

HOUSE BILL NO. 633

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Delegate Cherry)

A BILL to amend and reenact §§ 8.01-42.4, 17.1-805, 18.2-513, 19.2-10.2, 19.2-268.3, 19.2-299, and 19.2-392.02 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 8 of Title 18.2 an article numbered 3.1, consisting of sections numbered 18.2-361.2 and 18.2-361.3, relating to labor trafficking; forced labor or service; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-42.4, 17.1-805, 18.2-513, 19.2-10.2, 19.2-268.3, 19.2-299, and 19.2-392.02 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 8 of Title 18.2 an article numbered 3.1, consisting of sections numbered 18.2-361.2 and 18.2-361.3, as follows:

§ 8.01-42.4. Civil action for trafficking in persons.

A. Any person injured by reason of (i) a violation of clause (iii), (iv), or (v) of § 18.2-48; (ii) a violation of § 18.2-348, 18.2-348.1, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 18.2-357.1, 18.2-361.2, or 18.2-368; or (iii) a felony violation of § 18.2-346.01 may sue therefor and recover compensatory damages, punitive damages, and reasonable attorney fees and costs.

B. No action shall be commenced under this section more than ~~seven~~ 10 years after the later of the date on which such person (i) was no longer subject to the conduct prohibited by clause (iii), (iv), or (v) of § 18.2-48 or § 18.2-348, 18.2-348.1, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 18.2-357.1, 18.2-361.2, or 18.2-368 or under a felony violation of § 18.2-346.01 or (ii) attained 18 years of age.

C. The provisions of this section shall apply whether or not an individual has been charged with or convicted of any of the alleged violations listed in subsection A.

§ 17.1-805. Adoption of initial discretionary sentencing guideline midpoints.

27 A. The Commission shall adopt an initial set of discretionary felony sentencing guidelines which
28 shall become effective on January 1, 1995. The initial recommended sentencing range for each felony
29 offense shall be determined first, by computing the actual time-served distribution for similarly situated
30 offenders, in terms of their conviction offense and prior criminal history, released from incarceration
31 during the base period of calendar years 1988 through 1992, increased by 13.4 percent, and second, by
32 eliminating from this range the upper and lower quartiles. The midpoint of each initial recommended
33 sentencing range shall be the median time served for the middle two quartiles and subject to the following
34 additional enhancements:

35 1. The midpoint of the initial recommended sentencing range for first degree murder, second
36 degree murder, rape in violation of § 18.2-61, forcible sodomy, object sexual penetration, and aggravated
37 sexual battery shall be further increased by (i) 125 percent in cases in which the defendant has no previous
38 conviction of a violent felony offense; (ii) 300 percent in cases in which the defendant has previously been
39 convicted of a violent felony offense punishable by a maximum punishment of less than 40 years; or (iii)
40 500 percent in cases in which the defendant has previously been convicted of a violent felony offense
41 punishable by a maximum punishment of 40 years or more, except that the recommended sentence for a
42 defendant convicted of first degree murder who has previously been convicted of a violent felony offense
43 punishable by a maximum term of imprisonment of 40 years or more shall be imprisonment for life;

44 2. The midpoint of the initial recommended sentencing range for voluntary manslaughter, robbery,
45 aggravated malicious wounding, malicious wounding, and any burglary of a dwelling house or statutory
46 burglary of a dwelling house or any burglary committed while armed with a deadly weapon or any
47 statutory burglary committed while armed with a deadly weapon shall be further increased by (i) 100
48 percent in cases in which the defendant has no previous conviction of a violent felony offense, (ii) 300
49 percent in cases in which the defendant has previously been convicted of a violent felony offense
50 punishable by a maximum term of imprisonment of less than 40 years, or (iii) 500 percent in cases in
51 which the defendant has previously been convicted of a violent felony offense punishable by a maximum
52 term of imprisonment of 40 years or more;

