



# 2010 Selected Acts of the General Assembly

New River Criminal Justice  
Training Academy

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# GENERAL LAW UPDATES



# Equipment used to determine the decibel level of sound.

- **An Act to amend and reenact § 2.2-1112 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-270.7, relating to equipment used to determine the decibel level of sound; admissibility of determination; training.**
- Authorizes a law-enforcement officer to use certain equipment to determine the decibel level of sound, including noise.
- The results of such determinations shall be accepted as prima facie evidence of the decibel level of the sound in any court or legal proceeding where the decibel level of the sound is at issue.
- The bill also provides that in any court or legal proceeding in which any question arises about the calibration or accuracy of such equipment used to determine the decibel level of sound, a certificate, or a true copy thereof, showing the calibration or testing for accuracy of the equipment, and when and by whom the calibration or test was made, shall be admissible as evidence of the facts therein stated.



# Freedom of Information Act; applicability; disclosure of criminal records; noncriminal incident information.

- HB518 -- § 2.2-3704 -
- Provides that in the event a public body transferred possession of public records for storage, maintenance or archiving, the public body initiating the transfer shall remain the custodian of the records for the purpose of responding to FOIA requests.
- The bill also adds a definition of "criminal investigative file" and clarifies what records are exempt from FOIA as so defined.
- The bill provides that undercover operations and protective detail records as well as records of background and internal affairs investigations held by any state or local law-enforcement agencies are exempt from the mandatory disclosure provisions of FOIA.



# Freedom of Information Act; proceedings for enforcement.

- HB431 -- § 2.2-3713 –
- Clarifies that a FOIA action may be brought in the name of a person notwithstanding that a request for public records was made by the person's attorney in his representative capacity.
- The bill also clarifies that costs and reasonable fees for expert witnesses may be recovered by the petitioner in a FOIA action.



# ANIMAL CONTROL UPDATES



# Animal cruelty; penalty.

- HB281 -- § 3.2-6503 –
- Increases the penalty for a second or subsequent violation of the animal care laws regarding an owner's failure to provide adequate food, adequate water, adequate shelter, and adequate veterinary care from a Class 4 to a Class 2 misdemeanor.
- A second or subsequent violation related to adequate space, adequate exercise, and adequate care, treatment and transportation are increased from a Class 4 to a Class 3 misdemeanor.
- The civil penalty for failure to sterilize a dog or cat adopted from a releasing agency is increased from \$50 to \$250.



# COURT / CIVIL UPDATES



# § 6.1-118.1. Recovery of costs in civil actions for bad checks.

- A. In any civil action by a holder to recover the sum payable of a check drawn by the defendant on which payment has been refused by the payor bank because the drawer had no account or insufficient funds, or in any civil action following an arrest under § 18.2-181 or § 18.2-182, the court, upon a determination that the plaintiff has prevailed, shall add the following amounts, as costs, to the amount due to the plaintiff for the check: (i) the sum of ten dollars *\$30 to defray the cost of processing the returned check;* and (ii) *the base wage of one employee for time actually spent acting as a witness for the Commonwealth; provided, however, that the total amount of allowable costs granted under the provisions of this section shall not exceed the sum of \$250 excluding restitution for the amount of the check.*
- B. Such award of costs shall be contingent upon a finding (i) that the plaintiff complied with the provisions in § 18.2-183 relating to notice and (ii) that the defendant failed to deliver payment or evidence of bank error to the plaintiff within five days after receipt of such notice.



## § 8.01-6.3. *Actions or suits against fiduciaries; style of the case; amendment of pleading.*

- *A. In any action or suit required to be prosecuted or defended by or in the name of a fiduciary, including a personal representative, trustee, conservator, or guardian, the style of the case in regard to the fiduciary shall be substantially in the following form: "(Name of fiduciary), (type of fiduciary relationship), (Name of the subject of the fiduciary relationship)."*
- *B. Any pleading filed that does not conform to the requirements of subsection A but otherwise identifies the proper parties shall be amended on the motion of any party or by the court on its own motion. Such amendment relates back to the date of the original pleading.*
- **The provisions of this act shall apply to any action or suit pending as of the effective date of this act**



## § 8.01-66. Recovery of damages for loss of use of vehicle.

- A. Whenever any person is entitled to recover for damage to or destruction of a motor vehicle, he shall, in addition to any other damages to which he may be legally entitled, be entitled to recover the reasonable cost which was actually incurred in hiring a comparable substitute vehicle for the period of time during which such person is deprived of the use of his motor vehicle. However, such rental period shall not exceed a reasonable period of time for such repairs to be made or if the original vehicle is a total loss, a reasonable time to purchase a new vehicle. Nothing herein contained shall relieve the claimant of the duty to mitigate damages.



- B. Whenever any insurance company licensed in this Commonwealth to write insurance as defined in § [38.2-124](#) or any self-insured company refuses or fails to provide a comparable temporary substitute vehicle to any person entitled to recover the actual cost of hiring a substitute vehicle as set forth in subsection A, and if the trial judge of a court of proper jurisdiction subsequently finds that such refusal or failure was not made in good faith, such company shall be liable to that person in the amount of \$500 or double the amount of the rental cost he is entitled to recover under subsection A ~~of this section~~, whichever amount is greater. If the trial court finds that an action brought against an insurance company or any self-insured company under subsection B ~~of this section~~ is frivolous, or not to have been brought in good faith, the court may in its discretion require the plaintiff to pay the reasonable attorney's fees, not to exceed ~~\$200~~ \$350, incurred by the defendant in defending the action. This section shall in no way preclude any party from seeking such additional common law remedies as might otherwise be available.



## § 8.01-66.2. Lien against person whose negligence causes injury.

- Whenever any person sustains personal injuries caused by the alleged negligence of another and receives treatment in any hospital, public or private, or nursing home, or receives medical attention or treatment from any physician, or receives nursing service or care from any registered nurse, or receives physical therapy treatment from any registered physical therapist in this Commonwealth, or receives medicine from a pharmacy, or receives any ambulance service, such hospital, nursing home, physician, nurse, physical therapist, pharmacy or ambulance service shall each have a lien for the amount of a just and reasonable charge for the service rendered, but not exceeding ~~\$2,000~~ \$2,500 in the case of a hospital or nursing home, ~~\$500~~ \$750 for each physician, nurse, physical therapist, or pharmacy, and \$200 for each ambulance service on the claim of such injured person or of his personal representative against the person, firm or corporation whose negligence is alleged to have caused such injuries.



## § 8.01-187. Commissioners or condemnation jurors to determine compensation for property taken or damaged.

- Whenever it is determined in a declaratory judgment proceeding that a person's property has been taken or damaged within the meaning of Article I, Section 11 of the Constitution of Virginia and compensation has not been paid or any action taken to determine the compensation within ~~sixty~~ 60 days following the entry of such judgment order or decree, the court which entered the order or decree may, upon motion of such person after reasonable notice to the adverse party, enter a further order appointing *commissioners or condemnation jurors* to determine the compensation. The appointment of *commissioners or condemnation jurors* and all proceedings thereafter shall be governed by the procedure prescribed for the condemning authority.



