**Navigating Virginia’s New Criminal Law Landscape**

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**NOTES**

* **Please do not rely on these descriptions to include the entire nuance of the bill, they are for reference only. You need to read the whole new statute yourself before you cite it.**
* Please note that several of these bills had delayed enactment dates or reenactment clauses which mean they will not be in effect for some time, if at all.
* This summary was written before the reconvene session so some of these bills are subject to the governor’s veto or amendments. If that happens we will update you during the program.
* The “Practice Notes” sections of the outline reflect the opinion of the presenters of what the law is, there is no warrantee that a trial judge, or the Court of Appeals, will agree.
* To find the text of the bills and the revised statutes, please use the Virginia Legislative information system at <https://lis.virginia.gov/>. You can use a dropdown menu on the right hand side to choose the session the bill was passed, then look up the bill by number (starting with HB or SB). Make sure you are using the correct session or you will not see the correct bill.
* All 2021 Session bills can be found in 2021 Special Session I. Do not use “2021 Session.”

1. **CRIMINAL PROCEDURE**
2. Suspension or modification of sentence; transfer to the Department of Corrections- HB1806
3. 2021 session
4. Provides that if a person has been sentenced for a felony to the Department of Corrections (the Department), the court that heard the case, if it appears compatible with the public interest and there are circumstances in mitigation of the offense, may, at any time before the person is transferred to the Department, or within 60 days of such transfer, suspend or otherwise modify the unserved portion of such a sentence. Under current law, the court may only suspend or otherwise modify the unserved portion of such a sentence prior to the transfer of such person to the Department.
5. Sealing of criminal records; penalties -HB2113, SB1339
6. 2021 Session
7. Establishes a process for the automatic sealing of police and court records, defined in the bill, for certain convictions, deferred dispositions, and acquittals and for offenses that have been nolle prossed or otherwise dismissed. The bill also allows a person to petition for the sealing of police and court records relating to certain convictions. The bill has staggered delayed effective dates in order to develop systems for implementing the provisions of the bill.
8. **Practice notes:**
   1. This won’t come into effect for a few years, but we need to know this now.
   2. Defense counsel should be considering what charges and what circumstances can lead to expungement, either automatic or petition based.
   3. Need to consider this in plea agreements and trials now, as well as advising clients who come to talk about a expunging a past offense.
9. Jurisdiction over criminal cases; certification or appeal of charges- HB2150
10. 2021 Session
11. Provides that upon (i) certification by the general district court of any felony charge and ancillary misdemeanor charge or when an appeal of a conviction of an offense in general district court is noted or (ii) certification by the juvenile and domestic relations district court of any felony charge and ancillary misdemeanor charge committed by an adult or when an appeal of a conviction or adjudication of an offense is noted, jurisdiction as to such charges shall vest in the circuit court, unless such case is reopened, modified, vacated, or suspended or the appeal has been withdrawn in the district court within 10 days. As introduced, this bill was a recommendation of the Virginia Criminal Justice Conference.
12. Post-conviction relief; previously admitted scientific evidence- SB1105
13. 2021 Session
14. Provides that a person who was convicted of a felony offense, or who was adjudicated delinquent of an offense that would have been a felony offense if committed by an adult, may petition the Court of Appeals to have his conviction vacated. The petition shall allege (i) the offense for which the petitioner was convicted or adjudicated delinquent; (ii) that the petitioner did not commit the offense for which the petitioner was convicted or adjudicated delinquent; (iii) an exact description of the newly available forensic scientific evidence and its relevance to guilt or punishment; (iv) specific facts indicating that relevant forensic scientific evidence was not available or could not have been obtained in the exercise of diligence before the expiration of 21 days following entry of the final order of conviction or adjudication of delinquency or that newly available forensic scientific evidence would discredit or contradict forensic scientific evidence that was admitted at the petitioner's trial or adjudication of delinquency; and (v) that the admission of the discredited or contradicted forensic scientific evidence or the absence of the newly available forensic scientific evidence was not harmless. The bill provides that if the court finds by clear and convincing evidence that the admission of the discredited forensic scientific evidence or the absence of the newly available forensic scientific evidence was not harmless, the court may grant the petition and vacate the petitioner's conviction, subject to retrial in the discretion of the Commonwealth. The bill has a delayed effective date of July 1, 2022, and would apply to petitions filed before July 1, 2026. The provisions of the bill are contingent on funding in a general appropriation act
15. Personal appearance by two-way electronic video and audio communication; entry of plea, nolle prosequi, or dismissal; revocation proceedings- SB1242
16. 2021 Session
17. Provides that with the consent of the court and all parties, an appearance in a court may be made by two-way electronic video and audio communication for the purpose of (i) entry of a plea of guilty or nolo contendere and the related sentencing of the defendant charged with a misdemeanor or felony, (ii) entry of a nolle prosequi or dismissal, or (iii) a revocation proceeding. As introduced, this bill was a recommendation of the Judicial Council of Virginia and the Committee on District Courts.
18. **Practice Notes**:
    1. This has to be with the consent of all parties. Keep track if a judge, prosecutor, sheriff, or regional jail is forcing this on our clients. They have a constitutional right to be personally present. Court cannot put conditions on that right.
19. Admission to bail; rebuttable presumptions against bail- SB1266
20. 2021 Session
21. Eliminates provisions regarding the rebuttable presumptions against being admitted to bail. The bill also provides that in making a bail determination, a judicial officer shall consider all relevant information including a number of factors specified in the bill.
22. Practice Notes
    1. This bill includes a non-exhaustive list of things for a magistrate or judge to consider when determining whether to admit someone to bail.
    2. This will be critically important on appeal. *See Shannon v. Commonwealth*, 289 Va. 203 (2015).
    3. “There is no general requirement that trial courts must state for the record the reasons underlying their decisions. Nevertheless, in light of the public policy underlying the laws providing for prompt and meaningful review of bail decisions, a court making such a decision has a duty to articulate the basis of its ruling sufficiently to enable a reviewing court to make an objective determination that the court below has not abused its discretion.” *Id.*
    4. “It was impossible for the Court of Appeals to determine from the circuit court's ruling what, if any, consideration or weight the circuit court might have given to the statutory presumption against bail, the effect of Shannon's presence on the sex offender registry, and his pending charges involving a repeat sexual offense involving violence. Therefore, the Court of Appeals was required to look to the record made in the circuit court to ascertain whether the conclusion the circuit court reached had factual support.” *Id.*
    5. There is now a presumption in favor of release. If a court doesn’t explain its rationale for denying bond, it should cut in favor of overturning the ruling on appeal, if the Court was consistent.
23. Magistrate can find presumption has been overcome and admit a person to bail. HB1462
    * 1. 2020 Regular session
      2. Eliminates the provision prohibiting a judicial officer who is a magistrate, clerk, or deputy clerk of a district or circuit court from admitting to bail, that is not set by a judge, any person who is charged with an offense giving rise to a rebuttable presumption against bail without the concurrence of an attorney for the Commonwealth. The bill also eliminates the requirement that notice be provided to the attorney for the Commonwealth before such judicial officer may set or admit a person to bail.
      3. Practice Note
         1. Largely made irrelevant by 2021 bill ending presumptions against bail
         2. Important to note that many magistrates still heavily relied on the presumption and did not admit people to bail despite the statutory change.
24. Unrestorably incompetent defendant; competency report SB1431
25. 2021 Session
26. Provides that in cases where a defendant was previously determined to be unrestorably incompetent in the past two years, a competency report may recommend that the court find the defendant unrestorably incompetent to stand trial, and the court may proceed with the disposition of the case based on such recommendation. Under current law, the defendant is required to undergo treatment to restore his competency before the court can find a defendant unrestorably incompetent to stand trial.
