

Attorneys

# PROCEDURE

## **BIG CHANGES**

**Birchfield v. North Dakota, JUN16 USSC No. 14-1468:** (1) Nothing changes for breath tests. (2) No criminal penalties in implied consent are allowed in blood tests. (3) Civil penalties in implied consent are allowed in blood tests. (4) A search warrant must be gotten for a blood test if there is a refusal.

### **Admission of Child's Out of Court Statement [NEW STATUTE]**

§ 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.

#### **IEP as Evidence [NEW STATUTE]**

§ 16.1-274.2. Certain education records as evidence.

A. In any proceeding where (i) a juvenile is alleged to have committed a delinquent act that would be a misdemeanor if committed by an adult and whether such act was committed intentionally or willfully by the juvenile is an element of the delinquent act and (ii) such act was committed (a) during school hours, and during school-related or school-sponsored activities upon the property of a public or private elementary or secondary school or child day center; (b) on any school bus as defined in § 46.2-100; or (c) upon any property, public or private, during hours when such property is solely being used by a public or private elementary or secondary school for a school-related or school-sponsored activity, the juvenile shall be permitted to introduce into evidence as relevant to whether he acted intentionally or willfully any document created prior to the commission of the alleged delinquent act that relates to (a) an Individualized Education Program developed pursuant to the federal Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.; (b) a Section 504 Plan prepared pursuant to § 504 of the federal Rehabilitation Act of 1973, 29 U.S.C. § 794; (c) a behavioral intervention plan as defined in 8VAC20-81-10; or (d) a functional behavioral assessment as defined in 8VAC20-81-10.

Any such document shall be admitted as evidence of the facts stated therein.

B. At least 10 days prior to the commencement of the proceeding in which a document listed in subsection A will be offered as evidence, the juvenile intending to offer the document shall notify the attorney for the Commonwealth, in writing, of the intent to offer the document and shall provide or make available copies of the document to be introduced.

C. Copies of documents listed in subsection A shall be received as evidence, provided that such copies are authenticated to be true and accurate copies by the custodian thereof, or by the person to whom the

custodian reports if they are different. An affidavit signed by the custodian of such documents, or by the person to whom the custodian reports if they are different, stating that such documents are true and accurate copies of such documents shall be valid authentication for the purposes of this section.

D. Upon motion of the juvenile, any document admitted pursuant to this section shall be placed under seal by the court.

## **Searches**

### **Pen Trap**

§ 19.2-70.2 – Expands where an order for a pen trap can be ordered from where suspect has contacts to include “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.”

### **Internet Record**

§ 19.2-70.3(A)(3) – Clarifies that court orders [which are not warrants or subpoenas] which require disclosure by an internet server or remote computing service of a client’s records are to be issued by a circuit court.

§ 19.2-70.3(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.”

## **Charging**

### **Rejected Warrant: Returning the Complaint**

§ 19.2-72 - 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.

### **Statute Of Limitations**

§ 19.2-8 – Misdemeanors § 18.2-64.2 [carnal knowledge], 18.2-67.4 [sexual battery], 18.2-67.4:1 [infected sexual battery], 18.2-67.4:2 [sexual abuse of a minor 13 or 14 years old], 18.2-67.5 [attempted sexual battery], or 18.2-370.6 [kissing a child under 13 with tongue insertion], can be prosecuted up to year after the child reaches majority.

### **Dealing With an Adult With Juvenile Offenses [S 454]**

§ 16.1-247(K) - “An intake officer shall have the authority to issue a capias for an adult under the age of 21 who is alleged to have committed, before attaining the age of 18, an offense that would be a crime if committed by an adult.”

§ 16.1-259(C) & (D) – Under 21 a petition shall be used to start a prosecution for an event prior to 18 or a probation violation from an event prior to 18.

§ 16.1-263(A) - “After a petition has been filed against an adult pursuant to subsection C or D of § 16.1-259, the court shall direct the issuance of a summons against the adult” and parents are not summoned with the defendant.

§ 16.1-284 – An adult can only be sentenced to a maximum 36 months and \$2,500 with each particular offense treated as a class 1 misdemeanor. [formerly all together it was treated as a class 1 for a maximum of 12 months]

## **COLLATERAL ISSUES**

### **Sex & Violent Offender Website**

§ 9.1-913 – Information provided shall include “his current work address; the name of any institution of higher education at which he is currently enrolled.”