53 3. The midpoint of the initial recommended sentencing range for manufacturing, selling, giving,
54 or distributing, or possessing with the intent to manufacture, sell, give, or distribute a Schedule I or II
55 controlled substance, shall be increased by (i) 200 percent in cases in which the defendant has previously
56 been convicted of a violent felony offense punishable by a maximum punishment of less than 40 years or
57 (ii) 400 percent in cases in which the defendant has previously been convicted of a violent felony offense
58 punishable by a maximum term of imprisonment of 40 years or more; and

59 4. The midpoint of the initial recommended sentencing range for felony offenses not specified in
60 subdivision 1, 2, or 3 shall be increased by 100 percent in cases in which the defendant has previously
61 been convicted of a violent felony offense punishable by a maximum punishment of less than 40 years
62 and by 300 percent in cases in which the defendant has previously been convicted of a violent felony
63 offense punishable by a maximum term of imprisonment of 40 years or more.

64 B. For purposes of this chapter, previous convictions shall include prior adult convictions and
65 juvenile convictions and adjudications of delinquency based on an offense which would have been at the
66 time of conviction a felony if committed by an adult under the laws of any state, the District of Columbia,
67 or the United States or its territories.

68 C. For purposes of this chapter, violent felony offenses shall include any felony violation of § 16.1-
69 253.2; solicitation to commit murder under § 18.2-29; any violation of § 18.2-31, 18.2-32, 18.2-32.1, 18.2-
70 32.2, 18.2-33, or 18.2-35; any violation of subsection B of § 18.2-36.1; any violation of § 18.2-40 or 18.2-
71 41; any violation of clause (c) (i) or (ii) of subsection B of § 18.2-46.3; any violation of § 18.2-46.5, 18.2-
72 46.6, or 18.2-46.7; any Class 5 felony violation of § 18.2-47; any felony violation of § 18.2-48, 18.2-48.1,
73 or 18.2-49; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-51.6, 18.2-52,
74 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, or 18.2-55; any violation of subsection B of § 18.2-
75 57; any felony violation of § 18.2-57.2; any violation of § 18.2-58 or 18.2-58.1; any felony violation of §
76 18.2-60.1, 18.2-60.3, or 18.2-60.4; any violation of § 18.2-61, 18.2-64.1, 18.2-67.1, 18.2-67.2, former §
77 18.2-67.2:1, 18.2-67.3, 18.2-67.5, or 18.2-67.5:1 involving a third conviction of either sexual battery in
78 violation of § 18.2-67.4 or attempted sexual battery in violation of subsection C of § 18.2-67.5; any Class
79 4 felony violation of § 18.2-63; any violation of subsection A of § 18.2-67.4:1; any violation of subsection

80 A of § 18.2-77; any Class 3 felony violation of § 18.2-79; any Class 3 felony violation of § 18.2-80; any
 81 violation of § 18.2-85, 18.2-89, 18.2-90, 18.2-91, 18.2-92, or 18.2-93; any felony violation of § 18.2-
 82 152.7; any Class 4 felony violation of § 18.2-153; any Class 4 felony violation of § 18.2-154; any Class 4
 83 felony violation of § 18.2-155; any felony violation of § 18.2-162; any violation of § 18.2-279 involving
 84 an occupied dwelling; any felony violation of subsection A or B of § 18.2-280; any violation of § 18.2-
 85 281; any felony violation of subsection A of § 18.2-282; any felony violation of § 18.2-282.1; any violation
 86 of § 18.2-286.1, 18.2-287.2, 18.2-289, or 18.2-290; any violation of subsection A of § 18.2-300; any
 87 felony violation of subsection C of § 18.2-308.1 or § 18.2-308.2; any violation of § 18.2-308.2:1 or
 88 subsection M or N of § 18.2-308.2:2; any violation of § 18.2-308.3 or 18.2-312; any former felony
 89 violation of § 18.2-346; any felony violation of § 18.2-346.01, 18.2-348, or 18.2-349; any violation of §
 90 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1; ~~any violation of, former § 18.2-358; any violation of,~~
 91 ~~subsection B of § 18.2-361; any violation of, § 18.2-361.2, subsection B of § 18.2-366; any violation of,~~
 92 § 18.2-368, 18.2-370, or 18.2-370.1; ~~any violation of, or~~ subsection A of § 18.2-371.1; any felony violation
 93 of § 18.2-369 resulting in serious bodily injury or disease; any violation of § 18.2-374.1; any felony
 94 violation of § 18.2-374.1:1; any violation of § 18.2-374.3 or 18.2-374.4; any second or subsequent offense
 95 under §§ 18.2-379 and 18.2-381; any felony violation of § 18.2-405 or 18.2-406; any violation of § 18.2-
 96 408, 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, or 18.2-433.2; any felony
 97 violation of § 18.2-460, 18.2-474.1, or 18.2-477.1; any violation of § 18.2-477, 18.2-478, 18.2-480, 18.2-
 98 481, or 18.2-485; any violation of § 37.2-917; any violation of § 52-48; any violation of § 53.1-203; any
 99 conspiracy or attempt to commit any offense specified in this subsection, or any substantially similar
 100 offense under the laws of any state, the District of Columbia, or the United States or its territories.

