25100580D

HOUSE BILL NO. 2694

Offered January 16, 2025

A BILL to amend and reenact §§ 2.2-3705.7, 8.01-654, 17.1-310, 17.1-406, 18.2-8, 18.2-10, 18.2-18, 18.2-19, 18.2-22, 18.2-25, 18.2-26, 18.2-30, 18.2-31, 18.2-32, 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-251.01, 19.2-11.01, 19.2-71, 19.2-76.1, 19.2-100, 19.2-102, 19.2-152.2, 19.2-157, 19.2-159, 19.2-163, 19.2-163.01, 19.2-163.4:1, 19.2-169.3, 19.2-175, 19.2-217.1, 19.2-247, 19.2-270.4:1, 19.2-295.3, 19.2-299, 19.2-299.1, 19.2-311, 19.2-319, 19.2-321.2, 19.2-327.1, 19.2-327.3, 19.2-327.11, 19.2-389.1, 19.2-389.3, as it is currently effective, 19.2-400, 53.1-204, 53.1-229, and 54.1-3307 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 8.01-654.3 and 17.1-313.1, by adding in Article 3 of Chapter 1 of Title 18.2 a section numbered 18.2-17.1, by adding in Chapter 10 of Title 19.2 an article numbered 4.2, consisting of sections numbered 19.2-163.9 and 19.2-163.10, by adding in Chapter 15 of Title 19.2 an article numbered 4.1:1, consisting of sections numbered 19.2-264.5:1 through 19.2-264.5:11, by adding a section numbered 53.1-230.1, and by adding in Title 53.1 a chapter numbered 13.1, consisting of sections numbered 53.1-236.1 through 53.1-236.6, relating to capital murder; death penalty; certain offenses of criminal sexual assault against a minor punishable by death.

Patron—Griffin

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.7, 8.01-654, 17.1-310, 17.1-406, 18.2-8, 18.2-10, 18.2-18, 18.2-19, 18.2-22, 18.2-25, 18.2-26, 18.2-30, 18.2-31, 18.2-32, 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-251.01, 19.2-11.01, 19.2-71, 19.2-76.1, 19.2-100, 19.2-102, 19.2-152.2, 19.2-157, 19.2-159, 19.2-163, 19.2-163.01, 19.2-163.4:1, 19.2-169.3, 19.2-175, 19.2-217.1, 19.2-247, 19.2-270.4:1, 19.2-295.3, 19.2-299, 19.2-299.1, 19.2-311, 19.2-319, 19.2-321.2, 19.2-327.1, 19.2-327.3, 19.2-327.11, 19.2-389.1, 19.2-389.3, as it is currently effective, 19.2-400, 53.1-204, 53.1-229, and 54.1-3307 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 8.01-654.3 and 17.1-313.1, by adding in Article 3 of Chapter 1 of Title 18.2 a section numbered 18.2-17.1, by adding in Chapter 10 of Title 19.2 an article numbered 4.2, consisting of sections numbered 19.2-163.9 and 19.2-163.10, by adding in Chapter 15 of Title 19.2 an article numbered 4.1:1, consisting of sections numbered 19.2-264.5:1 through 19.2-264.5:11, by adding a section numbered 53.1-230.1, and by adding in Title 53.1 a chapter numbered 13.1, consisting of sections numbered 53.1-236.1 through 53.1-236.6, as follows:

§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and certain other limited exclusions.

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

1. State income, business, and estate tax returns, personal property tax returns, and confidential records held pursuant to § 58.1-3.

2. Working papers and correspondence of the Office of the Governor, the Lieutenant Governor, or the Attorney General; the members of the General Assembly, the Division of Legislative Services, or the Clerks of the House of Delegates or the Senate of Virginia; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education in the Commonwealth. However, no information that is otherwise open to inspection under this chapter shall be deemed excluded by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence. Further, information publicly available or not otherwise subject to an exclusion under this chapter or other provision of law that has been aggregated, combined, or changed in format without substantive analysis or revision shall not be deemed working papers. Nothing in this subdivision shall be construed to authorize the withholding of any resumes or applications submitted by persons who are appointed by the Governor pursuant to § 2.2-106 or 2.2-107.

As used in this subdivision:

"Members of the General Assembly" means each member of the Senate of Virginia and the House of Delegates and their legislative aides when working on behalf of such member.

"Office of the Governor" means the Governor; the Governor's chief of staff, counsel, director of policy, and Cabinet Secretaries; the Assistant to the Governor for Intergovernmental Affairs; and those individuals to

whom the Governor has delegated his authority pursuant to § 2.2-104.

"Working papers" means those records prepared by or for a public official identified in this subdivision for his personal or deliberative use.

3. Information contained in library records that can be used to identify (i) both (a) any library patron who has borrowed or accessed material or resources from a library and (b) the material or resources such patron borrowed or accessed or (ii) any library patron under 18 years of age. For the purposes of clause (ii), access shall not be denied to the parent, including a noncustodial parent, or guardian of such library patron.

4. Contract cost estimates prepared for the confidential use of the Department of Transportation in awarding contracts for construction or the purchase of goods or services, and records and automated systems prepared for the Department's Bid Analysis and Monitoring Program.

5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth, whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by the political subdivision.

6. Information furnished by a member of the General Assembly to a meeting of a standing committee, special committee, or subcommittee of his house established solely for the purpose of reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of formulating advisory opinions to members on standards of conduct, or both.

7. Customer account information of a public utility affiliated with a political subdivision of the Commonwealth, including the customer's name and service address, but excluding the amount of utility service provided and the amount of money charged or paid for such utility service.

8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other local government agency concerning persons who have applied for occupancy or who have occupied affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access to one's own information shall not be denied.

9. Information regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if disclosure of such information would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions, and provisions of the siting agreement.

10. Information on the site-specific location of rare, threatened, endangered, or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archaeological sites if, in the opinion of the public body that has the responsibility for such information, disclosure of the information would jeopardize the continued existence or the integrity of the resource. This exclusion shall not apply to requests from the owner of the land upon which the resource is located.

11. Memoranda, graphics, video or audio tapes, production models, data, and information of a proprietary nature produced by or for or collected by or for the Virginia Lottery relating to matters of a specific lottery game design, development, production, operation, ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such information not been publicly released, published, copyrighted, or patented. Whether released, published, or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

12. Information held by the Virginia Retirement System, acting pursuant to § 51.1-124.30, or a local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of trustees of a trust established by one or more local public bodies to invest funds for post-retirement benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the board of visitors of The College of William and Mary in Virginia, acting pursuant to § 23.1-2803, or by the Commonwealth Savers Plan, acting pursuant to § 23.1-704, relating to the acquisition, holding, or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, if disclosure of such information would (i) reveal confidential analyses prepared for the board of visitors of the University of Virginia, prepared for the board of visitors of The College of William and Mary in Virginia, prepared by the retirement system, a local finance board or board of trustees, or the Commonwealth Savers Plan, or provided to the retirement system, a local finance board or board of trustees, or the Commonwealth Savers Plan under a promise of confidentiality of the future value of such ownership interest or the future financial performance of the entity and (ii) have an adverse effect on the

value of the investment to be acquired, held, or disposed of by the retirement system, a local finance board or board of trustees, the board of visitors of the University of Virginia, the board of visitors of The College of William and Mary in Virginia, or the Commonwealth Savers Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested, or the present value of such investment.

13. Financial, medical, rehabilitative, and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

14. Information held by the Virginia Commonwealth University Health System Authority pertaining to any of the following: an individual's qualifications for or continued membership on its medical or teaching staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; information of a proprietary nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts, or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and information of a proprietary nature produced or collected by or for employees of the Authority, other than the Authority's financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical, or scholarly issues, whether sponsored by the Authority alone or in conjunction with a governmental body or a private concern, when such information has not been publicly released, published, copyrighted, or patented. This exclusion shall also apply when such information is in the possession of Virginia Commonwealth University.

15. Information held by the Department of Environmental Quality, the State Water Control Board, the State Air Pollution Control Board, or the Virginia Waste Management Board relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such information shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the director of the agency. This subdivision shall not be construed to prevent the disclosure of information related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents.