## § 8.01-195.10. Purpose; action by the General Assembly required; definitions.

- "Wrongful incarceration" or "wrongfully incarcerated" means incarceration for a felony conviction for which (i) the conviction has been vacated pursuant to Chapter 19.2 (§ [19.2-327.2](#) et seq.) or 19.3 (§ [19.2-327.10](#) et seq.) of Title 19.2, or *the person incarcerated has been granted an absolute pardon for the commission of a crime that he did not commit*, (ii) the person incarcerated must have entered a final plea of not guilty, or regardless of the plea, any person sentenced to death, or convicted of a Class 1 felony, a Class 2 felony, or any felony for which the maximum penalty is imprisonment for life, and (iii) the person incarcerated did not by any act or omission on his part intentionally contribute to his conviction for the felony for which he was incarcerated.



## § 8.01-195.11. Compensation for wrongful incarceration.

- A. Any person who is convicted of a felony by a county or city circuit court of the Commonwealth and is wrongfully incarcerated for such felony may be awarded compensation in an amount equal to 90 percent of the *inflation adjusted* Virginia per capita personal income as reported by the Bureau of Economic Analysis of the United States Department of Commerce for each year, or portion thereof, of incarceration up to 20 years.



## § 8.01-195.12. Conditions for continued compensation.

- *A1. Any person awarded compensation under this article who is subsequently incarcerated upon the revocation of parole or probation resulting from the commission of an act that constitutes a crime shall, during the period of such incarceration, forfeit any payments under an annuity purchased pursuant to subsection B of § 8.01-195.11. Any forfeited amounts under any annuity shall become the property of the Commonwealth and shall be deposited into the general fund of the state treasury.*



## § 8.01-316. Service by publication; when available.

- A. Except in condemnation actions, an order of publication may be entered against a defendant in the following manner:
  - 1. An affidavit by a party seeking service stating one or more of the following grounds:
    - a. That the party to be served is (i) a foreign corporation, (ii) a foreign unincorporated association, order, or a foreign unincorporated common carrier, or (iii) a nonresident individual, other than a nonresident individual fiduciary who has appointed a statutory agent under § 26-59; or
    - b. That diligence has been used without effect to ascertain the location of the party to be served; or
    - c. That the last known residence of the party to be served was in the county or city in which service is sought and that a return has been filed by the sheriff that the process has been in his hands for twenty-one days and that he has been unable to make service; or



- 2. In any action, when ~~(i) a pleading~~ *a pleading (i)* states that there are or may be persons, whose names are unknown, interested in the subject to be divided or disposed of; (ii) briefly describes the nature of such interest; and (iii) makes such persons defendants by the general description of "parties unknown"; or
- 3. In any action, when (i) the number of defendants upon whom process has been served exceeds ten and (ii) it appears by a pleading, or exhibit filed, that such defendants represent like interests with the parties not served with process.
- Under subdivisions 1 and 2 of this ~~section~~ *subsection*, the order of publication may be entered by the clerk of the court. Under this subdivision such order may be entered only by the court. *However, any orders not properly entered, but processed by a clerk prior to July 1, 2010, shall be deemed to have been properly entered.*



- Every affidavit for an order of publication shall state the last known post office address of the party against whom publication is asked, or if such address is unknown, the affidavit shall state that fact.
- B. The cost of such publication shall be paid initially by the party seeking service; however, such costs ultimately may be recoverable pursuant to § [17.1-601](#).



## § 8.01-353. Notice to jurors; making copy of jury panel available to counsel; objection to notice.

- A. The sheriff shall notify the jurors on the list, or such number of them as the judge may direct to appear in court on such day as the court may direct. Such notice shall be given a juror as provided by § [8.01-298](#). Verbal direction given by the judge, or at his direction, to a juror who has been given notice as hereinbefore provided that he appear at a later specified date, shall be a sufficient notice. Any notice given as provided herein shall have the effect of an order of court. No particular time in advance of the required appearance date shall be necessary for verbal notice hereunder, but the court may, in its discretion, excuse from service a juror who claims lack of sufficient notice. Upon request, the clerk or sheriff or other officer responsible for notifying jurors to appear in court for the trial of a case shall make available to all counsel of record in that case, a copy of the jury panel to be used for the trial of the case at least ~~forty-eight hours~~ *three full business days* before the trial.



- Such copy of the jury panel shall show the name, age, address, occupation and employer of each person on the panel. Any error in the information shown on such copy of the jury panel shall not be grounds for a mistrial or assignable as error on appeal, and the parties in the case shall be responsible for verifying the accuracy of such information.
- B. No judgment shall be arrested or reversed for the failure of the record to show that there was service upon a juror of notice to appear in court unless made a ground of exception in the trial before the jury is sworn.



## § 8.01-353.1. Jurors to provide identification.

- *At the time of assembly for the purpose of juror selection, the clerk of court shall ensure that the identity of each member of the jury venire is verified as provided in this section. Prior to being selected from the jury venire, a potential juror shall verify his identity by presenting to the clerk of court upon request any of the following forms of identification: his Commonwealth of Virginia voter registration card; his social security card; his valid Virginia driver's license or any other identification card issued by a government agency of the Commonwealth, one of its political subdivisions, or the United States; or any valid employee identification card containing a photograph of the juror and issued by an employer of the juror in the ordinary course of the employer's business. If the juror is unable to present one of these forms of identification, he shall sign a statement affirming, under penalty of perjury, that he is the named juror.*



## § 8.01-389. Judicial records as evidence; full faith and credit; recitals in deeds, deeds of trust, and mortgages; "records" defined.

- A. The records of any judicial proceeding and any other official records of any court of this Commonwealth shall be received as prima facie evidence provided that such records are authenticated and certified by the clerk of the court where preserved to be a true record. For the purposes of this section, judicial proceeding shall include the review of a petition and issuance of a temporary detention order under § [16.1-340.1](#) or [37.2-809](#).



## § 8.01-401.2:1. Podiatrist as an expert witness.

- *A podiatrist shall not be permitted to testify as an expert witness against a doctor of medicine or osteopathic medicine in connection with a medical malpractice civil court proceeding or a medical malpractice review panel in any case where the doctor or osteopath is a defendant in such proceeding.*



# Attorney-issued summons; protective orders.

- SB721 -- § 8.01-407 –
- Eliminates the prohibition on attorney issued summonses in cases involving the issuance of protective orders.



## § 8.01-416. Affidavit regarding damages to motor vehicle.

- A. In a civil action in any court, whether sounding in contract or tort, to recover for damages to a motor vehicle in excess of ~~\$1,000~~ \$2,500, evidence as to such damages may be presented by an itemized estimate or appraisal sworn to by a person who also makes oath (i) that he is a motor vehicle repairman, estimator or appraiser qualified to determine the amount of such damage or diminution in value; (ii) as to the approximate length of time that he has engaged in such work; and (iii) as to the trade name and address of his business and employer. Such estimate shall not be admitted unless by consent of the adverse party or his counsel, or unless a true copy thereof is mailed or delivered to the adverse party or his counsel not less than seven days prior to the date fixed for trial.



- B. In a civil action in any court, whether sounding in contract or tort, to recover for damages to a motor vehicle of ~~-\$1,000~~ \$2,500 or less, evidence as to such damages may be presented by an itemized estimate or appraisal sworn to by a person who also makes oath (i) that he is a motor vehicle repairman, estimator or appraiser qualified to determine the amount of such damage or diminution in value; (ii) as to the approximate length of time that he has engaged in such work; and (iii) as to the trade name and address of his business and employer.