101 Article 3.1.

102 Labor Trafficking; Forced Labor or Service.

103 § 18.2-361.2. Labor trafficking; forced labor or service; receiving money from labor
 104 trafficking; penalties.

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

106 "Abuse or threatened abuse of law or legal process" means the use or threatened use of a law or
107 legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the
108 law was not designed in order to exert pressure on another person to cause that person to take some action
109 or refrain from taking some action. "Abuse or threatened abuse of law or legal process" includes
110 destroying, concealing, confiscating, or withholding or threatening to withhold a passport, immigration
111 document, other governmental identification, or any other document or item of value or threatening to
112 report another as being illegally present in the United States.

113 "Serious harm" means any harm, whether physical or nonphysical, including psychological,
114 financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to
115 compel a reasonable person of the same background and in the same circumstances to perform or to
116 continue performing labor or services in order to avoid incurring that harm.

117 B. Any person who knowingly provides or obtains the labor or services of a person by means of
118 (i) force, threats of force, physical restraint, or threats of physical restraint to that person or another person;
119 (ii) serious harm or threats of serious harm to that person or another person; (iii) the abuse or threatened
120 abuse of law or legal process; or (iv) any scheme, plan, or pattern intended to cause the person to believe
121 that if that person did not perform such labor or services that person or another person would suffer serious
122 harm or physical restraint is guilty of labor trafficking.

123 C. Any person who knowingly benefits, financially or by receiving anything of value, from
124 participation in a venture that has engaged in the providing or obtaining of labor or services by any of the
125 means described in subsection B, knowing or in reckless disregard of the fact that the venture has engaged
126 in the providing or obtaining of labor or services by any of such means, is guilty of receiving money from
127 labor trafficking.

128 D. A violation of this section is punishable as a Class 4 felony. However, any adult who violates
129 this section with a person under the age of 18 is guilty of a Class 3 felony.

130 **§ 18.2-361.3. Venue for labor trafficking, forced labor or service, receiving money from labor**
131 **trafficking.**

132 Any crime specified in this article may be presented, indicted, tried, and convicted in any county
133 or city in which an element of the crime is alleged to have occurred, in any county or city through which
134 the victim was transported by the defendant in the commission of such offense, or in any county or city
135 where the victim resided at the time of the offense.

136 **§ 18.2-513. Definitions.**

137 As used in this chapter:

138 "Criminal street gang" means the same as that term is defined in § 18.2-46.1.

139 "Enterprise" includes any of the following: sole proprietorship, partnership, corporation, business
140 trust, criminal street gang, or other group of three or more individuals associated for the purpose of
141 criminal activity.

142 "Proceeds" means the same as that term is defined in § 18.2-246.2.