16. Information related to the operation of toll facilities that identifies an individual, vehicle, or travel itinerary, including vehicle identification data or vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

17. Information held by the Virginia Lottery pertaining to (i) the social security number, tax identification number, state sales tax number, home address and telephone number, personal and lottery banking account and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific retail locations and (ii) individual lottery winners, except that a winner's name, hometown, and amount won shall be disclosed. If the value of the prize won by the winner exceeds $10 million, the information described in clause (ii) shall not be disclosed unless the winner consents in writing to such disclosure.

18. Information held by the Board for Branch Pilots relating to the chemical or drug testing of a person regulated by the Board, where such person has tested negative or has not been the subject of a disciplinary action by the Board for a positive test result.

19. Information pertaining to the planning, scheduling, and performance of examinations of holder records pursuant to the Virginia Disposition of Unclaimed Property Act (§ 55.1-2500 et seq.) prepared by or for the State Treasurer or his agents or employees or persons employed to perform an audit or examination of holder records.

20. Information held by the Virginia Department of Emergency Management or a local governing body relating to citizen emergency response teams established pursuant to an ordinance of a local governing body that reveal the name, address, including e-mail address, telephone or pager numbers, or operating schedule of an individual participant in the program.

21. Information held by state or local park and recreation departments and local and regional park authorities concerning identifiable individuals under the age of 18 years. However, nothing in this subdivision shall operate to prevent the disclosure of information defined as directory information under regulations implementing the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out requirements provided by such regulations. Access shall not be denied to the parent, including a noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For such information of persons who are emancipated, the right of access

may be asserted by the subject thereof. Any parent or emancipated person who is the subject of the information may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such information for inspection and copying.

22. Information submitted for inclusion in the Statewide Alert Network administered by the Department of Emergency Management that reveal names, physical addresses, email addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless or portable communications device information, or operating schedules of individuals or agencies, where the release of such information would compromise the security of the Statewide Alert Network or individuals participating in the Statewide Alert Network.

23. Information held by the Judicial Inquiry and Review Commission made confidential by § 17.1-913.

24. Information held by the Virginia Retirement System acting pursuant to § 51.1-124.30, a local retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement system), or the Commonwealth Savers Plan, acting pursuant to § 23.1-704 relating to:

a. Internal deliberations of or decisions by the retirement system or the Commonwealth Savers Plan on the pursuit of particular investment strategies, or the selection or termination of investment managers, prior to the execution of such investment strategies or the selection or termination of such managers, if disclosure of such information would have an adverse impact on the financial interest of the retirement system or the Commonwealth Savers Plan; and

b. Trade secrets provided by a private entity to the retirement system or the Commonwealth Savers Plan if disclosure of such records would have an adverse impact on the financial interest of the retirement system or the Commonwealth Savers Plan.

For the records specified in subdivision b to be excluded from the provisions of this chapter, the entity shall make a written request to the retirement system or the Commonwealth Savers Plan:

(1) Invoking such exclusion prior to or upon submission of the data or other materials for which protection from disclosure is sought;

(2) Identifying with specificity the data or other materials for which protection is sought; and

(3) Stating the reasons why protection is necessary.

The retirement system or the Commonwealth Savers Plan shall determine whether the requested exclusion from disclosure meets the requirements set forth in subdivision b.

Nothing in this subdivision shall be construed to prevent the disclosure of the identity or amount of any investment held or the present value and performance of all asset classes and subclasses.

25. Information held by the Department of Corrections made confidential by ~~former~~ § ~~53.1-233~~ *53.1-236.3*.

26. Information maintained by the Department of the Treasury or participants in the Local Government Investment Pool (§ 2.2-4600 et seq.) and required to be provided by such participants to the Department to establish accounts in accordance with § 2.2-4602.

27. Personal information, as defined in § 2.2-3801, contained in the Veterans Care Center Resident Trust Funds concerning residents or patients of the Department of Veterans Services Care Centers, except that access shall not be denied to the person who is the subject of the information.

28. Information maintained in connection with fundraising activities by the Veterans Services Foundation pursuant to § 2.2-2716 that reveal the address, electronic mail address, facsimile or telephone number, social security number or other identification number appearing on a driver's license or other document issued under Chapter 3 (§ 46.2-300 et seq.) of Title 46.2 or the comparable law of another jurisdiction, or credit card or bank account data of identifiable donors, except that access shall not be denied to the person who is the subject of the information. Nothing in this subdivision, however, shall be construed to prevent the disclosure of information relating to the amount, date, purpose, and terms of the pledge or donation or the identity of the donor, unless the donor has requested anonymity in connection with or as a condition of making a pledge or donation. The exclusion provided by this subdivision shall not apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the foundation for the performance of services or other work or (ii) the terms and conditions of such grants or contracts.

29. Information prepared for and utilized by the Commonwealth's Attorneys' Services Council in the training of state prosecutors or law-enforcement personnel, where such information is not otherwise available to the public and the disclosure of such information would reveal confidential strategies, methods, or procedures to be employed in law-enforcement activities or materials created for the investigation and prosecution of a criminal case.

30. Information provided to the Department of Aviation by other entities of the Commonwealth in connection with the operation of aircraft where the information would not be subject to disclosure by the entity providing the information. The entity providing the information to the Department of Aviation shall identify the specific information to be protected and the applicable provision of this chapter that excludes the information from mandatory disclosure.

31. Information created or maintained by or on the behalf of the judicial performance evaluation program

related to an evaluation of any individual justice or judge made confidential by § 17.1-100.

32. Information reflecting the substance of meetings in which (i) individual sexual assault cases are discussed by any sexual assault response team established pursuant to § 15.2-1627.4, (ii) individual child abuse or neglect cases or sex offenses involving a child are discussed by multidisciplinary child sexual abuse response teams established pursuant to § 15.2-1627.5, (iii) individual cases of abuse, neglect, or exploitation of adults as defined in § 63.2-1603 are discussed by multidisciplinary teams established pursuant to §§ 15.2-1627.5 and 63.2-1605, or (iv) individual human trafficking cases are discussed by any human trafficking response team established pursuant to § 15.2-1627.6. The findings of any such team may be disclosed or published in statistical or other aggregated form that does not disclose the identity of specific individuals.

33. Information contained in the strategic plan, marketing plan, or operational plan prepared by the Virginia Economic Development Partnership Authority pursuant to § 2.2-2237.1 regarding target companies, specific allocation of resources and staff for marketing activities, and specific marketing activities that would reveal to the Commonwealth's competitors for economic development projects the strategies intended to be deployed by the Commonwealth, thereby adversely affecting the financial interest of the Commonwealth. The executive summaries of the strategic plan, marketing plan, and operational plan shall not be redacted or withheld pursuant to this subdivision.

34. Information discussed in a closed session of the Physical Therapy Compact Commission or the Executive Board or other committees of the Commission for purposes set forth in subsection E of § 54.1-3491.

35. Information held by the Commonwealth of Virginia Innovation Partnership Authority (the Authority), an advisory committee of the Authority, or any other entity designated by the Authority, relating to (i) internal deliberations of or decisions by the Authority on the pursuit of particular investment strategies prior to the execution of such investment strategies and (ii) trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a private entity to the Authority, if such disclosure of records pursuant to clause (i) or (ii) would have an adverse impact on the financial interest of the Authority or a private entity.

36. Personal information provided to or obtained by the Virginia Lottery in connection with the voluntary exclusion program administered pursuant to § 58.1-4015.1.

37. Personal information provided to or obtained by the Virginia Lottery concerning the identity of any person reporting prohibited conduct pursuant to § 58.1-4043.

§ 8.01-654. When and where petition filed; what petition to contain.

A. 1. A petition for a writ of habeas corpus ad subjiciendum may be filed in the Supreme Court or any circuit court showing by affidavits or other evidence that the petitioner is detained without lawful authority.