### **Revoke a Suspended Sentence**

§ 19.2-306 – A court can only revoke a suspended sentence if process is issued “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.” [failure to pay restitution is new]

### **Payments for a Non-support Paying, Prisoner Working for a Municipality**

§ 20-63 – Raised amount required to be paid by a county or city from \$5-25 to \$20-40 each week and changed recipient to DSS instead of the court.

### **Halfway House from Prisoner**

§ 53.1-155(C) - “The Department shall offer each prisoner to be released on parole or under mandatory release who has been sentenced to serve a term of imprisonment of at least three years the opportunity to participate in a transition program within six months of such prisoner's projected or mandatory release date. The program shall include advice for job training opportunities, recommendations for living a law-abiding life, and financial literacy information. The Secretary of Public Safety and Homeland Security shall prescribe guidelines to govern these programs.”

**Bond Appeal by the Commonwealth**

§ 19.2-124(C) - “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.”

**Representing a Person in a Commitment Proceeding**

§ 19.2-182 – Raised amount from \$25 to \$150.

**Electronic Transfer of Appellate Papers From GDC**

§ [16.1-112](#) - Changed to (1) allow the electronic transfer of GDC record to an appellate court if the clerk of that court and the Chief Judge of the GDC agree. (2) The electronic documents will be (a) the official file and (b) “fulfill any statutory requirement requiring an original, original paper, paper, record, document, facsimile, memorandum, exhibit, certification, or transcript (c) if such electronic case papers are in an electronic form approved by the Executive Secretary of the Supreme Court.”

**Grand Jury Records**

§ 19.2-215.9 – Allows the Commonwealth Attorney and US Attorney access to grand jury records and evidence.

**Cooperation With Higher Education Facility**

§§ 23-9.2:16 & 9.1-1301 – Upon request by an institute of higher education it and the local law enforcement agency shall “establish a written memorandum of understanding . . . to address the prevention of and response to criminal sexual assault.”

**Agreements Between Police and Higher Education Institutions**

§ 23-234 – Clarifies that the private institutes of higher education which must enter into memorandums of understanding about felony sexual assault to “nonprofit” ones.

### **Sex & Violent Offender Website**

§ 9.1-913 – Information provided shall include “his current work address; the name of any institution of higher education at which he is currently enrolled.”

### **School Resource Officer**

§ 9.1-110 – SRO’s are NOT “to enforce school board rules and codes of student conduct.” [removed from the statute]. Responsibilities left (1) Help ensure safety, (2) Prevent truancy, & (3) Prevent violence.

# SUBSTANCE

## **Violent Crimes**

### **Felony Assault or Battery**

§ 18.2-57 - DOC Internal Investigators are law enforcement officers for the purposes of the felony.

### **Stalking**

§ 18.2-60.3(A) - “If the person contacts or follows or attempts to contact or follow the person at whom the conduct is directed after being given actual notice that the person does not want to be contacted or followed, such actions shall be prima facie evidence that the person intended to place that other person, or reasonably should have known that the other person was placed, in reasonable fear of death, criminal sexual assault, or bodily injury to himself or a family or household member.”

§ 18.2-60.3(B) – Limits class 6 felony to second offense “under this section or for a substantially similar offense under the law of any other jurisdiction.” [removed various battery misdemeanors and felonies as priors]

### **Advisement for Domestic Assault**

§ 18.2-57.3 – Adds “simple assault in violation of subsection A of § 18.2-57 where the victim was a family or household member of the person” to offenses which can be taken under advisement under this statute.

§ 18.2-57.3(C) – Changed the assignment to community based probation from discretionary to mandatory.

### **Sex & Violent Offender List**

§ 9.1-902 – Added (1) aggravated malicious wounding by an adult on a minor under 13.

### **Local Ordinance Terrorist or Bomb Threat**

§ 15.2-1716.1 – A locality can pass an ordinance allowing \$250 restitution for terroristic threat or bomb threat or up to \$1,000 with an accounting.

### **Physical Evidence Recovery Kit (PERK)**

§ 54.1-2970.1(A1) - “For purposes of this section, if a parent or guardian of a minor refuses to consent to a physical evidence recovery kit examination of the minor, the minor may consent.”