27. Unrestorably incompetent defendant; competency report-[HB 259:](https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB259)
    * 1. 2020 Regular Session
      2. Provides that in cases where a defendant is likely to remain incompetent for the foreseeable future due to an ongoing and irreversible medical condition and prior medical or educational records are available to support the diagnosis, a competency report may recommend that the court find the defendant unrestorably incompetent to stand trial, and the court may proceed with the disposition of the case based on such recommendation. Under current law, the defendant is required to undergo treatment to restore his competency before the court can find a defendant unrestorably incompetent to stand trial. The bill also provides that such person who is found unrestorably incompetent to stand trial shall be prohibited from purchasing, possessing, or transporting a firearm.
      3. Practice Notes
28. Lets you skip the restoration process in 19.22-169.2 if the evaluator opines that your client is not restorable in the initial evaluation.
29. Some CSBs have been trying to limit this as narrowly as possible, but don’t let them do that. “Medical condition” is not defined in the statute, but I would argue that cognitive issues are also included in the statute.
30. Criminal cases; jury sentencing reform-SB5007
31. 2020 Special Session
32. Provides that in a criminal case the court shall ascertain the extent of the punishment unless the accused has requested that the jury ascertain punishment or was found guilty of capital murder. The bill also provides that if a jury cannot agree on a punishment, the court shall fix punishment. The bill provides that the attorney for the Commonwealth may not demand a jury trial when an order declaring a judicial emergency has suspended criminal jury trials.
33. Practice notes
    1. Should apply to any trial that starts after that date.
    2. You need to give 30 days notice if you want a JURY to recommend sentence after the trial. Default is a judge sentencing only.
    3. Interesting issue is whether you can ask for a jury sentencing, then waive that choice after a guilty finding. I would imagine most judges would want to get the jury out of there and move on to the PSI, but that will be really judge dependent.
    4. This will mean more people can have jury trials and not be afraid of jury sentences.
34. Court authority in criminal cases; prosecutorial discretion to dispose of a criminal case- HB5062, SB5033
35. 2020 Special Session
36. Requires a court to grant a motion to dismiss made by the Commonwealth, whether with or without prejudice, and with the consent of the defendant unless the court finds by clear and convincing evidence that the motion was made as the result of (i) bribery or (ii) bias or prejudice toward a victim because of the race, religious conviction, gender, disability, gender identity, sexual orientation, color, or national origin of the victim.
37. The bill provides that, upon the agreement of the Commonwealth and the defendant, a trial court may defer proceedings; defer entry of a conviction order, if none, or defer entry of a final order; and continue the case for final disposition, on such reasonable terms and conditions as may be agreed upon by the parties.
38. **Practice notes**
    1. The nolle part of the statute will mean judges will be able to nolle prosequi any case they want with the agreement of the defense. This will solve the Arlington/ Norfolk marijuana problem.
    2. The deferred disposition part gives the statutory authority for a *Stars* disposition that we have all been trying to do for years, but the judge can only enter a deferred dispo if both parties agree. It appears that the judge can still decide not to agree.
39. Criminal cases; ex parte requests for expert assistance- [HB 824:](https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB824)
    * 1. 2020 Regular Session
      2. Provides that in any case in which a defendant is charged with a felony offense or a Class 1 misdemeanor and determined to be indigent by the court, the defendant or his attorney, upon notice to the Commonwealth, may move the court to designate another judge in the same circuit to hear an ex parte request for appointment of a qualified expert to assist in the defense. For a motion for expert assistance, the bill requires a defendant or his attorney to state under oath or in a sworn declaration that a need for confidentiality exists. Upon receiving the defendant's or his attorney's declaration of need for confidentiality, the court is required to conduct an ex parte hearing as soon as practicable on the request for authorization to obtain expert assistance. After a hearing upon the motion, the court is required to authorize the defendant or his attorney to obtain expert assistance upon a showing that the requested assistance would materially assist the defendant and that the denial of such services would result in a fundamentally unfair trial.
40. Subpoena duces tecum; attorney of record may issue in any criminal case- [SB 801](https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB801)
    * 1. 2020 Regular Session
      2. Provides that in any criminal case a subpoena duces tecum may be issued by the attorney of record who is an active member of the Virginia State Bar at the time of issuance, as an officer of the court. The bill provides that any such subpoena duces tecum shall be on a form approved by the Executive Secretary of the Supreme Court of Virginia, signed by the attorney as if a pleading, shall include the attorney's address, and shall be mailed or delivered to the adverse party. The bill also provides that the law governing subpoenas duces tecum issued pursuant to Rule 3A:12(b) shall apply and provides a process for objection to such attorney-issued subpoenas.
41. [HB 100:](http://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB100) Voir dire examination of persons called as jurors; criminal case.
    * 1. 2020 Regular Session
      2. Allows the court and counsel for either party in a criminal case to (i) ask potential jurors any relevant question to ascertain whether the juror can sit impartially in either the guilt or sentencing phase of the case and (ii) inform any potential juror as to the potential range of punishments to ascertain if the person or juror can sit impartially in the sentencing phase of the case.
      3. **Practice Notes**
42. Overturns *Hill v. Commonwealth,* 264 Va. 315 (2002). Says a lawyer can inform the jury about the range of punishment in voir dire.
43. Also note that this statute has different language and structure than 8.01-358. It appears to be broader than that statute, so if you have a judge who tries to say your questions need to be about the factors in 8.01-358, point to this new statute and how it gives you more leeway to ask questions.
44. [SB 144:](https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB144) Protective orders; issuance upon convictions for certain felonies, penalty
    * + 1. 2020 Regular Session
        2. Authorizes a court to issue a protective order upon convicting a defendant for an act of violence and upon the request of the victim or the attorney for the Commonwealth on behalf of the victim. The duration of such protective order can be for any reasonable period of time, including up to the lifetime of the defendant, that the court deems necessary to protect the health and safety of the victim. The bill provides that a violation of a protective order issued upon a conviction for an act of violence is punishable as a Class 1 misdemeanor.
45. **APPELLATE PROCEDURE**
46. Court of Appeals; jurisdiction; number of judges- SB1261
47. 2021 Session
48. Expands the jurisdiction of the Court of Appeals of Virginia by providing for an appeal of right in every civil case and provides that the granting of further appeal to the Supreme Court of Virginia shall be within the discretion of the Supreme Court. The bill provides for an appeal of right in criminal cases by a defendant, but leaves unchanged the current requirement that in criminal cases the Commonwealth must petition the Court of Appeals for granting of an appeal. The bill increases from 11 to 17 the number of judges on the Court of Appeals. The bill also (i) provides jurisdiction to the Court of Appeals over interlocutory appeals and petitions for review of injunctions; (ii) allows for oral arguments to be dispensed with if the panel of judges makes a unanimous decision that the appeal is wholly without merit or that the dispositive issues on appeal have already been authoritatively decided and the appellant has not argued that the case law should be overturned, extended, or reversed; (iii) provides that the Attorney General shall represent the Commonwealth in criminal appeals unless, and with the consent of the Attorney General, the attorney for the Commonwealth who prosecuted the case files a notice of appearance; (iv) eliminates the requirement for an appeal bond in criminal appeals; (v) requires all criminal cases in a court of record to be recorded and requires the clerk of the circuit court to prepare a transcript of any trial for which an appeal is noticed to him; and (vi) requires an expedited review of appeals of permanent protective orders and of bond validation proceedings. The bill has a delayed effective date of January 1, 2022, which is applicable to all provisions of the bill except for those increasing the number of judges on the Court of Appeals.
