

# 2018 Bills of Interest

Passed or Considered  
by the  
2018 Session  
of the  
General Assembly of Virginia



Virginia Trial Lawyers Association  
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**Virginia Trial Lawyers Association's**  
**2018 Bills of Interest**

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## 2018 VTLA BILLS OF INTEREST

### TORT LAW

#### [HB 110](#) **Franchisees; status thereof and its employees as employees of the franchisor.**

Provides that, notwithstanding any voluntary agreement between the U.S. Department of Labor and the franchisee or franchisor, neither a franchisee nor a franchisee's employee shall be deemed to be an employee of the franchisee's franchisor. The measure also provides that this exclusion does not apply with respect to a specific claim for relief made by a franchisee or a franchisee's employee if the franchisor has been found by a court of competent jurisdiction to have exercised a type or degree of control over the franchisee or the franchisee's employees not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand. PASSED

[HB 170](#) **Businesses; central filing of assumed or fictitious name, etc.** Postpones, from May 1, 2019, to January 1, 2020, the effective date of the measure enacted in 2017 that requires a person conducting or transacting business under an assumed or fictitious name to file a certificate of assumed or fictitious name in the office of the clerk of the State Corporation Commission. PASSED

[HB 220](#) **Parks, local; waterway activities, liability.** Authorizes a locality or park authority to establish, conduct, and regulate a system of boating, canoeing, kayaking, or tubing activities on waterways and to exercise certain related powers. The bill releases from certain civil liability a locality that establishes such a system or a system of hiking, biking, or horseback riding trails, or the owner of any property leased or licensed for such uses, in the absence of gross negligence or willful misconduct. PASSED

[HB 1024](#) **Attorney fees for prevailing party; more than one attorney.** Repeals the provision that allows only the fee of one attorney to be taxed by the court, even if the recovering party had more than one attorney. This bill is a recommendation of the Boyd-Graves Conference. PASSED

[SB 487](#) **Virginia Fraud Against Taxpayers Act; civil penalties; rate of inflation.** Raises the amounts for the civil penalties in the Virginia Fraud Against Taxpayers Act from not less than \$5,500 and not more than \$11,000 to not less than \$10,957 and not more than \$21,916. The bill also provides that these amounts shall automatically increase as prescribed by the Federal False Claims Act, in which the civil penalties are adjusted to the rate of inflation. PASSED

[HB 1454](#) **Civil immunity; programs for probationers; nonprofit corporation officials; worksite supervisors.** Extends to state personnel and nonprofit corporation employees or officials the civil immunity afforded to probation officers, court personnel, county, city, and town personnel, public officials, and private volunteers who participate in programs where persons on probation or community service are ordered as a condition of probation or community service to perform certain tasks. The bill provides that the civil immunity afforded to nonprofit corporation employees or officials does not extend to acts or omissions resulting from gross negligence or willful misconduct. The bill adds to the list of services covered by such immunity those services performed that are assigned by such probation officers, court personnel, state, county, city, or town personnel, public officials, nonprofit corporation employees or officials, or private volunteers acting as approved worksite

supervisors of a court-approved voluntary jail diversion program. PASSED

**[HB 1479](#) Equine liability; execution of waiver.**

Provides that the execution of a waiver by a duly authorized representative of a parent or guardian of a minor participant in equine activities shall constitute the knowing execution of such a waiver by a parent or guardian. PASSED

**[SB 535](#) Personal injury claim; disclosure of insurance policy limits.** Provides that in a civil action for personal injuries sustained from a motor vehicle accident, regardless of the amount of losses sustained by an injured person, an insurance company shall disclose the policy limits of an alleged tortfeasor who has been convicted of an offense of driving under the influence within 30 days of a request for such disclosure. PASSED

**[SB 545](#) Court reporters; prohibited actions; civil penalties.** Establishes ethical standards and requirements for the provision of court reporting services, including prohibiting providers of court reporting services from (i) entering into contracts for more than one case, action, or legal proceeding with a party to an action, insurance company, third-party administrator, or any other person or entity that has a financial interest in the case, action, or legal proceeding; (ii) giving an economic advantage to one side that is not offered to the other; (iii) having a financial interest in the action; (iv) entering into an agreement for court reporting services that restricts an attorney from using the court reporter or court reporting services provider of the attorney's choosing; (v) allowing the format, content, or body of a certified transcript as submitted by the court reporter to be manipulated in a manner that increases the cost of the transcript; and (vi) providing additional advocacy or litigation support services. PASSED

**[SB 926](#) Attorney General, Office of the; employment of special council, report.** Limits the contingency fee that may be charged by special counsel employed by a state agency, depending on the amount recovered. PASSED

**[HB 70](#) Immunity of employers; employees and independent contractors convicted of a nonviolent offense.** Provides that no cause of action for negligent hiring against an employer shall arise solely because such employer hired an employee or independent contractor convicted of a nonviolent offense. FAILED

**[HB 209](#) Duty to take reasonable precautions; criminal conduct of a third party.** Provides that any person owning, operating, or managing (i) a commercial property used primarily for business purposes or (ii) residential real property that is owned by a person who owns five or more dwelling units that are used primarily for rental as a dwelling unit shall have the duty to take reasonable precautions to protect the tenants, other authorized occupants, or guests or invitees of such property against injury caused by the criminal conduct of a third party, if the danger of injury by such conduct is known to such owner, operator, or manager or is reasonably foreseeable. The bill provides that the same duty applies to any private security services business contracted to provide services to such person owning, operating, or managing such property. FAILED

**[HB 213](#) Virginia Freedom of Information Advisory Council; formal advisory opinions, immunity.** Requires that formal advisory opinions issued by the Virginia Freedom of Information Advisory Council (Council) be approved by the Council and, after such approval, be published on the Council's website. The bill also provides that no officer, employee, or member of a public body shall be found to have willfully and knowingly violated certain enumerated provisions of the Freedom of Information Act if the alleged violation resulted

from his good faith reliance on a formal advisory opinion of the Council made in response to his written request for such opinion and such opinion was made after a full disclosure of the facts. FAILED

**[HB 223/SB 619](#) Virginia Human Rights Act; limitations on causes of action.** Allows courts to award front pay in addition to back pay as damages for discharging an employee in violation of the Virginia Human Rights Act (§2.2-3900 et seq.). The bill also removes the time period limitation on the amount of back pay awarded, allows courts to increase or diminish the award if the court finds that either party engaged in delay tactics, and increases the cap on attorney fees awarded from 25 percent of the back pay awarded to 40 percent of the back pay and front pay awarded. FAILED

**[HB 273](#) Firearms; civil liability for sale or transfer, background check.** Provides that a person is civilly liable for injuries to person or property or wrongful death of another caused by a third party if it can be shown that the civil defendant sold or transferred a firearm to the person who committed the crime resulting in injury or death without obtaining a background check and verification that the transferee was not prohibited from possessing a firearm. FAILED

**[HB 551](#) Nonpayment of wages; private action.** Provides that an employee has a private cause of action against an employer who fails to pay wages to recover the amount of wages due plus interest at eight percent annually from the date the wages were due. If the court finds that the employer knowingly failed to pay wages, the court shall award the employee reasonable attorney fees and other costs. If the court finds that the employer's failure to pay wages was willful and with intent to defraud the employee, the court shall also award the employee three times the amount of wages due. FAILED

**[HB 587](#) Consumer arbitration; private arbitration company; information reporting requirement.** Requires a private arbitration company, as defined in the bill, to collect, maintain, and make available to the public on a searchable website certain information related to arbitrations such company facilitates between consumers and nonconsumers. FAILED

**[HB 704](#) Arbitration agreements; unconscionable and unenforceable provisions; sexual harassment.** Provides that any provision of an arbitration agreement that has the purpose or effect of concealing the details regarding a claim of sexual harassment or sexual assault is unconscionable and unenforceable. FAILED

**[HB 741](#) Virginia Division of Human Rights; informal determinations inadmissible in civil action.** Provides that any informal determination made by the Virginia Division of Human Rights, prior to a public hearing held pursuant to § 2.2-520, as a result of an investigation or conciliation process involving an alleged unlawful discriminatory practice shall not be discoverable or admissible in evidence in any civil action. FAILED

**[HB 742/SB 415](#) Jurisdiction of claim; plaintiff's motion to amend claim amount; transfer of matter.** Provides that, where a matter is pending in either the general district court or the circuit court, upon motion of the plaintiff seeking to amend the amount of the claim, the court shall order transfer of the matter to the court having jurisdiction over the claim without requiring a dismissal of the claim or a nonsuit. The bill further provides that, where such an amended claim provides the general district court and the circuit court with concurrent jurisdiction over such a claim, the court shall transfer the matter to either the general district court or the circuit court, as directed by the plaintiff, provided that such court otherwise has jurisdiction over the matter. FAILED

[HB 843/SB 753](#) **Standards for testimony of expert witnesses.** Adopts two additional standards for admission of expert testimony found in Rule 702 of the Federal Rules of Evidence by (i) requiring that the expert's testimony be the product of reliable principles and methods and (ii) requiring that the expert has reliably applied the principles and methods to the facts of the case. The bill also codifies the requirement that the expert's testimony be based on sufficient facts or data (as recognized in *Forbes v. Rapp*, 269 Va. 374, 611 S.E.2d 592 (2005)). FAILED

[HB 858/ SB 590](#) **Scope of discovery; deposing certain corporate officers.** Provides that parties to a civil action may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter and proportional to the needs of the case. The bill states that a determination of whether discovery is unduly burdensome or expensive shall include consideration of whether the burden or expense of the proposed discovery outweighs its likely benefits. The bill further provides that when an officer, as defined in the bill, who is called as a deposition witness files a motion for a protective order because the discovery sought by the deposition is obtainable from some other source that is more convenient, less burdensome, or less expensive, the burden shall be on the party seeking the deposition to defeat such a motion by showing that (i) there is a reasonable indication that the officer's deposition is calculated to lead to the discovery of admissible evidence, (ii) the officer has unique or superior personal knowledge of discoverable information that cannot be discovered through means other than a deposition, and (iii) deposition of a representative other than the officer or other methods of discovery are unsatisfactory, insufficient, or inadequate. FAILED

[HB 895](#) **Statute of limitations; discovery rule.** Provides that the period of limitations for filing a cause of action for injury resulting from toxic substance exposure or prescribed or over-the-counter medications accrues from the time the person knew or should have known of the injury and its causal connection to such exposure or medication, respectively. FAILED

[HB 1171](#) **Construction contracts; liability for payment of wages.** Provides that construction contracts shall be deemed to include a provision under which the general contractor and the subcontractor are jointly and severally liable to pay the wages due to the subcontractor's employees. FAILED

[HB 1288](#) **Personal injury actions; situations of peril created by plaintiff's negligence.** Provides that a plaintiff shall not be able to recover against a defendant in a personal injury action solely due to the defendant's failure to avoid a situation of peril created by the plaintiff's negligence. FAILED

[SB 81](#) **Landowner liability; educational activity.** Provides that a landowner whose property is used for an educational activity shall owe no duty of care to a member of the public arising out of the educational use of the land. Current law provides such an exemption for recreational activities and certain other uses of land. FAILED

[SB 87](#) **Careless driving; cause of injury to vulnerable road user.** Provides that a person who operates a motor vehicle in a careless or distracted manner and is the proximate cause of serious physical injury to a vulnerable road user, defined in the bill as a pedestrian or person riding a bicycle, electric wheelchair, electric bicycle, wheelchair, skateboard, skates, foot-scooter, animal, or animal-drawn vehicle, is guilty of a traffic infraction. FAILED