## **§ 8.01-417. Copies of written statements...copies of subpoenaed documents to be provided to other party; disclosure of insurance policy limits.**

- *D. After he gives written notice that he represents the personal representative of the estate of a decedent who died as a result of a motor vehicle accident, an attorney, or the personal representative of the estate of a decedent who died as a result of a motor vehicle accident if he is not represented by counsel, may, prior to the filing of a civil action for wrongful death as a result of a motor vehicle accident, request in writing that the insurer disclose the limits of liability of any motor vehicle liability insurance policy or any personal injury liability insurance policy that may be applicable to the claim. The requesting party shall provide the insurer with the date of the motor vehicle accident, the name and last known address of the alleged tortfeasor, a copy of the accident report, if any, and the claim number, if available.*



- *The requesting party shall submit to the insurer the death certificate of the decedent; the certificate of qualification of the personal representative of the decedent's estate; the names and relationships of the statutory beneficiaries of the decedent; medical bills, if any, supporting a claim for damages under subdivision 3 of § [8.01-52](#); and, if at the time the request is made, a claim for damages under clause (i) of subdivision 2 of § [8.01-52](#) is anticipated, a description of the source, amount, and payment history of the claimed income loss for each beneficiary. The insurer shall respond in writing within 30 days of receipt of the request and shall disclose the limits of liability at the time of the accident of all such policies, regardless of whether the insurer contests the applicability of the policy to the personal representative's claim. Disclosure of the policy limits under this section shall not constitute an admission that the alleged death or other damage is subject to the policy. Information concerning the insurance policy is not by reason of disclosure pursuant to this subsection admissible as evidence at trial.*



## § 8.01-420.7. Attorney-client privilege and work product protection; limitations on waiver.

- *A. When disclosure of a communication or information covered by the attorney-client privilege or work product protection made in a proceeding or to any public body as defined in § [2.2-3701](#) operates as a waiver of the privilege or protection, the waiver extends to an undisclosed communication or information only if:*
  - *1. The waiver is intentional;*
  - *2. The disclosed and undisclosed communications or information concern the same subject matter; and*
  - *3. The disclosed and undisclosed communications or information ought in fairness be considered together.*



- *B. Disclosure of a communication or information covered by the attorney-client privilege or work product protection made in a proceeding or to any public body as defined in § [2.2-3701](#) does not operate as a waiver of the privilege or protection if:*
  - *1. The disclosure is inadvertent;*
  - *2. The holder of the privilege or protection took reasonable steps to prevent disclosure; and*
  - *3. The holder promptly took reasonable steps to rectify the error, including, if applicable, complying with the provisions of subdivision (b)(6)(ii) of Rule 4:1 of the Rules of the Supreme Court.*



- *C. A court may order that the privilege or protection is not waived by the disclosure connected with the litigation pending before the court, in which case the disclosure does not operate as a waiver in any other proceeding.*
- *D. An agreement on the effect of the disclosure in a proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.*
- *E. This section shall not limit any otherwise applicable waiver of attorney-client privilege or work product protection by an inmate who files an action challenging his conviction or sentence.*



# § 8.01-449. How judgments are docketed.

- D. Beginning July 1, ~~2010~~ 2012, any judgment made available to subscribers via secure remote access pursuant to § [17.1-294](#) shall contain only the last four digits of the social security number of any party. However, the information otherwise required in the judgment docket pursuant to this section shall be provided.
- E. The attorney or party who prepares or submits the judgment for recordation has the responsibility for ensuring that only the last four digits of the social security number are included in the judgment prior to the instrument's being submitted for recordation. The clerk has the authority to reject any judgment that does not comply with the provisions of this section.



## § 8.01-502.1. Serving notice of lien on financial institution.

- *B. Any judgment creditor serving a notice of lien on a financial institution shall, within five business days of such service, mail to the judgment debtor at his last known address a copy of the notice of lien along with a notice of exemptions and claim for exemption form in accordance with § [8.01-512.4](#). The judgment creditor or attorney for the judgment creditor shall file a certification with the court affirming that he has mailed the judgment debtor these notices. In the event that the judgment creditor fails to comply with the requirements of this subsection, he shall be liable to the judgment debtor for no more than \$100 in damages, unless he proves by a preponderance of the evidence that the failure was not willful.*



## § 8.01-504. Penalty for service of notice of lien when no judgment exists.

- Whoever causes to be served a notice of lien of a writ of fieri facias without there being a judgment against the defendant named therein, shall pay to him the sum of ~~-\$100~~ \$350, and whoever serves a notice of lien of a writ of fieri facias before the issuance of a writ of fieri facias, or after the return day thereof, or serves or in any way gives a notice of a lien of fieri facias by means other than by service by an officer authorized to serve civil process, shall pay to the named defendant the sum of ~~-\$100~~ \$350, to be recoverable as damages in an action at law, in addition to whatever damages may be alleged and proven.



## § 8.01-512.4. Notice of exemptions from garnishment and lien.

- No summons in garnishment shall be issued or served, *nor shall any notice of lien be served on a financial institution pursuant to § [8.01-502.1](#)*, unless a notice of exemptions and claim for exemption form are attached.



## § 8.01-581.17. Privileged communications of certain committees and entities.

- F. Exchange of
  - (i) patient safety data among health care providers or patient safety organizations that does not identify any patient or
  - (ii) *information privileged pursuant to subsection B between committees, boards, groups, commissions, or other entities specified in § [8.01-581.16](#)* shall not constitute a waiver of any privilege established in this section.



# MISCELLANEOUS UPDATES



# Line of Duty Act; access to records of investigation.

- HB857 -- § 9.1-408 –
- Provides that evidence and documents obtained by or created by, and the report of investigation prepared by, the Department of State Police in carrying out the provisions of the Line of Duty Act shall
  - (i) be deemed confidential,
  - (ii) be exempt from disclosure under the Freedom of Information Act (§ 2.2-3700 et seq.), and
  - (iii) not be released in whole or in part by any person to any person except as provided in the Line of Duty Act.



# Last drink inquiry protocol.

- HB144 -- § 9.1-902 –
- Provides that the Department of Criminal Justice Services has the power and duty to establish, publish and disseminate a model policy for law-enforcement personnel to use in questioning individuals suspected of driving while intoxicated concerning the physical location of the individual's last consumption of an alcoholic beverage and for communicating that information to the Alcoholic Beverage Control Board.



# Sex offenders; registration requirements.

- HB1198 -- § 9.1-902 –
- Provides that prior to entering judgment of conviction of an offense for which registration is required if the victim of the offense was
  - a minor,
  - physically helpless,
  - or mentally incapacitated,
- the court shall determine by a preponderance of the evidence, whether the victim of the offense was a minor, physically helpless or mentally incapacitated.



# Sex offenders; registration requirements. (continued)

- If it is determined that the victim was a minor at the time of the offense, the victim's age must be determined.
- Upon such a determination the court shall advise the defendant of its determination and of the defendant's right to withdraw a plea of guilty or nolo contendere. If the defendant chooses to withdraw his plea of guilty or of nolo contendere, his case shall be heard by another judge, unless the parties agree otherwise.



# Sex offenders; registration requirements. (continued)

- The bill requires verification of the residency of offenders who have been civilly committed to the Department of Behavioral Health and Developmental Services and are under supervision.
- The bill also provides that the Department of Behavioral Health and Developmental Services shall give notice to a committed sex offender, prior to his release, of his obligation to register as a sex offender.
- The custodian of a person required to register as a sex offender is required to notify the State Police immediately upon discovering the person's escape from custody.



# Sex offender registry; residence.

- HB912 -- § 9.1-903 –
- Provides that if a person required to register as a sex offender does not have a legal residence, the person must designate a location that can be located with reasonable specificity where he resides or habitually locates himself.
- The designated location will be considered his residence for the purposes of sex offender registration requirements.