143 "Racketeering activity" means to commit, attempt to commit, or conspire to commit or to solicit,
144 coerce, or intimidate another person to commit two or more of the following offenses: Article 2.1 (§ 18.2-
145 46.1 et seq.) of Chapter 4, § 18.2-460; a felony offense of § 3.2-4212, 3.2-4219, 10.1-1455, 18.2-31, 18.2-
146 32, 18.2-32.1, 18.2-33, or 18.2-35, Article 2.2 (§ 18.2-46.4 et seq.) of Chapter 4, § 18.2-47, 18.2-48, 18.2-
147 48.1, 18.2-49, 18.2-51, 18.2-51.2, 18.2-52, 18.2-53, 18.2-55, 18.2-58, 18.2-59, 18.2-77, 18.2-79, 18.2-80,
148 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, 18.2-95, 18.2-96, or 18.2-103.1, Article 4 (§ 18.2-111 et seq.)
149 of Chapter 5, Article 1 (§ 18.2-168 et seq.) of Chapter 6, § 18.2-178 or 18.2-186, Article 6 (§ 18.2-191 et
150 seq.) of Chapter 6, Article 9 (§ 18.2-246.1 et seq.) of Chapter 6, § 18.2-246.13, Article 1 (§ 18.2-247 et
151 seq.) of Chapter 7, § 18.2-279, 18.2-286.1, 18.2-289, 18.2-300, 18.2-308.2, 18.2-308.2:1, 18.2-328, 18.2-
152 346, 18.2-346.01, 18.2-348, 18.2-348.1, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 18.2-357.1, 18.2-361.2,
153 18.2-368, 18.2-369, or 18.2-374.1, Article 8 (§ 18.2-433.1 et seq.) of Chapter 9, Article 1 (§ 18.2-434 et
154 seq.) of Chapter 10, Article 2 (§ 18.2-438 et seq.) of Chapter 10, Article 3 (§ 18.2-446 et seq.) of Chapter
155 10, Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12, § 3.2-6571, 18.2-516, 32.1-314, 58.1-1008.2, 58.1-
156 1017, or 58.1-1017.1; or any substantially similar offenses under the laws of any other state, the District
157 of Columbia, or the United States or its territories.

158 **§ 19.2-10.2. Administrative subpoena issued for record from provider of electronic**
159 **communication service or remote computing service.**

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

165 1. In order to obtain such records or other information, the attorney for the Commonwealth or the
166 Attorney General shall certify on the face of the subpoena that there is reason to believe that the records
167 or other information being sought are relevant to a legitimate law-enforcement investigation concerning
168 violations of §§ 18.2-47, 18.2-48, 18.2-49, 18.2-346, 18.2-346.01, 18.2-347, 18.2-348, 18.2-348.1, 18.2-
169 349, 18.2-355, 18.2-356, 18.2-357, 18.2-357.1, 18.2-361.2, 18.2-374.1, and 18.2-374.1:1, former § 18.2-
170 374.1:2, and § 18.2-374.3.

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

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

183 B. All records or other information received by an attorney for the Commonwealth or the Attorney
184 General pursuant to an administrative subpoena issued under this section shall be used only for a

185 reasonable length of time not to exceed 30 days and only for a legitimate law-enforcement purpose. Upon
186 completion of the investigation, the records or other information held by the attorney for the
187 Commonwealth or the Attorney General shall be destroyed if no prosecution is initiated. The existence of
188 such a subpoena shall be disclosed upon motion of an accused.

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

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

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

200 **§ 19.2-268.3. Admissibility of statements by children in certain cases.**

201 A. As used in this section, "offense against children" means a violation or an attempt to violate §
202 18.2-31, 18.2-32, or 18.2-35, subsection A of § 18.2-47, § 18.2-48, 18.2-51, 18.2-51.2, 18.2-51.6, 18.2-
203 52, 18.2-54.1, 18.2-54.2, 18.2-61, 18.2-67.1, 18.2-67.2, or 18.2-67.3, § 18.2-346.01 if punishable as a
204 felony, § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1, subsection B of § 18.2-361, § 18.2-361.2,
205 subsection B of § 18.2-366, § 18.2-370, 18.2-370.1, 18.2-371.1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, or
206 18.2-374.4, § 18.2-386.1 if punishable as a felony, or § 40.1-103.