[SB 159](#) **Medical Services; Commonwealth's lien for payment, limitations.** Provides that a lien granted to the Commonwealth against any

recovery from a third party obtained by an injured person, or the personal representative of a decedent, whose medical costs were paid pursuant to the Virginia Medical Assistance Program shall attach only to the portion of the claim representing compensation for medical expenses incurred by the injured person. The bill further provides that such lien shall be reduced by deducting from the portion of the recovery representing compensation for such medical costs the pro rata share of attorney fees, costs, and expenses incurred by the injured party or decedent. FAILED

**SB 351 Firearms in locked vehicles; immunity from liability.** Provides that no person, property owner, tenant, employer, or business owner may (i) prohibit a person who lawfully possesses a firearm from storing that firearm or ammunition for a firearm in a locked motor vehicle, (ii) take any adverse employment action against an employee or contractor for lawfully storing a firearm or ammunition for a firearm in a locked motor vehicle, or (iii) search an employee's or contractor's motor vehicle or require that an employee or contractor consent to such a search as a condition of employment. The bill allows a person to petition a circuit court for an injunction to enforce his right to lawfully store a firearm or ammunition for a firearm in a locked motor vehicle. The bill provides immunity for any person, property owner, tenant, employer, or business owner in a civil action for any occurrence resulting from the use of a lawfully stored firearm or ammunition for a firearm. CARRIED OVER

**HB 1203/SB 481 Nonsuits; commencement of action.** Decreases the time period in which a plaintiff who takes a voluntary nonsuit may recommence this action from six months to 14 days from the date the nonsuit was entered. The bill does not change the provision allowing for commencement of the action within the original period of limitation, if longer than 14

days from the date the nonsuit was entered. The bill further provides that a plaintiff who has taken a voluntary nonsuit shall serve the defendant within three months of the commencement of the action. FAILED

**HB 1305 Recovery of punitive damages.** Eliminates the limitation of the total amount of punitive damages that can be awarded in an action. Current law provides that the total amount awarded for punitive damages shall not exceed \$350,000. FAILED

**HB 1306 Certain identifying information confidential; separate addendum required; secure remote access.** Provides that, except as otherwise provided by law, beginning July 1, 2019, no petition, pleading, motion, order, or decree filed in a civil case in a circuit court, including any agreement of the parties or transcripts, shall contain the social security number of any party, or of any minor child of any party, or any identifying financial information of any party. CARRIED OVER

**SB 242 Park authority; immunity from liability in any civil action.** Grants immunity from liability in any civil action to park authorities created pursuant to the Park Authorities Act (§ 15.2-5700 et seq.) for damages caused by ordinary negligence on the part of any officer or agent of such park authority in the maintenance or operation of a park, recreational facility, or playground under control of the authority. FAILED

**SB 380/HB 323 Personal injury; loss of consortium claims by certain relatives.** Creates a cause of action for loss of consortium, the damages for which are specified in the bill, for (i) spouses of persons, (ii) parents of minor children, and (iii) adult children of persons who suffer personal injuries as a result of negligence. CARRIED OVER

**SB 613 Deposition of local governing body.** Provides that when a local governing body is

named as a deponent, it shall designate one or more members of such body to serve as a deponent on its behalf. The bill provides that such designee and his testimony shall be subject to all of the same duties, responsibilities, and consequences as a corporate or organizational deponent as determined by the rules of court. FAILED

**[SB 620](#) Denial of motion to compel arbitration; appeal.** Provides that no appellate court has jurisdiction to review a trial court's interlocutory order denying a motion to compel arbitration. The bill further provides that an interlocutory appeal shall be permitted if the trial court orders arbitration and dismisses the action or stays the litigation. FAILED

**[SB 694](#) Bystander claims for intentional or negligent infliction of injury or death; emotional distress.** Provides that a bystander who witnesses, live and in-person, an event during which the intentional or negligent infliction of injury to or death of a victim occurs may recover damages for resulting emotional distress, proven by a preponderance of the evidence, with or without a physical impact or physical injury to the bystander, if (i) the bystander is related to the victim or (ii) although not related to the victim, the bystander is in close proximity to the victim at the time the event occurs and is aware that such event is causing injury to or the death of the victim. CARRIED OVER

**[SB 744](#) Safety belt systems; rear passengers; primary offense.** Expands the requirement that any person at least 18 years of age use a safety belt system while a motor vehicle is in motion on a public highway from only occupants in the front seat to occupants in the front and rear passenger seats, defined in the bill. The bill makes any violation of the statute governing the required use of safety lap belts and shoulder harnesses a primary offense. FAILED

**[SB 791/ HB 1457](#) Immunity of employers and potential employers; reports of violent behavior.** Provides civil immunity to an employer who makes a report to a potential employer or law-enforcement agency of violent or threatened violent behavior, as defined in the bill, by an employee or former employee, provided that such a report was made in good faith and with reasonable cause to make such report. The bill further provides immunity to a potential employer who receives such a report and takes reasonable action in good faith to respond to the violent or threatened violent behavior noted in such report. The bill further provides that the court shall award reasonable attorney fees and costs to any employer or potential employer who has a suit dismissed against him pursuant to the immunity provided to him. CARRIED OVER

**[SB 800](#) Civil action for trespass; vicarious liability.** Provides that any person arrested for or convicted of criminal trespass shall be liable for any property damage caused during the commission of such trespass. The bill also provides that any person who compensates another person for such trespass may be held vicariously liable for any property damage caused during the commission of such trespass. CARRIED OVER

**[HB 1435](#) Initiation of a civil action; clerk of a general district court.** Requires a general district court clerk to file, process, and issue for service of process any pleading initiating a civil action in the general district court within 14 days of receipt of such pleading. CARRIED OVER

**[HB 1561](#) Settlement agreements; indemnification provision declared void & waiver of sexual harassment claim.** Provides that any provision in a contract or agreement by which a party waives a claim of sexual assault or harassment or agrees to nondisclosure of such a claim is unconscionable and against public policy and void and unenforceable unless the

waiver is in writing and the waiving party consulted with counsel who approved the waiver or the court approved the waiver. FAILED

**[SB 895](#) Punitive damages; raises cap from \$350,000 to \$500,000.** Raises the punitive damages cap from \$350,000 to \$500,000 for any action accruing on or after July 1, 2018. FAILED

**[HB 1336](#) Spoliation of evidence; jury instruction.** Provides that if a party has possession, custody, or control of evidence, as specified in the bill, that such party knows or reasonably should know may be material to pending or probable litigation, and such evidence is disposed of, altered, concealed, destroyed, or not preserved by such party, a court may instruct that a jury may infer that, if such evidence had been introduced, such evidence would be detrimental to the case of such party. The bill further provides that the party seeking such instruction need not show that the disposal of, alteration of, concealing of, or failure to preserve such evidence was undertaken intentionally or in bad faith in order for such instruction to be given. The bill serves to overrule a portion of the Supreme Court of Virginia's decision in *Emerald Point, LLC v. Hawkins*, 2017 Va. Lexis 197. FAILED

## MEDICAL MALPRACTICE

**[HB 226/SB 222](#) Patients; medically or ethically inappropriate care not required.** Establishes a process whereby a physician may cease to provide health care that has been determined to be medically or ethically inappropriate for a patient. PASSED

**[HB 793](#) Nurse practitioners; practice agreements.** Eliminates the requirement for a practice agreement with a patient care team physician for licensed nurse practitioners who have completed the equivalent of at least five

years of full-time clinical experience and submitted an attestation from his patient care team physician stating that (i) that the patient care team physician has served as a patient care team physician on a patient care team with the nurse practitioner pursuant to a practice agreement. PASSED

**[HB 379](#) Chief Medical Examiner, Office of; collection of fees.** Prohibits the Office of the Chief Medical Examiner (the Office) from charging a fee for any services provided in connection with death investigations unless such fees are expressly authorized by statute. FAILED

**[HB 385](#) Health care providers; meeting, trial, and deposition charges.** Provides that, in any case, a health care provider may only charge a patient or the patient's attorney, executor or administrator, or authorized insurer a reasonable fee on an hourly basis for such health care provider's actual time spent at or preparing for (i) a meeting related to pending or probable litigation, (ii) a trial, or (iii) a deposition. The bill further specifies that such fee shall not be more than the amount of actual lost revenue incurred due to such time spent at or preparing for such meeting, trial, or deposition. FAILED

**[HB 777](#) Emergency air medical transportation; informed decision.** Requires emergency medical services personnel, prior to initiating contact with an emergency air medical transportation provider for air transport of a patient, to obtain written consent from the patient after disclosing certain information. The bill provides that emergency medical services personnel shall be exempt from such requirements if compliance might jeopardize the health or safety of the patient or the patient is unable to provide consent. CARRIED OVER

**[SB 860](#) Health care provider panels; vertically integrated carriers, public hospitals.** Requires any vertically integrated carrier, which is a health insurer or other carrier that owns an interest in an acute care hospital facility, to offer to every public hospital the ability to participate in the provider panels or networks established for each of the carrier's policies, products, and plans. FAILED

**[HB 1548](#) Sudden Infant Death Syndrome; results of an autopsy of an infant.** Provides that the results of an autopsy of an infant shall not deem the cause of death as Sudden Infant Death Syndrome. FAILED

## CRIMINAL LAW

**[HB 1550/SB 105](#) Grand larceny and certain property crimes; increases threshold amount.** Increases from \$200 to \$500 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. PASSED

**[HB 202](#) Court fines and costs; community service.** Requires a court assessing fines and costs against a person for conviction of a crime to inform such person of the availability of earning credit toward discharge of the fine or costs through the performance of community service and provide such person with written notice of terms and conditions of the community service program. PASSED

**[HB 35/SB 52](#) Juveniles; places of confinement.** Provides that when juveniles who are determined by the court to be a threat to the security or safety of other juveniles detained in a juvenile secure facility are transferred to or confined to a jail or other facility for the detention of adults, such adult-

detention facility must be approved by the State Board of Corrections for the detention of juveniles. The bill removes an existing provision that such juveniles need not be separated and removed from the adult detainees when confined with adults. PASSED

**[HB 52](#) Competency and sanity evaluations; location of evaluation.** Requires that evaluations to determine whether a person is competent to stand trial or to determine a person's sanity at the time of the commission of a criminal offense be conducted on an outpatient basis at a mental health facility or in jail unless an outpatient evaluation has been conducted and the outpatient evaluator opines that a hospital-based evaluation is needed to reliably reach an opinion or unless the defendant is in the custody of the Commissioner of Behavioral Health and Developmental Services. Currently, such evaluations are to be conducted on an outpatient basis, but a court may order that a person be hospitalized instead if the court finds the services necessary to conduct an outpatient evaluation are not available or if the results of the outpatient evaluation indicate that it is necessary to hospitalize the person for further evaluation. PASSED

**[HB 53](#) Persons acquitted by reason of insanity; evaluation.** Provides that a court may authorize a person acquitted of a crime by reason of insanity to be evaluated for commitment or release with or without conditions on an outpatient basis. The bill provides that if a court authorizes an outpatient evaluation, the Commissioner of Behavioral Health and Developmental Services shall determine whether to conduct the evaluation on an outpatient basis or to confine the person to a hospital for the purpose of such evaluation. PASSED

**[HB 77](#) Venue in criminal cases; concurrent jurisdiction, obsolete provisions.** Provides that the courts of a locality have concurrent jurisdiction with the courts of any other adjoining locality over criminal offenses committed in or upon the premises, buildings, rooms, or offices owned or occupied by such locality or any officer, agency, or department thereof that are located in the adjoining locality and repeals an existing statute that provides such concurrent jurisdiction for certain enumerated localities. PASSED

**[HB 128](#) Motion or petition for rule to show cause for violation of court order.** Provides that, in any civil action, a party requesting a rule to show cause for a violation of a court order shall file a motion, a petition, or a form with the court, which shall include facts identifying with particularity the violation or which shall be accompanied by an affidavit setting forth such facts. The introduced bill was a recommendation of the Boyd-Graves Conference. PASSED