# Child-care facilities in certain counties and cities

- HB1379 -- § 15.2-914 –
- Child-care facilities in certain counties and cities; local regulation of possession and storage of firearms, ammunition, or components or combination thereof.
- Provides that certain Northern Virginia localities may adopt local ordinances that regulate the possession and storage of firearms, ammunition, or components or combination thereof at child-care facilities, so long as such regulation remains no more extensive in scope than comparable state regulations applicable to family day-care homes.



# Virginia Public Procurement Act; exemptions; dogs trained for police work

- SB52 -- § 15.2-980 -
- Provides that locality may sell any dog specially trained for police work to the handler who was last in control of such dog, at a price deemed by the locality to be appropriate.
- Such sale shall not be deemed a violation of the State and Local Government Conflict of Interests Act.



## Noise ordinance; authorizes governing body to adopt civil penalties.

- SB246 -- § 15.2-980 –
- Authorizes the governing body of a locality to adopt civil penalties for violations of noise ordinances.
- Civil fines will not exceed \$250 for the first offense and \$500 for each subsequent offense.
- Noise ordinances enacted under this section shall not apply to railroads or to sound emanating from any area permitted by the Virginia Department of Mines, Minerals and Energy or any division thereof.



Disposal of unclaimed property in possession of sheriff or police; storage fee.

- HB909 -- § 15.2-1719 -
- Restates that payment of a storage fee to the sheriff or other department storing unclaimed property is required unless the property is being retained by that sheriff's office or other law enforcement agency for its use.



# Line of Duty Act; short-term disability benefits for state police officers

- **An Act to amend and reenact § 51.1-1121 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 9.1-401.1, relating to duration of short-term disability benefits for state police officers injured in the line of duty.**
- Provides that a state police officer who incurs a work-related injury in the line of duty shall receive supplemental short-term disability coverage providing income replacement for 100 percent of the officer's creditable compensation for the first six months and, pursuant to a certification by the Superintendent of State Police, based on a medical evaluation, that the officer is likely to return to service within another six months up to one calendar year.
- At the end of the one-year period, the officer would be eligible for supplemental long-term disability benefits, which provide income replacement at 60 percent of the officer's creditable compensation.
- Prior to July 1, 2010, the maximum period that an eligible employee generally may receive short-term disability benefits, before getting long-term disability benefits at the 60 percent rate, is 125 work days.



## Unlawfully obtaining or attempting to obtain controlled substances; report.

- HB1166 -- § 32.1-127.1:03 -
- Provides that any person authorized to prescribe, dispense, or administer controlled substances pursuant to § 54.1-3408 who has reason to suspect that a person has obtained or attempted to obtain a controlled substance or prescription for a controlled substance by fraud or deceit may report the activity to the local law-enforcement agency for investigation.
- Any person who, in good faith, makes a report or furnishes information or records to a law-enforcement officer or entity pursuant to this section shall not be liable for civil damages in connection with making such report or furnishing such information or records.



# JUVENILE LAW UPDATES



# Sex offenses prohibiting entry onto school property.

- HB227 -- § 16.1-241 –
- Provides that a sex offender who has received a court order allowing entry on school or child day center property must also obtain permission of the school board or of the owner of the private school or child day center for entry within all or part of the scope of the lifted ban and must do so in compliance with the terms and conditions of both the school or center and the court order.
- The bill also provides that the petition must be filed in circuit court; prior to July 1, 2010 the law allowed an adult who is prohibited from entering upon school or child day center property because he was convicted of a sexually violent offense to petition either the juvenile and domestic relations district or circuit court of the locality for permission to enter the property.



# Punishment of a juvenile for possession, etc., of alcohol.

- HB862 -- § 16.1-278.9 –
- Provides that a juvenile charged with possession, consumption, etc., of alcohol or public intoxication may be found delinquent of such a charge and punished, or have his case deferred and upon completion of the terms and conditions of his probation, have his case dismissed by the juvenile and domestic relations district court.
- Prior to July 1, 2010, the law provided that the case would be deferred and dismissed upon completion of terms and conditions.



# Extension of protective orders.

- HB930 -- § 16.1-279.1 –
- Allows a petitioner who has obtained a protective order under § 16.1-279.1 (cases of family abuse) or § 19.2-152.10 (stalking) to obtain an extension of such order for a period of no more than two years if the respondent continues to pose a threat to the health or safety of the petitioner and the petitioner's family and household members.
- There is no limit on the number of extensions that may be requested.



# Exception to confidentiality of juvenile records; fugitives and escapees.

- HB918 -- § 16.1-309.1 –
- Allows for the release of identifying information of a juvenile who is charged with or convicted of any misdemeanor or felony and is a fugitive from justice or an escapee.
- Prior to July 1, 2010, only juveniles charged with or convicted of certain serious offenses (e.g., murder, rape, robbery) may have identifying information released once they become a fugitive or escapee.



# Additional fee for Internet Crimes Against Children task forces.

- SB620 -- § 17.1-275.12 –
- Creates the Internet Crimes Against Children Fund to be funded by a \$10 additional fee on each felony and misdemeanor conviction and any appropriations, gifts and grants.
- Moneys in the Fund will be disbursed to designated entities to support the investigation and prosecution of Internet crimes against children.



# Juvenile records; gang information; exceptions to confidentiality.

- **An Act to amend and reenact §§ 16.1-300, 16.1-309.1, and 52-8.6 of the Code of Virginia, relating to confidentiality of Department of Juvenile Justice records; exceptions.**
- Places an affirmative duty on the Department of Juvenile Justice to provide information to law enforcement that may aid in initiating or furthering an investigation of a criminal street gang.
- The bill also requires, rather than allows, the Department and locally operated court services unit to release to law enforcement information on a juvenile's criminal street gang involvement and the criminal street gang-related activity of others.
- The Department is prohibited from releasing information on a juvenile who is not affiliated with a gang unless the information relates to a specific crime.
- The Department is required to provide information to the Organized Criminal Gang File maintained by the State Police



# Admissibility of certificates of analysis at preliminary hearing/trial.

- **An Act to amend and reenact §§ 17.1-275.5, 19.2-183, and 19.2-187.1 of the Code of Virginia, relating to admissibility of certificates of analysis at hearing and trial.**
- Provides that at any preliminary hearing, certificates of analysis and reports prepared by lab analysts, etc., shall be admissible without the testimony of the person preparing such certificate or report.
- The bill also provides that when such an analyst appears in court on the day of trial to testify, the certificate of analysis shall be admissible.
- In addition the bill requires a defendant who demands the testimony of an analyst to pay \$50 in court costs for expenses related to the analyst's appearance if the defendant is convicted.



# Reports of certain acts to school authorities.

- HB907 -- § 22.1-279.3:1 –
- Provides that for any report from local law-enforcement authorities to the principal or his designee and the division superintendent regarding certain offenses committed by a juvenile student that would be an adult misdemeanor, local law enforcement authorities and attorneys for the Commonwealth shall also be authorized to disclose information regarding terms of release from detention, court dates, and terms of any disposition orders entered by the court to the superintendent of such student's school division.



# CRIMINAL LAW UPDATES



Possessing or consuming alcoholic beverages while operating a school bus;penalty.

- HB1353 -- § 4.1-309.1 –
- Provides that any person who possesses or consumes an alcoholic beverage while operating a school bus transporting children is guilty of a Class 1 misdemeanor.