2. A petition for writ of habeas corpus ad subjiciendum, other than a petition challenging a criminal conviction or sentence, shall be brought within one year after the cause of action accrues. A habeas corpus petition attacking a criminal conviction or sentence, *except as provided in § 8.01-654.3 for cases in which a death sentence has been imposed,* shall be filed within two years from the date of final judgment in the trial court or within one year from either final disposition of the direct appeal in state court or the time for filing such appeal has expired, whichever is later.

B. 1. With respect to any such petition filed by a petitioner whose detention originated under criminal process, and subject to the provisions of *subsection C and of* § 17.1-310, only the circuit court that entered the original judgment or order resulting in the detention complained of in the petition shall have authority to issue writs of habeas corpus. If a district court entered the original judgment or order resulting in the detention complained of in the petition, only the circuit court for the city or county wherein the district court sits shall have authority to issue writs of habeas corpus. Hearings on such petition, where granted in the circuit court, may be held at any circuit court within the same circuit as the circuit court in which the petition was filed, as designated by the judge thereof.

2. Such petition shall contain all allegations the facts of which are known to petitioner at the time of filing and such petition shall enumerate all previous applications and their disposition. No writ shall be granted on the basis of any allegation the facts of which petitioner had knowledge at the time of filing any previous petition. The provisions of this section shall not apply to a petitioner's first petition for a writ of habeas corpus when the sole allegation of such petition is that the petitioner was deprived of the right to pursue an appeal from a final judgment of conviction or probation revocation, except that such petition shall contain all facts pertinent to the denial of appeal that are known to the petitioner at the time of the filing, and such petition shall certify that the petitioner has filed no prior habeas corpus petitions attacking the conviction or probation revocation.

3. Such petition may allege detention without lawful authority through challenge to a conviction, although the sentence imposed for such conviction is suspended or is to be served subsequently to the sentence currently being served by petitioner.

4. In the event the allegations of illegality of the petitioner's detention can be fully determined on the basis of recorded matters, the court may make its determination whether such writ should issue on the basis of the record.

5. The court shall give findings of fact and conclusions of law following a determination on the record or

after hearing, to be made a part of the record and transcribed.

6. If petitioner alleges as a ground for illegality of his detention the inadequacy of counsel, he shall be deemed to waive his privilege with respect to communications between such counsel and himself to the extent necessary to permit a full and fair hearing for the alleged ground.

C. 1. With respect to any such petition filed by a petitioner held under the sentence of death, and subject to the provisions of this subsection, the Supreme Court shall have exclusive jurisdiction to consider and award writs of habeas corpus. The circuit court that entered the judgment order setting the sentence of death shall have authority to conduct an evidentiary hearing on such a petition only if directed to do so by order of the Supreme Court.

2. Hearings conducted in a circuit court pursuant to an order issued under the provisions of subdivision 1 shall be limited in subject matter to the issues enumerated in the order.

3. The circuit court shall conduct such a hearing within 90 days after the order of the Supreme Court has been received and shall report its findings of fact and recommend conclusions of law to the Supreme Court within 60 days after the conclusion of the hearing. Any objection to the report of the circuit court must be filed in the Supreme Court within 30 days after the report is filed.

§ 8.01-654.3. Limitation on consideration of petition filed by prisoner sentenced to death.

No petition for a writ of habeas corpus filed by a prisoner held under the sentence of death shall be considered unless it is filed within 60 days after the earliest of (i) denial by the Supreme Court of the United States of a petition for a writ of certiorari to the judgment of the Supreme Court of Virginia on direct appeal, (ii) a decision by the Supreme Court of the United States affirming imposition of the sentence of death when such decision is in a case resulting from a granted writ of certiorari to the judgment of the Supreme Court of Virginia on direct appeal, or (iii) the expiration of the period for filing a timely petition for certiorari without a petition being filed.

However, notwithstanding the time restrictions otherwise applicable to the filing of a petition for a writ of habeas corpus, an indigent prisoner may file such a petition within 120 days following appointment of counsel made under § 19.2-163.9 to represent him.

§ 17.1-310. Habeas corpus, appeals, writs of error and supersedeas.

The Supreme Court shall also have jurisdiction to award writs of habeas corpus and of such appeals, writs of error and supersedeas as may be legally docketed in or transferred to the Court. *In accordance with § 8.01-654, the Court shall have exclusive jurisdiction to award writs of habeas corpus upon petitions filed by prisoners held under the sentence of death.*

§ 17.1-313.1. Review of death sentence.

A. The sentence of death, upon the judgment thereon becoming final in the circuit court, shall be reviewed on the record by the Supreme Court.

B. The proceeding in the circuit court shall be transcribed as expeditiously as practicable and the transcript filed forthwith upon transcription with the clerk of the circuit court, who shall, within 10 days after receipt of the transcript, compile the record as provided in Rule 5:14 of the Rules of Supreme Court of Virginia and transmit it to the Supreme Court.

C. In addition to consideration of any errors in the trial enumerated by appeal, the Supreme Court shall consider and determine:

1. Whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor; and

2. Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

D. In addition to the review and correction of errors in the trial of the case, with respect to review of the sentence of death, the Supreme Court may:

1. Affirm the sentence of death;

2. Commute the sentence of death to imprisonment for life; or

3. Remand to the trial court for a new sentencing proceeding.

E. The Supreme Court may accumulate the records of all felony cases punishable by death tried within such period of time as the Court may determine. The Court shall consider such records as are available as a guide in determining whether the sentence imposed in the case under review is excessive. Such records as are accumulated shall be made available to the circuit courts.

F. Sentence review shall be in addition to appeals, if taken, and review and appeal may be consolidated. The defendant and the Commonwealth shall have the right to submit briefs within time limits imposed by the Supreme Court, either by rule or order, and to present oral argument.

G. The Supreme Court shall, in setting its docket, give priority to the review of cases in which the sentence of death has been imposed over other cases pending in the Court. In setting its docket, the Court shall also give priority to the consideration and disposition of petitions for writs of habeas corpus filed by prisoners held under the sentence of death.

§ 17.1-406. Appeals in criminal matters; cases over which Court of Appeals does not have

jurisdiction.

A. Any aggrieved party may appeal to the Court of Appeals from any final conviction in a circuit court of a traffic infraction or a crime, *except where the sentence of death has been imposed*. The Commonwealth or any county, city, or town may petition the Court of Appeals for an appeal pursuant to this subsection in any case in which such party previously could have petitioned the Supreme Court for a writ of error under § 19.2-317. The Commonwealth may also petition the Court of Appeals for an appeal in a criminal case pursuant to § 19.2-398.

B. In accordance with other applicable provisions of law, appeals lie directly to the Supreme Court *from a conviction in which the sentence of death is imposed;* from a final decision, judgment, or order of a circuit court involving a petition for a writ of habeas corpus; from any action collaterally attacking a criminal conviction, including a motion filed under § 8.01-428; from any final finding, decision, order, or judgment of the State Corporation Commission; and from proceedings under §§ 54.1-3935 and 54.1-3937. Complaints of the Judicial Inquiry and Review Commission shall be filed with the Supreme Court of Virginia. The Court of Appeals shall not have jurisdiction over any cases or proceedings described in this subsection.

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

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

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

The authorized punishments for conviction of a felony are:

(a) For Class 1 felonies, *death, if the person so convicted was 18 years of age or older at the time of the offense and is not determined to be a person with intellectual disability pursuant to § 19.2-264.5:4, or* imprisonment for life and, subject to subdivision (g), a fine of not more than $100,000. *If the person was younger than 18 years of age at the time of the offense or is determined to be a person with intellectual disability pursuant to § 19.2-264.5:4, the punishment shall be imprisonment for life, and subject to subdivision (g), a fine of not more than $100,000.* Any person who was 18 years of age or older at the time of the offense and who is sentenced to imprisonment for life upon conviction of a Class 1 felony shall not be eligible for (i) parole, (ii) any good conduct allowance or any earned sentence credits under Chapter 6 (§ 53.1-186 et seq.) of Title 53.1, or (iii) conditional release pursuant to § 53.1-40.01 or 53.1-40.02.