207 B. An out-of-court statement made by a child who is under 13 years of age at the time of trial or
208 hearing who is the alleged victim of an offense against children describing any act directed against the
209 child relating to such alleged offense shall not be excluded as hearsay under Rule 2:802 of the Rules of
210 Supreme Court of Virginia if both of the following apply:

211 1. The court finds, in a hearing conducted prior to a trial, that the time, content, and totality of
212 circumstances surrounding the statement provide sufficient indicia of reliability so as to render it
213 inherently trustworthy. In determining such trustworthiness, the court may consider, among other things,
214 the following factors:

- 215 a. The child's personal knowledge of the event;
- 216 b. The age, maturity, and mental state of the child;
- 217 c. The credibility of the person testifying about the statement;
- 218 d. Any apparent motive the child may have to falsify or distort the event, including bias or
219 coercion;
- 220 e. Whether the child was suffering pain or distress when making the statement; and
- 221 f. Whether extrinsic evidence exists to show the defendant's opportunity to commit the act; and

222 2. The child:
223 a. Testifies; or
224 b. Is declared by the court to be unavailable as a witness; when the child has been declared
225 unavailable, such statement may be admitted pursuant to this section only if there is corroborative evidence
226 of the act relating to an alleged offense against children.

227 C. At least 14 days prior to the commencement of the proceeding in which a statement will be
228 offered as evidence, the party intending to offer the statement shall notify the opposing party, in writing,
229 of the intent to offer the statement and shall provide or make available copies of the statement to be
230 introduced.

231 D. This section shall not be construed to limit the admission of any statement offered under any
232 other hearsay exception or applicable rule of evidence.

233 **§ 19.2-299. Investigations and reports by probation officers in certain cases.**

234 A. When a person is tried in a circuit court (i) upon a charge of assault and battery in violation of
235 § 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,
236 attempted sexual battery in violation of § 18.2-67.5, or driving while intoxicated in violation of § 18.2-
237 266, and is adjudged guilty of such charge, unless waived by the court and the defendant and the attorney

238 for the Commonwealth, the court may, or on motion of the defendant shall; or (ii) upon a felony charge
239 not set forth in subdivision (iii) below, the court may when there is a plea agreement between the defendant
240 and the Commonwealth and shall, unless waived by the defendant and the attorney for the Commonwealth,
241 when the defendant pleads guilty or nolo contendere without a plea agreement or is found guilty by the
242 court after a plea of not guilty or nolo contendere; or (iii) the court shall when a person is charged and
243 adjudged guilty of a felony violation, or conspiracy to commit or attempt to commit a felony violation, of
244 § 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,
245 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-
246 361, 18.2-361.2, 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
247 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
248 probation officer of such court to thoroughly investigate and report upon the history of the accused,
249 including a report of the accused's criminal record as an adult and available juvenile court records, any
250 information regarding the accused's participation or membership in a criminal street gang as defined in §
251 18.2-46.1, and all other relevant facts, to fully advise the court so the court may determine the appropriate
252 sentence to be imposed. Unless the defendant or the attorney for the Commonwealth objects, the court
253 may order that the report contain no more than the defendant's criminal history, any history of substance
254 abuse, any physical or health-related problems as may be pertinent, including any diagnoses of an
255 intellectual or developmental disability as defined in § 37.2-100, and any applicable sentencing guideline
256 worksheets. This expedited report shall be subject to all the same procedures as all other sentencing reports
257 and sentencing guidelines worksheets. The probation officer, after having furnished a copy of this report
258 at least five days prior to sentencing to counsel for the accused and the attorney for the Commonwealth
259 for their permanent use, shall submit his report in advance of the sentencing hearing to the judge in
260 chambers, who shall keep such report confidential. Counsel for the accused may provide the accused with
261 a copy of the presentence report. The probation officer shall be available to testify from this report in open
262 court in the presence of the accused, who shall have been provided with a copy of the presentence report
263 by his counsel or advised of its contents and be given the right to cross-examine the investigating officer
264 as to any matter contained therein and to present any additional facts bearing upon the matter. The report