**[HB 483](#) Restitution; collection; Criminal Injuries Compensation Fund.** Adds to the duties of the Workers' Compensation Commission (the Commission) in its role as administrator of the Criminal Injuries Compensation Fund (Fund) the obligation to (i) identify and locate victims for whom restitution owed to such victims has been deposited into the Fund and (ii) collect and disburse such unclaimed restitution to such victims. The bill directs the Commission to include in its annual report information on all unclaimed restitution that it disburses. The bill provides that clerks shall deposit into the Fund by November 1 of each year restitution collected for victims who can no longer be identified or located, or state that there is no such restitution to be deposited. PASSED

**[HB 484](#) Restitution; defendant on probation until all is paid in full.** Establishes procedures to be used by courts to monitor the payment of

restitution by defendants. The bill requires that a probation agency ordered to monitor the restitution payments of a defendant placed on supervised probation notify the court and the attorney for the Commonwealth of the amount of unsatisfied restitution (i) 60 days prior to the defendant's release from supervision or (ii) if the agency requests that the defendant be released from supervision, at the time the agency submits its request for the defendant's release. PASSED

**[HB 145](#) [SB 475](#)/Search warrant for a tracking device; delivery of affidavit.** Provides that an affidavit for a search warrant authorizing use of a tracking device may be delivered by a judicial officer's designee or agent. Current law requires the affidavit to be delivered by the judicial officer. As introduced, this bill was a recommendation of the Judicial Council of Virginia. PASSED

**[HB 188](#)/[HB 203](#) Sentence reduction; substantial assistance to prosecution.** Allows a convicted person's sentence to be reduced if such person provides substantial assistance, defined in the bill, in the furtherance of the investigation or prosecution of another person engaged in an act of violence or for offenses involving the manufacture or distribution of controlled substances or marijuana. Sentence reduction can occur only upon motion of the attorney for the Commonwealth. PASSED

**[HB 135](#)/[SB 109](#) Dissemination of juvenile record information; emergency medical services agency applicants.** Provides that juvenile record information maintained in the Central Criminal Records Exchange may be disseminated (i) to the State Health Commissioner or his designee for the purpose of screening any person who applies to be a volunteer with or an employee of an emergency medical services agency and (ii) to the chief law-enforcement officer of a locality, or his designee who shall be an individual employed as a public

safety official of the locality, that has adopted an ordinance to conduct investigations of employment applicants for the purpose of screening any person who applies to be a volunteer with or an employee of an emergency medical services agency. PASSED

**[HB 303](#) Physical evidence recovery kits; submission to Department of Forensic Science.**

Adds as an exception to the requirement that a law-enforcement agency that receives a physical evidence recovery kit submit such kit to the Department for Forensic Science for analysis within 60 days of receipt the circumstance of another law-enforcement agency having taken over responsibility for the investigation related to such kit. PASSED

**[HB 311](#) Unlawful detainer, summons for; legal title to real property foreclosed upon.** Provides that a former owner who remains in possession of a single-family residential dwelling unit on the date of a foreclosure sale becomes a tenant at sufferance. The bill further provides that the successor owner may file an unlawful detainer action three days after giving the tenant written termination notice. Finally, the bill provides that the tenant shall be responsible for payment of fair market rental from the date of the foreclosure until the date the tenant vacates the dwelling unit, as well as damages, and for payment of reasonable attorney fees and court costs. PASSED

**[HB 262](#) Protective orders; family abuse, cellular telephone numbers and service plans.** Provides that as a condition to be imposed by the court on the respondent, a petitioner with a protective order issued in a case that alleges family abuse and, where appropriate, any other family or household member may be granted exclusive use and possession of a cellular telephone number or electronic device. The bill further provides that a respondent may be enjoined from terminating a cellular telephone number or electronic device before the

expiration of the contract term with a third-party provider. The bill provides that the court may enjoin the respondent from using a cellular telephone or electronic device to locate the petitioner. PASSED

**[HB 1055](#) Sentencing guidelines; written explanation.** Provides that the report of a judge's judicial performance evaluation, which is transmitted to the General Assembly, shall include the number of cases in which such judge did not file a written explanation of any departure from the sentencing guidelines as required by law. The bill provides that the person sentenced may seek a writ of mandamus to enforce the requirement that the court file such a written explanation. PASSED

**[HB 1164](#) Return of search warrants to jurisdiction where executed.** Provides that return made on search warrants for records or other information pertaining to a subscriber to, or customer of, an electronic communication service or remote computing service shall be made in the circuit court clerk's office for the jurisdiction where the warrant was executed, if executed within the Commonwealth, or issued, if executed outside the Commonwealth. Currently, the return on such warrants is made in the circuit court clerk's office for the jurisdiction where the warrant was executed. The bill also provides that a copy of the return shall be delivered to the clerk of the circuit court where the warrant was issued if the warrant was executed within the Commonwealth. PASSED

**[HB 1193](#) Persons acquitted by reason of insanity; commitment; sentencing.** Provides that a person who is acquitted by reason of insanity of an offense and convicted of another offense must serve his sentence for the conviction prior to being committed for inpatient hospitalization or, if the person has already been committed at the time of the conviction, be transferred to the custody of the correctional facility where he is to serve his

sentence and returned to commitment upon completion of his sentence. PASSED

**[HB 1194](#) Schedule I controlled substances.** Adds drugs to the list of Schedule I controlled substances. PASSED

**[SB 35](#) Sentence reduction; substantial assistance to prosecution.** Allows a convicted person's sentence to be reduced if such person provides substantial assistance, defined in the bill, in the furtherance of the investigation or prosecution of another person engaged in an act of violence or for offenses involving the manufacture or distribution of controlled substances or marijuana. Sentence reduction can occur only upon motion of the attorney for the Commonwealth. PASSED

**[SB 36](#) Weekend jail time; replaces provision limiting nonconsecutive days.** Allows courts, for good cause and absent objection by the Commonwealth, to impose nonconsecutive or weekend jail time for defendants convicted of a misdemeanor, traffic offense, any offense under Chapter 5 (§ 20-61 et seq.) of Title 20, or felony that is not an act of violence as defined in § 19.2-297.1, provided that the active portion of the sentence remaining to be served is 90 days or less. Under current law, the imposition of nonconsecutive or weekend jail time is limited to defendants convicted of a misdemeanor, traffic offense, or any offense under Chapter 5 (§ 20-61 et seq.) of Title 20. PASSED

**[HB 1212](#) Pro se minors; signing of pleading, motion, or other paper by next friend.** Provides that a minor who is not represented by an attorney shall sign his pleading, motion, or other paper by his next friend. The bill further provides that either or both parents of such minor may sign on such minor's behalf as his next friend, unless such signature is otherwise prohibited by § 64.2-716 of the Uniform Trust Code. PASSED

**[SB 420](#) Witness testimony accompanied by certified facility dogs.** Provides that in any criminal proceeding the attorney for the Commonwealth or the defendant may request and the court may enter an order authorizing the use of a certified facility dog to aid a testifying witness, provided that the use of a certified facility dog will aid the witness in providing testimony and the presence and use of the certified facility dog will not interfere with or distract from the testimony or proceedings. The bill provides that the court may make any orders necessary to preserve the fairness of the proceeding, including imposing restrictions on and instructing the jury regarding the presence of the certified facility dog. PASSED

**[HB 326](#) Child abuse and neglect; venue may lie where alleged abuse or neglect occurred.** Provides that, for cases in juvenile and domestic relations district court involving an allegedly abused or neglected child, venue may lie in the city or county where the alleged abuse or neglect occurred in addition to the city or county where the child resides or where the child is present when the proceedings are commenced. PASSED

**[HB 988](#) Criminal history record information; discovery** Provides that laws precluding dissemination of a person's criminal history record information do not preclude dissemination made pursuant to the rules of court for obtaining discovery or for review by the court. PASSED

**[HB 1310](#) Retention of case records; electronic format.** Allows the clerk of a district court to destroy the papers, records, and documents in civil and criminal cases after the case has ended if such papers, records, and documents have been microfilmed or converted to an electronic format. PASSED

**[SB 564](#) Public access to nonconfidential court records.** Provides that a clerk of court or the

Executive Secretary of the Supreme Court shall make nonconfidential court records or reports of aggregated, nonconfidential case data available to the public upon request. The bill specifies that such records or reports shall be provided no later than 30 days after the request. The bill further provides that the clerk may charge a fee for responding to such request that shall not exceed the actual cost incurred in accessing, duplicating, reviewing, supplying, or searching for the requested records. Finally, the bill requires the Executive Secretary of the Supreme Court to make available to the public an online case information system of nonconfidential information for criminal cases by July 1, 2019. PASSED

**[SB 565](#) DNA analysis upon conviction of certain misdemeanors.** Adds misdemeanor violations of §§ 18.2-57 (assault and battery), 18.2-57.2 (assault and battery against a family or household member), 18.2-96 (petit larceny), 18.2-103 (concealing merchandise; altering price tags), 18.2-119 (trespass), 18.2-137 (destruction of property), and 18.2-460 (obstruction of justice) to the list of offenses for which an adult convicted of such offense must have a sample of his blood, saliva, or tissue taken for DNA analysis. PASSED

**[SB 566](#) Report of arrests; fingerprints; trespass; disorderly conduct.** Requires that a law-enforcement agency make a report of any arrest of a person for trespassing (§ 18.2-119) or disorderly conduct (§ 18.2-415) to the Central Criminal Records Exchange and that such report be accompanied by the fingerprints and photograph of the person arrested. PASSED

**[SB 57](#) Obstructing justice and resisting arrest; fleeing from a law-enforcement officer, penalty.** Relocates the existing section prohibiting fleeing from a law-enforcement officer to a more logical location with

prohibitions for obstructing justice and resisting arrest. PASSED

**[SB 609](#) Retention of jurisdiction over juvenile offenders.** Clarifies that when a juvenile and domestic relations district court obtains jurisdiction in the case of any child, such jurisdiction includes the authority to suspend, reduce, modify, or dismiss the disposition of any juvenile adjudication until such person reaches 21 years of age, except when the person is in the custody of the Department of Juvenile Justice or the court is divested of jurisdiction. The bill provides that it is declaratory of existing law. PASSED

**[HB 1482](#) Use of unmanned aircraft systems by public bodies; search warrant required.** Allows an unmanned aircraft system to be deployed without a warrant to survey the scene of an accident for the purpose of crash reconstruction when a law-enforcement officer is required to make a report of such accident because of personal injury, death, or property damage of \$1,500 or more. PASSED

**[HB 1580](#) Violation of protective order or stalking; third or subsequent offense, penalty.** Expands the offenses for which a conviction of a third or subsequent offense, when the offense is committed within 20 years of the first conviction and when either the instant or one of the prior offenses was based on an act or threat of violence and the instant and prior offenses arise out of separate incidents, is a Class 6 felony with a mandatory minimum term of confinement of six months from violating a protective order to any combination of violating a protective order or stalking. PASSED

**[HB 88](#) Marijuana field test; evidence at trial.** Provides that a law-enforcement officer is permitted to testify as to the results of any field test approved by the Department of Forensic Science regarding whether or not any plant material is marijuana in any trial for a

misdemeanor offense of possession of marijuana with intent to distribute. Under current law, such testimony is allowed only in any trial for simple possession of marijuana. FAILED