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

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

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

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

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

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

For any felony offense committed (i) on or after January 1, 1995, the court may, and (ii) on or after July 1, 2000, shall, except in cases in which the court orders a suspended term of confinement of at least six months, impose an additional term of incarceration of not less than six months nor more than three years, which shall be suspended conditioned upon successful completion of a period of post-release supervision pursuant to § 19.2-295.2 and compliance with such other terms as the sentencing court may require. However, such additional term may only be imposed when the sentence includes an active term of incarceration in a correctional facility.

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

§ 18.2-17.1. When capital punishment is inflicted.

No crime shall be punished with death unless it is authorized by statute.

§ 18.2-18. How principals in second degree and accessories before the fact punished.

In the case of every felony, every principal in the second degree and every accessory before the fact may be indicted, tried, convicted and punished in all respects as if a principal in the first degree; provided, however, that except in the case of a killing for hire under the provisions of subdivision A 2 of § 18.2-31 or a killing pursuant to the direction or order of one who is engaged in a continuing criminal enterprise under the

provisions of subdivision A 10 of § 18.2-31 or a killing pursuant to the direction or order of one who is engaged in the commission of or attempted commission of an act of terrorism under the provisions of subdivision A 13 of § 18.2-31, an accessory before the fact or principal in the second degree to ~~an aggravated~~ *capital* murder shall be indicted, tried, convicted and punished as though the offense were murder in the first degree.

§ 18.2-19. How accessories after the fact punished; certain exceptions.

Every accessory after the fact is guilty of (i) a Class 6 felony in the case of a homicide offense that is punishable *by death or* as a ~~Class 1 or~~ Class 2 felony or (ii) a Class 1 misdemeanor in the case of any other felony. However, no person in the relation of spouse, parent or grandparent, child or grandchild, or sibling, by consanguinity or affinity, or servant to the offender, who, after the commission of a felony, aids or assists a principal felon or accessory before the fact to avoid or escape from prosecution or punishment, shall be deemed an accessory after the fact.

§ 18.2-22. Conspiracy to commit felony.

(a) If any person shall conspire, confederate or combine with another, either within or outside the Commonwealth, to commit a felony within the Commonwealth, or if he shall so conspire, confederate or combine with another within the Commonwealth to commit a felony either within or outside the Commonwealth, he shall be guilty of a felony that shall be punishable as follows:

(1) Every person who so conspires to commit an offense that is punishable ~~as a Class 1 felony~~ *by death* is guilty of a Class 3 felony;

(2) Every person who so conspires to commit an offense that is ~~any other~~ *a noncapital* felony is guilty of a Class 5 felony; and

(3) Every person who so conspires to commit an offense the maximum punishment for which is confinement in a state correctional facility for a period of less than five years shall be confined in a state correctional facility for a period of one year, or, in the discretion of the jury or the court trying the case without a jury, may be confined in jail not exceeding 12 months and fined not exceeding $500, either or both.

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

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

(d) The penalty provisions of this section shall not apply to any person who conspires to commit any offense defined in the Drug Control Act (§ 54.1-3400 et seq.) or of Article 1 (§ 18.2-247 et seq.) of Chapter 7. The penalty for any such violation shall be as provided in § 18.2-256.

§ 18.2-25. Attempts to commit Class 1 felony offenses; how punished.

If any person attempts to commit an offense that is punishable ~~as a Class 1 felony~~ *by death*, he is guilty of a Class 2 felony.

§ 18.2-26. Attempts to commit felonies other than Class 1 felony offenses; how punished.

~~Except as provided in § 18.2-25, every~~ *Every* person who attempts to commit an offense that is a *noncapital* felony shall be punished as follows:

~~(1)~~ *1.* If the felony attempted is punishable by a maximum punishment of life imprisonment or a term of years in excess of ~~twenty~~ *20* years, an attempt thereat shall be punishable as a Class 4 felony.

~~(2)~~ *2.* If the felony attempted is punishable by a maximum punishment of ~~twenty~~ *20* years' imprisonment, an attempt thereat shall be punishable as a Class 5 felony.

~~(3)~~ *3.* If the felony attempted is punishable by a maximum punishment of less than ~~twenty~~ *20* years' imprisonment, an attempt thereat shall be punishable as a Class 6 felony.

§ 18.2-30. Murder and manslaughter declared felonies.

Any person who commits ~~aggravated~~ *capital* murder, murder of the first degree, murder of the second degree, voluntary manslaughter, or involuntary manslaughter~~,~~ is guilty of a felony.

§ 18.2-31. Capital murder defined; punishment.

A. The following offenses shall constitute ~~aggravated~~ *capital* murder, punishable as a Class 1 felony:

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

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

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

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

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

6. The willful, deliberate, and premeditated killing of a law-enforcement officer as defined in § 9.1-101, a

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

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

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

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

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

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

12. The willful, deliberate, and premeditated killing of a person under the age of 14 by a person age 21 or older;

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

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

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

B. For a violation of subdivision A 6 where the offender was 18 years of age or older at the time of the offense, the punishment shall be no less than a mandatory minimum term of confinement for life.

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

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

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

All murder other than ~~aggravated~~ *capital* murder and murder in the first degree is murder of the second degree and is punishable by confinement in a state correctional facility for not less than five nor more than ~~forty~~ *40* years.

§ 18.2-61. Rape.

A. If any person has sexual intercourse with a complaining witness, whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in sexual intercourse with any other person and such act is accomplished (i) against the complaining witness's will, by force, threat or intimidation of or against the complaining witness or another person; or (ii) through the use of the complaining witness's mental incapacity or physical helplessness; or (iii) with a child under age 13 as the victim, he or she shall be guilty of rape.

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

1. For a violation of clause ~~(iii)~~ *(i) or (ii)* of subsection A ~~where the offender is more than three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89, 18.2-90, or 18.2-91, or (iii) § 18.2-51.2, the punishment shall include a mandatory minimum term of confinement of 25 years~~, *by confinement in a state correctional facility for life or for any term not less than five years*; ~~or~~

2. For a violation of clause (iii) of subsection A where *the offender is more than three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48; (ii) § 18.2-89, 18.2-90, or 18.2-91 ; or (iii) § 18.2-51.2, by confinement in a state correctional facility for life or for any term not less than five years, and the punishment shall include a mandatory minimum term of confinement of 25 years; or*

3. For a violation of clause (iii) of subsection A where it is alleged in the indictment that the offender was

18 years of age or older at the time of the offense, *by death, if the offender is not determined to be a person with intellectual disability pursuant to § 19.2-264.5:4, or confinement in a state correctional facility for life. If a sentence of death is not imposed,* the punishment shall include a mandatory minimum term of confinement for life.

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

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

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

§ 18.2-67.1. Forcible sodomy.

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

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

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

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

1. For a violation of subdivision A 1, where the offender is more than three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48~~,~~*;* (ii) § 18.2-89, 18.2-90, or 18.2-91~~,~~*;* or (iii) § 18.2-51.2, *by confinement in a state correctional facility for life or for any term not less than five years, and* the punishment shall include a mandatory minimum term of confinement of 25 years; ~~or~~

2. For a violation of subdivision A 1 where it is alleged in the indictment that the offender was 18 years of age or older at the time of the offense, *by death, if the offender is not determined to be a person with intellectual disability pursuant to § 19.2-264.5:4, or confinement in a state correctional facility for life. If a sentence of death is not imposed,* the punishment shall include a mandatory minimum term of confinement for life*; or*

3. For a violation of subdivision A 2, by confinement in a state correctional facility for life or for any term not less than five years.

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

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

C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case tried

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

§ 18.2-67.2. Object sexual penetration; penalty.

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

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

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

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

1. For a violation of subdivision A 1, where the offender is more than three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48~~,~~*;* (ii) § 18.2-89, 18.2-90, or 18.2-91~~,~~*;* or (iii) § 18.2-51.2, *by confinement in the state correctional facility for life or for any term not less than five years, and* the punishment shall include a mandatory minimum term of confinement of 25 years; ~~or~~

2. For a violation of subdivision A 1 where it is alleged in the indictment that the offender was 18 years of age or older at the time of the offense, *by death, if the offender is not determined to be a person with intellectual disability pursuant to § 19.2-264.5:4, or confinement in the state correctional facility for life. If a sentence of death is not imposed,* the punishment shall include a mandatory minimum term of confinement for life*; or*

3. For a violation of subdivision A 2, by confinement in the state correctional facility for life or for any term not less than five years.