265 of the investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a
266 part of the record in the case. Any report so filed shall be made available only by court order and shall be
267 sealed upon final order by the court, except that such reports or copies thereof shall be available at any
268 time to any criminal justice agency, as defined in § 9.1-101, of this or any other state or of the United
269 States; to any agency where the accused is referred for treatment by the court or by probation and parole
270 services; and to counsel for any person who has been indicted jointly for the same felony as the person
271 subject to the report. Subject to the limitations set forth in § 37.2-901, any report prepared pursuant to the
272 provisions hereof shall without court order be made available to counsel for the person who is the subject
273 of the report if that person (a) is charged with a felony subsequent to the time of the preparation of the
274 report or (b) has been convicted of the crime or crimes for which the report was prepared and is pursuing
275 a post-conviction remedy. Such report shall be made available for review without a court order to
276 incarcerated persons who are eligible for release by the Virginia Parole Board, or such person's counsel,
277 pursuant to regulations promulgated by the Virginia Parole Board for that purpose. The presentence report
278 shall be in a form prescribed by the Department of Corrections. In all cases where such report is not
279 ordered, a simplified report shall be prepared on a form prescribed by the Department of Corrections. For
280 the purposes of this subsection, information regarding the accused's participation or membership in a
281 criminal street gang may include the characteristics, specific rivalries, common practices, social customs
282 and behavior, terminology, and types of crimes that are likely to be committed by that criminal street gang.

283 B. As a part of any presentence investigation conducted pursuant to subsection A when the offense
284 for which the defendant was convicted was a felony, the court probation officer shall advise any victim of
285 such offense in writing that he may submit to the Virginia Parole Board a written request (i) to be given
286 the opportunity to submit to the Board a written statement in advance of any parole hearing describing the
287 impact of the offense upon him and his opinion regarding the defendant's release and (ii) to receive copies
288 of such other notifications pertaining to the defendant as the Board may provide pursuant to subsection B
289 of § 53.1-155.

290 C. As part of any presentence investigation conducted pursuant to subsection A when the offense
291 for which the defendant was convicted was a felony drug offense set forth in Article 1 (§ 18.2-247 et seq.)

292 of Chapter 7 of Title 18.2, the presentence report shall include any known association of the defendant
293 with illicit drug operations or markets.

294 D. As a part of any presentence investigation conducted pursuant to subsection A, when the offense
295 for which the defendant was convicted was a felony, not a Class 1 felony, committed on or after January
296 1, 2000, the defendant shall be required to undergo a substance abuse screening pursuant to § 18.2-251.01.

297 **§ 19.2-392.02. National criminal background checks by businesses and organizations**
298 **regarding employees or volunteers providing care to children or the elderly or disabled.**