49. **Practice Notes:**
    * + 1. All petitions will be briefs and merit arguments. If you do a bad job making your record, or preparing your brief, you will create bad law for everyone. Please do not do that.
        2. There will be an AAG responding to all of your briefs. No more commonwealth attorneys not responding to your petition.
        3. The Court can deny oral argument if it is frivolous or a clearly settled issue. They will grant argument if you are arguing for a good faith extension of law or overturning a case.
        4. If you are doing the latter, you need to assign error to that and specifically argue why the court should do that.
50. **CHANGES TO EXISTING CRIMES**
51. Disposing of litter; penalty- HB1801
52. 2021 Session
53. Increases the minimum fine for dumping or disposing of litter, trash, or other unsightly matter on public or private property from $250 to $500
54. Robbery; penalties- HB1936
55. 2021 Session
56. Creates degrees of punishment corresponding to the severity of a robbery offense. Any person who commits a robbery and causes serious bodily injury to or the death of another person is guilty of a Class 2 felony. Any person who commits robbery by using or displaying a firearm in a threatening manner is guilty of a Class 3 felony. Any person who commits robbery by using physical force not resulting in serious bodily injury, or by using or displaying a deadly weapon other than a firearm in a threatening manner, is guilty of a Class 5 felony. Any person who commits robbery by using threat or intimidation or by any other means not involving a deadly weapon is guilty of a Class 6 felony. Under current law, any robbery is punishable by confinement in a state correctional facility for life or any term not less than five years.
57. **Practice Notes:**
    1. This drastically changes the levels of robbery and changes the elements of robbery.
    2. Class 2-4 robbery are now category 2 offense, not category 1.
    3. Old robbery convictions will likely be category 2 unless the commonwealth can prove that there was a maiming involved.
58. Violations of protective orders; preliminary child protective order -HB2012, SB1415
59. 2021 Session
60. Changes the punishment and sentencing requirements for a violation of a preliminary child protective order so that the maximum penalty is a Class 1 misdemeanor and the court is no longer required to enter a permanent family abuse protective order (i.e., a protective order with a maximum duration of two years) upon a conviction of a violation of a preliminary child protective order. The bill provides that a violation of a preliminary child protective order is punishable as contempt of court; however, if the violation involves an act or acts of commission or omission that endanger the child's life, health, or normal development or result in bodily injury to the child, it is punishable as a Class 1 misdemeanor. Under current law, violations of preliminary child protective orders constitute contempt of court and are also subject to the same penalties as violations of preliminary, emergency, and permanent family abuse protective orders, including enhanced penalties for certain violations. As introduced, this bill was a recommendation of the Virginia Criminal Justice Conference.
61. Abolition of the death penalty- HB2263, SB1165
62. 2021 session
63. Abolishes the death penalty, including for those persons currently under a death sentence. The bill provides that no person may be sentenced to death or put to death on or after its effective date for any violation of law.
64. **Practice Notes**:
    1. These crimes will not go away, just the penalty and the resources.
    2. We should be advocating for the same resources on all murder cases, certainly anything that was formally a capital offense.
65. Punishment for conviction of second or subsequent misdemeanor larceny; repeal- HB2290
66. 2021 session
67. Repeals the enhanced penalties for a second or subsequent misdemeanor larceny conviction. Under current law, when a person is convicted of a second larceny offense, he shall be confined in jail not less than 30 days nor more than 12 months, and for a third, or any subsequent offense, he shall be guilty of a Class 6 felony.
68. HB2312- Marijuana legalization framework
69. 2021 Session
70. Creates framework for legalization and sale in 2024
71. Changes may come from Governor after this document was submitted. Final update will be discussed on the day of the event.
72. The regulatory regime will include many new crimes for those who grow or possess large amounts of marijuana without a license or who otherwise go outside the regulatory scheme.
73. Marijuana products will be regulated like alcohol or tobacco.
74. HB972- Marijuana; definitions, possession and consumption, civil penalties, report.
    1. 2020 Regular Session
    2. Decriminalizes the possession of marijuana and its byproducts. Up to one ounce is presumed to be possession for personal use.
75. Habitual offenders; repeal- SB1122
76. 2021 Session
77. Repeals the remaining provisions of the Habitual Offender Act. The bill also requires that the Commissioner of the Department of Motor Vehicles reinstate a person's privilege to drive a motor vehicle that was suspended or revoked solely on the basis that such person was determined to be or adjudicated a habitual offender pursuant to the Habitual Offender Act. The bill also authorizes the Virginia Alcohol and Safety Action Program to continue to administer intervention for individuals who were ordered to attend an intervention interview on or before June 30, 2021.
78. [HB 995:](http://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB995) Grand larceny; increases threshold amount.
    * + 1. 2020 Regular session
        2. Increases from $500 to $1,000 the threshold amount of money taken or value of goods or chattel taken at which the crime rises from petit larceny to grand larceny. The bill increases the threshold by the same amount for the classification of certain property crimes
79. [HB 1071:](https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB1071) Profane swearing in public; removes the crime from Code.
    * + 1. 2020 Regular Session
        2. Removes the crime of profane swearing in public, which is currently punishable as a Class 4 misdemeanor.
80. [SB 378:](https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB378) Computer trespass; expands the crime.
    * + 1. 2002 Regular Session
        2. Expands the crime of computer trespass to provide that the prohibited actions that constitute computer trespass are criminalized if done through intentionally deceptive means and without authority.
81. [HB 618:](https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB618) Hate crimes; gender, disability, gender identity, or sexual orientation, penalty.
    * + 1. 2020 Regular Session
        2. Adds gender, disability, gender identity, and sexual orientation to the categories of victims whose intentional selection for a hate crime involving assault, assault and battery, or trespass for the purpose of damaging another's property results in a higher criminal penalty for the offense. The bill also eliminates the mandatory minimum terms of confinement for such hate crimes. The provisions of the bill are contingent on funding in a general appropriation act. See bill for effective date.
82. **NEW CRIMES**
    * + - 1. Communicating threats of death or bodily injury to a person with intent to intimidate; penalties- HB2194, SB1113
83. 2021 session
84. Provides that any person 18 years of age or older who communicates a threat in writing, including an electronically transmitted communication producing a visual or electronic message, to another to kill or to do serious bodily injury to any other person and makes such threat with the intent to (i) intimidate a civilian population at large; (ii) influence the conduct or activities of a government, including the government of the United States, a state, or a locality, through intimidation; or (iii) compel the emergency evacuation, or avoidance, of any place of assembly, any building or other structure, or any means of mass transportation is guilty of a Class 5 felony. The bill provides that any person younger than 18 years of age who commits such offense is guilty of a Class 1 misdemeanor.
    * + - 1. Unlawful dissemination of unsolicited, obscene image of self to another; penalty- HB2254
85. 2021 Session
86. Provides that any person who, with the intent to coerce, harass, or intimidate, disseminates to any person 18 years of age or older any unsolicited, obscene videographic or still image created by any means whatsoever that depicts himself totally nude, or in a state of undress so as to expose his own genitals, pubic area, buttocks, or female breast, is guilty of a Class 1 misdemeanor.