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

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

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

§ 18.2-251.01. Substance abuse screening and assessment for felony convictions.

A. When a person is convicted of a felony, except a ~~Class 1 felony~~ *capital offense*, committed on or after January 1, 2000, he shall be required to undergo a substance abuse screening and, if the screening indicates a substance abuse or dependence problem, an assessment by a certified substance abuse counselor as defined in § 54.1-3500 employed by the Department of Corrections or by an agency employee under the supervision of

such counselor. If the person is determined to have a substance abuse problem, the court shall require him to enter treatment and/or education program or services, if available, which, in the opinion of the court, is best suited to the needs of the person. The program or services may be located in the judicial district in which the conviction was had or in any other judicial district as the court may provide. The treatment and/or education program or services shall be licensed by the Department of Behavioral Health and Developmental Services or shall be a similar program or services which are made available through the Department of Corrections if the court imposes a sentence of one year or more or, if the court imposes a sentence of 12 months or less, by a similar program or services available through a local or regional jail, a local community-based probation services agency established pursuant to § 9.1-174, or an ASAP program certified by the Commission on VASAP. The services agency or program may require the person entering such program or services under the provisions of this section to pay a fee for the education and treatment component, or both, based upon the defendant's ability to pay.

B. As a condition of any suspended sentence and probation, the court shall order the person to undergo periodic testing and treatment for substance abuse, if available, as the court deems appropriate based upon consideration of the substance abuse assessment.

§ 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.) 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 and 19.2-305.1, Chapter 21.1 (§ 19.2-368.1 et seq.), 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.

f. Victims of sexual assault, as defined in § 19.2-11.5, shall be advised of their rights regarding physical evidence recovery kits as provided in Chapter 1.2 (§ 19.2-11.5 et seq.).

g. Upon the victim's request, the victim shall be notified by the Commissioner of Behavioral Health and Developmental Services or his designee of the release of a defendant (i) who was found to be unrestorably incompetent and was 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 or (ii) who was acquitted by reason of insanity and committed pursuant to § 19.2-182.3.

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 ~~§~~ *§§ 19.2-264.5:10 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 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, change of address without notice, or failure to provide an address or phone number as required in subdivision A 3 b.

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 attorney for the Commonwealth may satisfy his responsibility under this provision by consulting with a parent or guardian of an unemancipated minor victim, if the parent or guardian is not a suspect, person of interest, or defendant in the criminal investigation of the proceeding.

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.

e. Whenever the Attorney General represents the Commonwealth in any criminal appeal, he shall consult with the victim in the manner prescribed by subdivision d.

5. Courtroom assistance.

a. Victims and witnesses shall be informed that their addresses, any telephone numbers, and email addresses 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~~ *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.

§ 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.). 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 an offense of ~~aggravated~~ *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.

§ 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 that charges ~~aggravated~~ *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~~ *that* 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 that charges ~~aggravated~~ *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.

§ 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 the Commonwealth with all practicable speed and complaint made against him under oath setting forth the ground for the arrest as in § 19.2-99, and thereafter his answer shall be heard as if he had been arrested on a warrant.

§ 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 the 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 the Commonwealth.

§ 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. 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 ~~as a Class 1 felony~~ *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.

§ 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.

§ 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 that 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 the first paragraph of this subdivision 3. 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; (ii) the court finds that appointment of other counsel is necessary to attain the ends of justice; or (iii) the public defender, with the concurrence of the executive director of the Virginia Indigent Defense Commission or his designee, determines that the current active caseload would preclude the public defender from providing adequate representation to new clients, 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 Virginia Indigent Defense Commission pursuant to § 19.2-163.01. If no attorney who is on the list maintained by the Virginia 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.

§ 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 this section, or other such amount as may be provided by law. Such amounts shall be allowed in any case wherein counsel conducts the defense of a single charge against the indigent accused 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:

1. In a district court, except as provided in subdivisions 2 and 3, (i) a sum not to exceed $330 or (ii) for a charge of violation of probation for any misdemeanor offense, a sum not to exceed $180, 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 provided under clause (i) or (ii) up to 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;

2. For a misdemeanor charge in a district court for a violation of § 18.2-266, 18.2-266.1, 18.2-270, or 46.2-341.24, (i) a sum not to exceed $448 or (ii) for a charge of violation of probation for such a misdemeanor offense, a sum not to exceed $180, 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 provided under clause (i) or (ii) up to 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;

3. For a juvenile charge in a district court, (i) a sum not to exceed $680 or (ii) for a charge of violation of probation for any offense, a sum not to exceed $180, 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 provided under clause (i) or (ii) up to (a) an additional $120 or (b) an additional $650 for 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;

4. In a circuit court (i) to defend a ~~Class 1~~ felony charge *that may be punishable by death*, compensation for each appointed attorney in 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 any felony violation of § 18.2-35, 18.2-36, 18.2-36.1, 18.2-41, 18.2-51, 18.2-67.3, 18.2-79, 18.2-80, 18.2-370, 18.2-370.1, or 18.2-371.1, a sum not to exceed $1,692, 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, except those described in clause (i) or (ii), a sum not to exceed $834, 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; (iv) for a charge of violation of probation for any felony offense, except ~~Class 1~~ felonies *punishable by death*, 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 (a) an additional $850 for a charge of violation of probation for any felony described in clause (ii) or (b) an additional $155 for a charge of violation of probation of any other felony 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; (v) to defend a misdemeanor violation of § 18.2-266, 18.2-266.1, 18.2-270, or 46.2-341.24, a sum not to exceed $448 and to defend any other misdemeanor charge punishable by confinement in jail, a sum not to exceed $330; (vi) for a charge of violation of probation for any misdemeanor offense, a sum not to exceed $180; (vii) for a juvenile adjudication appealed from a district court, a sum not to exceed $680; or (viii) for a charge of violation of probation for any juvenile adjudication appealed from a district court, a sum not to exceed $180. 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 is punishable ~~as a Class 1 felony~~ *by death*, each attorney appointed 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 lesser felony, 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 the presiding judge determines that the request for an additional amount is not justified in whole or in part, such presiding judge shall provide to the requesting attorney, in writing, the reasons for such determination and shall, if such request has been approved in part, include a copy of such writing when forwarding the request as approved to the chief judge of the circuit court or district court for approval. If the chief judge of the circuit court or district court, upon review of the request as approved, determines, subject to the guidelines issued by the Executive Secretary of the Supreme Court of Virginia, that any part of the request for an additional amount is not justified, such chief judge shall provide to the requesting attorney and to the presiding judge, in writing, the reason for such determination.

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 is punishable ~~as a Class 1 felony~~ *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 *punishable by death, or counsel representing an indigent prisoner under the 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. Notwithstanding any provision to the contrary, no person found indigent pursuant to § 19.2-159 shall have fees assessed against him for any amount paid for his legal representation pursuant to this article in an amount greater than the amount such defendant would have owed if the assessment took place on or before June 30, 2024.

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. Notwithstanding any provision to the contrary, if the court has determined such child's parents or other persons responsible for his care to be indigent pursuant to § 19.2-159, no fee shall be taxed by the clerk against any such child in an amount greater than the amount the clerk would have taxed against such child if the assessment took place on or before June 30, 2024.

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 Committee on Appropriations, and members of the Senate Committee on Finance and Appropriations on a quarterly basis.

§ 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 Senate Committees for Courts of Justice, the House Committee on Appropriations, and the Senate Committee on Finance and Appropriations 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 *or capital 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 and Appropriations 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.

§ 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.

Article 4.2.

Counsel in Capital Cases.

§ 19.2-163.9. 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 § 19.2-163.10 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, 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, appoint counsel from the same list, or such other list as the Supreme Court and the Indigent Defense Commission may establish, to represent an indigent prisoner under the 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.

§ 19.2-163.10. 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 that 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 the attorney's background, experience, and training and the Court's and the Indigent Defense Commission's assessment of whether the attorney is competent to provide quality legal representation.