**[HB 100](#) Method of execution; lethal injection drugs.** Eliminates the provision making the identities of (i) any pharmacy or outsourcing facility that enters into a contract with the Department of Corrections for the compounding of drugs necessary to carry out an execution by lethal injection, (ii) any officer or employee of such pharmacy or outsourcing facility, and (iii) any person or entity used by such pharmacy or outsourcing facility to facilitate the compounding of such drugs confidential, exempt from the Freedom of Information Act (§ 2.2-3700 et seq.), and not subject to discovery or introduction as evidence in any civil proceeding unless good cause is shown. FAILED

**[HB 104](#) Writ of actual innocence; a person may petition based on biological evidence regardless of plea.** Provides that a person may petition for a writ of actual innocence based on biological evidence regardless of the type of plea he entered at trial. FAILED

**[HB 138](#) Fornication; repeals crime.** Repeals the crime of fornication, i.e., voluntary sexual intercourse by an unmarried person. FAILED

**[HB 294](#) DNA; sample taken upon conviction, fee.** Removes the limitation that the fee for withdrawing a sample of a person's blood, saliva, or tissue for DNA analysis upon conviction for a felony or certain misdemeanors be taxed only one time regardless of the number of samples taken. FAILED

**[HB 300](#) Assault and battery; hate crime, penalty.** Makes it a Class 6 felony to commit a simple assault or assault and battery against a victim who was selected because of the victim's

race, religious conviction, color, or national origin. FAILED

**[HB 440](#) Indigent defendants; public defender office, appointment of counsel.** Provides that in localities having a public defender office, the public defender office or the Indigent Defense Commission must represent to the court that the public defender lacks an appropriate level of training and experience before a court can appoint another attorney to represent an indigent defendant. FAILED

**[HB 441](#) Police and court records; expungement.** Provides that a court that enters a judgment acquitting a person of a criminal charge shall, upon the motion of the person acquitted of such charge, enter an order requiring the expungement of the police and court records relating to the charge. FAILED

**[HB 522](#) Safe reporting of criminal sexual assault.** Establishes an affirmative defense to prosecution of an individual for (i) simple possession of a controlled substance, marijuana, or controlled paraphernalia; (ii) intoxication in public; or (iii) the unlawful purchase, possession, or consumption of alcohol if such individual reports to a law-enforcement officer that he was the victim of or witness to a criminal sexual assault that occurred concurrently with the conduct listed in clause (i), (ii), or (iii) if the evidence for the charge was obtained as a result of the individual reporting the criminal sexual assault. FAILED

**[HB 622](#) Sex offenses prohibiting entry onto school property; penalty.** Provides that an adult who has been convicted of any felony offense for which registration on the Sex Offender and Crimes Against Minors Registry is required where the victim of the offense was a minor is guilty of a Class 6 felony if he enters or is present (i) upon any property he knows or has reason to know is a public or private elementary or secondary school or child day center property during school hours and during school-

related or school-sponsored activities; (ii) upon any property during hours when such property is being used by such a school for school-related or school-sponsored activities; or (iii) on any school bus. CARRIED OVER

**[HB 718](#) Hate crimes; criminal acts against persons because of gender, etc.** Adds disability, gender, 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. FAILED

**[HB 719](#) Hate crimes; immigration status; civil action; penalty.** Adds immigration status to the bases of a victim's intentional selection for a hate crime involving assault, assault and battery, or trespass for the purpose of damaging another's property that result in a higher criminal penalty for the offense. FAILED

**[HB 744](#) Preliminary protective orders; contents of order.** Provides that if a preliminary protective order is issued in an ex parte hearing where the petition for the order is supported by sworn testimony and not an affidavit or a form completed by a law-enforcement officer that includes a statement of the grounds for the order, the court issuing the order shall state in the order the basis on which the order was entered, including a summary of the allegations made and the court's findings. FAILED

**[HB 758](#) Death penalty; severe mental illness.** Provides that a defendant in a capital case who had a severe mental illness, which is defined in the bill, at the time of the offense is not eligible for the death penalty. FAILED

**[HB 841](#) Admissibility of prior inconsistent statements in a criminal case.** Provides that in all criminal cases, evidence of a prior statement that is inconsistent with testimony at the hearing or trial is admissible if the testifying

witness is subject to cross-examination and the prior statement (i) was made by the witness under oath at a trial, hearing, or other proceeding or (ii) narrates, describes, or explains an event or condition of which the witness had personal knowledge and (a) the statement is proved to have been written or signed by the witness; (b) the witness acknowledges under oath the making of the statement in his testimony at the hearing or trial in which the admission into evidence of the prior statement is being sought; or (c) the statement is proved to have been accurately recorded by using an audio recorder, a video/audio recorder, or any other similar electronic means of sound recording. This bill is a recommendation of the Virginia State Crime Commission. FAILED

**[HB 900](#) Forfeiture of property used in connection with the commission of crimes; finding of guilt required.** 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. FAILED

**[HB 833](#) Multi-jurisdiction grand jury; hate crimes.** Adds the following to the list of crimes that a multi-jurisdiction grand jury may investigate: (i) simple assault or assault and battery where the victim was intentionally selected because of his race, religious conviction, color, or national origin; (ii) entering the property of another for purposes of damaging such property or its contents or

interfering with the rights of the owner, user, or occupant where such property was intentionally selected because of the race, religious conviction, color, or national origin of the owner, user, or occupant; and (iii) various offenses that tend to cause violence. FAILED

[HB 961](#) **Expungement of police and court records; victims of human trafficking.** Allows a victim of human trafficking to petition for expungement of convictions for certain nonviolent offenses. FAILED

[HB 997](#) **Pretrial Services Act; repeal.** Repeals the Pretrial Services Act (§ 19.2-152.2 et seq.). The Act authorized the establishment of local pretrial services agencies that were intended to assist judicial officers in making bail determinations. FAILED

[HB 1015](#) **Multi-jurisdiction grand jury investigations.** Expands the purview of multi-jurisdiction grand juries to allow the investigation of any criminal violation of Virginia law punishable as a felony. FAILED

[HB 1033](#) **Deemed consent to testing of bodily fluids.** Allows a magistrate or a general district court to issue an order requiring a person to provide a blood specimen for testing for human immunodeficiency virus or the hepatitis B or C virus when exposure to bodily fluids occurs between a person and any health care provider, person employed by or under the direction and control of a health care provider, law-enforcement officer, firefighter, emergency medical services personnel, person employed by a public safety agency, or school board employee and the person whose blood specimen is sought refuses to consent to providing such specimen. CARRIED OVER

[HB 1062](#) **Misdemeanor sexual offenses; statute of limitations.** Eliminates the statute of limitations for prosecuting misdemeanor violations of the following crimes: female genital mutilation, carnal knowledge of

offender by employee of bail bond company, sexual battery, infected sexual battery, sexual abuse of a child age 13 or 14 by an adult, attempted sexual battery, and tongue penetration by adult of mouth of child under age 13. FAILED

[HB 1063](#) **Marijuana; decriminalization of simple marijuana possession.** Decriminalizes marijuana possession and provides a civil penalty of no more than \$250 for a first violation and \$1,000 for a second or subsequent violation. FAILED

[HB 1065](#) **Expungement of police and court records; possession of marijuana.** Allows a person convicted of possession of marijuana, or charged with such offense which charge was deferred and dismissed, who has successfully completed all terms of probation to file a petition for expungement after at least five years have passed since the date of conviction. FAILED

[HB 1066](#) **Expungement of police and court records.** Provides that a court that enters a nolle prosequi for a criminal charge or dismisses such charge for any reason may, upon motion of the person charged and with the agreement of the attorney for the Commonwealth, enter an order requiring the expungement of the police and court records relating to the charge. FAILED

[HB 1214](#) **Expungement of certain charges and convictions.** Allows a person to petition for expungement of convictions and deferred disposition dismissals for marijuana possession, underage alcohol possession, and using a false ID to obtain alcohol when the offense occurred prior to the person's twenty-first birthday; all court costs, fines, and restitution have been paid; and five years have elapsed since the date of completion of all terms of sentencing and probation. FAILED

**[HB 1264](#) DNA analysis upon conviction of certain misdemeanors.** dds misdemeanor violations of §§ 18.2-57 (assault and battery), 18.2-57.2 (assault and battery against a family or household member), 18.2-96 (petit larceny), 18.2-103 (concealing merchandise; altering price tags), 18.2-119 (trespass), 18.2-137 (destruction of property), and 18.2-460 (obstruction of justice) to the list of offenses for which an adult convicted of such offense must have a sample of his blood, saliva, or tissue taken for DNA analysis. This bill is a recommendation of the Virginia State Crime Commission. FAILED

**[HB 1296](#) Establishment of statewide public defender system; appellate defender officer.** Establishes a public defender office in each judicial circuit. FAILED

**[SB 777](#) Post-conviction relief; previously admitted scientific evidence.** Provides that a person who was convicted of certain offenses, upon a plea of not guilty or an Alford plea, or who was adjudicated delinquent upon a plea of not guilty or an Alford plea, by a circuit court of an offense that would be such offense if committed by an adult, may petition the Court of Appeals to have his conviction vacated. CARRIED OVER

**[SB 40](#) Marijuana; reduced penalties for distribution or possession with intent to distribute** Raises the threshold amount of marijuana subject to the offense of distribution or possession with intent to distribute from one-half ounce to one ounce. The bill also reduces the criminal penalties for distribution of or possession with intent to distribute certain greater weights of marijuana and creates a rebuttable presumption that a person who possesses no more than one ounce of marijuana possesses it for personal use. FAILED

**[HB 661](#) First offense assault and battery against a family or household member; enhanced penalty.** Provides that the deferral

and dismissal of a first offense of assault and battery against a family or household member will be treated as a prior conviction for the purpose of determining whether a person is eligible for the enhanced Class 6 felony penalty for assault and battery against a family or household member, which applies on the basis of a person's prior convictions. FAILED

**[SB 66](#) Assault and battery against a family member; child witness as a sentencing consideration.** Provides that if a defendant is convicted of assault and battery against a family or household member and a minor who is a family or household member of the defendant was a witness to the offense, the court may consider such circumstance as an aggravating factor in determining sentencing. FAILED

**[SB 67](#) Intake process, etc.; statements made by child to an intake officer or probation officer.** Provides that a statement made by a child during or after the intake process, or during or after a mental health screening or other court-ordered evaluation or assessment, and prior to a hearing on the merits of a petition filed against the child, shall not be admissible at any stage of the proceedings. Current law limits such period of time to those statements made *during* the intake process, or *during* a mental health screening or assessment, and prior to a hearing on the merits of a petition filed against the child. FAILED

**[SB 85](#) Protective orders, preliminary; contents of order.** Provides that if a preliminary protective order is issued in an ex parte hearing where the petition for the order is supported by sworn testimony and not an affidavit or a form completed by a law-enforcement officer that includes a statement of the grounds for the order, the court issuing the order shall state in the order the basis on which the order was entered, including a summary of the allegations made and the court's findings. FAILED

**[SB 86](#) Driver's license.** Provides that a person is guilty of an offense of driving or operating a motor vehicle (i) after his driver's license has been revoked for certain offenses, (ii) in violation of the terms of a restricted license, (iii) without an ignition interlock system if one is required, or (iv) if the person's license had been restricted, suspended, or revoked for certain driving under the influence offenses, with a blood alcohol content of 0.02 percent or more, only if such person was driving or operating the motor vehicle on a highway, as defined in Title 46.2, Motor Vehicles. FAILED

**[SB 104](#) Reckless driving; raises threshold for speeding.** Raises from 80 to 85 miles per hour the speed above which a person who drives a motor vehicle on the highways in the Commonwealth is guilty of reckless driving regardless of the applicable maximum speed limit. FAILED

**[SB 110](#) Marijuana field test; evidence at trial.** Provides that a law-enforcement officer is permitted to testify as to the results of any field test approved by the Department of Forensic Science regarding whether or not any plant material is marijuana in any trial for a misdemeanor offense of possession of marijuana with intent to distribute. CARRIED OVER