    * + - 1. Bribery in correctional facilities; penalty- SB1461
87. 2021 Session
88. Provides that any person who receives any pecuniary benefit or other consideration to act in the unlawful delivery of items or contraband to prisoners is guilty of bribery, punishable as a Class 4 felony. The bill also provides that any law-enforcement officer, jail officer, or correctional officer who violates the provisions of the bill shall be decertified and shall be forever ineligible for reemployment as a law-enforcement officer, jail officer, or correctional officer in the Commonwealth.

D. [HB 1004:](https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB1004) Protective orders; possession of firearms, surrender or transfer of firearms, penalty.

* + - 1. 2020 Regular Session
      2. Prohibits any person subject to a permanent protective order (i.e., a protective order with a maximum duration of two years) from knowingly possessing a firearm while the order is in effect, provided that for a period of 24 hours after being served with a protective order such person may continue to possess such firearm for the purposes of selling or transferring it to any person who is not otherwise prohibited by law from possessing such firearm. A violation of this provision is a Class 6 felony. The bill also provides that a court shall order a person subject to a permanent protective order to (i) within 24 hours, surrender any firearm possessed by such person to a designated local law-enforcement agency or sell or transfer any firearm possessed by such person to a dealer or to any person who is not otherwise prohibited by law from possessing such firearm and (ii) certify in writing that such person does not possess any firearms or that all firearms possessed by such person have been surrendered, sold, or transferred and file such certification with the clerk of the court that entered the protective order within 48 hours after being served with a protective order. The bill provides that the willful failure of any person to certify in writing that all firearms possessed by such person have been surrendered, sold, or transferred or that such person does not possess any firearms shall constitute contempt of court. The bill provides procedures for designating a local law-enforcement agency to receive and store firearms, as well as a process to return such surrendered firearms. The bill also makes it a Class 4 felony for any person to sell, barter, give, or furnish any firearm to any person he knows is prohibited from possessing or transporting a firearm who is subject to a permanent protective order.
  1. **Practice Notes**
     1. There were lots of firearm statutes passed, make sure to check those for your clients.
     2. Judges are starting to ask client to sign a form and/or respond verbally about their firearms when they issue a protective order, so make sure to prepare your client for this and talk to them about their guns before court.

**E**. [HB 1524:](https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB1524) Prostitution; touching the unclothed genitals or anus of another, penalty.

1. 2020 Regular Session

**2.** Provides that any person who touches the unclothed genitals or anus of another (or allows to be touched) with the intent to sexually arouse or gratify for money is guilty of prostitution, which is punishable as a Class 1 misdemeanor. The bill also provides that any person who receives any money on account of procuring for or placing in a house of prostitution any person for the purpose of causing such person to engage in the touching of the unclothed genitals or anus of another person with the intent to sexually arouse or gratify is guilty of a Class 4 felony.

**F.** [HB 674:](https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB674) Firearms; removal from persons posing substantial risk of injury to himself, etc., penalties.

**1.** 2020 Regular Session

**2.** Creates a procedure by which any attorney for the Commonwealth or law-enforcement officer may apply to a general district court, circuit court, or juvenile and domestic relations district court judge or magistrate for an emergency substantial risk order to prohibit a person who poses a substantial risk of injury to himself or others from purchasing, possessing, or transporting a firearm. The bill outlines the procedure regarding the court’s issuance of a substantial risk order, extension of the order, and its expiration. Persons who are subject to a substantial risk order, until such order has been dissolved by a court, are guilty of a Class 1 misdemeanor for purchasing, possessing, or transporting a firearm; are disqualified from having a concealed handgun permit; and may not be employed by a licensed firearms dealer. A person who transfers a firearm to a person he knows has been served with a warrant or who is the subject of a substantial risk order is guilty of a Class 4 felony. The bill creates a computerized substantial risk order registry for the entry of orders issued pursuant to provisions in the bill.

1. **DEFENSES**
2. Arrest and prosecution when experiencing or reporting overdoses- HB1821
3. 2021 Session
4. Prohibits the arrest or prosecution of an individual for the unlawful purchase, possession, or consumption of alcohol, possession of a controlled substance, possession of marijuana, intoxication in public, or possession of controlled paraphernalia if (i) such individual, in good faith, renders emergency care or assistance, including cardiopulmonary resuscitation (CPR) or the administration of naloxone or other opioid antagonist for overdose reversal, to an individual experiencing an overdose while another individual seeks or obtains emergency medical attention; (ii) such individual remains at the scene of the overdose or at any location to which he or the individual requiring emergency medical attention has been transported; (iii) such individual identifies himself to the law-enforcement officer who responds; and (iv) the evidence for a prosecution of one of the enumerated offenses would have been obtained only as a result of the individual's rendering emergency care or assistance.
5. Current law prohibits arrest or prosecution for such offenses only to an individual who seeks or obtains emergency medical attention for himself or another individual or who is experiencing an overdose when another individual seeks or obtains emergency medical attention for him.
6. [SB 667:](https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB667) Overdoses; arrest and prosecution when experiencing or reporting.
7. 2020 Regular Session
8. Provides that no individual shall be subject to arrest or prosecution for the unlawful purchase, possession, or consumption of alcohol; possession of a controlled substance; possession of marijuana; intoxication in public; or possession of controlled paraphernalia if (i) such individual (a) seeks or obtains emergency medical attention for himself, if he is experiencing an overdose, or for another individual, if such other individual is experiencing an overdose, or (b) is experiencing an overdose and another individual seeks or obtains emergency medical attention for him; (ii) such individual remains at the scene of the overdose or at any location to which he or the individual requiring emergency medical attention has been transported; (iii) such individual identifies himself to the law-enforcement officer who responds; and (iv) the evidence for a prosecution of one of the enumerated offenses would have been obtained only as a result of an individual seeking or obtaining emergency medical attention. Current law provides an affirmative defense to such offenses only when an individual seeks or obtains emergency medical attention for himself, if he is experiencing an overdose, or for another individual, if such other individual is experiencing an overdose.
9. Criminal proceedings; consideration of mental condition and intellectual and developmental disabilities - HB2047, SB1315
10. 2021 Session
11. Permits the admission of evidence by the defendant concerning a defendant's mental condition at the time of an alleged offense, including expert testimony, if such evidence is relevant and is not evidence concerning an ultimate issue of fact and (i) tends to show the defendant did or did not have the intent required for the offense charged and (ii) is otherwise admissible pursuant to the general rules of evidence. The bill provides that to establish a mental condition for such purposes, the defendant must show that his condition existed at the time of the offense and that such condition satisfies the diagnostic criteria for (a) a mental illness, as defined in the bill, (b) an intellectual or developmental disability, as defined in the bill, or (c) an autism spectrum disorder, as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. If a defendant intends to present such evidence, the bill requires him or his counsel to give notice in writing to the attorney for the Commonwealth within specified time periods. The bill also clarifies that a court, in addition to a magistrate, may enter a temporary detention order in such cases if the criteria required under current law for temporary detention orders are met.
12. The bill clarifies that a diagnosis of an intellectual or developmental disability shall be considered by a judicial officer for the purpose of rebuttal of a presumption against bail and that a court may order that a sentencing report prepared by a probation officer contain any diagnosis of an intellectual or developmental disability. The bill also adds to the requirements to be met for qualification as a court-appointed attorney two hours of continuing legal education, which shall cover the representation of individuals with behavioral or mental health disorders and individuals with intellectual or developmental disabilities.
13. Finally, the bill requires the Office of the Executive Secretary of the Supreme Court to collect data regarding the cases that use the evidence made permissible in the bill and the Joint Subcommittee to Study Mental Health Services in the Commonwealth in the 21st Century to study and make recommendations about the standard of danger to self or others that may be appropriately applied for such persons found not guilty under the provisions of the bill in the issuance of emergency custody orders, involuntary temporary detention orders, or the ordering of other mandatory mental health treatments.
