

# CONSTITUTION

## 4<sup>th</sup> Amendment

### **Search & Seizure**

ARREST WARRANT / ANIMAL CONTROL – HB904: Changes § 19.2-71(A) and § 19.2-72 to allow a magistrate to issue a felony warrant to an animal control officer.

## 5th Amendment

### **Right to Remain Silent**

\*\*EXPIRATION OF ASSERTED RIGHT: Maryland v. Shatzer, FEB10, USSC No.08–680: (1) Once a suspect asserts his right to not speak or have an attorney present and he is released from “Miranda custody” the police cannot ask the suspect to waive his Miranda rights for 14 days. (2) Being in prison after a conviction does not count as “Miranda custody.” (3) The decision hints that being in jail awaiting trial is “Miranda custody.”

## 6<sup>th</sup> Amendment

### **Right to Counsel**

\*\* Montejo v. Louisiana, MAY09, USSC No.1529: “[T]he Sixth Amendment guarantees a defendant the right to have counsel present at all critical stages of the criminal proceedings.” However, applying the exclusionary remedy to Sixth Amendment violations “was policy driven, and if that policy is being adequately served through other means, there is no reason to retain its rule.” The defendant henceforth only has exclusionary remedy if the 5<sup>th</sup> Amendment right to remain silent is violated.

# PROCEDURE

WARRANTS/SUMMONS – SB72: Changes § 19.2-76.1 so that Commonwealth Attorneys can move a court to dismiss without prejudice any warrant or summons which has been issued by a magistrate before it has been served.

RELEASE OF JUVENILE INFORMATION – HB918: Changes § 16.1-309.1 so that (1) the Commonwealth Attorney can petition a court, (a) with notice to defense counsel, (b) to publically release the (i) name, (ii) age, (iii) physical description and (iv) photograph, (v) the charge for which he is sought or for which he was adjudicated and (vi) any other information which may expedite his apprehension (c) of a juvenile fugitive from any misdemeanor or felony charges or (d) juvenile escapee. (2) The Department of Juvenile Justice or court services unit may also do this after giving notice to the Commonwealth Attorney. (3) The judge shall grant such a petition upon (a) showing that the juvenile is a fugitive and (b) good cause shown. (4) If court is not in session the Commonwealth Attorney, Department of Juvenile Justice, or court services unit may authorize the release of this information.

DJJ / CRIMINAL STREET GANGS – HB1121 (SB486): The Department of Juvenile Justice is required to turn over any information involving criminal street gangs to law enforcement officers including the names of individual members known by DJJ. (2) DJJ shall provide this information without a request to do so. (3) The information shall be used in the investigation of criminal street gangs. (4) ID information of juveniles who are not street gang members shall not be released unless it pertains to a specific crime.

BOND ON CAPIAS – SB490 (HB1194): Creates 19.2-130.1, which requires the magistrate to set the bond which the judge who issued the capias ordered when issuing the capias.

## **Judicial Imposition of Sentence**

JUVENILE DISMISSAL WITHOUT CONVICTION – HB908: (1) A juvenile judge may only dismiss without adjudging delinquent first offenders for (a) underage possession of alcohol, (b) public intoxication, or (c) possession of a handgun. (2) If a juvenile has a second offense of the violations supra, the violation must be dealt with pursuant to § 16.1-278.8.

# SUBSTANTIVE

## Violent Crimes

CAPITAL MURDER – SB520 (HB934): Changes 18.2-31 so that the murder of an auxiliary police officer or auxiliary sheriff's deputy is a death penalty offense.

CAPITAL MURDER – HB166: Changes 18.2-31 so that the murder of a fire marshal or deputy fire marshal is a death penalty offense.

ABDUCTION / LOSS OF VEHICLE – HB1113: Adds § 19.2-386.16(B) forfeiting any car used in an abduction.

### 18.2-57 Assault & Battery

Clark v. Commonwealth, MAY10, VASC No. 091305: (1) Criminal assault occurs when (a) an assailant engages in an overt act intended to inflict bodily harm and has the present ability to inflict such harm or (b) engages in an overt act intended to place the victim in fear or apprehension of bodily harm and creates such reasonable fear or apprehension in the victim.

## Sex Crimes

POST CONVICTION ENTRY TO A SCHOOL – HB227: (1) Clarifies that in order to visit a school an offender must (a) get permission from the circuit court, (b) get permission from the school board, and (c) be in compliance of any terms set by the court and the board. (2) Removes the ability of JDR courts to hear these types of cases; all must go to circuit court.

SEX OFFENDER / NO LEGAL RESIDENCE: Adds § 9.1-903(J) requiring a registrant without a legal address to provide a location where he resides or habitually locates himself.

