VIRGINIA BEACH BAR ASSOCIATION

2020 VBJDR ANNUAL CLE

DISCLAIMER: The speakers who present at this CLE have graciously agreed to prepare and present material at this CLE session. The views expressed by them are entirely their own, and are not necessarily those of the Virginia Beach Bar Association. The Virginia Beach Bar Association's decision to allow these speakers to present at a CLE session does not constitute an endorsement or recommendation of them by the Virginia Beach Bar Association.

AGENDA VBBA JDR ANNUAL CLE VIA ZOOM 9.17.2020 6.5 HRS

9:00a-9:10am **Welcome and Announcements**

- Christianna Dougherty-Cunningham, Associate City Attorney, Chair of VBBA/JDR Committee

9:10am-11am **Juvenile Criminal Legislative and Procedural Update**

- Substantial changes to the juvenile criminal code took place July 1, 2020, hear from your Commonwealth Attorneys, Defense Counsel, and Law Enforcement on what changes were made and how it is affecting the practice, and enforcement, of juvenile criminal law
  - The Hon. Phillip Hollowell, The Hon. Adrianne L. Bennett, & Sarah Chandler, Deputy Commonwealth Attorney

11-11:15am **Coffee, email, and phone call break**

- Bring your own coffee

11:15am-12:45pm **Holding Hearings Online for Dummies**

- Criminal v. Civil Hearings
- Constitutional Implications
- Evidentiary Issues
- Technical Considerations
- Tips & Pointers for Maintaining Formality
  - The Hon. Tanya Bullock, The Hon. Cheshire I'Anson Eveleigh, Andy Patzig, Esq., & Richard Garriott, Esq.

12:45pm-1:30pm **Lunch break**

- Bring your own pizza

1:30pm-2:30pm **Adoptions in 2020- Legislative Changes, New Issues**

  - Jennifer Shupert, Esq. & Cynthia Chaing, Esq.

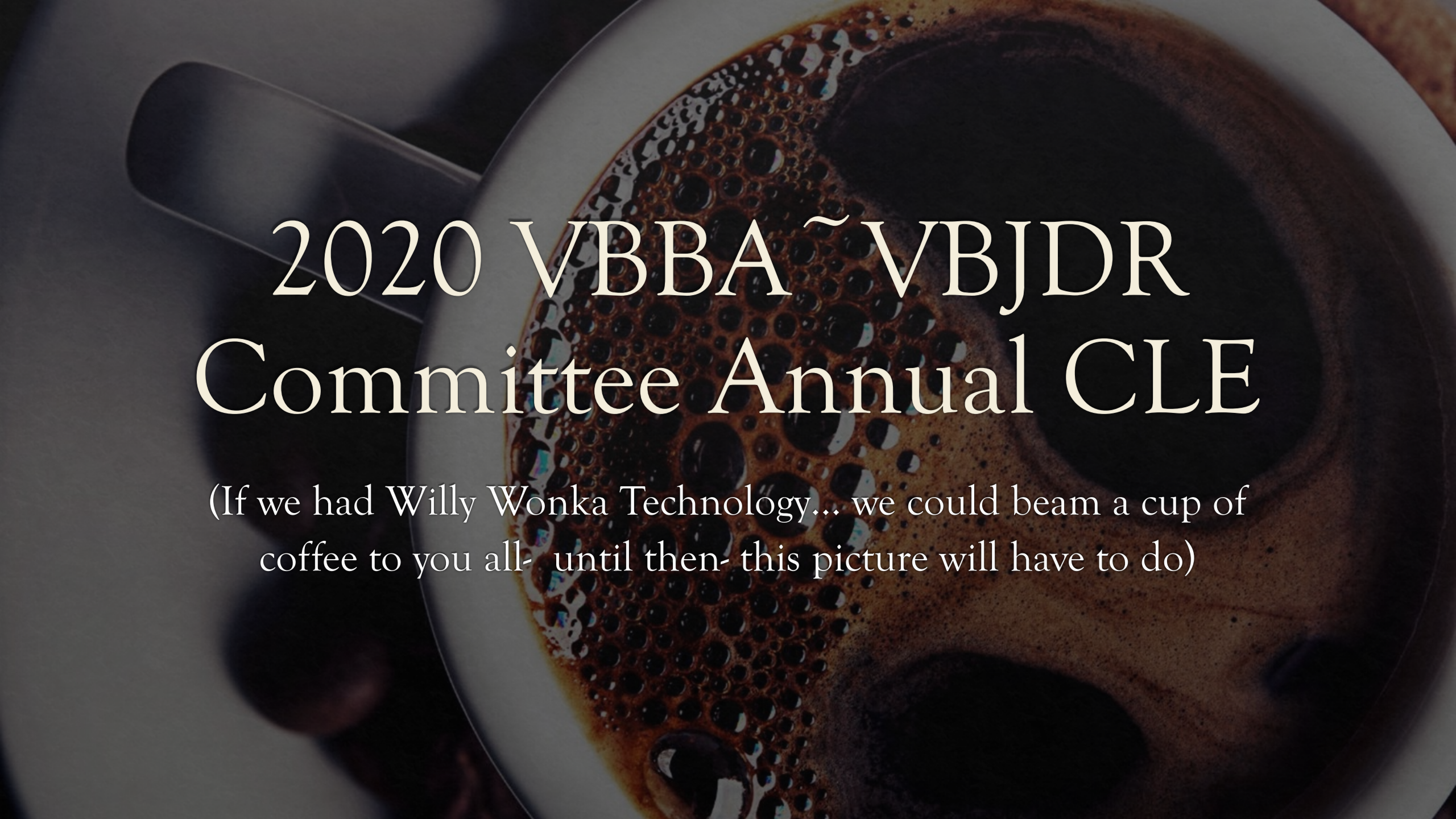
2:30pm-3:15pm **Ethics Part 1 - Interactive Q&A**

- Ethical Rules as they relate to Cybersecurity and Technology in custody and visitation battles.
- New concerns about how to litigate and communicate ethically in the pandemic, including remote ADR and settlement conferences.
- Concerns about professionalism, collegiality, delays/safety complications.
- Lawyer Wellness in a Time of Isolation and Hostility
- The Hon. Winship C. Tower (ret.), Kellam Parks, Esq., Bretta Z. Lewis, Esq., Co-Chair of VBBA/VBJDR Committee

3:15pm-3:30pm Coffee/Soda/Raid the Refrigerator and Email Break

3:30pm-4:45pm **Ethics Part 2 – Panel and Interactive Q&A (Hypotheticals)**

- Addressing Ethics and Professionalism in Conjunction with A Mindful Discussion of Systemic Sexism, Racism and other Cultural Client and Attorney Concerns
  - Criminal (Adult and Juvenile) Cases
  - DHS Cases
  - Civil Cases (Family Law/Experts/General)
  - Respect for Colleagues and the Judiciary
- The Hon. Deborah V. Bryan, The Hon. Timothy Quick, Cassandra Hargrave, Esq., & Ameet Habib, Esq., - Moderated by Bretta Z. Lewis, Esq.



2020 VBBA ~ VBJDR Committee Annual CLE

(If we had Willy Wonka Technology… we could beam a cup of coffee to you all- until then- this picture will have to do)

SPECIAL THANKS TO OUR SPONSORS

01

YOUR HELP AND CONTRIBUTIONS HAVE TAKEN THIS CLE TO NEW HEIGHTS EVERY YEAR!

02

WE LOOK FORWARD TO OUR SPONSORS HELPING US LEARN ABOUT NEW TECHNOLOGY TO ASSIST OUR CLIENTS AND OUR CASES!

03

WE HOPE TO BE ABLE TO MEET OUR SPONSORS IN PERSON SOON!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ANNOUNCEMENTS

- UPCOMING CLES:
  - YOU ASKED FOR IT... DHS BOOTCAMP: ALL THE OLD STUFF AND THE NEW – BIG CHANGES BEING IMPLEMENTED NOW AT A DOCKET NEAR YOU...
  - DSCE BOOTCAMP
  - JUVENILE MENTAL HEALTH & DELINQUENCY
  - MORE ONLINE TRAINING

SUGGESTIONS

WE ARE ALWAYS LOOKING TO THE BENCH & BAR FOR SUGGESTIONS ON WAYS TO ASSIST THE LEGAL COMMUNITY IN VB!

* New CLE Topic
* Concern about procedures
* Question about stakeholders (DHS/CSU/Clerks, etc.)

JUST ASK! Fwd any and all to Co-Chairs: Christianna Cunningham and Bretta Lewis

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HOUSEKEEPING

- THIS IS AN ALL DAY CLE
- DO NOT LOG OUT DURING BREAKS
- USE Q&A FUNCTION TO ASK QUESTIONS OF PANELISTS
- WRITTEN MATERIALS MAY BE DOWNLODED FROM BAR WEBSITE UNDER EVENTS' TAB
- THE CLE IS BEING RECORDED
- OUR SPONSORS WILL BE PRESENTING INFORMATION THROUGHOUT THE DAY *LINKS TO THEIR INFORMATION WILL BE PROVIDED FOR YOUR CONVENIENCE

THANK YOU

- While we were very sad not to be able to see you all in person, we are so thankful our fabulous tech wizards (Mitch Broudy & Andy Patzig) could bridge the gap so we could still hold our Annual CLE.
- It is the cornerstone of our committee to be able to bring the bench and bar together and to provide and as many credits as possible in one CLE.
- We hope you have your favorite coffee/tea/soda/water by your side and a fridge full of snacks – hopefully- next year we will have a vaccine & pizza ☺

Changes to Procedure

Custodial Interrogation of a Juvenile

- Remember what "in custody" means and what "interrogation" means
- 16.1-247.1: Prior to *custodial interrogation* of a juvenile who has been *arrested* for a crime
    1. Parent/guardian must be notified of the arrest
    2. Child must have contact with Parent/guardian
- By phone, electronically, video conference, or in person.