14. **Practice Notes:**
    1. Partially overturns *Stamper v. Commonwealth,* 228 Va. 707 (1985), and permits mental health information to be admitted in a trial even if insanity is not at issue.
    2. Consider how this could complement, or hurt, an insanity defense before you decide to give notice of both.
15. Homicides and assaults and bodily woundings; certain matters not to constitute defenses- HB2132
16. 2021 Session
17. Provides that another person's actual or perceived sex, gender, gender identity, or sexual orientation is not in and of itself, or together with an oral solicitation, a defense to any charge of capital murder, murder in the first degree, murder in the second degree, voluntary manslaughter, or assault and bodily wounding-related crimes and is not provocation negating or excluding malice as an element of murder.
18. **Practice Notes**
    1. Rarely used defense that would probably not work with a jury anyway in 2021.
19. Issuance of writ of vacatur for victims of commercial sex trafficking- HB2133
20. 2021 Session
21. Establishes a procedure for victims of sex trafficking to file a petition of vacatur in circuit court to have certain convictions vacated and the police and court records expunged for such convictions. The bill requires the court to grant the writ and vacate a qualifying offense if it finds the petitioner (i) was convicted or adjudicated delinquent of a qualifying offense and (ii) committed the qualifying offense as a direct result of being a victim of sex trafficking, as defined in the bill. As introduced, the bill is a recommendation of the Virginia State Crime Commission.
22. Practice Notes:
    1. If you have a case involving one of the qualifying offenses you need to build trust with your client to see if they will disclose that they were the victim of trafficking.
23. Victims of sex trafficking; affirmative defense to prosecution for certain offenses- HB2234
24. 2021 Session
25. Provides an affirmative defense to prosecution for prostitution and keeping, residing in, or frequenting a bawdy place if, at the time of the offense leading to such charge, such person was a victim of sex trafficking, as defined in the bill, and (i) was coerced to engage in the offense through the use of force or intimidation or (ii) such offense was committed at the direction of another person other than the individual with whom the person engaged in the acts of prostitution or unlawful sexual intercourse for such money or its equivalent.
26. **Practice Notes**:
    1. If you have a case involving one of the qualifying offenses you need to build trust with your client to see if they will disclose that they were the victim of trafficking.
27. **IMMIGRATION**
28. Special immigrant juvenile status; jurisdiction- SB1181
29. 2021 Session
30. Permits the juvenile and domestic relations district court to retain jurisdiction in cases where a child has petitioned the court to make findings of fact that would allow the child to apply for or receive a state or federal benefit until such child reaches 21 years of age for the purpose of entering findings of fact or amending past orders, to include findings of fact necessary for the person to petition the federal government for status as a special immigrant juveniles.
31. Certifications for victims of qualifying criminal activity- SB1468
32. 2020 Regular Session
33. Establishes a process for a state or local law-enforcement agency, an attorney for the Commonwealth, the Attorney General, or any other agency or department employing law-enforcement officers to complete a certification form or declaration that is required by federal immigration law certifying that a person is a victim of qualifying criminal activity.
34. **Practice Notes**:
    1. Any mention of this type of assistance is motivation to lie that is plainly *Brady* information and must be disclosed to the defense.

1. [HB 262:](http://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB262) Immigration status; prohibiting inquiry into status of certain victims or witnesses of crimes.
   * + 1. 2020 Regular Session
       2. Prohibits law-enforcement officers from inquiring into the immigration status of a person who (i) reports that he is a victim of a crime or a parent or guardian of a minor victim of a crime or (ii) is a witness in the investigation of a crime or the parent or guardian of a minor witness to a crime. However, a law-enforcement officer is not prohibited from making such an inquiry if it is necessary for the enforcement or implementation of certain criminal provisions or if the parent or guardian has been arrested for, has been charged with, or is being investigated for a crime against the minor victim.
2. [SB 761:](https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB761) Driver’s license; DMV to issue licenses and special ID cards
   * + 1. 2020 Regular Session
       2. Authorizes the Department of Motor Vehicles to issue a limited-duration driver's license, permit, or special identification card to an applicant with a valid, unexpired Employment Authorization Document.
3. **DEPARTMENT OF CORRECTIONS**
4. Department of Corrections; earned sentence credits - HB5148
   * 1. 2020 Special Session
     2. **.** Establishes a four-level classification system for the awarding and calculation of earned sentence credits. The bill also specifies certain crimes that are subject to the maximum 4.5 earned sentence credits for each 30 days served that is permitted under current law. The bill has a delayed effective date of July 1, 2021, and requires the calculation of earned sentence credits to apply retroactively to the entire sentence of any inmate who is confined in a state correctional facility and participating in the earned sentence credit system on July 1, 2021.
     3. **Practice Notes**
5. This bill will mean some people in DOC will get out earlier than they thought. For those eligible, it will mean they will eventually serve closer to 60% of their sentence instead of 85%.
6. A client needs to get over 5 years to get the maximum benefit from the new bill, and they have to have a perfect record in DOC.
7. Finally, the bill will not apply to anyone who has a violent, sexual, or serious charge. You will get calls from lots of clients about this, so make sure to read the carve out list before telling someone they will get an earlier release date.
8. This is another instance where we need to be aware of the calculations when making plea agreements. The amount of time actually served can be incredibly different depending on what charge you plea to.
9. The list of exclusions is quite long, but, for example, possession of child porn first offense qualifies, but second offense does not. How a judge structures a sentence can also be incredibly important here.
10. [HB 1093:](https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB1093) Prisoners; obtaining certain identification documentation upon release.
    * + 1. 2020 Regular Session
        2. Requires the Department of Corrections and the sheriff, jail superintendent, or other jail administrator of a local correctional facility to provide the assistance necessary for any prisoner who does not already possess a government-issued identification card to apply for and obtain such identification. The requirement would apply for any prisoner who has been confined for a period of 90 days or more. If a prisoner is unable to obtain a government-issued identification, the Department would provide a Department of Corrections Offender Identification form. All costs and fees associated with obtaining such identification documentation are to be paid by the prisoner unless the prisoner is determined to be indigent. Current law authorizes local correctional institutions to issue special identification cards prior to the release of any prisoner and requires the prisoner to pay all costs and fees associated with obtaining such card.
11. [HB 1284:](https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB1284) Correctional facilities; use of isolated confinement.
    1. 2020 Regular session
    2. Directs the Board of Corrections, in consultation with a stakeholder work group, to conduct a review of the standards and requirements governing, and the application and use of, isolated confinement in local correctional facilities.
    3. Another bill to end solitary confinement in DOC died in 2021 due to an incredibly high fiscal impact statement from DOC.
12. [HB 277:](https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB277) Court fines and costs; community work in lieu of payment during imprisonment.
    * 1. 2020 Regular Session
      2. Provides that a court may permit an inmate to earn credits against any fines and court costs imposed against him by performing community service. Under current law, credits may be earned only before or after imprisonment.
13. **POLICING**
14. Execution of search warrants - SB1475
15. 2021 Special Session
16. Provides that a search warrant for the search of any place of abode shall be executed by initial entry of the abode only in the daytime hours between 8:00 a.m. and 5:00 p.m. unless (i) a judge or a magistrate, if a judge is not available, authorizes the execution of such search warrant at another time for good cause shown by particularized facts in an affidavit or (ii) prior to the issuance of the search warrant, law-enforcement officers lawfully entered and secured the place to be searched and remained at such place continuously. The bill also provides that a law-enforcement officer shall make reasonable efforts to locate a judge before seeking authorization to execute the warrant at another time, unless circumstances require the issuance of the warrant after 5 p.m., in which case the law-enforcement officer may seek such authorization from a magistrate without first making reasonable efforts to locate a judge. The bill contains an emergency clause.