## Drug Crimes

NEWLY CLASSIFIED – HB953: (1) Amends § 54.1-3448 to classify Tapentadol as a schedule II drug. (2) Amends § 54.1-3450 to classify boldione, desoxymethyltestosterone (madol), and 19-no4-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione) as schedule III drugs. (3) Amends § 54.1-3452 to classify fospropofol as schedule IV drug. (4) Amends § 54.1-3454 to classify lacosamide as a schedule V drug.

PHARMACIST / SCHEDULE II DRUGS – HB964: Changes § 54.1-3420.1 in several ways. (1) Requires a pharmacist to see an ID for anyone getting a schedule II drug, “unless known to the pharmacist.” (2) If the person seeking the schedule II drug is not the one on the prescription the pharmacist shall record his name and address, even if the pharmacist knows the person. (3) The pharmacist is required to copy the proof of identity. (4) The pharmacist must maintain the records of recipient's identities for at least one year. (5) Any prescriptions delivered outside the pharmacy shall require a signature by the recipient.

PHARMACIST / REPORTING FRAUD – HB1166: (1) Creates § 54.1-3408.2 which allows those who dispense pills to report those they suspect may have gotten their prescription by fraud or deceit. (2) Makes the reporter immune from civil liability if the report is made in good faith.

### **18.2-255.2: Possession with Intent to Distribute Drugs within 1,000 Feet of a School**

Fullwood v. Commonwealth, FEB10, VaSC No. 091015: (1) “Property open to public use” in the statute does not mean that the that the public use to be legal. (2) Trespassing people can be publicly using an area.

### **Theft / Property Crimes**

EXTORTION – HB210: Changes § 18.2-59 so that threatened “injury to property” includes the sale, distribution, or release of identifying information.

BURGLARY: Jones v. Commonwealth, JAN10, VaSC No. 090265: (1) Statutory burglary which occurs at night does not require a "breaking", only an entry. (2) Even a person authorized to enter a dwelling can be guilty of burglary if that person entered with the intent to commit illegal acts forbidden by the statute.

### **Weapon Crimes**

CONCEALED WEAPON / IN BAR – SB334 (HB505): (1) Allows a person to carry a concealed weapon into a place that serves alcohol as long as he does not drink. (2) Drinking is punishable by a class 2 misdemeanor. (3) The statute does not apply to federal, state or local law enforcement.

CONCEALED WEAPON / IN CAR – SB408 (HB885): Adds 18.2-308(B)(10) so that a person may carry a weapon concealed in his car if it is locked in a compartment or container.

CONCEALED WEAPON / DUI FROM ANOTHER STATE – SB501: Changes 18.2-308 so that someone who has had a DUI in another state within three years cannot get a concealed carry permit.

MINOR CARRYING A FIREARM – SB591: Changes § 16.1-248.1 to allow a juvenile to be placed in detention if he is alleged to have transported a handgun or assault firearm.

CONCEALED WEAPON / RETIRED OR RESIGNED OFFICER – HB1092 (HB1256): Amends 18.2-308(B)(7) so that a retired or resigned (but eligible to retire) law-enforcement officer who receives proof of consultation and favorable review pursuant to this subdivision is authorized to carry a concealed handgun.

### **18.2-308.4(C) Possession of a Firearm While Possessing Drugs**

\*\* NEXUS: Wright v. Commonwealth, NOV09, VaSC No. 090308: There is no requirement under this statute that there be a nexus between possession of the drug and possession of the firearm. Simply possessing both is sufficient for a conviction.

### **Motor Vehicles:**

DRIVING MOTORCYCLES SIDE BY SIDE IN ONE LANE – SB321: While it is reckless for anyone else to do so, it is not reckless driving for two officers to drive abreast in one lane while on duty. (46.2 – 851)

DUI / RESTRICTED LICENSE – SB589: Changes 18.2-271.1 to allow a restricted license for “travel to and from appointments approved by the Division of Child Support Enforcement of the Department of Social Services as a requirement of participation in a court-ordered intensive case monitoring program for child support for which the participant maintains written proof of the appointment, including written proof of the date and time of the appointment, on his person.”

RESTRICTED DRIVERS LICENSE – HB97: Creates 46.2-398.1: A judge can grant a driver licensed out of state, but suspended in Virginia, the same restricted driving privileges he can a person licensed in Virginia.

DRIVING ABREAST WHILE PASSING – HB163: Changes § 46.2-857 so that it is not illegal to travel side-by-side with a vehicle when passing it in a separate lane.

IMPOUNDING VEHICLE – HB513: (1) Changes § 46.2-301.1 so that if someone is found driving without a license (violating 46.2-301) his car will be impounded for 3 days or less if he gets his license. (2) Does not apply if the offender is (a) under 18, or has been without a license for less than a year.

ALLOWING NON-LICENSED TO DRIVE – HB513: Changes § 46.2-301.1 so that if anyone (1) authorizes an unlicensed driver to drive a vehicle, and (2) knows the driver has previously been convicted of driving without a license that person is guilty of a class 1 misdemeanor.