NOT required if

1. Parent/guardian is a co-defendant

2. Parent/guardian has been arrested for, charged with, or is being investigated for a crime against the juvenile

3. Parent/guardian cannot reasonably be located

4. Parent/guardian refuses contact (protective order?)

5. Exigent circumstances—Officer reasonably believes information sought is necessary to protect life, limb, property from imminent danger and the questions are limited to those reasonably necessary to obtain the necessary information

19.2-390.04: Audio Visual Recording required…For Everyone

UNLESS there is good cause not to, a Law Enforcement Officer MUST

- Make an audiovisual recording of the entire *custodial interrogation conducted in a place of detention*
- If audiovisual cannot be made, an audio recording is still required

(Failure to do so does not prohibit admissibility of the statements but can be considered when weighing the import of the evidence)

19.2-11.02: Inquiring into Immigration Status

- LEOs cannot inquire into the immigration status of
    1. Person who reports he is the victim of a crime
    2. Parent/guardian of a minor victim of a crime
    3. Person who is a witness in the investigation of a crime
    4. Parent/guardian of a minor witness
- MAY inquire IF
    1. necessary for enforcement of certain criminal provisions
    2. Parent/guardian has been arrested for, been charged with, or is being investigated for a crime against a minor victim.

19.2-59.1: Amends Code Governing Strip Searches

- No juvenile shall be strip searched or subject to body cavity search by any LEO or jail officer
- Exceptions:

1. DJJ commitment
2. Confined to/detained in a local secure facility (incl. jail)
3. Remanded to custody pursuant to Circuit/District/JDR Court order
4. Juvenile is in custodial arrest and LEO/jail officer reasonably believes he is concealing a weapon

16.1-277.1: Time Limits

- If a juvenile is held in secure detention, he shall be released from confinement if he has not had an adjudicatory/PH/Transfer Hearing within 21 days of his arrest (exceptions…)
- If he is NOT held in secure detention, his hearing must be held within 120 days (exceptions…)
- If he is held in secure detention after his adjudicatory hearing (or held after the court declines to transfer him to CC), he shall be released if his disposition hearing is not completed within 30 days of the adjudicatory (or transfer) hearing

Tolling of Time Limits

- If the whereabouts of the juvenile are unknown
- If the juvenile has escaped custody
- If the juvenile fails to appear for a hearing
- If the Transfer Report is being prepared
- For good cause shown (including for the completion of the Transfer Report or to secure the presence of a witness to testify regarding a certificate of analysis)

16.1-260: Amendments to Intake Procedures

- If a juvenile is alleged to be truant, Intake may defer filing a petition and instead develop a diversion plan (removed 90-day limit)

  Can't have had a previous truancy diversion within the last 3 years

  Can't have previously been proceeded against informally or adjudicated in need of supervision on two occasions for truancy

  Failure to comply with the diversion plan requires filing of the petition. (Still no time limit.)

- Intake is required to notify juvenile and parents that a subsequent complaint of CHINS, delinquency, etc., AFTER a diversion **MAY** result in the filing of a petition. (Used to be "will")

- Underage Possession of Alcohol can now be diverted and no petition filed

Amendments to Intake Procedures

- The Intake Officer must file a report with the school division superintendent notifying him that a petition has been filed against a student, laying out the nature of the offense, if the offense is
  - Firearm violation
  - Homicide
  - Felonious wounding
  - Sexual assault
  - PWID Sch. I/II or MJ
  - Arson
  - Burglary
  - Robbery
  - Mob violence
  - Gang participation/recruitment
  - **Abduction**
  - **Threat to kill/inflict bodily injury**

Speaking of Schools…

- 22.1-258 and 54.1-3900: Amends Code Dealing With School Attendance Officers
- They or their designees can file petitions alleging a violation of a school attendance order previously entered by JDRC (in a "Child In Need of Supervision" case)

Not the unauthorized practice of law

22.1-279.3:1: Amends the Code to make it OPTIONAL for a School Principal to report to Law Enforcement certain offenses that occur on school property/bus or at a school event:

1. A&B

2. Any misdemeanors…

22.1-279.3:3: Alternative School Discipline Process

- Allows local School Boards to adopt an alternative discipline process
- Assault or Assault and Battery (without bodily injury)
- Occurs on a school bus, school property, at a school-sponsored event
- Allows principal and involved parties (with their consent) to work it out without reporting it to the police.

63.2-1509: Amends Mandatory Reporter List

- Includes Athletic Coaches, Directors, and others 18 and over who are employed by or volunteering with a PUBLIC sports team or organization

63.2-1506.1: Amends Human Trafficking statutes

- Department of Social Services doing a Human Trafficking Assessment can interview alleged child victim or his siblings

    1. Without parent/guardian's consent
    2. Outside the presence of parent/guardian
    3. Without School personnel's consent
    4. Outside the presence of school personnel

Transfer and Certification 16.1-269.1

The mandate and goal of JDRC is to keep the juvenile offender in the juvenile system and pursue rehabilitation over punishment.

Sometimes, that may not be an option.

JDRC has the authority to transfer juveniles for trial as adults and is sometimes divested of the authority to retain them in the juvenile system.

Transfer Hearing

Generally….

- 14 years or older at the time of the offense
- Charged with a felony
- On motion of the Commonwealth
- Court conducts a **Transfer Hearing** prior to a hearing on the merits

Transfer Hearing

- After Court finds probable cause to believe the juvenile committed the offense charged (and assuming the juvenile is competent…)
- Court determines whether the juvenile is a proper person to remain within the jurisdiction of the Court.
  - Preponderance of the evidence

Transfer Hearing

- Transfer Report 16.1-269.2
  - Certain enumerated factors
  - Criminal Street Gang affiliation
  - Court can order the report also contain information found in a Social History
  - Court cannot review report until AFTER a finding of Probable Cause

Transfer Hearing

- Certain factors, including:
  - Age/enough time for juvenile disposition
  - Number/severity of charges (person/property crime)
  - Maximum punishment >20 years
  - Weapon used
  - Role
  - Appropriateness/availability of services
  - History in the system/prior absconding
  - School history
  - Mental/physical/intellectual/maturity factors

Transfer Hearing

- IF the Court finds PC at a Transfer Hearing:

1. Certify the charges and transfer the juvenile to be tried as an adult in Circuit Court. (Juvenile dispositions are still available)

OR

2. Retain the juvenile in JDRC and proceed with trial.

- Either decision can be appealed to the Circuit Court, but the judge only reviews whether 16.1-269.1 was substantially complied with—no review of the PC finding.

Must note the appeal within 10 days 16.1-269.3 and 16.1-269.4

Transfer Hearing

The Court may order the juvenile held at a correctional facility or a juvenile detention facility (16.1-269.5 and 16.1-249), or it can set bail.

Juvenile detention facility is the default, unless the court finds the juvenile is a threat to the security/safety of the other juveniles at the facility.

But some crimes are worse than others…

"Violent Juvenile Felony" (16.1-228)

I

18.2-31	Capital Murder
18.2-32	First and Second Degree Murder
18.2-40	Lynching
18.2-51.2	Aggravated Malicious Wounding

“Violent Juvenile Felony”

II

18.2-33	Felony Murder
18.2-41	Wounding by Mob
18.2-48	Abduction
18.2-51	Malicious Wounding
18.2-51.1	Malicious Wounding of LEO
18.2-54.1	Poisoning of Food, Cosmetics, etc.
18.2-54.2	Adulteration of Food, Cosmetics, etc.

“Violent Juvenile Felony”

18.2-58	Robbery
18.2-58.1	Carjacking
18.2-61	Rape
18.2-67.1	Forcible Sodomy
18.2-67.2	Object Sexual Penetration

“Violent Juvenile Felony”

- 18.2-248* PWID Controlled Substance
- 18.2-248.03* PWID Methamphetamine
- 18.2-248.5* PWID Anabolic Steroids

*Juvenile must have been found delinquent on two or more occasions of violating the distribution code section and the adjudications occurred when the juvenile was 16 or older.

Certification Hearing

- "Certification Hearing" = "Preliminary Hearing"
- ***Required*** that the Court conduct a Certification Hearing if
- the defendant is 16 or older (at the time of offense) and
- is charged with one of the four offenses in the first list (Capital Murder, 1st/2nd Degree Murder, Lynching, or Aggravated Wounding)
- So…
  - No notice requirement
  - No pre-hearing report from CSU
  - Court cannot retain the juvenile for disposition in JDRC
  - If the Court finds PC, the juvenile must be sent to CC for trial

Certification Hearing

- ***Required*** that the Court conduct a Certification Hearing if
- the defendant is 16 or older (at the time of offense)
- the Commonwealth provides written notice of intent to certify and
- the juvenile is charged with one of the offenses listed in II above (woundings, robberies, some sex offenses, PWIDs…)

Certification Hearing

Process:

1. Commonwealth submits written request to CSU to complete a Transfer Report
2. Transfer Report is filed with the Court and mailed to the Commonwealth and counsel for the defendant within 21 days of the written request for the report
3. At least 7 days prior to the hearing date, the Commonwealth provides written notice of intent to certify, affirming it has reviewed the transfer report

**Still no ability for the Court to retain the juvenile if PC is found

At the Conclusion of the Certification Hearing…

- If the Court finds PC, the charge and all ancillary charges are sent to the Grand Jury. JDRC loses jurisdiction over the matter.
- If the Court does NOT find PC, and/or the charges are dismissed…the Commonwealth can proceed with a Direct Indictment and the juvenile still goes to Circuit Court.
- If the charges are *nolle prossed*, the Commonwealth can only seek an indictment AFTER a Preliminary Hearing (i.e., you start all over with a petition)
- Once in Circuit Court, if the case is ended by a *nolle prosequi*, the Commonwealth can reinstate the proceedings through a new indictment.
- Just as with Transfer, the Juvenile Court can order the juvenile held in a correctional facility (if he is a threat to safety at a detention center) or at a juvenile detention center. The court can also set bail.