17. Issuing citations; possession of marijuana and certain traffic offenses HB5058
    * 1. 2020 Special Session
      2. **.** Provides that no law-enforcement officer may lawfully stop a motor vehicle for operating (i) without a light illuminating a license plate, (ii) with defective and unsafe equipment, (iii) without brake lights or a high mount stop light, (iv) without an exhaust system that prevents excessive or unusual levels of noise, (v) with certain sun-shading materials and tinting films, and (vi) with certain objects suspended in the vehicle. No evidence discovered or obtained as a result of such unlawful stop shall be admissible in any trial, hearing, or other proceeding. The bill also provides that no law-enforcement officer may lawfully stop, search, or seize any person, place, or thing solely on the basis of the odor of marijuana, and no evidence discovered or obtained as a result of such unlawful search or seizure shall be admissible in any trial, hearing, or other proceeding. The bill prohibits the enactment of a local ordinance establishing a primary offense when the corresponding provision in the Code of Virginia is a secondary offense. The bill prohibits any local ordinance relating to the ownership or maintenance of a motor vehicle from being cause to stop or arrest a driver of a motor vehicle unless such violation is a jailable offense. The bill prohibits a law-enforcement officer from stopping a pedestrian for jaywalking or entering a highway where the pedestrian cannot be seen. The bill provides that law-enforcement officers are not permitted to stop a motor vehicle for an expired safety inspection or registration sticker until the first day of the fourth month after the original expiration date. The bill also provides that no evidence discovered or obtained due to an impermissible stop, including evidence obtained with the person's consent, is admissible in any trial, hearing, or other proceeding.
      3. **Practice Notes**
18. These bills limit the ability of a police officer to stop a vehicle just for a violation of many traffic offenses, including dangling object and tint.
19. The House versions also include a statutory exclusionary rule. This is not a 4th amendment issue only, so if this version passes you will need to cite the statute in your motions.
20. It will not be enough to say that an officer stopping for one of these offenses is in violation of the 4th Amendment. It is likely objectively unreasonable for an officer to do a stop in direct violation of a statute, but, remember, there are many exceptions to the 4th Amendment, including good faith.
21. These statutes all have a statutory exclusionary rule that do not reference the 4th amendment, and therefore do not incorporate all of the exceptions to the 4th amendment.
22. It will be an open legal question, so if you lose one of these and are going to appeal please reach out to others to flesh this out.
23. This bill also includes a ban on using the odor of marijuana alone to search a vehicle (although this would not apply to commercial vehicles).
24. Mental health awareness response and community understanding services (Marcus) alert system- HB5043
25. 2020 Special Session
26. Provides that the Department of Criminal Justice Services (DCJS) and the Department of Behavioral Health and Developmental Services (DBHDS) shall support the development and establishment of a mental health awareness response and community understanding services (Marcus) alert system throughout the Commonwealth. The bill provides that, by July 1, 2021, DBHDS shall establish five Marcus alert programs and community care teams, one located in each of the five agency regions. By July 1, 2023, DBHDS shall establish five additional Marcus alert system programs and community care teams in such regions. Additional systems and teams are to be established in subsequent years and by July 1, 2026, all community services board or behavioral health geographical areas shall have established a Marcus alert system that uses community care teams. A "community care team" is defined in the bill as a group of mental health service providers working with registered peer recovery specialists and law-enforcement officers as a team, with the mental health service providers leading such team, to help stabilize individuals in crisis situations. A "mental health awareness response and community understanding services (Marcus) alert system" or "Marcus alert system" is defined in the bill as a process in which a call for service or other communication to an emergency 911 system or that is communicated with any other equivalent reporting system is routed for the appropriate services, including calls for service being directed to a community care team. The bill directs DBHDS and DCJS to submit a detailed plan for the establishment of a Marcus alert system that uses community care teams in community service boards or behavioral health authority geographical areas throughout the Commonwealth to the Joint Commission on Health Care no later than June 1, 2021
27. Decertification of law-enforcement officer -HB5051
28. 2020 Special Session
29. Requires any sheriff, chief of police, or agency administrator to notify the Criminal Justice Services Board in writing within 48 hours of becoming aware that any certified law-enforcement or jail officer currently employed by his agency has been terminated for engaging in misconduct, as set forth in the bill. The bill requires the Board to initiate decertification proceedings against any current or former law-enforcement or jail officer who has engaged in such activities. The bill also requires any sheriff, chief of police, or agency administrator to notify the Board and a civilian review panel, if one has been established, if any certified law-enforcement or jail officer currently employed by his agency has received three complaints of excessive use of force in the previous five years, and any recommendations made by the civilian review panel concerning such complaints shall be forwarded to the Board.
30. Law-enforcement misconduct -HB5072
31. 2020 Special Session
32. Authorizes the Attorney General to file a civil suit or inquire into or seek to conciliate, through the Division of Human Rights, any unlawful pattern and practice against the Commonwealth or a locality whenever the Attorney General has reasonable cause to believe that law-enforcement officers of any agency of the Commonwealth or any locality are engaging in a pattern or practice that deprives persons of rights, privileges, or immunities secured or protected by the laws of the United States and the Commonwealth. The bill also empowers the Attorney General to issue a civil investigative demand if the Attorney General has reasonable cause to believe that an unlawful pattern and practice violation has occurred. The bill authorizes the Attorney General to enter into a conciliation agreement with a locality to resolve an unlawful pattern and practice, and provides that such agreement may include a court-enforceable deprivation of certain local funds if the locality fails to abide by the agreement.
33. Search warrants; prohibition on no-knock search warrants -HB5099
34. 2020 Special Session
35. Prohibits any law-enforcement officer from seeking, executing, or participating in the execution of a no-knock search warrant, defined in the bill as any search warrant executed without law-enforcement officers giving notice of their identity, authority, and purpose prior to entering the place to be searched. The bill requires a law-enforcement officer to provide notice of his identity, authority, and purpose prior to entering the place to be searched and states that, after entering and securing the place to be searched and prior to undertaking any search or seizure pursuant to the search warrant, the executing officer shall read and give a copy of the search warrant to the person to be searched or the owner of the place to be searched or, if the owner is not present, to any occupant of the place to be searched. If the place to be searched is unoccupied, the executing law-enforcement officer shall leave a copy of the search warrant suitably affixed to the place to be searched.
36. [HB 1023:](https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB1023&201+sum+HB1023) Custodial interrogations; audiovisual recording.
37. 2020 Regular Session
38. Provides that any law-enforcement officer shall, unless has good cause not to, make an audiovisual recording of the entirety of any custodial interrogation of a person conducted in a place of detention. If an audiovisual recording is unable to be made, the law-enforcement officer shall make an audio recording. The bill provides that the failure of a law-enforcement officer to make such a recording shall not affect the admissibility of the statements made during the custodial interrogation, but the court or jury may consider such failure in determining the weight given to such evidence.
39. [HB 246:](http://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB246) Law-enforcement agencies, local; body-worn camera systems.
    * 1. 2020 Regular Session
      2. Requires localities to adopt and establish a written policy for the operation of a body-worn camera system, as defined in the bill, that follows identified best practices and is consistent with Virginia law and regulations, using as guidance the model policy established by the Department of Criminal Justice Services prior to purchasing or deploying a body-worn camera system. The bill also requires localities to make such policy available for public comment and review prior to its adoption. The bill requires the Department to establish a model policy for the operation of body-worn camera systems and the storage and maintenance of body-worn camera system records.