### **Multiple New Statutes (PERK) [S 291]**

§§ 19.2-11.6 & 19.2-11.7 – If the person decides not to report a sexual assault to the police the health care provider will turn it over to the Department of Forensic Science to be held for at least two years. It will be turned over to law enforcement if the victim decides to report the sexual assault.

§ 19.2-11.11. Victim's right to notification of scientific analysis information.

A. In addition to the rights provided under Chapter 1.1 (§ 19.2-11.01 et seq.), a victim of sexual assault, a parent or guardian of a victim of a sexual assault who was a minor at the time of the offense, or a close relative of a deceased victim of sexual assault shall have the right to request and receive information from the law-enforcement agency regarding (i) the submission of any physical evidence recovery kit for forensic analysis that was collected from the victim during the investigation of the offense; (ii) the status of any analysis being performed on any evidence that was collected during the investigation of the offense; and (iii) the results of any analysis, unless disclosing this information would interfere with the investigation or prosecution of the offense, in which case the victim, parent, guardian, or relative shall be informed of the estimated date on which the information may be disclosed, if known.

B. The victim, parent, guardian, or relative who requests to be notified under subsection A must provide a current address and telephone number to the attorney for the Commonwealth and to the law-enforcement agency that is investigating the offense and keep such information updated.

### **Sex & Violent Offender List**

§ 9.1-902 – Added (2) procuring a person under 18 for forced sex or labor [18.2-356], and (3) “pandering” [getting money for prostitution of another] involving a person under 18 [18.2-357].

§ 46.2-725(E) - “No special license plates authorized pursuant to this article shall be issued to or renewed for any owner or co-owner of a vehicle who is registered pursuant to the Sex Offender and Crimes Against Minors Registry Act (§ 9.1-900 et seq.) if the design of such special license plates, including any logo, emblem, seal, or symbol therein, references children or children's programs or if any revenue-sharing provision authorized for such special license plates contributes, directly or indirectly, to any fund or program established for the benefit of children.”

§ 46.2-726 – Regarding the reservation of personalized license plate numbers/letters: No “ reserved license plates shall be issued to or renewed for any owner or co-owner of a vehicle who is registered pursuant to the Sex Offender and Crimes Against Minors Registry Act (§ 9.1-900 et seq.) if the requested registration numbers or letters or combination thereof could be read, interpreted, or understood to be a reference to children.”

## **Theft Crimes**

### **Fraud By False Claims of Military Service [NEW STATUTE]**

“§ 18.2-177.1. False representation of military status; penalty.

A. It is unlawful for any person, with the intent to obtain any services, to falsely represent himself to be a member or veteran of the United States Armed Forces, Armed Forces Reserves, or National Guard by wearing the uniform or any medal or insignia authorized for use by the members or veterans of the United States Armed Forces, Armed Forces Reserves, or National Guard by federal or state law or regulation and obtain any services through such false representation.

B. It is unlawful for any person, with the intent to obtain any services, to falsely represent himself as a recipient of any decoration or medal created by federal or state law or regulation to honor the members or veterans of the United States Armed Forces, Armed Forces Reserves, or National Guard and obtain any services through such false representation.

C. A violation of this section is a Class 1 misdemeanor.

D. The provisions of this section shall not preclude prosecution under any other statute.”

### **Report of Theft from an Adult in Need of Services**

§ 63.2-1605(I) - “Upon receipt of an initial report pursuant to § 63.2-1606 or during an adult protective services investigation of suspected financial exploitation of an adult in which financial losses to the adult resulting from the exploitation are suspected to be greater than \$50,000, the local department or adult protective services hotline shall immediately refer the matter and all relevant documentation to the local law-enforcement agency where the adult resides or where the alleged exploitation took place or, if these places are not known where the alleged exploitation was discovered, for investigation.”

### **Willfully, With Intent to Defraud, Refusing to Pay Wages**

§ 40.1-29(E)(1) & (2) – Clarifies that the cumulative amount can be for “an employee or employees.”  
[>\$10,000 = class 6 felony; \$9,999.99 = class 1 misdemeanor]

# **Weapons Crimes**

## **Concealed Handguns**

§ 44-39.1 – (New Statute) Allows National Guard members with concealed handgun permits to carry a personal concealed weapon at National Guard facilities. This can be limited by federal law, contracts with the property owner, and – on a person by person basis – the commanding officer of the soldier.