So You've Been Convicted in Circuit Court… 16.1-272

- Still no jury sentencing of juveniles
- Can get sentenced as an adult, as a juvenile, or something in between (and he earns good-time credits while serving his juvenile serious offender commitment prior to his transfer to the adult facility)
- If convicted of a misdemeanor, can only get a juvenile (delinquency) disposition
- **The Court can depart from mandatory minimum sentences or may suspend any portion of an otherwise applicable sentence.**
- **If the juvenile is not sentenced as a juvenile, the Circuit Court must consider**
  - **The juvenile's exposure to adverse childhood experiences, early childhood trauma, or any child welfare agency AND**
  - **The differences between juvenile and adult offenders.**

So You've Been Convicted in Circuit Court…

16.1-269.6

- From here on out, you are deemed an adult and JDRC will not have jurisdiction over you (unless it is otherwise appropriate, like for domestic matters or where your victim is a minor)
- What's more, JDRC loses jurisdiction over any criminal matters still pending in JDRC—they all get transferred to GDC.

** Not the same as an *appeal* to Circuit Court…

A Few More Points About Disposition

- 16.1-273: Social histories, etc.: Juveniles adjudicated delinquent on a charge of marijuana possession (18.2-250.1) SHALL be ordered to undergo a drug screening and SHALL submit to a drug dependence assessment by a certified substance abuse counselor employed by DJJ or CSU.

19.2-152.9 Preliminary Protective Orders

If the order is issued pursuant to sworn testimony (as opposed to an affidavit or written application), the issuing court must state in its order the basis upon which it is issued, including a summary of the allegations and the Court's findings. (This is the same as with Family Violence PPOs 16.1-253.1)

The full hearing on the Preliminary Protective Order is still to be held within 15 days of issuance, but the code now clarifies that if the Court is closed (a weekend, holiday, or other legal closure), the hearing will be on the next date that the court is open AND the PPO remains in effect until it is dissolved, replaced by a permanent protective order, or replaced by another preliminary protective order. (This is the same as with Family Violence PPOs 16.1-253.1)

19.2-152.9 Preliminary Protective Orders

Either party can file a motion to dissolve or modify the PPO.

If the petitioner seeks the dissolution of a preliminary protective order, the Court can dissolve it ex parte by order, with or without a hearing. Such ex parte hearings take precedence and the dissolution order must be served on the respondent. (This is the same as with Family Violence PPOs 16.1-253.1)

Upon issuance of a preliminary protective order, the clerk of the court shall make available to the petitioner information that is published by the Department of Criminal Justice Services for victims of domestic violence or for petitioners in protective order cases.

Preliminary Protective Orders in cases of Family Violence 16.1-253.1

- Most of the provisions are the same as those laid out in 19.2-152.9; however, if the PPO is issued pursuant to a claim of Family Violence and issued under 16.1-253.1, the Court can also grant exclusive use and possession of a cell phone/number/electronic device. It can enjoin the respondent from terminating the service and from using the phone/device to locate the petitioner

19.2-152.10: (Permanent) Protective Orders

Subsection C: Upon conviction for an “act of violence” and upon the request of the victim or of the attorney for the Commonwealth on behalf of the victim, the court may issue a protective order to the victim pursuant to this chapter to protect the health and safety of the victim. The protective order may be issued for any reasonable period of time, including up to the lifetime of the defendant, that the court deems necessary to protect the health and safety of the victim. The protective order shall expire at 11:59 p.m. on the last day specified in the protective order, if any. Upon a conviction for violation of a protective order issued pursuant to this subsection, the court that issued the original protective order may extend the protective order as the court deems necessary to protect the health and safety of the victim. The extension of the protective order shall expire at 11:59 p.m. on the last day specified, if any. Nothing herein shall limit the number of extensions that may be issued.

“Act of Violence”

any one of the following :

- a. First/second degree murder and voluntary manslaughter
- b. Mob-related felonies
- c. Abduction
- d. Malicious woundings
- e. Robbery and carjacking
- f. Felonious sexual assault
- g. Arson of a dwelling or other building when occupied
- h. Conspiracy to commit any of the above, accessory before the fact to any of the above, or being a principal in the second degree.

(Permanent) Protective Orders

- Either party can file a written motion to dissolve or modify the protective order.
- If the petitioner seeks the dissolution of a protective order, the Court can dissolve it ex parte by order, with or without a hearing. Such ex parte hearings take precedence and the dissolution order must be served on the respondent.
- Upon issuance of a protective order, the clerk of the court shall make available to the petitioner information that is published by the Department of Criminal Justice Services for victims of domestic violence or for petitioners in protective order cases.

19.2-169.1: Competency

- Location of evaluation. — The evaluation shall be performed 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.
- Eliminates the requirement that the Court determine that outpatient services are unavailable
- Eliminates the requirement that the Court order the defendant transferred to the state hospital for evaluation.
- Eliminates the 30-day limit on hospitalization to complete the evaluation
- Remember… “in jail” is still “outpatient”
- **Procedures for JUVENILES haven’t changed (see 16.1-356 et seq.)

Competency, and…

- The evaluation is done and the doc opines that the defendant is likely to remain incompetent for the foreseeable future due to an ongoing and irreversible medical condition: If prior medical or educational records are available to support the diagnosis, the report may recommend that the court find the defendant unrestorably incompetent to stand trial and the court may proceed with the disposition of the case in accordance with § 19.2-169.3. (So, the Court can skip the attempts at restoration, within certain limits.)
- The periodic review of status of a committed NGRI Acquittee can now be conducted via two-way audiovisual means (subject to meeting certain criteria), unless objected to by the Acquittee, his attorney, or the CWA. 19.2-182.5

19.2-266.4: Ex Parte Request for Expert Assistance for Indigent Defendants

- In Circuit Court
- Must be charged with Class 1 Misdemeanor or a Felony
- Must be indigent
- Must provide notice to the Commonwealth
- Request that another judge hear an ex parte request for appointment of an expert—Must be supported by sworn declaration that confidentiality is required
- Ex parte hearing is on the record

Deferred Dispositions

- 19.2-303.2: Expands and contracts the list of MISDEMEANOR offenses for which the Court can place a first-time offender on a deferred finding. Now includes larcenies, but also excludes Peeping Tom. Can't have any prior felony convictions and you only get to do this FUA once.
- 19.2-303.6: Provides for a deferred finding for persons with autism or intellectual disabilities.
- Does not apply to Capital Murder or an "act of violence" or any crime for which a deferred disposition is provided for by statute
- Defendant has been diagnosed with an autism spectrum disorder or an intellectual disability
- Court finds by clear and convincing evidence that the criminal conduct was caused by or had a direct and substantial relationship to the person's disorder or disability

Deferred Dispositions

- With the consent of the accused, after giving due consideration to the position of the Attorney for the Commonwealth and the views of the victim
- Defer further proceedings and place the accused on probation subject to terms and conditions set by the court.
- Upon violation of a term or condition, the court may enter an adjudication of guilt
- Upon fulfillment of the terms and conditions, the court may discharge the person and dismiss the proceedings against him without an adjudication of guilt.
- Does not limit the authority of JDRC

Deferred Dispositions

More on 19.2-303.6…

Deferred disposition shall be available to the defendant even though he has previously been convicted of a criminal offense, been adjudicated delinquent as a juvenile, or had proceedings deferred and dismissed under this section or under any other provision of law, UNLESS, after having considered the position of the Attorney for the Commonwealth, the views of the victims, and any evidence offered by the defendant, the court finds that deferred disposition is inconsistent with the interests of justice.

Post-Conviction Matters

- 19.2-327.1: Post-Conviction Motion for Scientific Testing of Human Biological Evidence
  - Removes the language about the material not being tested previously because the testing procedure was not available to DFS
  - Removes the language about the requested testing being something DFS does (now only need to show the requested testing involves a scientific method generally accepted within the relevant scientific community)
  - no longer contingent on when the testing method became available to DFS.
  - If the testing is ordered, it does not have to be done by DFS
  - CW and Appellant can agree on a lab, the Court can designate one if they can't agree, or it can be DFS.
  - Designated lab must meet credentialing standards

Post-Conviction Matters

19.2-327.2: Writs of Actual Innocence—Biological Evidence:

- Removes requirement that the conviction/adjudication came upon a plea of not guilty.
- Allows the Supreme Court to issue Writs for ANY felony conviction/adjudication

19.2-327.10: Writs of Actual Innocence—Non-Biological Evidence

- Same story, except the Court of Appeals has the authority to issue these writs… If either side appeals to the Supreme Court, the Supreme Court then has the authority.