40. [HB 1522](http://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB1522): Forfeiture of property used in connection with the commission of crimes; finding of guilt required.
    * 1. 2020 Regular Session
      2. Requires that any action for the forfeiture of property used in connection with the commission of a crime be stayed until the person whose property is the subject of the forfeiture action has been found guilty of the crime authorizing the forfeiture, regardless of whether he has been sentenced. The bill provides that property may be forfeited even though no finding of guilt is made if (i) the forfeiture is ordered by the court pursuant to a plea agreement or (ii) the owner has not submitted a written demand for the return of the property within 21 days from the date the stay terminates.
41. **TRAFFIC**
42. Restricted permit; prepayment of fines and costs- SB1262
43. 2021 Session
44. Provides that any person who is otherwise eligible to receive a restricted permit to operate a motor vehicle shall not be required to pay in full his fines and costs before being issued such restricted permit.
45. Restricted permits to operate a motor vehicle; ignition interlock systems -SB1336
46. 2021 Session
47. Provides that in any criminal case for reckless or improper driving where a defendant's license to operate a motor vehicle, engine, or train is subject to revocation or suspension and the court orders a defendant, as a condition of probation or otherwise, to enter into and successfully complete an alcohol safety action program, the court may issue the defendant a restricted license to operate a motor vehicle where the only restriction is to prohibit the defendant from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system for a period of not less than six consecutive months without alcohol-related violations of the interlock requirements.
48. [HB 909:](https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB909) Driver’s license; suspensions for certain non-driving related offenses.
49. 2020 Regular Session
50. Removes the existing provisions that allow a person's driver's license to be suspended (i) when he is convicted of or placed on deferred disposition for a drug offense, (ii) for non-payment of certain fees owed to a local correctional facility or regional jail, and (iii) for shoplifting motor fuel.
51. [SB 1:](https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB1) Driver’s license; suspension for nonpayment of fines or costs.
52. 2020 Regular Session
53. Repeals the requirement that the driver's license of a person convicted of any violation of the law who fails or refuses to provide for immediate payment of fines or costs be suspended. The bill also removes a provision allowing the court to require a defendant to present a summary prepared by the Department of Motor Vehicles of the other courts in which the defendant also owes fines and costs. The bill requires the Commissioner of the Department of Motor Vehicles to return or reinstate any person's driver's license that was suspended prior to July 1, 2019, solely for nonpayment of fines or costs. Such person does not have to pay a reinstatement fee.
54. [HB 34:](http://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB34) Refusal of tests; restricted license.
55. 2020 Regular Session
56. Allows a person convicted of a first offense of unreasonable refusal to have samples of his breath or blood taken for chemical tests to determine the alcohol content of his blood to petition the court 30 days after conviction for a restricted driver's license. The court may, for good cause shown, grant such restricted license for the same purposes as allowed for restricted licenses granted after conviction of driving under the influence if the person installs an ignition interlock system on each motor vehicle owned by or registered to the person and enters into and successfully completes an alcohol safety action program. The bill provides that such restricted license shall not permit any person to operate a commercial motor vehicle.
57. **Practice Notes**
    1. Huge change in DUI law. It will also drastically change the calculus for some clients about going to trial in these cases. Hopefully it will lead to more trials and appeals (and better initial offers if we try more of these cases).
58. [SB 282:](https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB282) Ignition interlock; first offense driving under the influence of drugs
    * + 1. 2020 Regular Session
        2. Provides that a court of proper jurisdiction may, as a condition of a restricted license, prohibit an offender from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system for a first offense of driving under the influence of drugs. Under current law, such prohibition is required to be ordered as a condition of a restricted license.
59. [SB 439:](https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB439) Driving under the influence; remote alcohol monitoring, penalty.
    * + 1. 2020 Regular Session
        2. Provides that in the case of an adult offender's first conviction of driving under the influence when the offender's blood alcohol content was less than 0.15, upon motion of the offender, the sole restriction of the offender's restricted driver's license shall be the prohibition of the offender from operating any motor vehicle not equipped with a functioning, certified ignition interlock system for one year without any violation of the ignition interlock system requirements. The bill provides that if a person is ineligible to receive a restricted license, a court may instead authorize such person to use a remote alcohol monitoring device, refrain from alcohol consumption, and participate in an alcohol safety action program; such provisions of the bill shall become effective on July 1, 2021. Tampering with a remote alcohol monitoring device is a Class 1 misdemeanor. See bill for effective date.
60. **DATA COLLECTION**
61. [HB 1250:](https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB1250&201+sum+HB1250) Virginia Community Policing Act; data collection and reporting requirement.
62. 2020 Regular session
    1. Prohibits law-enforcement officers and State Police officers from engaging in bias-based profiling, defined in the bill, in the performance of their official duties. The bill directs the Department of State Police (the Department) to create the Community Policing Reporting Database into which sheriffs, police forces, and State Police officers report certain data pertaining to motor vehicle or investigatory stops. The data analysis shall be used to determine the existence and prevalence of the practice of bias-based profiling and the prevalence of complaints alleging the use of excessive force. The bill requires that each time a local law-enforcement officer or State Police officer stops a driver of a motor vehicle the officer collect the following data based on the officer's observation or information provided to the officer by the driver: (i) the race, ethnicity, age, and gender of the person stopped; (ii) the reason for the stop; (iii) the location of the stop; (iv) whether a warning, written citation, or summons was issued or whether any persons were arrested; (v) if a warning, written citation, or summons was issued or an arrest was made, the warning provided, violation charged, or crime charged; and (vi) whether the vehicle or any person was searched. The bill requires each state and local law-enforcement agency to also collect and report to the State Police the number of complaints the agency receives alleging the use of excessive force. The Director of DCJS will annually report the findings and recommendations resulting from the collection, analysis, and interpretation of the data from the Database to the Governor, the General Assembly, and the Attorney General beginning July 1, 2021.
63. Pretrialdata collection**.** HB2110, SB1391
    * 1. 2021 Session
      2. Requires the Virginia Criminal Sentencing Commission to collect and disseminate, on an annual basis, statewide and locality-level data related to adults charged with criminal offenses punishable by confinement in jail or a term of imprisonment. The bill provides that any personal or case identifying information within the data shall not be subject to the Virginia Freedom of Information Act and shall not be made publicly available. The bill does not require that the Virginia Criminal Sentencing Commission submit such annual report prior to December 1, 2022. Additionally, the bill requires the Virginia State Crime Commission to provide the Virginia Criminal Sentencing Commission with the final dataset of all adults charged with a criminal offense punishable by confinement in jail or a term of imprisonment in October 2017 and that the Virginia Criminal Sentencing Commission make such statewide and locality-level data publicly available on a website established and maintained by the Virginia Criminal Sentencing Commission as an electronic dataset, excluding any personal and case identifying information, by October 1, 2021, and on an electronic interactive data dashboard tool that displays aggregated data based on characteristics or indicators selected by the user, by December 1, 2022. As introduced, this bill was a recommendation of the Virginia State Crime Commission.
64. **Practice Notes on Data**
    * 1. These two bills will drastically expand the availability of data to criminal defense attorneys about how our localities work. You need to be looking at and analyzing this data, or working with other who can.
      2. This will help you advocate for change with your court or CA by letting them know what you have always been saying is statistically true.