# Capital murder; fire marshals, deputy and assistant fire marshals; penalty.

- **An Act to amend and reenact § 18.2-31 of the Code of Virginia, relating to capital murder; fire marshals, deputy and assistant fire marshals; penalty.**
- Adds fire marshals and deputy and assistant fire marshals with law-enforcement powers to the capital murder statute so that the death sentence can be imposed for their murder when such killing is for the purpose of interfering with the performance of their official duties.



# Capital murder; auxiliary law-enforcement officers; penalty.

- **An Act to amend and reenact § 18.2-31 of the Code of Virginia, relating to capital murder; auxiliary law enforcement officers; penalty.**
- Adds auxiliary police officers and auxiliary deputy sheriffs to the capital murder statute so that the death sentence can be imposed for their murder.



# Gang-free zones; penalties.

- **An Act to amend and reenact § 18.2-46.3:3 of the Code of Virginia, relating to expansion of gang-free zones; penalties.**
- Expands current "gang-free school zones" to the broader "gang-free zones" and includes any publicly owned or operated community center or recreational center.
- Engaging in criminal street gang activity in a gang-free zone is a Class 5 or 6 felony and may include a two-year mandatory minimum sentence, depending upon other aggravators.



# Malicious injury; search and rescue personnel.

- **An Act to amend and reenact § 18.2-51.1 of the Code of Virginia, relating to malicious bodily injury; search and rescue personnel; penalty.**
- Adds search and rescue personnel who are members of an organization that has a memorandum of understanding with the Virginia Department of Emergency Management to the definition of search and rescue personnel so that the enhanced penalty will apply if they are the victims of malicious or unlawful wounding.
  - Malicious wounding is a Class 3 felony (five to 20 years); the penalty for malicious wounding of search and rescue personnel is five to 30 years, with a mandatory minimum term of imprisonment of two years.
  - Unlawful wounding of search and rescue personnel is a Class 6 felony (one to five years), with a mandatory minimum term of imprisonment of one year.



# Extortion; definition of injury to property

- **An Act to amend and reenact § 18.2-59 of the Code of Virginia, relating to extortion by threat of injury to personal identity or financial security; penalty.**
- Provides that for the purposes of the extortion statute "injury to property" includes the sale, distribution or release of personal identifying information listed in the identity theft statute, unless it is done with the intent to obtain money, property or a pecuniary benefit to which a person reasonably believes he is lawfully entitled.



# Public disclosure of personal information; law-enforcement officers.

- **An Act to amend and reenact § 18.2-186.4 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-186.4:1, relating to public disclosure of personal information of law enforcement officers.**
- Prohibits a state or local agency from publicly posting or displaying on the Internet the home address or personal telephone numbers of a law enforcement officer if the officer has made a written demand that such information not be disclosed.
- The written demand must include a copy of a court order authorizing the state or locality to remove the information. The bill also clarifies that the publication of a person's primary residence address along with his name or photograph with the intent to coerce, intimidate, or harass is unlawful.



# Restricted permit; driving to church.

- **An Act to amend and reenact § 18.2-271.1 of the Code of Virginia, relating to limits on driving on a restricted permit.**
- Adds driving to and from a place of religious worship one day per week at a specified time and place to the list of purposes for which a court may issue a restricted permit.



# Concealed handguns; restaurants; penalty.

- **An Act to amend and reenact § 18.2-308 of the Code of Virginia, relating to concealed handguns; restaurants.**
- Allows a person with a concealed handgun permit to carry a concealed handgun onto the premises of a restaurant or club and prohibits such person from consuming alcoholic beverages while on the premises.
- A person who consumes alcohol in violation of the provisions of the bill is guilty of a Class 2 misdemeanor.



# Possession of concealed weapons in vehicles.

- **An Act to amend and reenact § 18.2-308 of the Code of Virginia, relating to possession of concealed weapons in vehicles.**
- Creates a new exemption to the general prohibition against carrying concealed weapons by allowing a person who may lawfully possess a firearm to carry a handgun in a private motor vehicle or vessel if the handgun is secured in a container or compartment.



# Possession of concealed weapons in vehicles.

- **An Act to amend and reenact § 18.2-308 of the Code of Virginia, relating to possession of concealed weapons in vehicles.**
- Creates a new exemption to the general prohibition against carrying concealed weapons by allowing a person who may lawfully possess a firearm to carry a handgun in a private motor vehicle or vessel if the handgun is locked in a container or compartment.



# Unsolicited commercial electronic mail (spam); penalty.

- HB1 -- § 18.2-152.2 –
- Narrows the scope of the existing spam statute to cover only those emails that constitute unsolicited commercial electronic mail (spam).
- Commercial electronic mail is defined in the bill as electronic mail, the primary purpose of which is the advertisement or promotion of a commercial product or service.
- Spam is defined as a subset of commercial mail that is unsolicited.
  - The definition of spam excludes emails that are transmitted by a sender to a person with whom the sender has an existing business or personal relationship.
- Any person who
  - (i) falsifies or forges the transmission or routing information of spam or
  - (ii) knowingly sells, gives, or distributes software designed to facilitate the transmission of spam is guilty of a Class 1 misdemeanor.
- The penalty for sending spam rises to a Class 6 felony if the person sends a certain volume of spam in a given time period or generates a certain amount of revenue from a spam transmission.



# Civil damages for computer trespass.

- HB1147 -- § 18.2-152.12 –
- Expands the availability to institute a suit for civil damages resulting from computer trespass to include computer trespass by installing or causing to be installed, or collecting information through, computer software that records all or a majority of the keystrokes made on the computer of another.



# Using transportation district trains without a valid ticket.

- SB25 -- § 18.2-160 –
- Rewrites the code section that punishes unlawfully riding on a transportation district train.
- The bill punishes failure or refusal to pay the posted fare, or failure to properly validate a train ticket, as a \$100 civil penalty.
- The bill punishes use of a validated ticket outside of the zone of the ticketed ride as a \$100 civil penalty.
- The bill punishes use of a fraudulent or counterfeit ticket as a Class 2 misdemeanor.
- The bill limits the amount of recoverable costs to the same amount as the maximum fine.



# Consecutive license suspensions for DUI.

- HB769 -- § 18.2-271.1 –
- Provides that any suspension of driving privilege for driving while intoxicated shall run consecutively with any other court-ordered period of suspension for driving while intoxicated or for underage driving with a blood alcohol concentration of 0.02 percent or more.
- Prior to July 1, 2010, suspensions ordered for failure to submit to a blood or breath test ran consecutively with the DUI suspension.



# Renewal of concealed handgun permits.

- HB8 -- § 18.2-308 –
- Allows a person who previously has been issued a Virginia concealed handgun permit to submit an application to renew the permit via the United States mail.



# Carrying concealed handguns; retired law-enforcement officers.

- HB1092 -- § 18.2-308 –
- States that a retired law-enforcement officer who receives proof of consultation and favorable review to carry a concealed handgun without a concealed handgun permit is authorized to carry a concealed handgun in the same manner as a law-enforcement officer authorized to carry a concealed handgun.



# Concealed handgun permit; fees.

- HB637 -- § 18.2-308 –
- Waives the concealed handgun permit fee (maximum \$50) for certain designated boarding team members and boarding officers of the United States Coast Guard.



# Issuance of concealed handgun permits; clerk of court.

- HB1191 -- § 18.2-308 –
- Allows a circuit court judge to authorize the clerk of court to issue concealed handgun permits in instances where the application is complete, the background check does not indicate that the applicant is disqualified, and, after consulting with the local sheriff or police department, there are no other questions or issues surrounding the application.
- The bill further provides that the court clerk is immune from suit arising from any acts or omissions relating to the issuance of concealed handgun permits without judicial review unless the clerk was grossly negligent or engaged in willful misconduct.
- This bill is not to be construed to limit, withdraw, or overturn any defense or immunity already existing in statutory or common law, or to affect any cause of action accruing prior to July 1, 2010.