18.2-67.9: Testimony by Children Through Two-Way CCTV

- Adds commercial sex trafficking and prostitution as crimes for which cctv testimony is permitted

18.2-251.03: Overdose and Arrest

- NO PERSON SHALL BE SUBJECT TO ARREST OR PROSECUTION for

1. Illegal purchase, consumption or possession of alcohol
2. Possession of a controlled substance
3. Possession of marijuana
4. Public intoxication
5. Possession of controlled paraphernalia

IF that person

1. Is experiencing an overdose and seeks emergency medical attention

2. Seeks emergency medical attention for another if the other person is experiencing an overdose

3. Is experiencing an overdose and someone else seeks emergency medical attention for him

HE MUST

1. Remain at the scene of the overdose or at any location the overdosing person has been transported

2. Identify himself to responding Law Enforcement

- This is contingent on the evidence for a prosecution being only discoverable as a result of the person calling for help.
- Eliminates the prior posture of it being an affirmative defense—now, cannot even charge.

…Speaking of drugs…

Crimes and Offenses

Marijuana

18.2-250.1: Simple Possession of Marijuana is now a civil offense, punishable with a $25.00 fine.

18.2-248.1: There shall be a rebuttable presumption that a person who possesses no more than one ounce of marijuana possesses it for personal use. (But remember PWID MJ ½ oz to 5 lbs…)

- So, no First Offender for adults with Simple Possession of MJ anymore… BUT
- Possession of MJ is still a delinquent act for juveniles (and still results in the suspension of his OL)

18.2-247: Definition of Hashish Oil is changed and the separate felony offense is eliminated—Now, any Oil extract containing 12% THC or higher is “MJ” and a civil penalty (absence evidence of PWID)

Other Things to Smoke

18.2-371.2: Amends the code to make it illegal to sell hemp products intended for smoking to anyone under 21.

46.2-810.1: Amends the code to prohibit smoking in a vehicle containing a minor under 15 (had been 8)

You might also see…

- 46.2-818.2: Prohibits anyone from **holding** a hand-held personal communication device while driving a motor vehicle (Effective January 1, 2021)

Exceptions include a driver who is lawfully stopped or parked and a driver who is reporting an emergency.

18.2-415: An elementary or secondary school student is not guilty of disorderly conduct in a public place if the disorderly conduct takes place on the property of an elementary or secondary school, on a school bus, or at any activity conducted or sponsored by any elementary or secondary school.

Hate Crimes

- 52-8.5: Expands the definition to include offenses committed against another or his property because of his

1. Disability ("Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities.)

2. Sexual Orientation

3. Gender

4. Gender Identification

and adds VSP reporting requirement

Hate Crimes, cont.

- 18.2-57: Class 6 Felony, with a term of confinement of at least 6 months, if assault results in bodily injury and the victim is intentionally selected based on

    1. Race
    2. Religious Conviction
    3. Gender
    4. Disability
    5. Gender Identity
    6. Sexual Orientation
    7. Color
    8. National Origin (immigration status…?)

18.2-121: Amends Code Prohibiting Trespass With the Intent to Do Damage

- Now includes all the previously-listed categories of protected people
- Class 6 Felony with 6 months minimum sentence required
- (If victim is not in a protected class or was not targeted because of that protected status, it's a Class 1 Misdemeanor)

Boys Can Be Victims, Too…

18.2-49: Threatening, attempting, or assisting in an Abduction

Then: Any person who "assists or aids in the abduction of, or threatens to abduct, and female under sixteen years of age for the purpose of concubinage or prostitution" is guilty of a Class 5 Felony.

Now: Applies to any "child" under the age of sixteen.

Good Touch, Bad Touch

- 18.2-67.3: Aggravated Sexual Battery now includes sexual assault committed by a massage therapist/physical therapist/healer, or someone pretending to be, during a “session.”

Threats, Protective Order Violations, Violation of Court Orders

- 18.2-60: Makes it a Class 1 Misdemeanor to orally threaten a healthcare provider in the performance of his duties in a hospital/ER/clinic (unless the defendant is there pursuant to a mental health committal order)
- 18.2-60.4: If the protective order that is violated was issued as a result of a criminal conviction (see 19.2-152.10(C)), this code section does not apply…
- 16.1-253.2 and 18.2-60.4 lay out that venue for a prosecution of violation of a protective order is EITHER where the protective order was issued OR where the act that constitutes the violation took place.
- 16.1-292: A juvenile who violates a JDRC order can only be held for 7 days and the Court must make written findings to support the ruling: What order was violated, how was it violated, what facts show it was violated, how long is the juvenile to be detained, and what is the plan for his release, and why are there no alternatives to detention. Cannot extend or renew this period of detention.

Larceny, Etc.

The threshold value between a misdemeanor and a felony is now $1,000.00.

This applies to (among other things):

1. Larceny (18.2-23; 18.2-95—18.2-97; 18.2-108.01)
2. Unauthorized Use (18.2-102)
3. Computer Fraud (18.2-152.3)
4. Arson (18.2-80; 18.2-81)

Weapons

- 18.2-308: Amends the Concealed Weapons Statute to replace “slingshot” with “sling bow.”
- 18.2-308.1 and 22.1-280.2:4: Amends laws regarding possession of weapons on school property:

1.No school board may authorize/designate any person to possess a firearm on school property other than those persons expressly authorized by statute.

2. No exception exists to authorize a Special Conservator of the Peace to possess a firearm or other weapon on school property.

3. Adds to the list of places where possession of a firearm is prohibited:

A. Public, private or religious pre-schools

B. Licensed child day centers not operated at the provider’s home

C. Includes the premises and school buses…

…Firearms…

- 18.2-56.2: Any person who recklessly leaves a loaded, unsecured firearm in such a manner as to endanger the life or limb of any person under the age of 14 is guilty of a Class 1 Misdemeanor (used to be a Class 3…)
- 19.2-152.16: Any person who knowingly and willfully makes any materially false statement or representation to a law-enforcement officer or attorney for the Commonwealth who is in the course of conducting an investigation undertaken pursuant to the Red Flag Law is guilty of a Class 1 misdemeanor.

Always read the code…

And now, a brief word about Discovery: “Ugh.”

MANY changes, lots of new requirements and responsibilities, for both sides.

Rule 3A:11…refer to it often and be patient!

HOLDING HEARINGS ONLINE FOR DUMMIES

FROM THE COURT'S PERSPECTIVE[1]

1. Platforms for hearings
    a. WebEx
        i. Internet based computer application. Parties can participate by video and/or audio. Parties can use app on their phone to access WebEx. Parties and counsel will receive unique link to access hearing. Allows for sharing of documents.
    b. Polycom (primarily for criminal)
        i. Not webbased. Used to access inmates. Can be used for civil hearings if participant is at a location that already has a Polycom unit installed. Usually best used for one person to join location (i.e. courtroom).
    c. Not Zoom per OES
    d. Telephonic
        i. Best used for relatively straightforward or single-issue disputes with small number of participants. Usually discovery issues. Some jurisdictions not in Hampton Roads were using telephonic hearings for DHS cases, but given the number of participants, it was not an effective way to conduct hearings.
2. Standards

    Courts are encouraged to establish standards for remote hearings. Some examples of standards are:

    a. Ensuring the protection of parties' constitutional rights;
    b. Ensuring a party can communicate confidentially with counsel during the remote hearing.
        i. WebEx is coming out with new version that will allow for breakout rooms.

[1] Some of the portions of this outline were taken from the Guidance for Holding Remote Access Hearings for Civil Cases promulgated by the Office of the Executive Secretary ("OES") authored by Ellen Bowyer, staff attorney

ii. May have to clear courtroom for defense attorney to communicate with their client.
iii. Sometimes the court will have an IPad that the defense attorney can use to communicate with their client.

c. Ensuring public access to the remote hearing, except where the hearing is not public as a matter of law or a judge has closed the hearing in accordance with Virginia Code or Court Rule.

3. Method for scheduling remote hearings
   a. File Motion for Remote Hearing form
   b. Found on court's website.
   c. Motion must state accurate contact information for all parties and counsel.
   d. Party asking for remote hearing should certify if all parties/counsel agree to remote hearing or if one or more parties do not agree. If one or more parties do not agree, the moving party should detail all attempts to reach agreement on appearance for a remote hearing. The moving party should certify that she informed the opposing party of the expected date of filing at least 3 business days in advance of same (per OES guidance to the courts). The opposing party may file a written explanation for objection to remote hearing but should do so prior to the return date for the remote hearing.
   e. If the court finds that the opposing party's objection merit the opposing party's in-person appearance, the parties could be informed via email that the opposing party may appear in the courtroom in person while the moving party appears remotely if that is feasible.
      i. The appearing party should be capable of fully complying with all measures the court has established for public health and safety.
      ii. The appearing party should have a laptop or smartphone or other device that will support his participation in the WebEx hearing while present in the courtroom.
      iii. If the party wants to appear in person because they do not have the necessary technology or ability to access a remote

hearing, the court can consider whether it is possible to further accommodate them.

f. If the court finds that the opposing party's objections do not merit an in-person hearing, the parties can be informed via email that all appearances will be electronic. The matter can thereafter be docketed in accordance with the paragraphs below with the opposing party's objections being duly noted.
g. In making the determination, the court may be guided by all relevant circumstances which may include on or more of the following factors:
    i. Whether any undue prejudice to the opposing party would result;
    ii. Whether the opposing party previously has appeared in a remote hearing without objection;
    iii. The convenience of the parties and any proposed witnesses, and the cost of producing the witness in person in relation to the importance of the offered testimony;
    iv. Whether the procedure would allow for full and effective cross-examination of any witnesses, especially when the cross-examination would involve documents or other exhibits.
    v. Whether a physical liberty or other fundamental interest is at stake in the proceeding; and
    vi. Any other factors the court may determine to be relevant.
h. The parties should provide the court with all relevant documents 48 hours in advance of the hearing unless the court orders otherwise. The documents might include the following:
    i. The motion (and any brief) filed by a party;
    ii. Any response to the motion;
    iii. The names, addresses, phone numbers and/or emails of the participants in the remote hearing.
i. The court will generate an email invitation for the WebEx hearing. The email will have a link (generally in a green box) that the participant can click on to join the conference. The email will also have a telephone number and password for participants joining by telephone rather than by laptop, smartphone or other personal device.