      3. It also presents the ability to create really interesting motions about racist police practices that violate equal protection, substantive due process, and the Virginia Constitution.
65. **PROBATION AND PAROLE**
66. Probation, revocation, and suspension of sentence; limitations -HB2038
67. 2021 session
68. Limits the amount of active incarceration a court can impose as a result of a revocation hearing for a probation violation. The bill provides that if the court finds the basis of a violation of the terms and conditions of a suspended sentence or probation is that the defendant was convicted of a criminal offense or violated another condition other than a technical violation, the court may pronounce whatever sentence might have been originally imposed. The bill defines "technical violation" and provides specific limitations on the sentence a court may impose depending on whether the violation is a first, second, or third or subsequent technical violation. The bill also provides that a court may fix the period of probation for up to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned and any period of supervised probation shall not exceed five years from the release of the defendant from any active period of incarceration. The bill also provides that a court must measure any period of suspension of sentence from the date of entry of the original sentencing order.
69. **Practice Notes**:
    1. As currently written, no punishment for first technical violation, no more than 14 days for second technical violation. (except absconding and owning a firearm, which are automatically treated as second violations).
    2. Defines technical violation as the standard DOC rules of probation (minus condition 1 for new charges).
    3. HUGE change to probation violation practice.
    4. This should cause you to contest more violations, not fewer. The ability to keep a client from having a first or second violation is critical. You should basically always be denying these violations and making the Commonwealth prove them. Remember to *read Cox v. Commonwealth*, 65 Va. App. 506 (2015), *Henderson v. Commonwealth*, 285 Va. 318 (2015), and their progeny to know what the Commonwealth must prove even in the simplest case.
    5. You should deny every first and second violation. There is no incentive not to.
    6. This should also mean all of your clients on pending violations are out on bail very shortly after arrest. If they are not there is absolutely 0 reason not to contest the violation.
    7. The court also has great discretion in probation violations. If your client is found in violation, consider asking the court to continue sentencing out for compliance and possible dismissal of the violation.
    8. This section also defines “technical violation.” A judge or prosecutor cannot get around this by making a normal condition a “special condition.”
    9. If the judge imposes a special condition, and it is put in the sentencing order, then it is not subject to the limitations in this statute. If the judge does that, you need to be objecting and trying to limit special conditions. *See Fazili v. Commonwealth,* 71 Va. App 239 (2019), and *Murry v. Commonwealth,* 288 Va. 117 (2014), for the standard on what makes a condition “reasonable.”
    10. You can appeal unreasonable conditions of probation immediately after sentencing, and you should.
    11. If a probation officer sets a condition that was not expressly stated by the judge, it is a violation of condition 6, which is defined as a technical violation under the statute. Consider this when defending a sex offender or gang probation violation.
70. Parole; notice and certification; monthly reports; discretionary early consideration- HB2167
    * 1. 2021 Session
      2. Provides that the Department of Corrections shall set the release date for an inmate granted discretionary parole or conditional release no sooner than 30 business days from the date that the Department of Corrections receives notification from the Chairman of the Parole Board of the Board's decision to grant discretionary parole or conditional release, except that the Department of Corrections may set an earlier release date in the case of a terminally ill inmate granted conditional release. The bill provides that in the case of an inmate granted parole who was convicted of a felony and sentenced to a term of 10 or more years, or an inmate granted conditional release, the Board shall notify the attorney for the Commonwealth in the jurisdiction where the inmate was sentenced (i) by electronic means at least 21 business days prior to such inmate's release that such inmate has been granted discretionary parole or conditional release or (ii) by telephone or other electronic means prior to release that a terminally ill inmate has been granted conditional release where death is imminent.
      3. The bill requires that the monthly reports issued by the Board regarding actions taken on the parole of prisoners (a) be published on the fifteenth day of the month and (b) include the name of each prisoner considered for parole, the offense of which the prisoner was convicted, the jurisdiction in which such offense was committed, the amount of time the prisoner has served, whether the prisoner was granted or denied parole, and the basis for the grant or denial of parole. However, in the case of a prisoner granted parole, the bill provides that such information shall be included in the statement published in the month immediately succeeding the month in which notification of such decision was given to the attorney for the Commonwealth and any victim. The bill also provides that if additional victim research is necessary, electronic notification shall be sent to the attorney for the Commonwealth and the director of the victim/witness program, if one exists, of the jurisdiction in which the offense occurred. The bill provides that the provisions regarding the monthly reports issued by the Board shall become effective on July 1, 2022.
71. Parole; notice and certification; monthly reports- SB1104
    * 1. 2021 session
      2. Provides that the Department of Corrections shall release a prisoner no sooner than 21 business days after the date of notification by the Virginia Parole Board (the Board) to the appropriate attorney for the Commonwealth of the decision to grant parole. The bill authorizes the Board to make such notification electronically and by certified mail; under current law only certified mail may be used. The bill requires that the monthly reports issued by the Board regarding actions taken on the parole of prisoners (i) be published on the last day of the month and (ii) include the offenses of which prisoners considered for parole were convicted, the jurisdictions in which such offenses were committed, and the amount of time served by such prisoners. However, a prisoner's name shall be included on report only if the attorney for the Commonwealth and any victims have been notified; otherwise, inclusion on the report is delayed to the following month. The bill requires that when notice is sent to a victim of the victim's right to present evidence to the Board of the impact that the release of a prisoner will have on the victim, such notice shall also be sent to the attorney for the Commonwealth and the director of the victim/witness program of the jurisdiction in which the prisoner's offense occurred.
72. Behavioral health docket; transfer of supervision- HB2236
    * 1. 2021 Session
      2. Provides that if an offender determined to be eligible to participate in a behavioral health docket resides in a locality other than that in which the behavioral health docket is located, or such offender desires to move to a locality other than that in which the behavioral health docket is located, and the court determines it is practicable and appropriate, the supervision of such offender may be transferred to a supervising agency in the new locality. The bill states that if the receiving agency accepts the transfer, it shall confirm in writing that it can and will comply with all of the conditions of supervision of the behavioral health docket, including the frequency of in-person and other contact with the offender and updates from the offender's treatment providers and that if the receiving agency cannot comply with the conditions of supervision, the agency shall deny the transfer in writing and the sending agency shall notify the court. The bill also provides that where supervision is transferred, the sending agency shall be responsible for providing to the court reports on an offender's conduct, treatment, and compliance with the conditions of supervision. Additionally, the bill provides that the standards prescribed by the Department of Criminal Justice Services for the development, implementation, operation, and evaluation of local community-based probation services and facilities shall include standards for the transfer of supervision between local community-based probation agencies.
73. **OTHER**
74. Fines and costs; accrual of interest; deferral or installment payment agreements HB1895
    * 1. 2021 Session
      2. Provides that no interest shall accrue on any fine or costs imposed in a criminal case or in a case involving a traffic infraction (i) for a period of 180 days following the date of the final judgment imposing such fine or costs; (ii) during any period the defendant is incarcerated; and (iii) for a period of 180 days following the date of the defendant's release from incarceration if the sentence includes an active term of incarceration. Current law prohibits interest from accruing on such fines or costs for a period of 40 days from the date of the final judgment imposing such fine or costs or during any period the defendant is incarcerated.
      3. The bill also removes the requirement that a defendant be unable to make payment of a fine, restitution, forfeiture, or penalty and costs within 30 days of sentencing in order to be eligible to enter into a deferred or installment payment agreement and allows any defendant to enter such payment agreements. The bill removes the requirement that a defendant make a down payment upon entering a deferred, modified deferred, or installment payment agreement.