§ 18.2-308(C)(12) – Exempts judges and justices of the Commonwealth from concealed weapons laws in Virginia.

§ 18.2-308(C)(12) – A retired officer who served 10 years is not subject to the concealed carry law. [previously was 15]

§ 18.2-308(C)(7) – A retired DOC internal investigator is not subject to the concealed carry law.

§ 18.2-308.016 [NEW STATUTE] – Moved the retired officer exception from the other section into its own section.

## **Firearms Seized by Law Enforcement**

§ 52-25.1 - “A. Whenever a law-enforcement agency confiscates a firearm in connection with a criminal investigation or otherwise recovers a firearm, such agency shall immediately take all appropriate steps to identify and trace the history of such firearm.”

B. “All law-enforcement agencies of the Commonwealth and of political subdivisions of the Commonwealth shall share with other Virginia law-enforcement agencies all information regarding firearms seized, forfeited, found, or otherwise coming into the agency's possession that are believed to have been used in the commission of a crime and shall enter such information into a firearms tracing system maintained by the U.S. Department of Justice.” [removed a specific list of information to be turned over and did away with requirement that VSP have its own database]

“C. Except as provided in § 19.2-386.29, whenever a firearm is identified as stolen, the law-enforcement agency shall return such firearm to the rightful owner thereof, if known, provided the owner is not prohibited from possessing the firearm and the agency does not need to retain the firearm as evidence in a criminal prosecution.”

## **Out of State Concealed Permit**

§ 18.2-308.014(A) – Valid in Virginia if (1) over 21, (2) the issuing authority provides the means for instantaneous verification of the validity of all such permits or licenses issued within that state, accessible 24 hours a day “if available;” (3) the permit or license holder carries a photo identification issued by a government agency of any state or by the U.S. Department of Defense or U.S. Department

of State and displays the permit or license and such identification upon demand by a law-enforcement officer; and (4) the permit or license holder has not previously had a Virginia concealed handgun permit revoked. [also directs Attorney General and VSP Superintendent to establish reciprocal recognition agreements with other States].

### **Armed Violation of a Protective Order**

§§ 16.1-253.2 and 18.2-60.4 - “In addition to any other penalty provided by law, any person who, while knowingly armed with a firearm or other deadly weapon, violates any provision of a protective order with which he has been served . . . is guilty of a Class 6 felony.”

§ 18.2-308.1:4(B) - “In addition to the prohibition set forth in subsection A, it is unlawful for any person who is subject to a protective order entered pursuant to § 16.1-279.1 or an order issued by a tribunal of another state, the United States or any of its territories, possessions, or commonwealths, or the District of Columbia pursuant to a statute that is substantially similar to § 16.1-279.1 to knowingly possess any firearm while the order is in effect, provided that for a period of 24 hours after being served with a protective order in accordance with subsection C of § 16.1-279.1 such person may continue to possess and, notwithstanding the provisions of subsection A, transport any firearm possessed by such person at the time of service for the purposes of selling or transferring any such firearm to any person who is not otherwise prohibited by law from possessing such firearm. A violation of this subsection is a Class 6 felony.”

### **Proof of Identification/Residence**

§ 18.2-308.2:2 – Removed requirement of proof other than government issued ID to purchase a firearm. [class 6 felony if seller does not follow statute]

### **Firearms After Adjudicated Delinquent as a Minor of a Felony**

§§ 18.2-308.09(16) and 18.2-308.2(B) – Can possess a firearm and get a concealed permit if served two years in the military and are honorably discharged.

## **Drug Crimes**

### **New Schedule I Drugs**

§ 54.1-3446 -

*4-bromomethcathinone (other name: 4-BMC);*

*4-chloromethcathinone (other name: 4-CMC);*

*4-Iodo-2,5-dimethoxy-N-[(2-hydroxyphenyl)methyl]-benzeneethanamine (other name: 25I-NBOH);*

*Alpha-Pyrrolidinohexiophenone (other name: alpha-PHP);*

*Alpha-Pyrrolidinoheptiophenone (other name: PV8)*

*Etizolam (sleep aid / anxiety treatment)*

*Acetyl fentanyl (other name: desmethyl fentanyl) (pain killer)*

### **New Cannabimimetic Agents**

*N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide (other names: ADB-CHMINACA, MAB-CHMINACA);*