C. Notwithstanding the requirements of § 19.2-163.9, 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 Supreme Court and the Indigent Defense 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.

§ 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, or if the initial evaluator has found that the defendant has an ongoing and irreversible medical condition causing him to likely remain incompetent for the foreseeable future or that the defendant has been found to be unrestorably incompetent in the past two years, he shall send a report to

the court so stating. The report shall also indicate whether, in the opinion of the director of the board, authority, or inpatient facility or his designee or the evaluator, 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 D or 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 37.2-817.01 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 ~~aggravated~~ *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 ~~aggravated~~ *capital* murder and has been determined to be unrestorably incompetent, notwithstanding any other provision of this section, the charge shall not be dismissed and the court having jurisdiction over the ~~aggravated~~ *capital* murder case may order that the defendant receive continued treatment under subsection A of § 19.2-169.2 in a secure facility determined by the Commissioner of the Department of Behavioral Health and Developmental Services where the defendant shall remain until further order of the court, provided that (i) a hearing pursuant to subsection E of § 19.2-169.1 is held at yearly intervals for five years and at biennial intervals thereafter, or at any time that the director of the treating facility or his designee submits a competency report to the court in accordance

with subsection D of § 19.2-169.1 that the defendant's competency has been restored, (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. No unrestorably incompetent defendant charged with ~~aggravated~~ *capital* murder shall be released except pursuant to a court order.

G. The attorney for the Commonwealth may bring charges that have been dismissed against the defendant when he is restored to competency.

§ 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, 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 Virginia Commonwealth University School of Medicine, 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 Virginia Commonwealth University School of Medicine, 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 ~~aggravated~~ *capital* murder cases pursuant to § 18.2-31, the fee shall not exceed $1,200, 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.

§ 19.2-217.1. Central file of capital murder indictments.

Upon the return by a grand jury of an indictment for ~~aggravated~~ *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.

§ 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 prosecution *for capital murder* pursuant to subdivision A 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.

Article 4.1:1.

Trial of Capital Cases.

§ 19.2-264.5:1. 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, the sentence of death shall not be imposed unless the court or jury shall (i) 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 (ii) recommend that the penalty of death be imposed.

§ 19.2-264.5:2. Procedure for trial by jury.

A. In any case in which the offense may be punishable by death that 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 and the accused has requested that the jury ascertain punishment of the offense as provided in subsection A of § 19.2-295, it shall fix the punishment as provided in § 19.2-295.1.

C. If the jury finds the defendant guilty of an offense that 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 § 19.2-264.5:10.

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.

§ 19.2-264.5:3. 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 or an offense punishable by death 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 (a) whether the defendant acted under extreme mental or emotional disturbance at the time of the offense, (b) 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 (c) 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 (1) 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 (2) 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 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.

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 or an offense punishable by death 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.

§ 19.2-264.5:4. Capital cases; determination of intellectual disability.

A. As used in this section and § 19.2-264.5:5:

"Intellectual disability" means a disability, originating before the age of 18, 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 intellectual disability under this section and § 19.2-264.5:5 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 intellectual disability, if raised by the defendant in accordance with the notice provisions of subsection E of § 19.2-264.5:5, shall be determined by the jury as part of the sentencing proceeding required by § 19.2-264.5:10.

In any case in which the offense may be punishable by death and is tried before a judge, the issue of intellectual disability, if raised by the defendant in accordance with the notice provisions of subsection E of § 19.2-264.5:5, shall be determined by the judge as part of the sentencing proceeding required by § 19.2-264.5:10.

The defendant shall bear the burden of proving that he is a person with intellectual disability by a preponderance of the evidence.

D. The verdict of the jury, if the issue of intellectual disability is raised, shall be in writing and, in addition to the forms specified in § 19.2-264.5:10, 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 a person with intellectual disability, 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 a person with intellectual disability.

Signed foreman"

§ 19.2-264.5:5. Expert assistance when issue of defendant's intellectual disability relevant to capital sentencing.

A. Upon (i) motion of the attorney for a defendant charged with or convicted of capital murder or an offense punishable by death 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 a person with intellectual disability and to assist the defense in the preparation and presentation of information concerning the defendant's intellectual disability. The mental health expert appointed pursuant to this section shall be (a) a psychiatrist, clinical psychologist, or 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 19.2-264.5:3.

C. The expert appointed pursuant to subsection A shall submit to the attorney for the defendant a report assessing whether the defendant is a person with intellectual disability. The report shall include the expert's opinion as to whether the defendant is a person with intellectual disability.

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 intellectual disability, 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 intellectual disability pursuant to subsection E.

E. In any case in which a defendant charged with capital murder or an offense punishable by death intends, in the event of conviction, to present testimony of an expert witness to support a claim that he is a person with intellectual disability, 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 intellectual disability, 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.

§ 19.2-264.5:6. 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 confidentiality. 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 § 19.2-264.5:3 or 19.2-264.5:5.

§ 19.2-264.5:7. 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 § 19.2-264.5:10 evidence of the 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.

§ 19.2-264.5:8. 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 § 19.2-264.5:3, or an intellectual disability evaluation performed pursuant to § 19.2-264.5:5, 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 or an offense punishable by death for the purpose of proving the aggravating circumstances specified in § 19.2-264.5:10. Such statements or disclosures shall be admissible in rebuttal only when relevant to issues in mitigation raised by the defense.

§ 19.2-264.5:9. 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.

§ 19.2-264.5:10. Sentence proceeding.

A. Upon a finding that the defendant is guilty of an offense that may be punishable by death, a proceeding shall be held that 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 the sentence of death is not recommended, the defendant shall be sentenced to imprisonment for life.

B. 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 § 19.2-299.1.

C. In cases of trial by jury, evidence may be presented as to any matter that 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 that 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 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 § 19.2-264.5:4 is inapplicable as a bar to the death penalty, the subaverage intellectual functioning of the defendant.

D. 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.

E. 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.

§ 19.2-264.5:11. 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.

§ 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 of Forensic Science 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.

~~C.~~ *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.

~~D.~~ *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 *any* officers, employees, or agents of the Commonwealth or its political subdivisions.

§ 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 and when the accused has requested the jury to ascertain punishment as provided in subsection A of § 19.2-295, the court shall permit the victim to testify at the sentencing hearing conducted pursuant to § 19.2-295.1. In all other cases of trial by jury, the case of trial by the court, or the case of a guilty plea, the court shall permit the victim to testify before the court prior to the imposition of the sentence by the presiding judge. *Victim impact testimony in all capital murder cases or any offense punishable by death shall be admitted in accordance with § 19.2-264.5:10.*

§ 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, unless waived by the defendant and the attorney for the Commonwealth, when the defendant pleads guilty or nolo contendere without a plea agreement or is found guilty by the court after a plea of not guilty or nolo contendere; 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, including any diagnoses of an intellectual or developmental disability as defined in § 37.2-100, 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 (a) is charged with a felony subsequent to the time of the preparation of the report or (b) has been convicted of the crime or crimes for which the report was prepared and is pursuing a post-conviction remedy. Such report shall be made available for review without a court order to incarcerated persons who are eligible for release by the Virginia Parole Board, or such person's counsel, pursuant to regulations promulgated by the Virginia Parole Board for that purpose. 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 ~~Class 1 felony~~ *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.

§ 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 or any offense punishable by death,* include a Victim Impact Statement. *Victim Impact Statements in all cases involving capital murder or any offense punishable by death shall be prepared and submitted in accordance with the provisions of § 19.2-264.5:11.*

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.).

§ 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, 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, 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 shall be applicable to first convictions in which the person convicted:

1. Committed the offense of which convicted before becoming 21 years of age;

2. Was convicted of a felony offense other than any of the following: ~~aggravated~~ *capital* murder, murder in the first degree or murder in the second degree, or a violation of § 18.2-61, 18.2-67.1, or 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.

§ 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 ~~Court of Appeals~~ *appellate court* shall either set bail or remand the matter to circuit court for such further action regarding bail as the ~~Court of Appeals~~ *appellate court* directs.