**[SB 111](#) Marijuana; decriminalization of simple possession, civil penalty.** Decriminalizes simple marijuana possession and provides a civil penalty of no more than \$50 for a first violation, \$100 for a second violation, and \$250 for a third or subsequent violation. FAILED

**[SB 112](#) Hate crimes; criminal acts against persons because of gender, etc.** Adds disability, gender, 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. FAILED

**[SB 135](#) Criminal cases; admissibility of prior inconsistent statements.** Provides that in all criminal cases, evidence of a prior statement that is inconsistent with testimony at the hearing or trial is admissible if the testifying witness is subject to cross-examination and the prior statement (i) was made by the witness under oath at a trial, hearing, or other proceeding or (ii) narrates, describes, or explains an event or condition of which the witness had personal knowledge and (a) the statement is proved to have been written or signed by the witness; (b) the witness acknowledges under oath the making of the statement in his testimony at the hearing or trial in which the admission into evidence of the prior statement is being sought; or (c) the statement is proved to have been accurately recorded by using an audio recorder, a video/audio recorder, or any other similar electronic means of sound recording. This bill is a recommendation of the Virginia State Crime Commission. FAILED

**[SB 142](#) Circuit court; failure to appear in accordance with condition of bail, etc** Provides that a person's failure to appear in circuit court in accordance with the condition of his bail, recognizance, or promise to appear constitutes a withdrawal of an appeal, provided that the person is notified in writing at the time he notes his appeal that his failure to appear in circuit court constitutes a withdrawal of the appeal. The bill also provides that within 60 days of entering an order affirming the judgment of a district court based on a person's failure to appear, a person who fails to appear may request the court to vacate its order if such failure to appear was not willful. FAILED

**[SB 167](#) Discovery in criminal cases; duty to provide.** Requires the attorney for the Commonwealth, upon written notice by an

accused to the court and to the attorney for the Commonwealth, to permit the accused to inspect and copy or photograph (i) any relevant written or recorded statements or confessions made by the accused and the substance of any oral statements or confessions made by the accused to any law-enforcement officer; (ii) any relevant written reports of autopsies, ballistic tests, fingerprint analyses, handwriting analyses, blood, urine, and breath tests, and other scientific reports and written reports of a physical or mental examination of the accused or the alleged victim; (iii) any books, papers, documents, tangible objects, buildings, or places, or copies or portions thereof, that are within the possession, custody, or control of the Commonwealth; (iv) any relevant police reports, as defined in the bill; and (v) all relevant statements, as defined in the bill, of any non-expert witness whom the Commonwealth is required to designate on a witness list. CARRIED OVER

**SB 168 Electronic transmission of nude or partially nude images of minors by minors; penalty.** Provides that a minor who knowingly transmits, distributes, publishes, or disseminates any sexually explicit visual material to another minor without the intent to harass, intimidate, or extort money or other pecuniary gain, by any means whatsoever on any device or through any media or through the use of a computer system, is guilty of a Class 1 misdemeanor. The bill also provides that any minor who knowingly possesses at least one but not more than 10 images containing sexually explicit visual material and such images are obtained with the consent of the depicted minor is guilty of a Class 2 misdemeanor. FAILED

**SB 181 Driver's license; suspension for nonpayment of fines or costs.** 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 provides that the Commissioner of the Department of Motor Vehicles shall return or reinstate any person's driver's license that was suspended prior to July 1, 2018, solely for nonpayment of fines or costs, provided that such person has paid the applicable reinstatement fee. FAILED

**SB 308 Driving under the influence; highways.** Provides an exemption to the prohibition of driving or operating a motor vehicle while under the influence to any person driving or operating a motor vehicle on his own residential property or the curtilage thereof. FAILED

**SB 334 Expungement of certain offenses.** Allows a person to petition for expungement of a deferred disposition dismissal for underage alcohol possession or using a false ID to obtain alcohol when the offense occurred prior to the person's twenty-first birthday; all court costs, fines, and restitution have been paid; and the person seeking the expungement is at least 21 years of age and has no other alcohol-related convictions. FAILED

**SB 339 Deferred disposition in criminal cases.** Allows a court to defer and dismiss a criminal case where the defendant has been diagnosed with autism or an intellectual disability. FAILED

**SB 402 Driving under the influence; secure transdermal alcohol monitoring.** Provides that the court may, upon request of an offender convicted for DUI who has not been previously prohibited from operating a vehicle that is not equipped with a functioning ignition interlock system, order that the offender (i) wear a secure transdermal alcohol-monitoring device that continuously monitors the person's blood alcohol level and (ii) refrain from alcohol consumption. FAILED

**SB 403 Marijuana possession, etc.** Allows a person to petition for expungement of

convictions and deferred disposition dismissals for marijuana possession, underage alcohol possession, and using a false ID to obtain alcohol when the offense occurred prior to the person's twenty-first birthday; all court costs, fines, and restitution have been paid; and five years have elapsed since the date of completion of all terms of sentencing and probation. FAILED

**[SB 93](#) Parole, eligibility for; at liberty between offenses.** Provides that a person convicted of three separate felony offenses of murder, rape, or robbery by the presenting of firearms or other deadly weapon, or any combination of such offenses, shall be eligible for parole unless that person was at liberty between the three convictions and used a weapon during the commission of each offense. FAILED

**[SB 94](#) Police and court records; expungement of records.** Provides that police and court records for all felony or misdemeanor offenses, or traffic infractions, are potentially eligible for expungement if the person seeking the expungement qualifies under the statute. FAILED

**[SB 578](#) Suspension of driver's license for nonpayment of fines or costs.** Removes the requirement that a court suspend 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. FAILED

**[SB 608](#) Expungement of police and court records; plea agreements.** Provides that any provision in any plea agreement that purports to waive, release, or extinguish the right of a person to file a petition requesting the expungement of police and court records shall be void and unenforceable as against public policy. FAILED

**[HB 1364](#) Closed preliminary hearings.** Adds child pornography offenses, use of a communications system to facilitate certain offenses involving children, and unlawful filming

to the list of sex offenses where, during a preliminary hearing for such an offense, a court may exclude all persons from the courtroom except those who would be supportive of the complaining witness or the accused and would not impair the conduct of a fair hearing. FAILED

**[SB 734](#) Custodial interrogations; length; recording.** Provides that any law-enforcement officer shall, if practicable, make an audiovisual recording of any custodial interrogation of a person conducted in a place of detention. The bill provides that the failure to make such a recording does not affect the admissibility of statements made during the custodial interrogation, but the court shall consider or shall instruct the jury to consider such failure in determining the weight given to such evidence. FAILED

**[SB 737](#) Driving under the influence; first offenders; license conditions; penalty.** 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, 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. CARRIED OVER

**[SB 797](#) Protective orders; possession of firearms; penalty.** Provides that it is a Class 6 felony for a person who is subject to a permanent protective order (i.e., a protective order with a maximum duration of two years) for subjecting another person to an act of violence, force, or threat to possess a firearm while the order is in effect, which is equivalent to the existing penalty for possession of a firearm by a person subject to a permanent protective order for family abuse. FAILED

**SB 954 Marijuana; reduces penalties for possession to a fine of not more than \$500.**

Reduces the penalties for possession of marijuana to a fine of not more than \$500 and makes a first offense violation that has been deferred and dismissed under § 18.2-251 eligible for expungement. Under current law, possession of marijuana is punishable by confinement in jail for not more than 30 days and a fine of not more than \$500, either or both. The bill provides that any person seeking expungement of such first offense violation shall be assessed a \$300 fee, of which \$150 shall be paid into the Heroin and Prescription Opioid Epidemic Fund, created by the bill, and \$150 shall be paid into the state treasury and credited to the Department of State Police. FAILED

## **DOMESTIC RELATIONS**

**HB 241 Adoption; lowers amount of time child must reside with close relative.** Lowers from three years to two years the amount of time a child must have continuously resided with or been under the physical custody of the prospective close relative adoptive parent in order for the adoption proceeding to commence in circuit court and be exempt from the parental placement provisions. PASSED

**HB 278 Compensation guardian ad litem appointed to represent a child; adjustment by the court.** Provides that a court may adjust the costs of a guardian ad litem's services for good cause shown or upon the failure of the guardian ad litem to substantially comply with the standards adopted for attorneys appointed as guardians ad litem. PASSED

**HB 289 Divorce proceedings; transfer of matters to district court.** Provides that after the entry of a decree of divorce a vinculo matrimonii the circuit court shall not (i) transfer a case for modification to the juvenile and

domestic relations district court in the absence of a motion by either party or (ii) require a provision for transfer of matters for modification to the juvenile and domestic relations district court as a condition of entry of a decree of divorce a *vinculo matrimonii*. The bill modifies the provision allowing transfer of any matters covered by the divorce decree to a juvenile and domestic relations district court to add transfer to any circuit court that constitutes a more appropriate forum. PASSED

**HB 418 Adoption; circuit court to accept a petition filed by child's foster parent.** Directs a circuit court to accept a petition for adoption filed by the child's foster parent and to order a thorough investigation if (i) the child-placing agency holding custody of the child consents to the adoption after the child has resided in the home of such foster parent continuously for at least six months and (ii) the birth parents' rights to the child have been terminated. Current law requires a circuit court to accept such petition in such circumstances only after the child has resided in the home of such foster parent continuously for at least 18 months. The bill provides that after the child has resided in the home of the foster parent continuously for at least 18 months, the consent of the child-placing agency holding custody of the child is no longer needed in order to require the court to accept the petition and order an investigation. PASSED

**HB 613 Access to child and spousal support case files.** Provides that all child support and spousal support case files shall be open to inspection only to the persons and agencies listed in the bill. The bill further provides that any other person, agency, or institution having a legitimate interest in such case files or the work of the court, by order of the court, may inspect the case files. PASSED

**[HB 754](#) Elective share claim; calculation of the augmented estate.** Provides that a surviving spouse claiming an elective share does not have the right to claim a share of the decedent spouse's separate property at death but that the decedent spouse may satisfy the surviving spouse's right to claim a share of marital property with such separate property. PASSED

**[HB 1219](#) Restoration of parental rights.** Provides that, at certain foster care review hearings, the court shall inquire of the child's guardian ad litem and the local board of social services whether the child has expressed a preference that the possibility of restoring the parental rights of his parent or parents be investigated. The bill further provides that, if the child expresses or has expressed such a preference, the court shall direct the local board of social services or the child's guardian ad litem to conduct an investigation of the parent or parents. The bill provides that if, following such investigation, the local board of social services or guardian ad litem deems it appropriate to do so, either may file a petition for the restoration of parental rights. PASSED

**[SB 540](#) Modification of spousal support; retirement age.** Provides that for the purposes of petitioning the court for a modification of spousal support, the payor spouse reaching full retirement age pursuant to the federal Social Security Act shall be considered a material change in circumstances. The bill provides a list of factors that shall be considered by the court in considering modification based on the payor spouse reaching full retirement age. A request for modification based on the payor spouse's retirement age is available to any person subject to a spousal support order regardless of the date of the suit for initial setting of support or the date of entry of any such order or decree. Finally, the bill provides that in the court's consideration of a petition for modification for any reason, it shall consider the

assets or property interest of each of the parties from the date of the support order and up to the time of the hearing on modification or termination, and any income generated from the asset or property interest. PASSED

**[SB 89](#) Child abuse or neglect; civil proceedings, testimony of children.** Adds proceedings involving family abuse protective orders to the list of civil proceedings involving alleged abuse and neglect of a child for which a court may order that the testimony of certain child victims or witnesses be taken outside the courtroom via two-way closed-circuit television. PASSED