# Resignation of law-enforcement officers; carrying concealed weapon.

- HB1256 -- § 18.2-308 –
- Provides that certain law-enforcement officers who are eligible for retirement with at least 20 years of service and who resign from their position in good standing to accept a position covered by a retirement system established under Title 51.1 of the Code of Virginia are eligible to carry a concealed handgun if the officer has received written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the agency from which the officer resigned.



# Concealed handgun permits; disqualifying convictions.

- SB501 -- § 18.2-308 –
- Provides that a conviction from another state for driving while intoxicated or for drunkenness in public within the preceding three years disqualifies an individual from obtaining a concealed handgun permit.



# Certificates of analysis and affidavits.

- SB106 -- § 18.2-472.1 –
- Clarifies that provisions requiring notification of defendants by the Commonwealth must be followed only if the certificate or affidavit is to be used in lieu of testimony.
- The bill also specifies that the notice of defendant's right to object shall be provided simultaneously with the certificate or affidavit rather than attached to the certificate or affidavit.
- The bill provides that certain documents are considered to be certificates of analysis.
- The bill modifies legislation enacted during the August 2009 Special Session in response to the United States Supreme Court decision in *Melendez-Diaz v. Massachusetts*, 557 U.S. \_\_\_\_ (June 25, 2009).



# Prohibition on wearing a mask; public emergency exception.

- **An Act to amend and reenact § 18.2-422 of the Code of Virginia, relating to prohibition of wearing masks; public health emergency exception.**
- Adds to the existing exemptions in the section making it a Class 6 felony for a person over the age of 16 to wear a mask in public or on private property without the owner's written consent an exception when the Governor has declared a disaster or state of emergency in response to a public health emergency and defines the mask appropriate for the emergency.



Use of profane, threatening, or indecent language over public airways or by computer or text.

- **An Act to amend and reenact § 18.2-427 of the Code of Virginia, relating to use of profane, threatening, or indecent language using email or by texting; penalty.**
- Provides that any person who uses obscene, vulgar, profane, lewd, lascivious, or indecent language, or makes any suggestion or proposal of an obscene nature, or threatens any illegal or immoral act with the intent to coerce, intimidate, or harass any person when any electronically transmitted message is received or transmitted by telephone is guilty of a Class 1 misdemeanor.
- The law prior to July 1, 2010 punished such behavior when simply using a telephone or citizens band radio.



# Schedule II drugs; require identification in filling prescriptions.

- HB964 -- § 54.1-3420.1 –
- Provides that a pharmacist shall require proof of identity from any person seeking to fill a prescription for a Schedule II drug before dispensing such drug and shall make a copy of such identification, unless the person seeking to fill the prescription is known to the pharmacist.
- This bill also provides that a pharmacist shall record the name and address of any person who seeks to fill a prescription for a Schedule II drug if the person is not the patient for whom the drug is prescribed, and that a pharmacist shall maintain records of names, addresses and, where required, copies of identification documents for at least one year.
- If such a prescription is delivered by mail, the delivery method employed must require the signature of the recipient as confirmation of receipt.



# CRIMINAL PROCEDURE UPDATES



# Obtaining records from financial entities.

- HB946 -- § 19.2-10.1 –
- Provides that electronic data and electronic communications are included in the information that certain financial entities must provide pursuant to a subpoena duces-tecum.



# Foreign search warrants to be honored.

- HB84 -- § 19.2-70.3 –
- Provides that a Virginia corporation or other entity that provides electronic communication services or remote computing services to the general public, when properly served with a warrant and affidavit in support of the warrant, issued by a judicial officer or court of another state with jurisdiction over the matter, to produce a record or other information pertaining to a subscriber to or customer of such service or the contents of electronic communications, or both, shall produce the record or other information as if that warrant had been issued by a Virginia court.
- This provision applies only to records relating to certain violent or sexual criminal offenses, computer fraud and identity theft.



## Electronic communication service providers; obtaining records.

- HB1252 -- § 19.2-70.3 –
- Authorizes the disclosure of the records of providers of electronic communication service or remote computing service if the court orders disclosure for an investigation of a missing child, senior adult or incapacitated person.
- Prior to July 1, 2010, the court may order disclosure only if the records are relevant and material to an ongoing criminal investigation.



# Bail bondsman to receive criminal history information.

- HB1255 -- § 19.2-120 –
- Provides that if a judicial officer sets a secured bond and the person engages the services of a licensed bail bondsman, the magistrate executing recognizance for the accused shall, upon request of the bondsman, provide the bondsman with a copy of the person's Virginia criminal history record, if readily available, to be used by the bondsman only to determine appropriate reporting requirements to impose upon the accused upon his release.
- The bondsman may review the record on the premises only and must promptly return it to the magistrate.
- The bondsman will pay a \$15 fee which will be payable to the state treasury to be credited to the Literary Fund.



# Destruction of exhibits.

- HB979 -- § 19.2-270.4 –
- Relieves the clerk of notifying a defendant of the destruction or donation of certain exhibits used at trial: drugs, weapons, or exhibits deemed contraband.
- The defendant's attorney still receives notice.



# Certificates of analysis in criminal cases.

- **An Act to amend and reenact §§ 19.2-3.1 and 19.2-187.1 of the Code of Virginia, relating to certificates of analysis; video conferencing.**
- Amends legislation enacted during the August 2009 Special Session in response to the United States Supreme Court decision in *Melendez-Diaz v. Massachusetts*, 557 U.S. \_\_\_\_ (June 25, 2009) to state that if the Commonwealth intends to have testimony by two-way video conferencing that information must be provided to the defendant in the notice that the Commonwealth is otherwise required to provide and the defendant must specifically object or he waives his right to object.
- The bill sets out procedures for video testimony and also clarifies that provisions requiring a 28-day notification to the defendant must be followed only if the certificate or affidavit is to be used in lieu of testimony.



# Records concerning electronic communication service or remote computing service.

- **An Act to amend and reenact § 19.2-70.3 of the Code of Virginia, relating to records concerning electronic communication service or remote computing service.**
- Clarifies that any provider of electronic communication service or remote computing service, including a foreign corporation that provides electronic communication service or remote computing service, shall disclose a record or other information pertaining to a subscriber to or customer of such service, excluding the contents of electronic communications, to an investigative or law-enforcement officer pursuant to
  - (1) a search warrant issued by a magistrate, general district court or a circuit court;
  - (2) a court order for such disclosure issued as provided in this section; or
  - (3) the consent of the subscriber or customer to such disclosure.



# Admissibility of records concerning electronic communication service or remote computing service.

- **An Act to amend and reenact § 19.2-70.3 of the Code of Virginia, relating to the admissibility of certain business records in criminal proceedings.**
- Provides that the provider of electronic communication service or remote computing service may verify the authenticity of the written reports or records that it discloses pursuant to a search warrant, court order, etc., excluding the contents of electronic communications, by providing an affidavit from the custodian of those written reports or records or from a person to whom said custodian reports certifying that they are true and complete and that they are prepared in the regular course of business.
- The bill also provides that when so authenticated, the written reports and records are admissible in evidence as a business records exception to the hearsay rule.