*Methyl-2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate (other name: 5-fluoro-AMB);*

*1-naphthalenyl 1-(5-fluoropentyl)-1H-indole-3-carboxylate (other name: NM-2201);*

*1-(4-fluorobenzyl)-3-(2,2,3,3-tetramethylcyclopropylmethanone)indole (other name: FUB-144);*

*1-(5-fluoropentyl)-3-(4-methyl-1-naphthoyl)indole (other name MAM-2201)*

### **New Schedule IV Drugs**

§ 54.1-3452 - *Eluxadoline (including its optical isomers and its salts, isomers, and salts of isomers);*  
(diarrhea treatment)

### **Controlled Paraphernalia**

§ 54.1-3466 – Clarifies that possession and distribution of “controlled paraphernalia” is a class 1 misdemeanor.

## **Industrial Hemp**

§§ 3.2-4113 and 3.2-4117 – Industrial hemp can be grown for any lawful purpose.

## **THC-A Oil for Intractable Epilepsy [S 701]**

§ 54.1-3442.7. Dispensing cannabidiol oil and THC-A oil

A. A pharmaceutical processor shall dispense cannabidiol oil or THC-A oil only in person to (i) a patient who is a Virginia resident, has been issued a valid written certification, and is registered with the Board pursuant to § 54.1-3408.3 or (ii) if such patient is a minor or an incapacitated adult as defined in § 18.2-369, such patient's parent or legal guardian who is a Virginia resident and is registered with the Board pursuant to § 54.1-3408.3. Prior to dispensing, the pharmaceutical processor shall verify that the practitioner issuing the written certification, the patient, and if such patient is a minor or an incapacitated adult, the patient's parent or legal guardian are registered with the Board. No pharmaceutical processor shall dispense more than a 30-day supply for any patient during any 30-day period. The Board shall establish in regulation an amount of cannabidiol oil or THC-A oil that constitutes a 30-day supply to treat or alleviate the symptoms of a patient's intractable epilepsy.

B. A pharmaceutical processor shall dispense only cannabidiol oil and THC-A oil that has been cultivated and produced on the premises of such pharmaceutical processor.

§ 54.1-3442.8. Criminal liability; exceptions.

In any prosecution of an agent or employee of a pharmaceutical processor under § 18.2-248, 18.2-248.1, 18.2-250, or 18.2-250.1 for possession or manufacture of marijuana or for possession, manufacture, or distribution of cannabidiol oil or THC-A oil, it shall be an affirmative defense that such agent or employee (i) possessed or manufactured such marijuana for the purposes of producing cannabidiol oil or THC-A oil in accordance with the provisions of this article and Board regulations or (ii) possessed, manufactured, or distributed such cannabidiol oil or THC-A oil in accordance with the provisions of this article and Board regulations. If such agent or employee files a copy of the permit issued to the pharmaceutical processor pursuant to § 54.1-3442.6 with the court at least 10 days prior to trial and causes a copy of such permit to be delivered to the attorney for the Commonwealth, such permit shall be prima facie evidence that (a) such marijuana was possessed or manufactured for the purposes of producing cannabidiol oil or THC-A oil in accordance with the provisions of this article and Board regulations or (b) such cannabidiol oil or THC-A oil was possessed, manufactured, or distributed in accordance with the provisions of this article and Board regulations.

## **Vehicle Crimes**

### **Smoking in a Car with a Child [NEW STATUTE]**

§ 46.2-112.1. Smoking in vehicle with a minor present; civil penalty.

A. For the purposes of this section, "smoke" means to carry or hold any lighted pipe, cigar, or cigarette of any kind or any other lighted smoking equipment or to light or inhale or exhale smoke from a pipe, cigar, or cigarette of any kind or any other lighted smoking equipment.

B. It is unlawful for a person to smoke in a motor vehicle, whether in motion or at rest, when a minor under the age of eight is present in the motor vehicle. A violation of this section is punishable by a civil penalty of \$100 to be paid into the state treasury and credited to the Literary Fund. No demerit points shall be assigned under Article 19 (§ 46.2-489 et seq.) of Chapter 3 and no court costs shall be assessed for a violation of this section. A violation of this section may be charged on the uniform traffic summons form.