**[SB 614](#) Modification of spousal support.** Provides that no request for modification of spousal support based on a material change in circumstances or the terms of stipulation or contract shall be denied solely on the basis of the terms of any stipulation or contract that is executed on or after July 1, 2018, unless such stipulation or contract contains specific language set out in the bill. PASSED

**[SB 615](#) Spousal support payments; employer withholding.** Clarifies that spousal support orders may be enforced by a court order requiring the payor's employer to deduct the support amount due from the amounts due or payable to such payor. Under current law, it is unclear that such withholding is available for enforcement of spousal support payments in addition to child support payments. PASSED

**[HB 1351](#) Joint legal or physical child custody; custody and visitation decisions;** communication to parties. Provides that, when determining custody, the court's primary consideration of the best interests of the child shall include whether joint legal or joint physical custody is appropriate. PASSED

**[SB 981](#) Child support; calculation of obligation, multiple custody arrangements.** Establishes methods by which child support obligations can

be calculated when multiple custody arrangements exist between parents of children subject to child support orders. PASSED

**[SB 982](#) Child support; guidelines for determination of obligation, child support orders.** Provides that the guidelines worksheet relied upon by the court or the Department of Social Services to compute a child support obligation for a support order issued by such court or the Department shall be placed in the court's file or the Department's file, and a copy of such guidelines worksheet shall be provided to the parties. PASSED

**[HB 149](#) Child support order payee; change in physical custody of child; child support orders involving the Department of Social Services or the Division of Child Support**

**Enforcement.** Provides that, when a child support order payee no longer has physical custody of a child, the Department of Social Services shall have the authority to direct child support payments to a custodial parent who has physical custody of a child in any child support matter in which an assignment of rights has been made to the Department or an application for services has been made with the Division of Child Support Enforcement. FAILED

**[HB 248](#) REAL Parenting Pilot Program; DSS to establish.** Directs the Department of Social Services (the Department) to establish a two-year pilot program, to be referred to as the Responsible Employed Active Loving Parenting Pilot Program (REAL Parenting Pilot Program or the Program), beginning in 2018 for the purpose of providing noncustodial parents an opportunity to reduce amounts owed for accrued interest on child support arrears to the Commonwealth. FAILED

**[HB 277](#) Guardians ad litem for children; report requirements, certification form.** Requires guardians ad litem appointed to represent a child in a matter to conduct an investigation in

compliance with certain standards. The bill further requires the guardian ad litem to file a copy of any written report directed by the court with the clerk of court. The bill requires the guardian ad litem to furnish a copy of such report to the attorneys representing parties and parties proceeding pro se in the matter prior to any trial or other proceeding or hearing on the matter. The bill provides that, where a written report is not directed, the guardian ad litem shall inform all attorneys representing parties and parties proceeding pro se of any recommendations intended to be made to the court prior to any trial or other proceeding or hearing on the matter. The bill specifies that a guardian ad litem's report shall not be admitted into evidence unless the contents are otherwise established at the trial or other proceeding or hearing on the matter. CARRIED OVER

**[HB 515](#) Custody and visitation; rights of parents with a disability.** Provides that a parent's disability, as defined in the bill, shall not be the sole basis of the denial or restriction of such parent's custody or visitation rights. The bill requires a party who alleges that a parent's disability should be a factor to be considered to not be in the best interests of the child, or should otherwise be a reason to deny or restrict such a parent's custody or visitation rights, to prove that the child's best interests would not be met or served due to such parent's disability. The bill allows a parent with a disability to demonstrate how supportive parenting services would appropriately address any threats to the child's best interests and further allows the court to order that such services be ordered by the court. The bill requires a court to make written findings where the court denies or restricts custody or visitation of a parent with a disability or where supportive parenting services are not ordered. FAILED

**[HB 599](#) Nonpayment of child support; amount of arrearage paid; time period to pay**

**arrearage.** Provides that an individual who is delinquent in child support payments or has failed to comply with a subpoena, summons, or warrant relating to paternity or child support proceedings is entitled to a judicial hearing if he makes a written request within 30 days from service of a notice of intent to suspend or renew his license. FAILED

**HB 745 Adultery; civil penalty.** Reduces the penalty for adultery from a Class 4 misdemeanor to a civil penalty of not more than \$250. FAILED

**HB 807 Custody and visitation agreements; best interests of the child; other violent abuse** Adds a definition of "other violent abuse" and requires the court to consider any history of abuse of persons other than family members when determining the best interests of the child for the purposes of custody and visitation arrangements. FAILED

**HB 939 Adoption by person other than spouse of parent.** Provides that a person other than the spouse of a birth parent or parent by adoption may adopt a child if (i) the child has only one parent or the child is the result of surrogacy and the surrogate consents, (ii) the adoption would not terminate the parental rights of the parent, and (iii) the parent joins in the adoption petition for the purpose of indicating his consent. FAILED

**HB 998 Temporary delegation of parental or legal custodial powers; child-placing agency.** Allows a parent or legal custodian of a minor to delegate to another person by a properly executed power of attorney any powers regarding care, custody, or property of the minor for a period not exceeding one year. The bill provides that a parent or legal custodian who is a service member, as defined in the bill, may delegate such powers for a period of longer than a year while on active duty service, but specifies that such a period is not to exceed

such active duty service plus 30 days. CARRIED OVER

**HB 1218 Termination of parental rights.**

Provides that the residual parental rights of a parent of a child placed in foster care may be terminated if the courts finds, based upon clear and convincing evidence, that it is in the child's best interests and that the parent, without good cause, has been unwilling or unable to substantially remedy the conditions that led to such foster care placement within a reasonable period of time not to exceed 15 total months from the date the child was first placed in foster care within the most recent 22 months. FAILED

**SB 64 Custody and visitation decisions; communication to parties required in writing.** Requires judges to communicate the basis of a custody or visitation decision to the parties in writing. FAILED

**SB 610 Adultery; civil penalty.** Reduces the penalty for adultery from a Class 4 misdemeanor to a civil penalty of not more than \$250. FAILED

**SB 612 Assisted conception; parentage presumption.** Makes the relevant law regarding children born as a result of assisted conception applicable to both same-sex and opposite-sex married couples. The bill also provides that a person is presumed to be the parent of a child if such person is married to the mother at the time of the child's birth or was married to the mother within 300 days of the child's birth. FAILED

**SB 938 Child support; withholding of income, contracts with an independent contractor.** Requires any person who contracts with an independent contractor, as defined in the bill, to submit information regarding any new independent contractor to the Virginia New Hire Reporting Center for the purposes of income withholding by the Division of Child

Support Enforcement. The bill also makes clear that income earned by an independent contractor may be withheld by court order for payment of child support obligations. CARRIED OVER

## JUDICIAL ADMINISTRATION

[HB 166](#) **Jurors; clerks of court. States that the clerk of an appellate court may request paper trial court records to be forwarded to such clerk.** The bill adds the Bond Book to the list of books for which a microphotographic process may be used to accomplish the recording of writings otherwise required to be recorded in a book or retained in the clerk's office. In addition, the bill repeals an obsolete section of the Code that required circuit court clerks to keep a log of documents submitted for recordation that had not been recorded because they had not been acknowledged or proved. PASSED

[HB 235](#) [SB 180](#) **Acceptability of electronic medium; record of criminal proceedings to appellate court.** Provides that in a criminal proceeding in circuit court any statutory requirement for an original, original paper, paper, record, document, facsimile, memorandum, exhibit, certification, or transcript shall be satisfied if such item is in an electronic form approved for filing under the Rules of Supreme Court of Virginia. The bill also provides that in a criminal proceeding any statutory authorization for the use of copies or reproductions shall be satisfied by use of such copies or reproductions in hard copy or electronic form approved for filing under the Rules of Supreme Court of Virginia. Under current law, only in civil proceedings are such statutory requirements and authorizations satisfied by an approved electronic form of such items. This bill is a recommendation of the Judicial Council. PASSED

[HB 378](#) [SB 524](#) **Electronic case papers; transmission between district and circuit courts.** Makes applicable to juvenile and domestic relations district courts current provisions related to electronic case papers and transmission of such papers between the general district courts and the circuit courts by relocating such provisions from a statute specifically addressing general district courts to a statute applicable to all district courts. The bill also allows the appellate court clerk to request the forwarding of paper trial records. As introduced, this bill was a recommendation of the Committee on District Courts and the Judicial Council. PASSED

[HB 743](#) [SB 525](#) **Maximum number of judges in each judicial district and circuit.** Increases or decreases the maximum number of judges in select judicial districts and circuits to reflect the number of authorized judgeships recommended by the Supreme Court of Virginia in the 2017 "Virginia Judicial Workload Assessment Report." PASSED

[HB 780](#) [SB 564](#) **Public access to nonconfidential court records.** Provides that a clerk of court or the Executive Secretary of the Supreme Court shall make nonconfidential court records or reports of aggregated, nonconfidential case data available to the public upon request. The bill specifies that such records or reports shall be provided no later than 30 days after the request. The bill further provides that the clerk may charge a fee for responding to such request that shall not exceed the actual cost incurred in accessing, duplicating, reviewing, supplying, or searching for the requested records. Finally, the bill requires the Executive Secretary of the Supreme Court to make available to the public an online case information system of nonconfidential information for criminal cases by July 1, 2019. PASSED

**[HB 1023](#) Issuance of foreign subpoenas; clerk of court.** Provides that no foreign subpoena issued in the Commonwealth pursuant to the Uniform Interstate Depositions and Discovery Act (§ 8.01-412.8 et seq.) may be issued by any person other than the applicable circuit court clerk of court in the Commonwealth. PASSED

**[HB 1301](#) Judges; central registry records check.** Requires that judges and substitute judges seeking reelection submit to a central registry records check for any founded complaint of child abuse or neglect. The bill also requires that any candidate seeking election to judicial office submit to a central registry records check. PASSED

**[HB 1310](#) Retention of case records; electronic format.** Allows the clerk of a district court to destroy the papers, records, and documents in civil and criminal cases after the case has ended if such papers, records, and documents have been microfilmed or converted to an electronic format. PASSED

**[HB 481](#) Deferral of jury service; students.** Allows a court to defer a person's jury service to a later term of court if such person is enrolled as a full-time student and is attending classes at an accredited public or private institution of higher education. PASSED

**[SB 939](#) Judges; retired from circuit court, etc., qualifications.** Requires that retired circuit court judges sitting as substitutes be found qualified every three years by the Senate and House Committees for Courts of Justice instead of authorized by the Chief Justice. The bill also removes the requirement that retired Court of Appeals judges and Supreme Court justices shall be recalled pursuant to § 17.1-106. The bill provides that Court of Appeals judges and Supreme Court justices retired under the Judicial Retirement System (§ 51.1-300 et seq.) shall be subject to recall with the consent of a majority of the members of the respective

court. The bill has a delayed effective date of July 1, 2019. PASSED

**[HB 51](#) Evidentiary hearings in the Supreme Court of Virginia; Judicial Inquiry and Review Commission.** Clarifies that the hearings allowed under the Constitution of Virginia related to complaints filed by the Judicial Inquiry and Review Commission are to be evidentiary hearings and that both the Commission and the judge who is the subject of the complaint are entitled to present evidence and argument during such hearings subject to any scheduling orders issued by the Court. FAILED

**[HB 243](#) Jury duty; employees summoned to report.** Requires employers, including the Commonwealth and localities, to provide to employees summoned to serve on jury duty the protections set forth in Title 18.2, Crimes and Offenses Generally. With certain exceptions, the employee is entitled to his usual compensation for periods he is excused, though the employer may deduct from such compensation any payments the employee receives for the jury service. The measure creates a private cause of action for an employee who is discharged, demoted, or suspended in violation of these provisions. FAILED