§ 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, (iii) been dismissed in part because at least one assignment of error contained in the petition for appeal did not adhere to proper form or procedures, or (iv) 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 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 and 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 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 the sentence of death has been imposed*.

§ 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; (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 generally accepted within the relevant scientific community; 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.

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 the 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.

E. The court shall order the tests to be performed by:

1. A laboratory mutually selected by the Commonwealth and the applicant; or

2. A laboratory selected by the court that ordered the testing if the Commonwealth and the applicant are unable to agree on a laboratory.

If the testing is conducted by the Department of Forensic Science, the court shall 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 the 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.

If the testing is not conducted by the Department of Forensic Science, it shall be conducted by a laboratory that is accredited by an accrediting body that requires conformance to forensic-specific requirements and that is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement with a scope of accreditation that covers the testing being performed and follows the appropriate Quality Assurance Standards issued by the Federal Bureau of Investigation.

F. *Nothing in this section shall constitute grounds to delay setting an execution date pursuant to § 53.1-236.2 or to grant a stay of execution that has been set pursuant to clause (iii) or (iv) of § 53.1-236.2.*

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.

~~G.~~ *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.

§ 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; (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 § 53.1-236.2 or to grant a stay of execution that has been set pursuant to clause (iii) or (iv) of § 53.1-236.2.*

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.

§ 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; (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 (a) the previously unknown or unavailable evidence supporting the allegation of innocence or (b) the previously untested evidence and the scientific testing supporting the allegation of innocence; (iv)(a) 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 or (b) if known, the reason that the evidence was not subject to scientific testing set forth in the petition; (v) the date (a) the previously unknown or unavailable evidence became known or available to the petitioner and the circumstances under which it was discovered or (b) the results of the scientific testing of previously untested evidence became known to the petitioner or any attorney of record; (vi)(a) that the previously unknown or unavailable evidence is such as could not, by the exercise of diligence, have been discovered or obtained before the time the conviction or adjudication of delinquency became final in the circuit court or (b) that the testing procedure was not available at the time the conviction or adjudication of delinquency became final in the circuit court; (vii) that the previously unknown, unavailable, or untested 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) that the previously unknown, unavailable, or untested evidence is not merely cumulative, corroborative, or collateral. Nothing in this chapter shall constitute grounds to *delay setting an execution date pursuant to § 53.1-236.2 or to grant a stay of execution that has been set pursuant to clause (iii) or (iv) of § 53.1-236.2 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. The Court of Appeals may summarily dismiss any second or subsequent petition for failure to identify new or different evidence in support of the factual innocence claim or, if new and different grounds are alleged, failure of the petitioner to assert those grounds in a prior petition filed pursuant to this section under circumstances that constitute an abuse of the writ. 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, unavailable, or untested 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.

F. Upon the scheduling of a hearing pursuant to § 19.2-327.12 or any subsequent oral argument, the Attorney General shall notify the victim or the victim's representative of the hearing. The victim or victim's representative shall have the right to attend any such hearing. For purposes of this subsection, "victim" means the same as that term is defined in subsection B of § 19.2-11.01.

§ 19.2-389.1. 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 § *19.2-264.5:11 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; (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; (xii) to the State Health Commissioner or his designee for the purpose of screening any person who applies to be a volunteer with or an employee of an emergency medical services agency as provided in § 32.1-111.5; and (xiii) to the chief law-enforcement officer of a locality, or his designee who shall be an individual employed as a public safety

official of the locality, that has adopted an ordinance in accordance with §§ 15.2-1503.1 and 19.2-389 for the purpose of screening any person who applies to be a volunteer with or an employee of an emergency medical services agency as provided in § 32.1-111.5.

§ 19.2-389.3. (For contingent expiration dates, see Acts 2021, Sp. Sess. I, cc. 524, 542, 550, and 551; for contingent repeal, see Acts 2023, cc. 554 and 555, cl. 3) Marijuana possession; limits on dissemination of criminal history record information; prohibited practices by employers, educational institutions, and state and local governments; penalty.

A. Records relating to the arrest, criminal charge, or conviction of a person for a misdemeanor violation of § 18.2-248.1 or a violation of § 18.2-250.1, including any violation charged under §§ 18.2-248.1 or 18.2-250.1 that was deferred and dismissed pursuant to § 18.2-251, maintained in the Central Criminal Records Exchange shall not be open for public inspection or otherwise disclosed, provided that such records may be disseminated (i) to make the determination as provided in § 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 pre-sentence or post-sentence investigation report pursuant to § *19.2-264.5:11 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 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 Virginia Criminal Sentencing Commission for research purposes; (viii) 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; (ix) to the State Health Commissioner or his designee for the purpose of screening any person who applies to be a volunteer with or an employee of an emergency medical services agency as provided in § 32.1-111.5; (x) to any full-time or part-time employee of the Department of Forensic Science for the purpose of screening any person for full-time or part-time employment with the Department of Forensic Science; (xi) to the chief law-enforcement officer of a locality, or his designee who shall be an individual employed as a public safety official of the locality, that has adopted an ordinance in accordance with §§ 15.2-1503.1 and 19.2-389 for the purpose of screening any person who applies to be a volunteer with or an employee of an emergency medical services agency as provided in § 32.1-111.5; and (xii) to any full-time or part-time employee of the Department of Motor Vehicles, any employer as defined in § 46.2-341.4, or any medical examiner as defined in 49 C.F.R. § 390.5 for the purpose of complying with the regulations of the Federal Motor Carrier Safety Administration.

B. An employer or educational institution shall not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest, criminal charge, or conviction against him when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. An applicant need not, in answer to any question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning any arrest, criminal charge, or conviction when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A.

C. 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, criminal charge, or conviction against him when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. An applicant need not, in answer to any question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning any arrest, criminal charge, or conviction when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any such arrest, criminal charge, or conviction.

D. A person who willfully violates subsection B or C is guilty of a Class 1 misdemeanor for each violation.

§ 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 ~~an aggravated~~ *a capital* murder case

or any offense punishable by death, 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.

§ 53.1-204. If prisoner commits any other felony, how punished.

If a prisoner in a state, local, or community correctional facility or in the custody of an employee thereof commits any felony other than those specified in §§ 18.2-31, 18.2-55, and 53.1-203, which is punishable by *death or* confinement in a state correctional facility, such prisoner shall be subject to the same punishment therefor as if he were not a prisoner.

§ 53.1-229. Powers vested in Governor.

In accordance with the provisions of Article V, Section 12 of the Constitution of Virginia, the power to *commute capital punishment and to* grant pardons or reprieves is vested in the Governor.

§ 53.1-230.1. Commutation of capital punishment.

In any case in which the Governor shall exercise the power conferred on him to commute capital punishment, he may issue his order to the Director, who shall receive and confine the person whose punishment is commuted according to such order. To carry into effect any commutation of punishment, the Governor may issue his warrant directed to any proper officer, and the same shall be obeyed and executed.

CHAPTER 13.1.

DEATH SENTENCES.

§ 53.1-236.1. Procedures for execution of death sentence; subsequent process.

A. The sentence of death shall not be executed sooner than 30 days after the sentence is pronounced. The court shall, in imposing such sentence, fix a day when the execution shall occur.

B. Whenever the day fixed for the execution of the sentence of death shall have passed without the execution of the sentence and it becomes necessary to fix a new date therefor, the circuit court that pronounced the sentence shall fix another day for the execution. The person to be executed need not be present but shall be represented by an attorney when such other day is fixed. A copy of the order fixing the new date of execution shall be promptly furnished by the clerk of the court making the order to the Director. The Director shall cause a copy of the order to be delivered to the person to be executed and, if he is unable to read it, cause it to be explained to him at least 10 days before the date fixed for such execution, and make return thereof to the clerk of the court that issued such order.

C. When the day fixed for the execution of the sentence of death has passed without the execution of the sentence by reason of a reprieve granted by the Governor, it shall not be necessary for the court to resentence the prisoner. The sentence of death shall be executed on the day to which the prisoner has been reprieved.