C. No citation for a violation of this section shall be issued unless the officer issuing such citation has cause to stop or arrest the driver of such motor vehicle for the violation of some other provision of this Code or local ordinance relating to the operation, ownership, or maintenance of a motor vehicle or any criminal statute.

### **Opening a Car Door [NEW STATUTE]**

§ 46.2-818.1. Opening and closing motor vehicle doors; penalty.

No operator shall open the door of a parked motor vehicle on the side adjacent to moving vehicular traffic unless it is reasonably safe to do so. [\$50 Fine]

### **Driving on a Flooded Road [NEW STATUTE]**

§ 46.2-800.3. Driving in flooded areas prohibited.

The governing body of any locality may by ordinance prohibit any person from operating a motor vehicle or watercraft on a flooded highway, street, alley, or parking lot, regardless of whether such highway, street, alley, or parking lot is publicly or privately owned in such a manner as to increase the level of floodwaters to a level that causes or could reasonably be expected to cause damage to any real or personal property.

Such ordinance shall not apply to any law-enforcement officer, firefighter, or emergency medical services personnel engaged in the performance of his duties nor to the operator of any vehicle owned or controlled by the Department of Transportation or a public utility company as defined in § 56-265.1.

Any locality adopting such an ordinance shall provide for adequate notice, including signs that, at a minimum, warn operators of motor vehicles and watercraft of the prohibition and penalties.

A violation of such ordinance shall constitute a Class 4 misdemeanor.

### **Inspection Sticker**

§ 46.2-1158.0(A)(11) - An uninspected car can be driven “an official safety inspection station provided that (a) the inspection station is located between the auto auction and the purchaser's residence or place of business or within a five-mile radius of such residence or business and (b) the vehicle is taken to the inspection station on the same day the purchaser removes the vehicle from the auto auction.” [it can also, under this statute be driven straight to the purchaser's business or residence]

§ 46.2-1158.0(A)(12) - Cars that are “parked on a highway and that have been submitted for a motor vehicle safety inspection to an official inspection station” are exempt from the requirement.

### **Exception to Television Ban for Driver**

§ 46.2-1077(A)(8) – Adds requirement that if the device can be seen by the driver it must [1] be “factory-installed” as well as [2] have an interlock that keeps it off during “driving tasks.” Defines driving tasks as “all of the real-time functions required to operate a vehicle in on-road traffic, excluding the selection of destinations and waypoints, and including steering, turning, lane keeping and lane changing, accelerating, and decelerating.”

### **Lights on Motorcycles**

1. § 1. The Superintendent of State Police shall establish guidelines setting forth a procedure pursuant to § 46.2-1005 to allow for the submission and approval of auxiliary lights on motorcycles that are not approved by the Society of Automotive Engineers and shall publish such procedure on the Department of State Police's website by January 1, 2017. The approval of any lights or equipment shall also be published on the Department's website and the Department shall notify official safety inspection stations of such approved equipment. [not a statute]

§ 46.2-1030(B) – A motorcycle can have 5 approved lights facing forward. (general rule is four)

### **Government Vehicles Which Do Not Have to Have a Marked Plate**

§ 46.2-750 – Exempts license plates of vehicles “used by an institution of higher education solely for purposes of vehicle technology research” from the requirement that government license plates must be marked.

### **Vehicle Length**

§ 46.2-1112 – Clarifies that while motor homes and buses can be over 40’ long they cannot be longer than 65’.

### **Transporting a Boat**

§ 46.2-1149.8 – Hauling boats between 102”+ to 108 inches requires a permit. [§ 46.2-1139(D)(1) Violation of any term of any permit issued under this article shall constitute a Class 1 misdemeanor.]

### **Driver Passing a Bus**

§ 46.2-844 - (\$250 fine) The rebuttable presumption that the registered owner is the driver of a car that passes a school bus “shall be rebutted if (i) the owner of the vehicle files an affidavit by regular mail with the clerk of the general district court that he was not the operator of the vehicle at the time of the alleged violation, (ii) the owner testifies in open court under oath that he was not the operator of the vehicle at the time of the alleged violation, or (iii) a certified copy of a police report showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation of this section is presented prior to the return date established on the summons issued pursuant to this section to the court adjudicating the alleged violation. Nothing herein shall limit the admission of otherwise admissible evidence.”