IMPOUNDING VEHICLES – HB742: (1) Changes § 46.2-301(A) so that if a person has been convicted after having his license revoked under 18.2-272 the judge can order his car impounded for 90 days. (2) Changes § 46.2-301.1 so that if a person has been arrested after having his license revoked under 18.2-272 his car is to be impounded for 30 days.

LICENSE SUSPENDED FOR DUI – HB769: Changes § 18.2-271(B) so that any license suspension for a DUI conviction must run consecutively with any prior suspension for a DUI conviction.

\*\* DUI ARREST – HB770 (HB1254): (1) Changes § 19.2-73(B) to allow an officer with probable cause to issue a summons to a person suspected of DUI who is in a medical facility and have the summons treated as though a warrant. (2) Changes § 19.2-81(D) to allow an officer to arrest anyone he has probable cause to believe has committed a DUI within 3 hours of the event, even if the officer did not witness the event.

SPEED LIMIT – HB856 (HB176) (SB537): Changes § 46.2-870 so that the maximum possible speed limit is 70 mph.

MINOR LICENSE SUSPENSION – HB863: Changes § 16.1-278.9(D) so that the court may not issue a minor a restricted license to travel to and from school if there is transportation provided by the school.

VEHICULAR MANSLAUGHTER / CDL – HB916: Adds § 46.2-341.18(E) which disqualifies an offender from having a CDL for 5 years if manslaughter occurred while operating a commercial motor vehicle.

MOVE OVER LAW- HB1159 (HB403): (1) If a vehicle displaying red, blue, or amber flashing lights is on the side of a four lane road, other drivers must pull into the lane farthest from it to pass. (2) The punishment for a first violation is reduced to a traffic citation. (3) A second or subsequent violation is a class 1 misdemeanor.

DRIVING A SCHOOL BUS WITH ALCOHOL – HB1382: Creates § 4.1-309.1 which makes it a class 1 misdemeanor to possess or drink alcohol while transporting children on a school bus.

## **Other**

**WEARING A MASK / PUBLIC EMERGENCY – SB532 (HB869):** Changes § 18.2-422 to allow the wearing of masks if there is a declaration of emergency which specifically waives the law against masks.

**GUESTS DRINKING ALCOHOL – HB1293:** If a person keeps alcohol at his residence and gives it to his family or guests, his family and guests must consume the alcohol in the residence. (Appears to have been intended to limit where minors may drink with adult supervision, but language is not limited to minors)

**ELUDING ON FOOT – SB96:** Changes § 46.2-817 so that if anyone eludes on foot, vehicle or by other means it is a class 2 misdemeanor.

**FAILURE TO PAY CHILD SUPPORT – SB589:** Allows those convicted of failure to pay child support to be placed on home electronic monitoring.

**ANTI-SPAM – HB001:** (1) Alters definitions in § 18.2-152.2 and the actual definition of the crime in § 18.2-152.3:1 so that spamming is only illegal if done for a commercial purpose. (2) It is a class 1 misdemeanor to distribute software which has as its purpose the distribution of commercial spam. (3) It is a class 6 felony if (a) commercial spam is more than (i) 10,000 sent in a day, (ii) 100,000 sent in a month, or (iii) 1,000,000 sent in a year; or (b) more than (i) \$1,000 is made from one commercial spam, or (ii) \$50,000 is made from more than one commercial spam; or (c) a minor is knowingly part of the commercial spamming.

**ILLEGAL TO TRY TO STOP HUNTING – HB486:** Changes § 29.1-521.1 so that if a person baits an area in order to make it illegal to hunt there he has committed a class 3 misdemeanor.

**FAKE TRAIN TICKET – HB688 (SB25):** Changes § 18.2-160.1 so that counterfeiting a train ticket is a class 2 misdemeanor.

**GAMBLING – HB1010:** (1) Changes § 18.2-325 so that buying tokens to gamble with instead of money is the same as gambling with money. (2)

**GANG FREE RECREATION CENTERS – HB682:** Changes § 18.2-46.3:3 so that committing a predicate criminal gang act on the property of a public community or recreation center incurs a mandatory minimum 2 years in prison.

**PROFANE OR THREATENING ELECTRONIC MESSAGES – HB741:** Changes § 18.2-427 so that telephonic communications include electronic messages sent or received by phone.

PROSTITUTION / LOSS OF VEHICLE – HB1113: Adds § 19.2-386.16(B) forfeiting any car used in pandering if the prostitute is a minor.

### **18.2-427: Use of Profane or Threatening Language Over the Phone**

\*\* Lofgren v. Commonwealth, NOV09, VaApp No. 1349-08-2: (1) In order for a defendant to be convicted under this statute the language must (a) be obscene and (b) intended to coerce, intimidate, or harass. (2) Calling someone a “fucking cunt” and a “fucking bitch” in anger is invective and therefore not obscene and does not support a conviction.