4. Conducting the Remote Hearing
    a. The parties are responsible for providing a court reporter, if desired, who may participate remotely or in person, if feasible. Except as authorized by the court, or by Virginia Code, video or audio recording is strictly prohibited and anyone who makes a recording may be subject to contempt proceedings. Each attorney must identify every person in the room with them at the start of the hearing so that the court may rule on any motion to exclude witnesses from the proceeding.
    b. For video conferences, the court will send a WebEx invitation by email in advance of the hearing to each person who will be participating. That person is responsible for joining the hearing at the appointed time using the link in the court's email invitation.
    c. Once everyone has joined the call, participants should 1) wait until prompted to speak; 2) speak slowly and clearly and 3) briefly identify themselves each time they speak.
    d. Sequestration of witnesses can be accomplished by the court locking the meeting and admitting witnesses when the court is ready to hear their testimony.
    e. If a party is unable to participate by video and the judge cannot visually witness recitation of the oath, the court may want to consider allowing the party to recite the oath by telephone with the following precautions:
        i. If the party has a lawyer, the judge can request that the lawyer advise, as an officer of the court, whether he recognizes his client's voice;
        ii. If no attorney is present, the judge can ask the other party if they recognize the person's voice;
        iii. If no one can independently verify that the speaker is the party, the judge must determine whether to proceed.
    f. The court may maintain order by advising the parties of the following:
        i. This is a formal court proceeding having the same legal consequences as an in-person hearing. The only difference is

that it is taking place through an electronic medium instead of on an in-person basis.

ii. Generally, all microphones should be muted except for the person that is speaking to avoid unnecessary background noise.

iii. The proceeding is a live hearing and everything that is said during the proceeding may be heard by all of those observing.

iv. Each person will get an opportunity to speak and should avoid interrupting or speaking over the other person.

v. Courtroom decorum rules still apply. Participants should operate as if they were inside a courtroom,

g. Confidential communication – Attorneys are responsible for ensuring that they can communicate confidentially with their clients during the course of the hearing except when the client is testifying. The attorney must choose how best to structure confidential communications – whether to be present at a single location with the client or whether to communicate by text or phone. If the attorney requests of the judge that he/she have time to talk to his client, the judge can mute the attorney's microphone and that of the client to allow that to happen. In that instance, the attorney and the client should each move away from the video screen so that their faces cannot be seen. The attorney can then notify the judge by the Chat feature that the colloquy is completed and their microphones can be restored.

h. Interpreters

i. The parties are responsible for advising the court if they need an interpreter for a remote hearing.

ii. The court should include as a necessary participant in the hearing when issuing the invitation to the remote hearing either:

1. A specific named interpreter; or
2. An interpretation service which will select the appropriate interpreter and supply a link to the hearing; or

3. The OES staff who manages the interpretation services, who will select the appropriate interpreter and supply the link to the hearing.
4. The interpreter will receive a link to the hearing just as all the other participants do. The interpreter should join the hearing at the designated start time.

Criminal Hearings

1. The VBJDR court has taken the position that a hearing before a trial may be conducted as a remote hearing. See Virginia Code Section 19.2-31.
    a. Those hearings are typically conducted by Polycom with the defendant either at the jail or the Juvenile Detention Center (JDC). (Arrangements can be made for an incarcerated party to appear at civil hearings with advance notice to the clerk so that a Transportation Order can be entered.) The incarcerated defendant can be in another jail and appear by Polycom if prior arrangements are made with the clerk. Typically, the other jail will need at least 48 hours' advance notice to arrange for defendant to appear.
    b. If the Commonwealth Attorney has indicated that they are going to *nolle prosse* a charge involving an incarcerated defendant who cannot be brought over from the jail, the Commonwealth and the defense counsel should sign the standard *nolle prosse* order with the approved language rather than have the defendant appear by Polycom.
    c. Guilty pleas: There is some authority for guilty pleas to be taken by remote hearing. See *Cruz v. Commonwealth*, 24 Va. App. 454 (1997). The court will consider such plea on a case by case basis and there must be a record of the Defendant waiving his/her in-person appearance.

Practice Pointers:

1. Counsel should ensure that they have the correct equipment for connecting to the remote hearing. Your computer should have a

camera with microphone and speakers. If yours does not, they are readily available for purchase online.

2. Counsel should ensure that they have sufficient connectivity so that the hearing does not stop because the call or video is dropped due to insufficient bandwidth.
3. Counsel should try a sample WebEx hearing to make sure that it will work in your office or home. Your firewall may prevent the hearing from proceeding so make sure that you try it out first rather than waiting until the hearing to find out that you can't access the video and/or audio.
4. If you have not received a WebEx invitation 24 hours before the hearing, contact the court to make sure that it was sent to the correct email address. Also, check your spam mail folder as well to see if it is sitting there.
5. Coordinate with counsel as to who will be providing the court reporter so that there aren't 2 court reporters for the hearing.
6. Have cell phone numbers for all participants, attorneys, parties, witnesses, in case there are connection issues so that if you are having trouble logging in, you can let someone else know.
7. If you and your client are going to be in the same conference room during the hearing, have a legal pad available for your client to write you notes during the hearing rather than trying to whisper to each other as you might do at counsel table in a courtroom.
8. If you need to talk to an inmate before a hearing, have made attempts to contact the jail to talk to the inmate and were unsuccessful, don't wait until the start of the docket to ask to have access by Ipad. Come early to the courtroom to see if you can have access before the docket begins.

Evidentiary issues

1. Presentation of Evidence/Documents

a. WebEx allows participants to share their screen which is the main way to admit documents. Screen sharing is the preferred method to present documents

to the Court during a hearing. Practitioners should become familiar with how to share their screens prior to the hearing.

i. Practice Tip: Be able to quickly load the document on your screen.

ii. Practice Tip: BEWARE of having open applications and programs that you may not want anyone else to see when you share your screen. This is especially important if your device is connected to iCloud and other personal devices. We see what you see!

iii. Practice Tip: Familiarize yourself with how to highlight and enlarge documents on WebEx.

2. If a party is not comfortable with sharing their screen, they can provide hard copies of exhibits to the Court and opposing parties. This should be done at least five days in advance of the hearing, and all documents should be labeled and/or have a bates stamp.

3. If a party wants to admit a document into evidence that has been shared via WebEx, a hard copy of the document should be presented to the Court.

FROM THE BAR'S PERSPECTIVE

1. <u>Remember You are in Court!</u>
    a. Notice to a Florida Bar Association in April gives a good perspective on what the Judge sees:

WESTON BAR ASSOCIATION

The **WBA** is committed to practicing the orders and guidelines currently in place to help prevent the spread of the **COVID-19** virus

and as such, will only be conducting remote board meetings and bar events until these orders and guidelines are no longer in effect.

We hope you stay safe and healthy during these challenging times.

- Virtual View From the Bench -

DURING THE COVID-19 PANDEMIC

A Letter from the Honorable Dennis Bailey

First of all, speaking on behalf of the ninety judges in this jurisdiction, we hope to find you in good health, safekeeping, and not in financial distress. Without revealing anyone else's medical information, the spouse of one of our own is fighting COVID-19 and we hope for good results. Clearly, the pandemic is no longer just knocking on the door.

Of all the divisions in the courthouse deeply affected by the shutdown, Family Court has been the least affected because it had two aspects unique to it: first, it's a very high priority because of families in crisis and children in harm's way and, second, it doesn't involve jury trials. So those of us in Family have been running dockets, conducting both evidentiary and non-evidentiary hearings, and even trials. And we continue to do so.

The Criminal courts arguably have suffered the most disruptive impact for two reasons: first, it's extremely rare that any trial proceeds non-jury and, second, the clients have a Constitutional right to be present for hearings. While Zoom can facilitate even final divorces, it is not logistically friendly to the demands of the Criminal Justice System. Now the positive testing of some inmates in the jail system complicates matters even further. Time will tell when those courts can return to functionality.

The Civil courts have finally gotten the green-light to begin using Zoom to run dockets and conduct hearings. They'll go to school on the lessons learned by the Family judges and hope for a very smooth track ahead.

One comment that needs sharing and that is the judges would appreciate it if the lawyers and their clients keep in mind these Zoom hearings are just that: hearings. They are not casual phone conversations. It is remarkable how many ATTORNEYS appear inappropriately on camera. We've seen many lawyers in casual shirts and blouses, with no concern for ill-grooming, in bedrooms with the master bed in the background, etc. One male lawyer appeared shirtless and one female attorney appeared still in bed, still under the covers. And putting on a beach cover-up won't cover up you're poolside in a bathing suit. So, please, if you don't mind, let's treat court hearings as court hearings, whether Zooming or not.