### **Vehicle Registration**

§ 46.2-662 – Allows a locality to pass an ordinance so that it can, once per year, impose a \$250 fine on someone who moves into Virginia and does not register his vehicle.

### **Restoration of Revoked License**

§ 46.2-360 (Habitual Offender) & § 46.2-391 (Multiple DUI’s) – Regarding the mandated recommendation by VASAP, “the court shall give the recommendations such weight as the court deems appropriate.”

## **Other Crimes**

### **Child Abuse and Neglect**

§ 18.2-371.1(A) – Clarifies that omissions must be willful. States specifically that “willful act or willful omission includes operating or engaging in the conduct of a child welfare agency [a child day center, child-placing agency, children's residential facility, family day home, family day system, or independent foster home] without first obtaining a license such person knows is required . . . or after such license has been revoked or has expired and not been renewed.”

### **Lottery Ticket Sales**

§ 58.1-4014 – Makes it a class 1 misdemeanor to operate a ticket courier service.

§§ 58.1-4002 - “Ticket Courier Service means a service operated for the purpose of purchasing Virginia Lottery tickets on behalf of individuals located within or outside the Commonwealth and delivering or transmitting such tickets, or electronic images thereof, to such individuals as a business-for-profit delivery service.”

### **Emergency Protective Orders**

§§ 16.1-253.4 & § 19.2-152.8 – Allows “prohibiting the respondent from being in the physical presence of the allegedly abused person or family or household members of the allegedly abused person.” Defines “physical presence” as “(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.”

### **Violating Emergency Protective Orders**

§§ 16.1-253.2 and 18.2-60.4 – Makes stalking someone under the protection of a protection order a class 6 felony.

### **Fake Service Dog [NEW STATUTE]**

§ 51.5-44.1. Fraudulent representation of a service dog or hearing dog; penalty.

Any person who knowingly and willfully fits a dog with a harness, collar, vest, or sign, or uses an identification card commonly used by a person with a disability, in order to represent that the dog is a service dog or hearing dog to fraudulently gain public access for such dog pursuant to provisions in § 51.5-44 is guilty of a Class 4 misdemeanor.

### **Trespass with Hunting Dogs [NEW STATUTE]**

§ 18.2-132.1. Trespass by hunters using dogs; penalty.

Any person who intentionally releases hunting dogs on the lands of another which have been posted in accordance with the provisions of § 18.2-134.1 to hunt without the consent of the landowner or his agent is guilty of a Class 3 misdemeanor. A second or subsequent violation of this section within three years is a Class 1 misdemeanor and, upon conviction, the court shall revoke such person's hunting or trapping license for a period of one year. The fact that hunting dogs are present on the lands of another alone is not sufficient evidence to prove that the person acted intentionally.

### **Wildlife Parts**

§ 29.1-103. Powers and duties of the Board.

The Board is responsible for carrying out the purposes and provisions of this title and is authorized to:

“18. Adopt regulations that allow any person who holds a valid license to hunt or trap to manufacture and sell products made from wildlife that he has lawfully taken, except where the Board determines that such manufacture or sale is detrimental to public health or sound wildlife management.”

§ 29.1-521(10) -Adds exception to the prohibition of transportation of animal body parts: “using turkey feathers or toes for making tools or utensils or selling such tools or utensils” and “the possession, manufacture, or sale of other parts or implements authorized by regulations adopted by the Board.”

### **Slingshot Hunting**

§ 29.1-519(A)(7) – Hunting with a slingshot is allowed except for deer, bear, elk, or turkey. [class 3 misdemeanor]

### **Sunday Hunting**

§ 29.1-521(A)(1) – Adds rallidae to birds which can be hunted on Sunday.

### **Fishing License**

§ 29.1-301(K) – On free fishing days, a license is no longer required for inland waters stocked with trout.

### **Prohibiting the Feeding of Deer**

§ 29.1-527.2 – A town or city can pass an ordinance forbidding the feeding of deer enforced with a \$50 fine.

### **Ordinance for Hunting Coyotes**

§ 29.1-528(B) – A city or county can adopt an ordinance allowing “the hunting of coyotes with a rifle of a caliber larger than .22 rimfire.”