299 A. For purposes of this section:

300 "Barrier crime" means (i) a felony violation of § 16.1-253.2; any violation of § 18.2-31, 18.2-32,
301 18.2-32.1, 18.2-32.2, 18.2-33, 18.2-35, 18.2-36, 18.2-36.1, 18.2-36.2, 18.2-41, or 18.2-42; any felony
302 violation of § 18.2-46.2, 18.2-46.3, 18.2-46.3:1, or 18.2-46.3:3; any violation of § 18.2-46.5, 18.2-46.6,
303 or 18.2-46.7; ~~any violation of,~~ subsection A or B of § 18.2-47; ~~any violation of,~~ § 18.2-48, 18.2-49, ~~or~~
304 18.2-50.3; ~~any violation of,~~ § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-51.5, 18.2-51.6,
305 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, 18.2-55, 18.2-55.1, 18.2-56, 18.2-56.1, 18.2-
306 56.2, 18.2-57, 18.2-57.01, 18.2-57.02, 18.2-57.2, 18.2-58, 18.2-58.1, 18.2-59, 18.2-60, or 18.2-60.1; any
307 felony violation of § 18.2-60.3 or 18.2-60.4; any violation of § 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2,
308 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-67.5, 18.2-67.5:1, 18.2-67.5:2,
309 18.2-67.5:3, 18.2-77, 18.2-79, 18.2-80, 18.2-81, 18.2-82, 18.2-83, 18.2-84, 18.2-85, 18.2-86, 18.2-87,
310 18.2-87.1, or 18.2-88; any felony violation of § 18.2-279, 18.2-280, 18.2-281, 18.2-282, 18.2-282.1, 18.2-
311 286.1, or 18.2-287.2; any violation of § 18.2-289, 18.2-290, 18.2-300, 18.2-308.4, or 18.2-314; any felony
312 violation of § 18.2-346.01, 18.2-348, or 18.2-349; any violation of § 18.2-355, 18.2-356, 18.2-357, or
313 18.2-357.1; ~~any violation of,~~ subsection B of § 18.2-361; ~~any violation of,~~ § 18.2-361.2, 18.2-366, 18.2-
314 369, 18.2-370, 18.2-370.1, 18.2-370.2, 18.2-370.3, 18.2-370.4, 18.2-370.5, 18.2-370.6, 18.2-371.1, 18.2-
315 374.1, 18.2-374.1:1, 18.2-374.3, 18.2-374.4, 18.2-379, 18.2-386.1, or 18.2-386.2; any felony violation of
316 § 18.2-405 or 18.2-406; any violation of § 18.2-408, 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-
317 423.1, 18.2-423.2, 18.2-433.2, 18.2-472.1, 18.2-474.1, 18.2-477, 18.2-477.1, 18.2-477.2, 18.2-478, 18.2-
318 479, 18.2-480, 18.2-481, 18.2-484, 18.2-485, 37.2-917, or 53.1-203; or any substantially similar offense

319 under the laws of another jurisdiction; (ii) any violation of § 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93,
320 or 18.2-94 or any substantially similar offense under the laws of another jurisdiction; (iii) any felony
321 violation of § 4.1-1101, 18.2-248, 18.2-248.01, 18.2-248.02, 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-
322 251.2, 18.2-251.3, 18.2-255, 18.2-255.2, 18.2-258, 18.2-258.02, 18.2-258.1, or 18.2-258.2 or any
323 substantially similar offense under the laws of another jurisdiction; (iv) any felony violation of § 18.2-250
324 or any substantially similar offense under the laws of another jurisdiction; (v) any offense set forth in §
325 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against
326 Minors Registry pursuant to § 9.1-901, including any finding that a person is not guilty by reason of
327 insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2 of an offense set forth in §
328 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against
329 Minors Registry pursuant to § 9.1-901; any substantially similar offense under the laws of another
330 jurisdiction; or any offense for which registration in a sex offender and crimes against minors registry is
331 required under the laws of the jurisdiction where the offender was convicted; or (vi) any other felony not
332 included in clause (i), (ii), (iii), (iv), or (v) unless five years have elapsed from the date of the conviction.

333 "Barrier crime information" means the following facts concerning a person who has been arrested
334 for, or has been convicted of, a barrier crime, regardless of whether the person was a juvenile or adult at
335 the time of the arrest or conviction: full name, race, sex, date of birth, height, weight, fingerprints, a brief
336 description of the barrier crime or offenses for which the person has been arrested or has been convicted,
337 the disposition of the charge, and any other information that may be useful in identifying persons arrested
338 for or convicted of a barrier crime.

339 "Care" means the provision of care, treatment, education, training, instruction, supervision, or
340 recreation to children or the elderly or disabled.

341 "Department" means the Department of State Police.

342 "Employed by" means any person who is employed by, volunteers for, seeks to be employed by,
343 or seeks to volunteer for a qualified entity.