# Arrest without warrant; DUI arrests.

- **An Act to amend and reenact §§ 19.2-73, 19.2-74, and 19.2-81 of the Code of Virginia, relating to arrest without warrant.**
- Allows an arrest to be made for misdemeanor offenses of DUI, boating while intoxicated or violation of an order prohibiting the operation of a watercraft, whether or not the offense occurred in the officer's presence.
- The bill also provides that the issuance of a summons to a DUI accused at a medical facility may be done without having to detain the person and that the issuance of the summons will be considered an arrest for purposes of DUI provisions, i.e. implied consent.



# Admissibility in evidence of non-existence of an official record

- **An Act to amend the Code of Virginia by adding a section numbered 19.2-188.3, relating to search of government records; admissibility of evidence of non-existence of record.**
- Provides that at a hearing or trial an affidavit signed by a government official who is competent to testify, deemed to have custody of an official record, or signed by his designee, stating that after a diligent search, no record or entry of such record is found to exist among the records in his custody, is admissible as evidence that his office has no such record or entry, provided that the procedures for admission of such an affidavit as set forth in the statute governing admission of affidavits indicating non-registration of a sex offender have been followed, *mutatis mutandis*.
- What is *mutatis mutandis*?
  - The phrase *Mutatis Mutandis* is Latin and means "that having been changed which had to be changed" or more commonly, "with the necessary changes".



# Forfeiture of vehicles used in pandering involving a minor or abduction.

- **An Act to amend and reenact § 19.2-386.16 of the Code of Virginia, relating to forfeiture of vehicles used in abduction or pandering involving a minor.**
- Requires that a vehicle knowingly used by the owner or another with the owner's knowledge during the commission of any felony abduction offense or pandering when the prostitute is a minor **shall** be seized by the arresting law-enforcement officer and forfeited to the Commonwealth.



# Information entered into VCIN.

- **An Act to amend and reenact §§ 19.2-390, 53.1-149, and 53.1-162 of the Code of Virginia, relating to information entered into VCIN.**
- Provides that within 72 hours following the receipt of a written statement issued by a parole officer authorizing the arrest of a person who has violated the provisions of his post release supervision or probation, the person's name and other appropriate information required by the Department of State Police shall be entered into the information systems known as the Virginia Criminal Information Network (VCIN).
- The information will be deemed a warrant authorizing the arrest of the person anywhere in the Commonwealth.



# **TRAFFIC OFFENSES AND REGULATORY UPDATES**



HOV lanes; use by vehicle with clean special fuel license plates.

- **An Act to amend and reenact § 33.1-46.2 of the Code of Virginia, as it is currently effective, relating to designation and use of high-occupancy vehicle lanes.**
- Extends until July 1, 2011, the sunset rule on use of HOV lanes by clean special fuel vehicles, regardless of the number of occupants.



# HOV lanes; military personnel.

- **An Act to amend and reenact § 33.1-46.2 of the Code of Virginia, as it is currently effective and as it may become effective, relating to use of high-occupancy vehicle lanes.**
- Allows any active duty military member in uniform to use HOV lanes, regardless of the number of passengers, on Interstate Route 264 and Interstate Route 64 for the purposes of traveling to or from a military facility in the Hampton Roads Planning District.



# Impoundment of vehicle for driving while license suspended.

- **An Act to amend and reenact §§ 46.2-301 and 46.2-301.1 of the Code of Virginia, relating to 90-day forfeiture of vehicle for driving on suspended license, suspended for a DUI violation.**
- Allows vehicle impoundment for a violation of § 18.2-272 (driving on a suspended license when suspended for driving for DUI or a DUI-related crime) and provides that a motor vehicle impounded or immobilized by the police following an arrest for driving on a suspended license, when suspended for DUI or a DUI-related crime, may be impounded or immobilized for an additional 90 days by the court upon conviction of that offense.



# Administrative impoundment of motor vehicles.

- **An Act to amend and reenact § 46.2-301.1 of the Code of Virginia, relating to administrative impoundment of a motor vehicle for driving without an operator's license; penalty.**
- Provides for a three-day administrative impoundment of a motor vehicle when driving without an operator's license if the person has previously been convicted of driving without a license.
- A person who knowingly authorizes the operation of a motor vehicle by a person who he knows has no operator's license and who he knows has been previously convicted of driving without a license is guilty of a Class 1 misdemeanor.
- The provisions of the bill do not apply to a person whose license has been expired for less than one year prior to the offense or a person under 18 years of age at the time of the offense.



# Restricted learner's permit.

- **An Act to amend and reenact § 46.2-335 of the Code of Virginia, relating to requirements for initial driver's license; restricted permit.**
- Authorizes the Department of Motor Vehicles to issue a restricted learner's permit if the person is 25 years of age or older and a court has authorized restricted driving privileges to the person.



# Restricted driving privilege for out-of-state drivers.

- **An Act to amend the Code of Virginia by adding a section numbered 46.2-398.1, relating to issuance of restricted driver's licenses to out-of-state licensees.**
- Provides that when the driver of any motor vehicle not licensed to drive in Virginia, but who has a valid driver's license from another jurisdiction, is convicted in Virginia of a violation for which license suspension and issuance of a restricted license is authorized, the court may issue a restricted driving privilege in Virginia upon the same conditions as if the person held a valid Virginia license.



# Vehicle exempt from registration.

- **An Act to amend and reenact §§ 46.2-665, 46.2-666, and 46.2-670 of the Code of Virginia, relating to certain vehicles exempt from registration.**
- Limits certain exemptions from registration to pickup trucks, panel trucks, sport utility vehicles, and vehicles having a gross vehicle weight rating greater than 7,500 pounds.



# Off-road recreational vehicles.

- **An Act to amend the Code of Virginia by adding a section numbered 46.2-800.2, relating to operation of certain vehicles on highways within localities embraced by the Southwest Regional Recreation Authority.**
- Authorizes localities embraced by the Southwest Regional Recreation Authority to allow over-the-road operation of "off-road recreational vehicles" within their boundaries.



# Eluding police; penalty.

- **An Act to amend and reenact § 46.2-817 of the Code of Virginia, relating to disregarding signal by law enforcement to stop; penalty.**
- Provides that a person who attempts to escape or elude a law-enforcement officer who has given a signal to bring the motor vehicle to a stop is guilty of a Class 2 misdemeanor whether the attempt to escape or elude is on foot, in the vehicle or by any other means.



# Vehicles driving abreast.

- **An Act to amend and reenact § 46.2-857 of the Code of Virginia, relating to driving abreast in a single lane.**
- Provides that the prohibition on vehicles driving abreast does not apply to vehicles lawfully overtaking and passing vehicles traveling in the same direction in a separate lane.



# Motorcycles driving two abreast; law-enforcement officers.

- **An Act to amend and reenact § 46.2-857 of the Code of Virginia, relating to driving two abreast in a single lane.**
- Allows law-enforcement officers on official duty to drive motorcycles two abreast in a single lane.



# Highway speed limits.

- **An Act to amend and reenact § 46.2-870 of the Code of Virginia, relating to maximum highway speed limits.**
- Increases the general highway speed limit on highways where it is presently 65 mph to 70 mph.



# "Move over" law.

- **An Act to amend and reenact § 46.2-921.1 of the Code of Virginia, relating to duties of drivers of vehicles approaching stationary vehicles displaying certain warning lights.**
- Requires drivers to move left on a four lane highway when approaching vehicles displaying flashing blue, red, or amber lights.
- The offense is punished as a traffic infraction, formerly a Class 1 misdemeanor.
- A second or subsequent violation, when such violation involved a vehicle with flashing, blinking, or alternating blue or red lights, is punishable as a Class 1 misdemeanor.
- These provisions shall not apply in highway work zones.