Finally, evidentiary hearings via Zoom take additional pre-hearing prep work. For instance, send whatever exhibits you intend to introduce into evidence to both the Court and to opposing counsel well in advance of the hearing (uploading to "Supporting Documents" in the e-portal is optimal; email is secondary), and that includes documents, photos and videos. You will also have to coordinate third-party witnesses; if they can't be on camera, they can't be sworn in by the judge and will need a notary at

their location to verify identification and oath. Be aware, Zoom hearings take more time than in-person hearings due to lag time in audio capacity coming online and people talking over each other which challenges the responsibility to make contemporaneous objections. Often, lawyers are not looking at their screens but down at their files, their outlines and notes, or simply out the window, and cannot see the judge is hollering "Stop! Stop!" because an objection has been made and the audio stays with the witness rather than obeying the judge. If you need additional guidance, call the J.A. and ask ahead of time. Just don't say I told you to!

If all this sounds like a challenge, it is. But there is no such thing as an objection to Zoom. That having been said, I for one will not conduct a two-week expert-laden hotly contested trial via Zoom; I will reschedule that one for late summer or early fall (if we're lucky). At the end of the day, we conduct these hearings as best we can, knowing we're running on one of those miniature spare tires we pulled from the trunk rather than a "real" tire. But it will get us to where we need to go if we decrease our speed and increase our caution and shorten our trip. Resolve as many issues as you can through negotiation and then buckle up. We'll get there, but it may get a little bumpy along the way.

Please, stay safe and healthy ... and lucrative.

Judge Dennis Bailey

    b. Make sure you have an appropriate background if you are not in your office
    c. Check the lighting beforehand.
        i. Make sure there is not bright lights behind you. This will put you in shadow and no one will be able to see you.
2. Remember your manners
    a. Address the Judge, Counsel and any other participants as you would in the courtroom.
    b. Make sure your microphone is working and on mute when not speaking. Background noise can make it very difficult for the court reporter to hear. This is more difficult via WebEx than in person.
3. Witness/Client Control
    a. Know the Law.
        i. Under Va. Code § 16.1-276.3, § 16.1-93.1, and § 17.1-513.2 when a court allows for a telephonic/electronic hearing, any electronic audio and video system used for the hearing need to meet the requirements in Va. Code § 19.2-3.1(B). Those

requirements are that the persons communicating must simultaneously see and speak to one another; the transmission must be real time and secure from interception by anyone other than the people communicating; and any other specifications coming from the Chief Justice of the Supreme Court.

ii. Witness Oath Requirements:

If a witness is testifying remotely from a location within Virginia, then she must be placed under oath in the same way any live witness present at a hearing would. Va. Sup. Ct. R. 1:27(e)(1). If the witness is testifying remotely outside of VA, then she must sign a written consent to the personal jurisdiction of the Virginia courts, provide testimony under an oath that is administered by a Virginia court, expressly agree to be subject to court orders from the Virginia or any other orders as if she were actually in the Virginia courtroom and subject to the penalties of perjury under Virginia law. Va. Sup. Ct. R. 1:27(e)(2)(A)-(C).

iii. Necessary Equipment

"Unless the courtroom or facility where the testimony will be presented has equipment meeting the standards of Code § 19.2-3.1 (B) and complying with the court's order under subpart (b) of this Rule, the party offering testimony of a witness by audiovisual means is responsible for providing the necessary equipment, and all necessary logistical arrangements, at no cost to the court." Va. Sup. Ct. R. 1:27(f).

iv. Va. Code § 19.2-3.1(A): Criminal Procedure

"If two-way electronic video and audio communication is used, a magistrate, intake officer or judge may exercise all powers conferred by law and all communications and proceedings shall be conducted in the same manner as if the appearance were in person."

v. Va. Code § 16.1-250: Procedure for detention hearing (JDR courts)

"If two-way electronic video and audio communication is used, a judge may exercise all powers conferred by law and all communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by electronically transmitted facsimile process."

vi. Code § 16.1-255: Limitation on issuance of detention orders for juveniles; appearance by juvenile

"All communications and proceedings shall be conducted in the same manner and the intake officer shall have the same powers as if the appearance were in person."

b. If possible have your client/witness appear from your office.
    i. This will allow you to have immediate access to your client.
    ii. Give assurance no one else is in the room with the witness.
        1. If witness is remote, make sure to inquire into whom, if anyone, is present in the room.
    iii. No witness or client should have any electronic devices on their person during the hearing.

4. <u>Evidentiary Issues</u>
    a. Unless there is a specific rule from the Court, confer with opposing counsel regarding evidence.
        i. If possible stipulate prior to hearing as to the authenticity of documents
        ii. Exchange exhibit notebooks with counsel and submit to the Court prior to the hearing.
        iii. Utilize the notebook so you can refer to specific pages/ bates numbers when attempting to introduce exhibits
    b. Possible use of screen sharing
    c. Remember Rules of Evidence Still apply.

Recent Changes to Adoption Statutes

1. §63.2-1202. Parental, or agency, consent required; exceptions. (2020)

A. WHAT WAS CHANGED: Language was ADDED:

L. A legal custodian of a child being placed for adoption, and any other named parties in pending cases in which the custody or visitation of such child is at issue, whether such case is in a circuit or district court, shall be entitled to proper notice of any adoption proceeding and an opportunity to be heard.

B. WHY IT MATTERS: This new provision creates a new obligation of providing notice of an adoption proceeding to certain parties. If you represent a party who has legal custody of a child, or who has filed for custody or visitation of a child, your party is entitled to notice of an adoption proceeding and you need to be aware that your client's options may be limited thereafter.

C. POTENTIAL ISSUES:

a. Who must be notified?
   i. A "legal custodian" – this is not defined in either the Adoption section nor the Social Services section. There is a definition of legal custody in §16.1-228:
      "Legal custody" means (i) a legal status created by court order which vests in a custodian the right to have physical custody of the child, to determine and redetermine where and with whom he shall live, the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal status created by court order of joint custody as defined in § **20-107.2**.

   ii. Any other named party in a pending cases where the custody or visitation of the child is at issue – applies to JDR and Circuit cases

b. What must they be notified of?
   i. Notice is required regarding "any adoption proceeding" – this would include the JDR proceedings to accept consent, as well as the adoption action filed in Circuit Court.

c. What does the party have the right to do?
   i. A party is to be given "an opportunity to be heard" – what does this mean?
      1. Does this give them standing to object to the adoption?
      2. Does this give them the right to present evidence?

ii. Best guess: The adoption statutes impose two major requirements on a Circuit Court when determining whether to grant a petition for adoption: (1) Consent to the adoption and (2) the best interest of the child. The opportunity to be heard has already been granted to any party whose consent to the adoption is required. This language likely provides parties who may have a legitimate interest in the best interest of the child to "be heard" by the Court prior to the Court determining whether the adoption is in the best interest of the child.

See Appendix 1-A, 1-B and 1-C

2. §63.2-1205.1 Certain offenders prohibited from adopting a child (and §9.1-902. Offenses requiring registration) (2020)

A. WHAT WAS CHANGED: Language was MODIFIED:

§9.1-902. Offenses requiring registration – This section was modified to categorize the offenses that require registration with the Sex Offender and Crimes Against Minors Registry. The new language refers to offenses as either "Tier I", "Tier II" or "Tier III" rather than the general term "sex offense." Among other things, these Tiers impact the length of time an offender must maintain their registration.

§63.2-1205.1. Certain offenders prohibited from adopting a child – This section was modified to remove the general reference to a "sexually violent offense" and instead refer specifically to those offenses requiring registration pursuant to §9.1-902.

B. WHY IT MATTERS: Your client could be prohibited from adopting a child! The best practice would be to include a question about criminal convictions in your intake. And make sure your inquiry is not limited to Virginia – any similar conviction in another state is also potentially prohibiting (§9.1-902(C)).

See Appendix 2-A, 2-B and 2-C

3. §63.2-1220.2 Authority to enter into post-adoption contact and communication agreements (2019)

A. WHAT WAS CHANGED: Language was ADDED:

Unless the parental rights of the birth parent or parents have been terminated pursuant to subsection E of Section 16.1-283, a local board of social services or child welfare agency required to file a petition for a permanency planning hearing pursuant to Section 16.1-282.1 may inform the birth parent or parents and shall inform the adoptive parent or parents that they may

enter into such an agreement and shall inform the child if he is 14 years of age or older that he may consent to such an agreement.

NOTE: this same language was also added to Section 16.1-283.1

See Appendix 3-A and 3-B

4. §63.2-1242 Investigation and report at discretion of circuit court (2018 and 2020)

A. WHAT WAS CHANGED: In 2018, language was ADDED that required a step-parent to obtain a national criminal history background check and provide the results to the Court, so that the Court could consider the results in determining whether a further investigation and report should be ordered. However, this change was automatically set to expire July 1, 2020.

B. WHY IT MATTERS: This addition introduced a new and unexpected hurdle in step-parent adoptions. Background checks are not normally requested by private parties. Usually it is the agency conducting a home study that facilitates the requests. This addition required practitioners to create a new procedure for step-parent adoptions to advise clients of the requirement and instruct them on how to obtain the required background check. This addition was allowed to expire, and no additional changes were made.

See Appendix 4-A and 4-B

5. §63.2-1242.1 Relative Adoption (2019)

A. WHAT WAS CHANGED: Language was MODIFIED:

For the purposes of this chapter, a "close relative placement" shall be an adoption by the child's grandparent, great-grandparent, adult nephew or niece, adult brother or sister, adult uncle or aunt, adult great uncle or great aunt, *stepparent, adult stepbrother or stepsisters, or other adult relatives of the child by marriage or adoption.*

B. WHY IT MATTERS:
   a. This change essentially allows *any adult relative* to qualify for the provisions of a "close" relative placement. Maybe.
   b. This change includes a *stepparent*. This may seem duplicative of the separate stepparent adoption section, but consider the scenario where the biological parent has passed away.
   c. The addition of *stepbrother or stepsisters* expands the application to non-blood relatives.