344 "Identification document" means a document made or issued by or under the authority of the
345 United States government, a state, a political subdivision of a state, a foreign government, political

346 subdivision of a foreign government, an international governmental or an international quasi-
347 governmental organization that, when completed with information concerning a particular individual, is
348 of a type intended or commonly accepted for the purpose of identification of individuals.

349 "Provider" means a person who (i) is employed by a qualified entity and has, seeks to have, or may
350 have unsupervised access to a child or to an elderly or disabled person to whom the qualified entity
351 provides care; (ii) is a volunteer of a qualified entity and has, seeks to have, or may have unsupervised
352 access to a child to whom the qualified entity provides care; or (iii) owns, operates, or seeks to own or
353 operate a qualified entity.

354 "Qualified entity" means a business or organization that provides care to children or the elderly or
355 disabled, whether governmental, private, for profit, nonprofit, or voluntary, except organizations exempt
356 pursuant to subdivision A 7 of § 22.1-289.030.

357 B. A qualified entity may request the Department of State Police to conduct a national criminal
358 background check on any provider who is employed by such entity. No qualified entity may request a
359 national criminal background check on a provider until such provider has:

- 360 1. Been fingerprinted; and
- 361 2. Completed and signed a statement, furnished by the entity, that includes (i) his name, address,
362 and date of birth as it appears on a valid identification document; (ii) a disclosure of whether or not the
363 provider has ever been convicted of or is the subject of pending charges for a criminal offense within or
364 outside the Commonwealth, and if the provider has been convicted of a crime, a description of the crime
365 and the particulars of the conviction; (iii) a notice to the provider that the entity may request a background
366 check; (iv) a notice to the provider that he is entitled to obtain a copy of any background check report, to
367 challenge the accuracy and completeness of any information contained in any such report, and to obtain a
368 prompt determination as to the validity of such challenge before a final determination is made by the
369 Department; and (v) a notice to the provider that prior to the completion of the background check the
370 qualified entity may choose to deny the provider unsupervised access to children or the elderly or disabled
371 for whom the qualified entity provides care.

372 C. Upon receipt of (i) a qualified entity's written request to conduct a background check on a
373 provider, (ii) the provider's fingerprints, and (iii) a completed, signed statement as described in subsection
374 B, the Department shall make a determination whether the provider has been convicted of or is the subject
375 of charges of a barrier crime. To conduct its determination regarding the provider's barrier crime
376 information, the Department shall access the national criminal history background check system, which
377 is maintained by the Federal Bureau of Investigation and is based on fingerprints and other methods of
378 identification, and shall access the Central Criminal Records Exchange maintained by the Department. If
379 the Department receives a background report lacking disposition data, the Department shall conduct
380 research in whatever state and local recordkeeping systems are available in order to obtain complete data.
381 The Department shall make reasonable efforts to respond to a qualified entity's inquiry within 15 business
382 days.

383 D. Any background check conducted pursuant to this section for a provider employed by a private
384 entity shall be screened by the Department of State Police. If the provider has been convicted of or is
385 under indictment for a barrier crime, the qualified entity shall be notified that the provider is not qualified
386 to work or volunteer in a position that involves unsupervised access to children or the elderly or disabled.

387 E. Any background check conducted pursuant to this section for a provider employed by a
388 governmental entity shall be provided to that entity.

389 F. In the case of a provider who desires to volunteer at a qualified entity and who is subject to a
390 national criminal background check, the Department and the Federal Bureau of Investigation may each
391 charge the provider the lesser of \$18 or the actual cost to the entity of the background check conducted
392 with the fingerprints.

393 G. The failure to request a criminal background check pursuant to subsection B shall not be
394 considered negligence per se in any civil action.

395 ~~2.-2.~~ **That the provisions of this act may result in a net increase in periods of imprisonment or**
396 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
397 **appropriation is _____ for periods of imprisonment in state adult correctional facilities;**
398 **therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I, requires the Virginia**

399 Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-
400 19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is _____ for
401 periods of commitment to the custody of the Department of Juvenile Justice.

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