**[HB 702](#) Libraries; assessment for costs in civil actions, disbursement for law libraries.** Increases from \$4 to \$7 the assessment a county, city, or town may make as part of the costs incident to each civil action filed in the courts located within its boundaries. FAILED

**[HB 1392](#) Judges; eligibility to serve.** Provides that no person who would be subject to mandatory retirement under the provisions of the Judicial Retirement System shall be eligible to serve as a judge, justice, or substitute judge. FAILED

## INSURANCE LAW

**[SB 535](#) Personal injury claim; disclosure of insurance policy limits.** Provides that in a civil action for personal injuries sustained from a motor vehicle accident, regardless of the amount of losses sustained by an injured person, an insurance company shall disclose the policy limits of an alleged tortfeasor who has been convicted of an offense of driving under the influence within 30 days of a request for such disclosure. PASSED

**[SB 176](#) Life insurance; claims of creditors.** Repeals a provision that excludes, from the protections from claims of creditors that are afforded life insurance policies and annuities, the cash surrender or loan value of a policy under which the right to change the beneficiary is reserved. In 2016, the General Assembly enacted a provision that exempts protected insurance items from the claims of creditors regardless of whether the right to change a beneficiary is reserved or permitted. PASSED

**[HB 396](#) State Corporation Commission; assistance with foreign insurance policies.** Authorizes the State Corporation Commission to assist consumers and to examine and investigate complaints and inquiries relating to trade practices and claim settlement practices of insurers involving certain group accident and sickness insurance policies issued outside of the Commonwealth but covering residents of the Commonwealth. PASSED

**[HB 1304/SB 17](#) Uninsured and underinsured motorist insurance policies; bad faith.** Provides that if an insurance company denies, refuses, or fails to pay its insured, or refuses a reasonable settlement demand within the policy's coverage limits for a claim for uninsured or underinsured motorist benefits within a reasonable time after being presented with a demand for such benefits and it is subsequently found that such denial, refusal, or failure was not in good faith,

then the insurance company shall be liable to the insured for the full amount of the judgment and reasonable attorney fees, expenses, and interest. FAILED

**[SB 517](#) False and fraudulent insurance claims; civil penalties and damages.** Establishes a cause of action for knowingly obtaining, attempting to obtain, or causing to be obtained, by deception, control over the property of any insurer by making a false or fraudulent insurance claim. A person who commits such an act is liable to the Commonwealth for (i) remedial damages equal to three times the amount of the property wrongfully obtained or, if no property was wrongfully obtained, twice the value of the property attempted to be obtained, whichever amount is greater, and (ii) a civil penalty of not less than \$5,500 and not more than \$11,000. Actions may be brought by the Superintendent of State Police or the Attorney General. Alternatively, qui tam actions may be brought by a private person in the name of the Commonwealth, in which event the Commonwealth has the right to intervene and proceed with the action. FAILED

**[HB 16](#) Motor vehicle and fire insurance; use of credit information.** Prohibits insurers from setting rates for motor vehicle insurance or fire insurance policies on the basis of a person's credit history, lack of credit history, or credit score. FAILED

**[SB 364](#) Motor vehicle liability insurance coverage limits.** Increases the minimum liability coverage amount from \$20,000 to \$50,000 for injury to or destruction of property of others in any one accident. The bill applies to motor vehicle insurance policies issued or renewed on or after January 1, 2019. CARRIED OVER

**[SB 611](#) Motor vehicle liability insurance coverage limits.** Increases the minimum motor vehicle liability insurance coverage amounts from \$25,000 to \$100,000 in cases of bodily

injury to or death of one person, from \$50,000 to \$200,000 in cases of bodily injury to or death of more than one person in any one accident, and from \$20,000 to \$40,000 for property damage coverage. FAILED

## CONSUMER LAW

[HB 304](#) **Virginia Consumer Protection Act**; Adds the offenses of obtaining money by false pretense, financial exploitation of mentally incapacitated persons, and construction fraud to the prohibited practices under the Virginia Consumer Protection Act (§ 59.1-196 et seq.). PASSED

[HB 855/SB 197](#) **Landlord and tenant law; notice requirements; landlord's acceptance of rent with reservation**. Changes the landlord and tenant law notice requirements for landlords to accept full or partial rent while continuing to proceed with a court action to obtain an order of possession and subsequent eviction by creating a single notice and removing the requirement for second notice for the time period between entry of an order of possession and prior to eviction. The bill provides that the landlord may accept full or partial payment of rent and still receive an order of possession and proceed with eviction if the landlord states in the written notice to the tenant that any payment of rent, damages, money judgment, award of attorney fees, and court costs would be accepted with reservation and not constitute a waiver of the landlord's right to evict the tenant from the dwelling unit. PASSED

[HB 856](#) **Unlawful detainer; execution of writ of possession**. Permits a judge, upon request of the plaintiff, to issue a writ of possession immediately upon entry of judgment in an unlawful detainer case. The bill requires the sheriff to serve notice of the writ, including the date and time of eviction, on the defendant at

least 72 hours prior to execution of the writ. The bill further provides that a sheriff shall not evict the defendant from the dwelling unit sooner than the expiration of the defendant's 10-day appeal period. PASSED

[HB 857](#) **Landlord and tenant law**. Removes remaining differences between general landlord and tenant provisions and the Virginia Residential Landlord and Tenant Act by conforming provisions pertaining to residential dwelling units in the following areas: (i) termination of a nonresidential tenancy by self-help eviction or by filing an unlawful detainer action; (ii) tenant obligations to maintain a dwelling unit; (iii) notice to the tenant in the event of foreclosure; (iv) wrongful failure to supply heat, water, hot water, or essential services; (v) prohibited provisions in the rental agreement; (vi) early termination of a rental agreement by military personnel; and (vii) remedies for the landlord's failure to deliver possession. PASSED

[HB 1047](#) **Manufactured Home Lot Rental Act; definition of manufactured homepark**. Reduces from 10 to five the number of manufactured homes required on a parcel of land under single or common ownership for purposes of being subject to the Manufactured Home Lot Rental Act (§ 55-248.41 et seq.). PASSED

[HB 1227/SB 286](#) **Virginia Residential Landlord and Tenant Act; transient lodging as primary residence**. Clarifies that the availability of the use of self-help eviction in certain circumstances to the owner of transient lodging shall not preclude such owner from pursuing any civil or criminal remedies under the laws of the Commonwealth. PASSED

[SB 422/ HB 755](#) **Foreclosure; notice of sale when owner is deceased**. Provides that when the owner of a property to be sold by a trustee pursuant to a deed of trust is deceased, the notice of the sale shall be delivered to the last

known address of the deceased owner, any personal representative of the deceased's estate, and any heirs of the deceased as recorded in the land records where the property is located. The bill further provides that the trustee of a deed of trust for property that is sold after the death of the owner shall include (i) any remaining subsequent debts and obligations secured by the deed and (ii) any liens of record inferior to the deed of trust under which the sale is made, with lawful interest, in the list of debts to be paid off using any surplus from the sale prior to paying the remainder of the surplus to the decedent's personal representative. PASSED

**[SB 95](#) Security freezes for protected consumers; raises age of eligibility for someone to qualify.** Provides that sufficient proof of authority for a person to place a security freeze on a protected consumer includes a birth certification or a written, notarized statement signed by a representative that expressly describes the authority of the representative to act on behalf of the protected consumer. PASSED

**[HB 178](#) Virginia Fair Housing Law; exemptions.** Provides that it shall not be unlawful under the Virginia Fair Housing Law for any owner to deny or limit the rental of housing to persons whose payment of rent for such housing is contingent upon the owner's acceptance of a contract authorizing payment of such rent by an entity or individual other than the lessee. FAILED

**[HB 956](#) Payday loans.** Changes the minimum term of a payday loan from two of the borrower's pay cycles to six months. The measure reduces the maximum amount of the loan fee that a licensee may charge from 20 percent of the total amount borrowed to 20 percent of the amount of the first \$300 borrowed and 7.5 percent of any amount borrowed in excess of \$300. FAILED

**[HB 971](#) Fair Housing Law; unlawful discrimination; gender identity.** Adds discrimination based on gender identity as an unlawful housing practice under the Virginia Fair Housing Law. The bill also defines "gender identity." FAILED

**[HB 1248](#) Consumer finance companies.** Updates several administrative provisions regarding the regulation of consumer finance companies by the State Corporation Commission's Bureau of Financial Institutions (Bureau). These provisions include matters relating to the licensing process, license suspension and revocation, conducting other types of business, investigations, examinations, fees, recordkeeping, civil penalties, reporting, and enforcement, including the issuance by the Attorney General of civil investigative demands. FAILED

**[SB 423](#) Virginia Fair Housing Law; unlawful discriminatory housing practices.** Adds discrimination on the basis of an individual's sexual orientation or gender identity as an unlawful housing practice. The bill defines sexual orientation and gender identity. FAILED

**[SB 625](#) Consumer finance companies.** Requires the State Corporation Commission, as a condition of licensing a consumer finance company, to find that the applicant will not make consumer finance loans at the same location at which the applicant makes payday loans or motor vehicle title loans. FAILED

**[SB 649](#) Manufactured Home Lot Rental Act; penalties for violation.** Increases the amount a tenant can recover after a landlord violates the Manufactured Home Lot Rental Act (§ 55-248.51 et seq.) from an amount equal to the greater of the tenant's monthly rental payment or actual damages and attorney fees to an amount equal to the greater of three times the tenant's monthly rental payment or actual damages and attorney fees. FAILED

**[HB 1408/SB 909](#) Virginia Fair Housing Law; unlawful discriminatory housing practices.**

Adds discrimination on the basis of a person's source of income to the list of unlawful discriminatory housing practices. FAILED

## EMPLOYMENT LAW

**[SB 51](#) Income withholding orders; employer's duty to request disclosure.** Repeals the requirement, enacted in 1993, that an employer request that each new employee disclose whether the employee has an income withholding order. PASSED

**[HB 67](#) Virginia Human Rights Act; pregnancy, childbirth, or related medical conditions, causes of action.** Provides that no employer may discharge any employee on the basis of pregnancy, childbirth, or related medical conditions, including lactation. FAILED

**[HB 37](#) Wages; cause of action against an employer for nonpayment.** Affirms that an employee has cause of action against an employer who fails to pay wages to recover the wages and prejudgment interest at eight percent annually from the date the wages were due. FAILED

**[HB 90](#) Teacher grievance procedures; hearing, three-member fact-finding panel.** Permits a school board to conduct a teacher grievance hearing before a three-member fact-finding panel consisting of one member selected by the teacher, one member selected by the division superintendent, and an impartial hearing officer, selected by the other two panel members, to serve as the chairman of the panel. FAILED

**[HB 120](#) Unemployment compensation; wage offset.** Provides that the weekly unemployment benefit to which an eligible individual is entitled

shall be reduced on a dollar-for-dollar basis by any wages in excess of \$100 that the individual earns in that week. FAILED

**[HB 259](#) Payment of wages; remedies, penalties.** Expands the information an employer is required to provide to its employees when wages are paid to include the name and address of the employer, the number of hours worked during the pay period, and the rate of pay. FAILED

**[HB 401](#) Discrimination;** Prohibits discrimination in employment, public accommodation, public contracting, apprenticeship programs, housing, banking, and insurance on the basis of sexual orientation or gender identity. FAILED

**[HB 1089](#) Virginia Equal Pay Act.** Creates the Virginia Equal Pay Act (the Act), which prohibits private employers from discriminating between employees on the basis of membership in a "protected class," defined in the bill as a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability, or age, in the payment of wages or other compensation for substantially similar work. FAILED