See Appendix 5-A, 5-B and 5-C

6. **§63.2-1242.2 Close relative adoption; child in home less than two years AND §63.2-1242.3 Close relative adoption; child in home for two years or more (2018)**

   A. WHAT WAS CHANGED: The time period for the child residing in the home was decreased, from three years to two years.

   B. WHY IT MATTERS: Once a child has resided in the relative's home for two years, the process for adoption becomes much simpler. No home study is required, and the adoption proceeding begins in circuit court.

   See Appendix 6-A and 6-B

7. **§63.2-1250 Registration; notice; form (2017)**

   A. WHAT WAS CHANGED:
      a. The name of the registry was changed from "Putative" Father Registry to "Virginia Birth Father Registry" in this section and all other Code sections that referenced the registry.
      b. The rights and obligations of putative fathers were specified in more detail.

   B. WHY IT MATTERS: If a man desires to parent or at least be notified of any adoption proceedings, the time limits in these statutes are strictly construed so you should be advising them to register immediately.

   See Appendix 7-A and 7-B

CHAPTER 3

An Act to amend and reenact § 63.2-1202 of the Code of Virginia, relating to legal custodian; notice of adoption proceeding.

[H 94]

Approved February 24, 2020

Be it enacted by the General Assembly of Virginia:

1. That § 63.2-1202 of the Code of Virginia is amended and reenacted as follows:

§ 63.2-1202. Parental, or agency, consent required; exceptions.

A. No petition for adoption shall be granted, except as hereinafter provided in this section, unless written consent to the proposed adoption is filed with the petition. Such consent shall be in writing, signed under oath and acknowledged before an officer authorized by law to take acknowledgments. The consent of a birth parent for the adoption of his child placed directly by the birth parent shall be executed as provided in § 63.2-1233, and the circuit court may accept a certified copy of an order entered pursuant to § 63.2-1233 in satisfaction of all requirements of this section, provided the order clearly evidences compliance with the applicable notice and consent requirements of § 63.2-1233.

B. A birth parent who has not reached the age of 18 shall have legal capacity to give consent to adoption and perform all acts related to adoption, and shall be as fully bound thereby as if the birth parent had attained the age of 18 years.

C. Consent shall be executed:

1. By the birth mother and by any man who:

a. Is an acknowledged father under § 20-49.1;

b. Is an adjudicated father under § 20-49.8;

c. Is a presumed father under subsection D; or

d. Has registered with the Virginia Birth Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.).

Verification of compliance with the notice provisions of the Virginia Birth Father Registry shall be provided to the court.

2. By the child-placing agency or the local board having custody of the child, with right to place him for adoption, through court commitment or parental agreement as provided in § 63.2-900, 63.2-903, or 63.2-1221; or an agency outside the Commonwealth that is licensed or otherwise duly authorized to place children for adoption by virtue of the laws under which it operates; and

3. By the child if he is 14 years of age or older, unless the circuit court finds that the best interests of the child will be served by not requiring such consent.

D. A man shall be presumed to be the father of a child if:

1. He and the mother of the child are married to each other and the child is born during the marriage;

2. He and the mother of the child were married to each other and the child is born within 300 days of their date of separation, as evidenced by a written agreement or decree of separation, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce; or

3. Before the birth of the child, he and the mother of the child married each other in apparent compliance with the law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within 300 days of their date of separation, as evidenced by a written agreement or decree of separation, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce.

Such presumption may be rebutted by sufficient evidence that would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation with the birth mother for a period of at least 300 days prior to the birth of the child.

E. No consent shall be required of a birth father if he denies under oath and in writing the paternity of the child. Such denial of paternity may be withdrawn no more than 10 days after it is executed. Once the child is 10 days old, any executed denial of paternity is final and constitutes a waiver of all rights with respect to the adoption of the child and cannot be withdrawn.

F. No consent shall be required of the birth father of a child when the birth father is convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, and the child was conceived as a result of such violation.

G. No notice or consent shall be required of any person whose parental rights have been terminated by a court of competent jurisdiction, including foreign courts that have competent jurisdiction. No notice or consent is required of any birth parent of a child for whom a guardianship order was granted when the child was approved by the United States Citizenship and Immigration Services for purposes of

adoption.

H. No consent shall be required of a birth parent who, without just cause, has neither visited nor contacted the child for a period of six months immediately prior to the filing of the petition for adoption or the filing of a petition to accept consent to an adoption. The prospective adoptive parent(s) shall establish by clear and convincing evidence that the birth parent(s), without just cause, has neither visited nor contacted the child for a period of six months immediately prior to the filing of the petition for adoption or the filing of a petition to accept consent to an adoption. This provision shall not infringe upon the birth parent's right to be noticed and heard on the allegation of abandonment. For purposes of this section, the payment of child support, in the absence of other contact with the child, shall not be considered contact.

I. A birth father of the child may consent to the termination of all of his parental rights prior to the birth of the child.

J. The failure of the nonconsenting party to appear at any scheduled hearing, either in person or by counsel, after proper notice has been given to said party, shall constitute a waiver of any objection and right to consent to the adoption.

K. If a birth parent, legal guardian, or prospective adoptee, executing a consent, entrustment, or other documents related to the adoption, cannot provide the identification required pursuant to § 47.1-14, the birth parent, legal guardian, or prospective adoptee may execute a self-authenticating affidavit as to his identity subject to the penalties contained in § 63.2-1217.

L. A legal custodian of a child being placed for adoption, and any other named parties in pending cases in which the custody or visitation of such child is at issue, whether such case is in a circuit or district court, shall be entitled to proper notice of any adoption proceeding and an opportunity to be heard.

Code of Virginia
Title 63.2. Welfare (Social Services)
Chapter 12. Adoption

§ 63.2-1202. Parental, or agency, consent required; exceptions

A. No petition for adoption shall be granted, except as hereinafter provided in this section, unless written consent to the proposed adoption is filed with the petition. Such consent shall be in writing, signed under oath and acknowledged before an officer authorized by law to take acknowledgments. The consent of a birth parent for the adoption of his child placed directly by the birth parent shall be executed as provided in § 63.2-1233, and the circuit court may accept a certified copy of an order entered pursuant to § 63.2-1233 in satisfaction of all requirements of this section, provided the order clearly evidences compliance with the applicable notice and consent requirements of § 63.2-1233.

B. A birth parent who has not reached the age of 18 shall have legal capacity to give consent to adoption and perform all acts related to adoption, and shall be as fully bound thereby as if the birth parent had attained the age of 18 years.

C. Consent shall be executed:

1. By the birth mother and by any man who:

a. Is an acknowledged father under § 20-49.1;

b. Is an adjudicated father under § 20-49.8;

c. Is a presumed father under subsection D; or

d. Has registered with the Virginia Birth Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.).

Verification of compliance with the notice provisions of the Virginia Birth Father Registry shall be provided to the court.

2. By the child-placing agency or the local board having custody of the child, with right to place him for adoption, through court commitment or parental agreement as provided in § 63.2-900, 63.2-903, or 63.2-1221;or an agency outside the Commonwealth that is licensed or otherwise duly authorized to place children for adoption by virtue of the laws under which it operates; and

3. By the child if he is 14 years of age or older, unless the circuit court finds that the best interests of the child will be served by not requiring such consent.

D. A man shall be presumed to be the father of a child if:

1. He and the mother of the child are married to each other and the child is born during the marriage;

2. He and the mother of the child were married to each other and the child is born within 300 days of their date of separation, as evidenced by a written agreement or decree of separation, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce; or

3. Before the birth of the child, he and the mother of the child married each other in apparent compliance with the law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within 300 days of their date of separation, as evidenced by a written agreement or decree of separation, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce.

Such presumption may be rebutted by sufficient evidence that would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation with the birth mother for a period of at least 300 days prior to the birth of the child.

E. No consent shall be required of a birth father if he denies under oath and in writing the paternity of the child. Such denial of paternity may be withdrawn no more than 10 days after it is executed. Once the child is 10 days old, any executed denial of paternity is final and constitutes a waiver of all rights with respect to the adoption of the child and cannot be withdrawn.

F. No consent shall be required of the birth father of a child when the birth father is convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, and the child was conceived as a result of such violation.

G. No notice or consent shall be required of any person whose parental rights have been terminated by a court of competent jurisdiction, including foreign courts that have competent jurisdiction. No notice or consent is required of any birth parent of a child for whom a guardianship order was granted when the child was approved by the United States Citizenship and Immigration Services for purposes of adoption.

H. No consent shall be required of a birth parent who, without just cause, has neither visited nor contacted the child for a period of six months immediately prior to the filing of the petition for adoption or the filing of a petition to accept consent to an adoption. The prospective adoptive parent(s) shall establish by clear and convincing evidence that the birth parent(s), without just cause, has neither visited nor contacted the child for a period of six months immediately prior to the filing of the petition for adoption or the filing of a petition to accept consent to an adoption. This provision shall not infringe upon the birth parent's right to be noticed and heard on the allegation of abandonment. For purposes of this section, the payment of child support, in the absence of other contact with the child, shall not be considered contact.

I. A birth father of the child may consent to the termination of all of his parental rights prior to the birth of the child.

