circuit court within seven days following the notice of appeal filed by the Commonwealth.

Any brief on cross appeal shall be consolidated with the defendant's brief as appellee, if any.

1987, c. 710; 2003, c. 109.

§ 19.2-402. Petition for appeal; brief in opposition; time for filing

A. When a notice of appeal has been filed pursuant to § 19.2-400, the Commonwealth may petition the Court of Appeals for an appeal pursuant to § 19.2-398. The Commonwealth shall be represented by the attorney for the Commonwealth prosecuting the case.

B. The provisions of this subsection apply only to pretrial appeals. The petition for a pretrial appeal shall be filed with the clerk of the Court of Appeals not more than 14 days after the notice of transcript or written statement of facts required by § 19.2-405 is filed or, if there are objections thereto, within 14 days after the judge signs the transcript or written statement of facts. The accused may file a brief in opposition with the clerk of the Court of Appeals within 14 days after the filing of the petition for pretrial appeal. If the accused has filed a notice of cross appeal, he shall file a petition for cross appeal to be consolidated with, and filed within the same time period as, his brief in opposition. The Commonwealth may file a brief in opposition to any petition for cross appeal within 10 days after the petition for cross appeal is filed. Except as specifically provided in this section, all other requirements for the petition for pretrial appeal and brief in opposition shall conform as nearly as practicable to Part Five A of the Rules of the Supreme Court of Virginia.

1987, c. 710; 2003, c. 109; 2014, cc. 33, 294.

§ 19.2-403. Procedures on petition for pretrial appeal

The procedures on a pretrial appeal to the Court of Appeals by the Commonwealth pursuant to § 19.2-398, and on a cross appeal of a pretrial appeal by the accused pursuant to § 19.2-401, shall be governed by the provisions of subsections C and D of § 17.1-407. The Court of Appeals, however, shall grant or deny the petition for a pretrial appeal, and the petition for cross appeal, if any, not later than 30 days after the brief in opposition is timely filed or the time for such filing has expired.

No petition for rehearing may be filed in any pretrial appeal pursuant to this chapter. If the petition for a pretrial appeal pursuant to this chapter is denied, the Court's mandate shall immediately issue and the clerk of the Court of Appeals shall return the record forthwith to the clerk of the trial court.

1987, c. 710; 2003, c. 109.

§ 19.2-404. Procedures on awarded pretrial appeal

This section applies only to pretrial appeals. If the Court of Appeals grants the Commonwealth's petition for a pretrial appeal, the Attorney General shall thereafter represent the Commonwealth during that appeal.

The Commonwealth shall file its opening brief in the office of the clerk of the Court of Appeals within 25 days after the date of the certificate awarding the appeal. The brief of the appellee shall be filed in the office of the clerk of the Court of Appeals within 25 days after the filing of the Commonwealth's opening brief. The Commonwealth may then file a reply brief, including its response to any cross appeal, in the office of the clerk of the Court of Appeals within 15 days after the filing of the brief of the accused. With the permission of a judge of the Court of Appeals, the time for filing any brief may be extended for good cause shown. Four copies of each brief shall be filed and three copies shall be mailed or delivered to opposing counsel on or before the date of filing. Except as specifically provided in this section, all other requirements of the brief shall conform as nearly as practicable to Part Five A of the Rules of the Supreme Court of Virginia. The Court of Appeals shall accelerate the appeal on its docket and render its decision not later than 60 days after the filing of the appellee's brief or after the time for filing such brief has expired.

When the opinion is rendered by the Court of Appeals, the mandate shall immediately issue and the clerk of the Court of Appeals shall return the record forthwith to the clerk of the trial court. No petition for rehearing may be filed.

1987, c. 710; 2003, c. 109.

§ 19.2-405. Pretrial appeals; record on appeal; transcript; written statement of facts; time for filing

This section applies only to pretrial appeals. The record on appeal shall conform, as nearly as practicable, to the requirements of Part Five A of the Rules of the Supreme Court for the record on appeal, except as hereinafter provided. The transcript or written statement of facts shall be filed

with the clerk of the circuit court from which the appeal is being taken, no later than 25 days following entry of the order of the circuit court. Upon motion of the Commonwealth, the Court of Appeals may grant an extension of up to 45 days for filing the transcript or written statement of facts for good cause shown. If a transcript or written statement of facts is filed, the Commonwealth shall file with the clerk of the circuit court a notice, signed by the attorney for the Commonwealth, who is counsel for the appellant, identifying the transcript or written statement of facts and reciting its filing with the clerk. There shall be appended to the notice a certificate by the attorney for the Commonwealth that a copy of the notice has been mailed or delivered to opposing counsel. The notice of filing of the transcript or written statement of facts shall be filed within three days of the filing of the transcript or written statement of facts or within 14 days of the order of the circuit court, whichever is later.

Any party may object to the transcript or written statement of facts on the ground that it is erroneous or incomplete. Notice of the objection specifying the errors alleged or deficiencies asserted shall be tendered to the trial judge within 10 days after the notice of filing of the transcript or written statement of facts is filed in the office of the clerk. The trial judge shall, within three days after the filing of such objection, either overrule the objection, or take steps deemed necessary to make the record complete or certify the respect in which the record is incomplete, and sign the transcript or written statement of facts to verify its accuracy. The clerk of the trial court shall forthwith transmit the record to the clerk of the Court of Appeals.

1987, c. 710; 2003, c. 109; 2014, cc. 33, 294.

§ 19.2-406. Bail pending pretrial appeal

This section applies only to pretrial appeals. Upon a pretrial appeal being taken by the Commonwealth pursuant to § 19.2-398, if the defendant moves the trial court for release on bail, that court shall promptly, but in no event later than three days after the Commonwealth's notice of appeal is filed, hold a hearing to determine the issue of bail. The burden shall be upon the Commonwealth to show good cause why the bail should not be reduced or the accused released on his own recognizance. If it is determined that the accused shall be released on bail, bail shall be set and determined in accordance with Article 1 (§ 19.2-119 et seq.) of Chapter 9 of this title.

1987, c. 710; 1999, cc. 829, 846; 2003, c. 109.

§ 19.2-407. Review by the Supreme Court

Pursuant to § 17.1-409, the Supreme Court in its discretion may certify an appeal taken pursuant to § 19.2-398, or a cross appeal taken pursuant to § 19.2-401, for expedited review by the Supreme Court before it has been determined by the Court of Appeals. Such certification may be made only when the Supreme Court determines that at least one of the conditions set forth in subsection B of § 17.1-409 exists.

1987, c. 710.

§ 19.2-408. Finality of decision of the Court of Appeals in pretrial appeals

The decision of the Court of Appeals shall be final for purposes of a pretrial appeal pursuant to § 19.2-398, or a cross appeal of a pretrial appeal taken pursuant to § 19.2-401, and no further pretrial appeal shall lie to the Supreme Court.

1987, c. 710; 2003, c. 109.

§ 19.2-409. Exclusion of pretrial appeal period from time within which accused must be tried; reconsideration of issues after conviction

This section applies only to pretrial appeals. The provisions of § 19.2-243 shall not apply to the period of time commencing when the Commonwealth's notice of pretrial appeal is filed pursuant to this chapter and ending 60 days after the Court of Appeals or Supreme Court issues its mandate disposing of the pretrial appeal. Such finality of the Court of Appeals' decision shall not preclude a defendant, if he is convicted, from requesting the Court of Appeals or Supreme Court on direct appeal to reconsider an issue which was the subject of the pretrial appeal.

1987, c. 710; 2003, c. 109; 2007, c. 414.