**[SB 968](#) False statements, etc., by employing units; failure to furnish reports, etc.** Provides that an employing unit that willfully fails or refuses to furnish a report required by the Unemployment Compensation Act or to produce or permit the inspection or copying of records is liable to a penalty of \$1,000 for each offense. FAILED

## WORKERS' COMPENSATION

**[HB 82](#) Workers' compensation; Uninsured Employer's Fund, financing tax.** Repeals an enactment clause that provides that the maximum tax rate that may be assessed on insurance carriers or self-insured employers for the purpose of funding workers' compensation benefits that are awarded against uninsured employers from the Uninsured Employer's Fund will revert from 0.5 percent to 0.25 percent on July 1, 2018. Repealing the enactment will maintain the maximum rate at its current level of 0.5 percent. PASSED

**[HB 117](#) Workers' Compensation Commission; quorum.** Provides that the commissioners of the Workers' Compensation Commission, for purposes of constituting a quorum, shall include any deputy commissioner or retired commissioner who is appointed or recalled, respectively, to fill a vacancy on the Commission. PASSED

**[HB 531](#) Workers' compensation; proof of coverage information.** Removes the provision that prevents the Workers' Compensation Commission from aggregating proof of coverage information filed with the Commission by an insurance carrier or rate service organization on behalf of an employer with the proof of coverage information filed by or on behalf of other employers. PASSED

**[HB 558](#) Workers' Compensation; employer's liability for medical services provided outside of Commonwealth.** Clarifies that the "medical community," when referring to providers of medical services rendered under the Virginia Workers' Compensation Act outside of the Commonwealth, shall be determined by the zip code of the principal place of business of the employer if located in the Commonwealth. If the employer's principal place of business is not in the Commonwealth, then it shall be

determined by the zip code of the location where the Workers' Compensation Commission would conduct its hearing regarding a dispute concerning the medical services. PASSED

**[SB 642](#) Workers' compensation; presumption of compensability for certain diseases.** Adds colon cancer to the list of cancers that are presumed to be an occupational disease covered by the Virginia Workers' Compensation Act when firefighters and certain employees develop the cancer. CARRIED OVER

**[SB 352](#) Workers' compensation; presumption of compensability for certain diseases.** Adds lymphoma, non-Hodgkin lymphoma, and cancers of the colon, brain, and testes to the list of cancers that are presumed to be an occupational disease covered by the Virginia Workers' Compensation Act when firefighters and certain employees develop them. The measure also reduces, from 12 years to five years, the minimum number of years of continuous service that such firefighters and other employees are required to have completed in order to qualify for the presumption that such a condition is an occupational disease suffered in the line of duty. CARRIED OVER

**[HB 107](#) Workers' compensation; disease presumptions, correctional officers.** Adds correctional officers to the list of public safety employees who are entitled to a presumption that hypertension and heart disease and certain infectious diseases are occupational diseases compensable under the Virginia Workers' Compensation Act. FAILED

**[HB 460](#) Workers' compensation; retaliatory discharge of employee.** Prohibits an employer or other person from discharging an employee if the discharge is motivated to any extent by knowledge or belief that the employee has filed a claim or taken or intends to take certain other

actions under the Virginia Workers' Compensation Act. FAILED

**[HB 461](#) Workers' compensation; employer to notify employee of intent to accept or deny claim.** Requires an employer whose employee has filed a claim under the Virginia Workers' Compensation Act to advise the employee whether the employer intends to accept or deny the claim. FAILED

**[HB 462](#) Workers' compensation;** Provides that an injured employee is eligible for benefits under the Virginia Workers' Compensation Act when a compensable accident happens while the employee is employed outside Virginia if (i) the employment contract was not expressly for services exclusively to be performed outside Virginia and (ii) either the employer's place of business is in Virginia or the employee regularly performs work on the employer's behalf in Virginia. FAILED

**[HB 472](#) Workers' compensation;** Adds cancers of the colon, brain, or testes to the list of cancers that are presumed to be an occupational disease covered by the Virginia Workers' Compensation Act when firefighters and certain employees develop the cancer. FAILED

**[HB 969](#) Workers' compensation; statutory employers; exclusions.** Provides that a person, including an owner, contractor, or subcontractor, who contracts with another person to perform work is not required to insure payment of workers' compensation benefits to the subcontractor, and is not liable for any injury sustained by the other person, if the person is not an employer subject to the compensation provisions of the Virginia Workers' Compensation Act or otherwise required to insure the payment of compensation to the subcontractor's employees. FAILED

## DISTRACTED DRIVING

**[HB 1525](#) Handheld personal communications devices; prohibits use in highway work zones.** Imposes a mandatory fine of \$250 for using a handheld personal communications device for reading emails or texting while operating a motor vehicle in a highway work zone, defined in the bill, when workers are present. PASSED

**[HB 181](#) Improper driving; use of handheld communication device while driving vehicle.** Provides that any person who drives a motor vehicle on any highway while using a handheld personal communications device where such use substantially diverts the driver's attention from the operation of the motor vehicle is guilty of distracted driving. Current law prohibits only the reading of an email or text message on the device and manually entering letters or text in the device as a means of communication. The bill provides that distracted driving is punishable as a traffic infraction with a fine of not more than \$500 and a mandatory minimum fine of \$250 if the violation occurs in a highway work zone. FAILED

**[HB 426](#) Careless driving; cause of injury to vulnerable road user, penalty.** Provides that a person who operates a motor vehicle in a careless or distracted manner and causes of serious bodily injury to a pedestrian or person riding a bicycle, electric wheelchair, electric bicycle, wheel chair, skateboard, skates, foot-scooter, animal, or animal-drawn vehicle is guilty of a Class 1 misdemeanor. FAILED

**[SB 97](#) Driving with animal; no person shall operate a moving motor vehicle with an animal on his lap.** Prohibits any person, while operating a moving motor vehicle, to (i) have an animal on his lap, (ii) permit an animal to impede his free access to and use of vehicle controls, or (iii) obstruct his vision. FAILED

## LONG TERM CARE

**[HB 879](#) Hospitals and nursing homes; frequency of inspections.** Clarifies, in provisions governing frequency of hospital and nursing home inspections, that a second inspection of a hospital or nursing home that has previously been inspected may be performed before all other hospitals and nursing homes in the Commonwealth have been inspected only in cases in which the subsequent inspection is performed in conjunction with an inspection required by the Centers for Medicare and Medicaid Services. The bill contains an emergency clause. PASSED

**[HB 309](#) Nursing homes; standards of care.** Increases the staffing and care standards in nursing homes to require a minimum of specific direct care services to each resident per 24-hour period. FAILED

**[HB 477](#) Guardianship; communication between incapacitated persons and others.** Prohibits a guardian of an incapacitated person from restricting such incapacitated person's ability to communicate with, visit, or interact with other persons with whom the incapacitated person has expressed a desire to communicate, visit, or interact or with whom the incapacitated person has an established relationship. FAILED .

**[HB 1494](#) Suspected adult abuse, neglect, or exploitation; mandated reporting; vulnerable adults.** Provides that for the purpose of mandated reporting of suspected adult abuse, neglect, or exploitation, "adult" means any person age 18 or older, regardless of capacity, and requires reporting of suspected abuse, neglect, or exploitation of any vulnerable adult. Currently, reporting is required in cases of suspected abuse, neglect, or exploitation of an adult who is (i) 60 years of age or older or (ii) 18 years of age or older and incapacitated. FAILED

## GENERAL PRACTICE

**[SB 545](#) Court reporters; prohibited actions; civil penalties.** Establishes ethical standards and requirements for the provision of court reporting services, including prohibiting providers of court reporting services from (i) entering into contracts for more than one case, action, or legal proceeding with a party to an action, insurance company, third-party administrator, or any other person or entity that has a financial interest in the case, action, or legal proceeding; (ii) giving an economic advantage to one side that is not offered to the other; (iii) having a financial interest in the action; (iv) entering into an agreement for court reporting services that restricts an attorney from using the court reporter or court reporting services provider of the attorney's choosing; (v) allowing the format, content, or body of a certified transcript as submitted by the court reporter to be manipulated in a manner that increases the cost of the transcript; and (vi) providing additional advocacy or litigation support services. The bill provides that a person harmed by a violation of these standards may file a complaint with the administrative body, court, or administrative tribunal in which the action upon which the legal proceeding is based is pending or scheduled to be heard. The bill provides that the court reporter or court reporting services provider alleged to have violated such standards shall be given notice and a right to be heard on any such complaint, with the right of appeal or review. PASSED

**[HB 746](#) Wills and revocable trusts; eliminating certain inconsistencies.** Eliminates certain inconsistencies between wills and revocable trusts by extending to revocable trusts (i) revocation of benefits to a spouse and appointments to a spouse as a fiduciary upon divorce or annulment, (ii) the default rules for nonademption of certain bequests, (iii) the default rules related to the lapsing of a failed

devise or bequest to the residue, and (iv) the anti-lapse rule that provides that a testamentary disposition fails when the taker predeceases the testator. The bill also provides that a court may modify the terms of a decedent's will to correct a mistake to conform to the decedent's intent, as proved by clear and convincing evidence. The bill further provides that, if shown by clear and convincing evidence, a court may modify the terms of a decedent's will to achieve the decedent's tax objectives in a manner that is not contrary to the decedent's probable intention. PASSED

**[SB 71](#) Service of process; domestic limited liability company.** Extends to domestic limited liability companies the rules for service of process on a domestic corporation. PASSED

**[SB 78](#) Trust decanting; authorized fiduciary.** Reinstates the restriction in Virginia's former trust decanting law that limits the type of fiduciary who may exercise the decanting power to a disinterested trustee. The bill also reinstates the former provisions that state that the decanting power may be exercised by a majority of the authorized fiduciaries and that the court has the power to appoint a special fiduciary to exercise the decanting power. PASSED

**[HB 1028](#) Real estate settlement; choice of settlement service provider.** Provides that a purchaser or borrower in a transaction related to real estate in the Commonwealth shall have the right to select the settlement agent, mortgage lender or broker, and any other vendor associated with the financing or settlement of such real estate. Currently, such right is limited to the choice of settlement agent. FAILED

**[SB 55](#) Professional and Occupational Regulation, Department of; disciplinary actions by regulatory boards.** Requires a regulatory board under the Department of Professional

and Occupational Regulation to determine the factual basis for its decisions through an informal fact-finding conference under the Administrative Process Act (§ 2.2-4000 et seq.) unless the regulant and the regulatory board agree to resolve the matter through a consent order or the regulant consents to waive the conference to go directly to a formal hearing. If the conference is waived, or if it fails to dispose of the case by consent, the bill requires the regulatory board to conduct a formal hearing. The bill also provides that, if a regulant is successful in a motion to quash a subpoena duces tecum issued in furtherance of an investigation, the court shall award reasonable costs and attorney fees or \$500, whichever is greater. FAILED

**[HB 1403](#) Electronic wills.** Provides a process for the execution of an electronic will, which has the same force and effect as a traditional, written will. The bill requires the electronic will to be kept under the control of a qualified custodian who is not an heir to the testator or a beneficiary or devisee under the will. FAILED

# Mark the date!



Virginia Trial Lawyers Association's

## 2019 Justice Day

**Wednesday, January 23, 2019**

We need you at the annual  
Virginia Trial Lawyers Association's Justice Day in Richmond  
and any other days you have available in January or February!

Tentative January 23<sup>rd</sup> Schedule:

- 8:30 am Meet in the SunTrust Building, downtown Richmond
- 8:45 am Update/Issue Briefing on the 2018 Session
- 9:30 am Walk halls of General Assembly & meet with legislators
- 11:45 pm Lunch, feedback and discussion about morning meetings

Be part of the legislative action - *no experience necessary!*

You will receive specific legislative information via email closer to the date and during the morning briefing.