D. Should the condemned prisoner be granted a reprieve by the Governor or obtain a writ of error from the Supreme Court of Virginia, or should the execution of the sentence be stayed by any other competent judicial proceeding, notice of such reprieve, writ of error, or stay of execution shall be served upon (i) the Director, (ii) the warden or superintendent having actual custody of the prisoner, and (iii) the prisoner himself; the Director shall yield obedience to the same. In any subsequent proceeding, the mandate of the court having regard to the condemned prisoner shall be served upon the Director, upon the warden or superintendent having actual custody of the prisoner, and upon the prisoner. Should the condemned prisoner be resentenced to death by the court, the proceedings shall be as hereinabove provided under the original sentence. Should a new trial be granted, such condemned prisoner shall be conveyed back to the place of trial by such officer or officers as the Director may direct.

§ 53.1-236.2. When execution dates required.

In a criminal case where the sentence of death has been imposed, the trial court shall set an execution date when it is notified in writing by the Attorney General or the attorney for the Commonwealth, and the court finds that: (i) the Supreme Court of Virginia has denied habeas corpus relief or the time for filing a timely habeas corpus petition in that Court has passed without such a petition being filed, (ii) the Supreme Court of the United States has issued a final order disposing of the case after granting a stay to review the judgment of the Supreme Court of Virginia on habeas corpus, (iii) the United States Court of Appeals has

affirmed the denial of federal habeas corpus relief or the time for filing a timely appeal in that court has passed without such an appeal being filed, or (iv) the Supreme Court of the United States has issued a final order after granting a stay in order to dispose of the petition for a writ of certiorari to review the judgment of the United States Court of Appeals.

The trial court shall conduct a proceeding to set the date within 10 days after receiving the written notice from the Attorney General or the attorney for the Commonwealth. The execution date shall be set by the trial court in accordance with the provisions of §§ 53.1-236.1 and 53.1-236.4 but in any event shall be no later than 60 days after the date of the proceeding. Nothing in this provision shall prohibit the trial court from setting an execution date under circumstances other than those specified herein. Once an execution date is scheduled, a stay of execution may be granted by the trial court or the Supreme Court of Virginia only upon a showing of substantial grounds for habeas corpus relief.

§ 53.1-236.3. Death chamber; who to execute death sentence.

The Director is hereby authorized and directed to provide and maintain a permanent death chamber and necessary appurtenant facilities within the confines of a state correctional facility. The death chamber shall have all the necessary appliances for the proper execution of prisoners by electrocution or by continuous intravenous injection of a substance or combination of substances sufficient to cause death. Any such substance shall be applied until the prisoner is pronounced dead by a physician licensed in the Commonwealth. All prisoners upon whom the death penalty has been imposed shall be executed in the death chamber. Each execution shall be conducted by the Director or one or more assistants designated by him.

The identities of persons designated by the Director to conduct an execution and any information reasonably calculated to lead to the identities of such persons, including their names, residential or office addresses, residential or office telephone numbers, and social security numbers, shall be confidential, shall be exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), and shall not be subject to discovery or introduction as evidence in any civil proceeding unless good cause is shown.

§ 53.1-236.4. Transfer of prisoner; how death sentence executed; who to be present.

The clerk of the circuit court in which is pronounced the sentence of death against any person shall, after such judgment becomes final in the circuit court, deliver a certified copy thereof to the Director. Such person so sentenced to death shall be confined prior to the execution of the sentence in a state correctional facility designated by the Director. Prior to the time fixed in the judgment of the court for the execution of the sentence, the Director shall cause the condemned prisoner to be conveyed to the state correctional facility housing the death chamber.

The Director, or the assistants appointed by him, shall at the time named in the sentence, unless a suspension of execution is ordered, cause the prisoner under sentence of death to be electrocuted or injected with a lethal substance until he is dead. The method of execution shall be chosen by the prisoner. In the event the prisoner refuses to make a choice at least 15 days prior to the scheduled execution, the method of execution shall be by lethal injection. Execution by lethal injection shall be permitted in accordance with procedures developed by the Department. At the execution, there shall be present the Director or an assistant, a physician employed by the Department or his assistant, such other employees of the Department as may be required by the Director, and at least six citizens who shall not be employees of the Department. In addition, the counsel for the prisoner and a clergyman may be present.

The Director may make and enter into contracts with an outsourcing facility, as defined in § 54.1-3401, for the compounding of drugs necessary to carry out an execution by lethal injection. Any such drugs provided to the Department pursuant to the terms of such a contract shall be used only for the purpose of carrying out an execution by lethal injection. The outsourcing facility providing such drugs to the Department pursuant to the terms of such a contract shall label each such drug with the drug name, its quantity, a projected expiration date for the drug, and a statement that the drug shall be used only by the Department for the purpose of carrying out an execution by lethal injection.

The identity of any outsourcing facility that enters into a contract with the Department for the compounding of drugs necessary to carry out an execution by lethal injection, any officer or employee of such outsourcing facility, and any person or entity used by such outsourcing facility to obtain equipment or substances to facilitate the compounding of such drugs shall not be confidential, shall be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), and may be subject to discovery or introduction as evidence in any civil proceeding. However, the residential and office addresses, residential and office telephone numbers, social security numbers, and tax identification numbers of officers and employees of the outsourcing facility and any person or entity used by the outsourcing facility to obtain equipment or substances to facilitate the compounding of such drugs shall be confidential and exempt from the Virginia Freedom of Information Act.

§ 53.1-236.5. Certificate of execution of death sentence.

After execution of the death sentence as provided in this chapter, the physician in attendance shall perform an examination to determine that death has occurred. The Director shall certify the fact of the execution, appending the physician's death certificate thereto, to the clerk of the court by which such sentence

was pronounced. The clerk shall file the certificate with the papers of the case and shall enter the same upon the records of the case.

§ 53.1-236.6. Disposition of remains.

Upon application of the relatives of the person executed, the remains after execution shall be returned to their address and at their cost. If no such application is made within three days of the date of execution, the provisions of § 32.1-298 shall apply.

§ 54.1-3307. Specific powers and duties of Board.

A. The Board shall regulate the practice of pharmacy and the manufacturing, dispensing, selling, distributing, processing, compounding, or disposal of drugs and devices. The Board shall also control the character and standard of all drugs, cosmetics, and devices within the Commonwealth, investigate all complaints as to the quality and strength of all drugs, cosmetics, and devices, and take such action as may be necessary to prevent the manufacturing, dispensing, selling, distributing, processing, compounding, and disposal of such drugs, cosmetics, and devices that do not conform to the requirements of law.

The Board's regulations shall include criteria for:

1. Maintenance of the quality, quantity, integrity, safety, and efficacy of drugs or devices distributed, dispensed, or administered.

2. Compliance with the prescriber's instructions regarding the drug and its quantity, quality, and directions for use.

3. Controls and safeguards against diversion of drugs or devices.

4. Maintenance of the integrity of, and public confidence in, the profession and improving the delivery of quality pharmaceutical services to the citizens of Virginia.

5. Maintenance of complete records of the nature, quantity, or quality of drugs or substances distributed or dispensed and of all transactions involving controlled substances or drugs or devices so as to provide adequate information to the patient, the practitioner, or the Board.

6. Control of factors contributing to abuse of legitimately obtained drugs, devices, or controlled substances.

7. Promotion of scientific or technical advances in the practice of pharmacy and the manufacture and distribution of controlled drugs, devices, or substances.

8. Impact on costs to the public and within the health care industry through the modification of mandatory practices and procedures not essential to meeting the criteria set out in subdivisions 1 through 7.

9. Such other factors as may be relevant to, and consistent with, the public health and safety and the cost of rendering pharmacy services.

B. The Board may collect and examine specimens of drugs, devices, and cosmetics that are manufactured, distributed, stored, or dispensed in the Commonwealth.

C. The Board shall report annually by December 1 to the Chairmen of the Senate Committee on Education and Health and the House Committee on Health and Human Services on (i) the number of outsourcing facilities permitted or registered by the Board to have entered into a contract with the Department of Corrections for the compounding of drugs necessary to carry out an execution by lethal injection pursuant to § 53.1-236.4 and (ii) the name of any such outsourcing facilities that received disciplinary action for a violation of law or regulation related to compounding.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is $0 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.