# Motor vehicle equipment; amber warning lights.

- **An Act to amend and reenact § 46.2-1025 of the Code of Virginia, relating to equipping vehicles with amber warning lights.**
- Allows non-tow trucks owned by towing and recovery businesses to be equipped with amber warning lights, provided the lights are lit only at towing and recovery sites.



# Safety belt use for persons under 18 years of age.

- **An Act to amend and reenact §§ 46.2-1094 and 46.2-1095 of the Code of Virginia, relating to safety belt use.**
- Requires safety belt use by those under 18 years of age who are occupying the rear seats of motor vehicles.



# Vehicle lengths.

- **An Act to amend and reenact § 46.2-1116 of the Code of Virginia, relating to maximum allowable length of triple saddle mount vehicles.**
- Increases the allowable length of triple saddle mount combination vehicles operated on National Highway System components to 97 feet.



# Connection between vehicles; tow trucks.

- **An Act to amend and reenact § 46.2-1118 of the Code of Virginia, relating to tow trucks towing vehicles by means of a wheel lift apparatus.**
- Provides that, when one vehicle is towing another, the fifth wheel, drawbar, trailer hitch, or similar device must
  - (i) be structurally adequate for the weight being drawn,
  - (ii) be properly and securely mounted,
  - (iii) provide for adequate articulation at the connection without excessive slack, and
  - (iv) be provided with a locking device that prevents accidental separation of the vehicles.



# Weight limits for trucks hauling gravel, etc.

- **An Act to amend and reenact § 46.2-1143 of the Code of Virginia, relating to maximum weight limits for certain trucks.**
- Extends "sunset" rule on increased weight limits applicable to trucks hauling gravel and certain other cargoes in coal-producing counties to July 1, 2011.



# Dulles Access Highway.

- HB1295 -- § 46.2-208 –
- Provides for the enforcement through the use of a photo-monitoring system or automatic identification system on the Dulles Access Highway.



# Maximum speed limit on nonsurface treated highways for certain counties.

- HB504 -- § 46.2-873.1 –
- Adds Rappahannock County to the list of counties where the unposted maximum speed limit on nonsurface treated highways (dirt roads) is 35 miles per hour.



# Maximum speed limit on nonsurface treated highways for certain counties.

- SB172 -- § 46.2-873.1 –
- Adds Nelson County to the list of counties where the unposted maximum speed limit on nonsurface treated highways (dirt roads) is 35 miles per hour.



# Disabled parking; windshield placard contents.

- SB45 -- § 46.2-1240 –
- Provides that permanent and removable windshield placards shall not show the name, age, and sex of the person to whom issued.
- Instead, holders of permanent windshield placards are required to carry Disabled Parking Placard Identification Cards issued by DMV.



# Virginia Retirement System; new employees.

- HB1189 -- § 51.1-124.3 –
- Modifies for new employees, all the defined benefit retirement plans administered by the Virginia Retirement System ("VRS"), as follows:
  - (i) requires employees to contribute five percent of creditable compensation (only local employers would be allowed to pick up this contribution),
  - (ii) increases the number of months used to calculate average final compensation from 36 to 60,
  - (iii) increases the cost, and decreases the time in which employees may purchase certain prior service credits, and
  - (iv) reduces the portion of the increase in the Consumer Price Index used for determining annual retirement allowance supplements ("COLA") from three percent plus one-half of the next four percent to two percent plus one-half of the next eight percent.



# Virginia Retirement System; new employees. (continued)

- The bill also decreases the Commonwealth's contribution for employees in institutions of higher education participating in an optional retirement plans from 10.4 percent to 8.5 percent of creditable compensation.
- However, institutions of higher education may provide an additional contribution up to 0.4 percent each year at their own cost.
- New employees of institutions of higher education would also be required to contribute five percent of salary.



# Virginia Retirement System; new employees. (continued)

- In addition to these modifications, for new state and local employees covered under the main defined benefit plan, (i.e. excluding the separate plans for state and local law enforcement employees and judges), the bill
  - (a) changes the requirements for unreduced early retirement benefits from 50 years of age and 30 years of creditable service, to one whereby the sum of age plus years of service equals 90 and
  - (b) sets the person's normal retirement date as his normal retirement date for federal social security. (The 122 bill would allow reduced early retirement to be taken only by those persons who have attained the age of 60 with at least five years of creditable service.)



# Virginia Retirement System; new employees. (continued)

- Finally, for judges appointed or elected to an original term commencing on or after July 1, 2010, service as a judge would be multiplied by the weighted years of service factor of
  - (i) 1.5 if the person was less than 45 at the time of such original term,
  - (ii) 2.0 if the person was at least 45 but less than 55 at the time of such original term, and
  - (iii) 2.5 if the person was at least 55 at the time of such original term.



# Virginia Retirement System; retirement supplement ("COLA").

- HB562 -- § 51.1-166 –
- Clarifies that the allowance supplement that is indexed to inflation will not reduce the allowance when there is deflation, and corrects how COLA adjustments should be calculated following a period of deflation.
- The bill also makes some technical changes.



# Virginia Retirement System; optional life insurance.

- HB561 -- § 51.1-505 –
- Modifies the optional life insurance plan by
  - (i) deleting the specific maximum amount of coverage, and replacing it with language clarifying that the maximum amount is set by the Board of Trustees of the Virginia Retirement System, and
  - (ii) clarifying the difference in benefits for an employee who has been on leave without pay while serving in the military.



# Virginia Retirement System; sickness and disability plan.

- HB560 -- § 51.1-1103 –
- Codifies provisions of the Appropriation Act making changes to the sickness and disability program that, among other things, create a one-year waiting period and a different benefit structure for new employees, and amends various provisions of the prior year's (2009) plan.



# Purchase of service handguns; resignation in good standing.

- HB1257 -- § 59.1-148.3 –
- Provides that certain law-enforcement officers who are eligible for retirement with at least 20 years of service and who resign from their position in good standing to take another position covered by the Virginia Retirement System may purchase their service handgun for \$1



# Purchase of service handguns.

- SB42 -- § 59.1-148.3 –
- Allows a law-enforcement officer who retires at or after age 70 with at least 10 years of service to purchase his service handgun for \$1.



## Admission into evidence of certificates of analysis of motor fuel or lubricating oils.

- SB386 -- § 59.1-165 -
- Provides that a certificate of analysis of any motor fuel or lubricating oils shall be admitted into evidence in any case relating to misbranding, etc., of motor fuel or lubricating oil, provided that the requirements (for admission of certificates of analysis that comport with the decision in *Melendez-Diaz v. Massachusetts*) of subsection A of § 19.2-187.1 have been satisfied and the accused has not objected to the admission of the certificate pursuant to subsection B of § 19.2-187.1.



# Protective orders; coordination with other states.

- HB931 –
- Requires the Executive Secretary of the Supreme Court, on an annual basis, to consult with the appropriate judicial authorities of adjacent states, and allows the Executive Secretary to consult with the appropriate judicial authorities of any other state, concerning the forms used in connection with the issuance of protective orders under the laws of the Commonwealth and the other states.
- The Executive Secretary shall, to the extent feasible under the laws of the Commonwealth, coordinate the contents of such protective order forms with other states in order to facilitate the enforcement of foreign protective orders in the Commonwealth and the enforcement of Virginia protective orders in other states.



# Questions?

- Thanks.
- This presentation is available on the web at <http://www.nrcjta.org/selectedacts2010.pdf>