J. The failure of the nonconsenting party to appear at any scheduled hearing, either in person or by counsel, after proper notice has been given to said party, shall constitute a waiver of any objection and right to consent to the adoption.

K. If a birth parent, legal guardian, or prospective adoptee, executing a consent, entrustment, or other documents related to the adoption, cannot provide the identification required pursuant to § 47.1-14, the birth parent, legal guardian, or prospective adoptee may execute a self-authenticating affidavit as to his identity subject to the penalties contained in § 63.2-1217.

L. A legal custodian of a child being placed for adoption, and any other named parties in pending cases in which the custody or visitation of such child is at issue, whether such case is in a circuit

or district court, shall be entitled to proper notice of any adoption proceeding and an opportunity to be heard.

Code 1950, § 63-351; 1954, c. 489; 1956, c. 300; 1960, c. 331; 1962, c. 603; 1968, c. 578, § 63.1-225; 1972, cc. 73, 475, 823; 1974, c. 620; 1978, cc. 730, 735, 744; 1985, c. 18; 1986, c. 387; 1989, c. 647; 1993, c. 553; 1995, cc. 772, 826;1999, c. 1028;2000, c. 830, § 63.1-219.10; 2002, c. 747;2005, c. 890;2006, cc. 825, 848;2007, cc. 606, 623;2009, c. 805;2011, c. 486;2012, c. 424;2017, c. 200; 2020, c. 3.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Appendix 1-C

VIRGINIA: IN THE [add below]

JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT OF THE CITY OF ___
****OR****
CIRCUIT COURT OF THE CITY OF ____

***IN RE:* ___**

____,

Petitioner(s),

v. **CIVIL ACTION NO.:/CASE NO.: _____**

____,

Respondent(s).

NOTICE OF ADOPTION PROCEEDING

PLEASE TAKE NOTICE that on the ____day of _____, 20____, at _____, or as soon thereafter as counsel may be heard, the Petitioner(s) will move this Court to [address the consent(s) of the birth parent(s)] OR [enter a Final Order of Adoption] for the child referenced above.

This Notice is being provided in accordance with Section 63.2-1202(L) of the Code of Virginia (1950), as amended. Please govern yourself accordingly.

[Petitioner]

By_____
Of Counsel

[Attorney's info]

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was transmitted to _____, Counsel for _____, on this ___day of _____ 20____ via:

- ☐ Mail to _____,
- ☐ Fax to _____,
- ☐ Email to _____.

_____
XXXX, Esq.

CHAPTER 829

An Act to amend and reenact §§ 2.2-515.2, 9.1-900, 9.1-901, 9.1-902, 9.1-903, 9.1-904, as it shall become effective, 9.1-906 through 9.1-914, 9.1-918, 15.2-2283.1, 16.1-228, 18.2-348.1, 18.2-370.5, 18.2-472.1, 22.1-79, 23.1-407, 32.1-127, 46.2-116, 46.2-117, 46.2-118, 46.2-323, 46.2-324, 46.2-330, 46.2-345, 46.2-2011.33, 63.2-100, 63.2-1205.1, 63.2-1503, 63.2-1506, and 63.2-1732 of the Code of Virginia, relating to Sex Offender and Crimes Against Minors Registry.

[S 579]

Approved April 7, 2020

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-515.2, 9.1-900, 9.1-901, 9.1-902, 9.1-903, 9.1-904, as it shall become effective, 9.1-906 through 9.1-914, 9.1-918, 15.2-2283.1, 16.1-228, 18.2-348.1, 18.2-370.5, 18.2-472.1, 22.1-79, 23.1-407, 32.1-127, 46.2-116, 46.2-117, 46.2-118, 46.2-323, 46.2-324, 46.2-330, 46.2-345, 46.2-2011.33, 63.2-100, 63.2-1205.1, 63.2-1503, 63.2-1506, and 63.2-1732 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-515.2. Address confidentiality program established; victims of domestic violence, stalking, sexual violence, or human trafficking; application; disclosure of records.

A. As used in this section:

"Address" means a residential street address, school address, or work address of a person as specified on the person's application to be a program participant.

"Applicant" means a person who is a victim of domestic violence, stalking, or sexual violence or is a parent or guardian of a minor child or incapacitated person who is the victim of domestic violence, stalking, or sexual violence.

"Domestic violence" means an act as defined in § 38.2-508 and includes threat of such acts committed against an individual in a domestic situation, regardless of whether these acts or threats have been reported to law-enforcement officers. Such threat must be a threat of force which would place any person in reasonable apprehension of death or bodily injury.

"Program participant" means a person certified by the Office of the Attorney General as eligible to participate in the Address Confidentiality Program.

"Sexual or domestic violence programs" means public and not-for-profit agencies the primary mission of which is to provide services to victims of sexual or domestic violence, or stalking. Such programs may also include specialized services for victims of human trafficking.

"Sexual violence" means conduct that is prohibited under clause (ii), (iii), (iv), or (v) of § 18.2-48, or § 18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, 18.2-67.5, 18.2-348, 18.2-348.1, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 18.2-357.1, or 18.2-368, regardless of whether the conduct has been reported to a law-enforcement officer or the assailant has been charged with or convicted of the alleged violation.

"Stalking" means conduct that is prohibited under § 18.2-60.3, regardless of whether the conduct has been reported to a law-enforcement officer or the assailant has been charged with or convicted for the alleged violation.

B. The Statewide Facilitator for Victims of Domestic Violence shall establish a program to be known as the "Address Confidentiality Program" to protect victims of domestic violence, stalking, or sexual violence by authorizing the use of designated addresses for such victims. An individual who is at least 18 years of age, a parent or guardian acting on behalf of a minor, a guardian acting on behalf of an incapacitated person, or an emancipated minor may apply in person at (i) sexual or domestic violence programs that have been accredited by the Virginia Sexual and Domestic Violence Program Professional Standards Committee established pursuant to § 9.1-116.3 and are qualified to (a) assist the eligible person in determining whether the address confidentiality program should be part of such person's overall safety plan, (b) explain the address confidentiality program services and limitations, (c) explain the program participant's responsibilities, and, (d) assist the person eligible for participation with the completion of application materials or (ii) crime victim and witness assistance programs. The Office of the Attorney General shall approve an application if it is filed in the manner and on the form prescribed by the Attorney General and if the application contains the following:

1. A sworn statement by the applicant declaring to be true and correct under penalty of perjury that the applicant has good reason to believe that:

a. The applicant, or the minor or incapacitated individual on whose behalf the application is made, is a victim of domestic violence, sexual violence, or stalking;

b. The applicant fears further acts of violence, stalking, retribution, or intimidation from the applicant's assailant, abuser, or trafficker; and

c. The applicant is not on active parole or probation supervision requirements under federal, state, or local law.

2. A designation of the Office of the Attorney General as agent for the purpose of receiving mail on behalf of the applicant;

3. The applicant's actual address to which mail can be forwarded and a telephone number where the applicant can be called;

4. A listing of any minor children residing at the applicant's actual address, each minor child's date of birth, and each minor child's relationship to the applicant; and

5. The signature of the applicant and any person who assisted in the preparation of the application and the date.

C. Upon approval of a completed application, the Office of the Attorney General shall certify the applicant as a program participant. An applicant shall be certified for three years following the date of the approval, unless the certification is withdrawn or invalidated before that date. A program participant may apply to be recertified every three years.

D. Upon receipt of first-class mail addressed to a program participant, the Attorney General or his designee shall forward the mail to the actual address of the program participant. The actual address of a program participant shall be available only to the Attorney General and to those employees involved in the operation of the Address Confidentiality Program and to law-enforcement officers. A program participant's actual address may be entered into the Virginia Criminal Information Network (VCIN) system so that it may be made known to law-enforcement officers accessing the VCIN system for law-enforcement purposes.

E. The Office of the Attorney General may cancel a program participant's certification if:

1. The program participant requests withdrawal from the program;

2. The program participant obtains a name change through an order of the court and does not provide notice and a copy of the order to the Office of the Attorney General within seven days after entry of the order;

3. The program participant changes his residence address and does not provide seven days' notice to the Office of the Attorney General prior to the change of address;

4. The mail forwarded by the Office of the Attorney General to the address provided by the program participant is returned as undeliverable;

5. Any information contained in the application is false;

6. The program participant has been placed on parole or probation while a participant in the address confidentiality program; or

7. The applicant is required to register ~~as a sex offender~~ *with the Sex Offender and Crimes Against Minors Registry* pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1.

For purposes of the address confidentiality program, residents of temporary housing for 30 days or less are not eligible to enroll in the address confidentiality program until a permanent residential address is obtained.

The application form shall contain a statement notifying each applicant of the provisions of this subsection.

F. A program participant may request that any state or local agency use the address designated by the Office of the Attorney General as the program participant's address, except when the program participant is purchasing a firearm from a dealer in firearms. The agency shall accept the address designated by the Office of the Attorney General as a program participant's address, unless the agency has received a written exemption from the Office of the Attorney General demonstrating to the satisfaction of the Attorney General that:

1. The agency has a bona fide statutory basis for requiring the program participant to disclose to it the actual location of the program participant; and

2. The disclosed confidential address of the program participant will be used only for that statutory purpose and will not be disclosed or made available in any way to any other person or agency.

A state agency may request an exemption by providing in writing to the Office of the Attorney General identification of the statute or administrative rule that demonstrates the agency's bona fide requirement and authority for the use of the actual address of an individual. A request for a waiver from an agency may be for an individual program participant, a class of program participants, or all program participants. The denial of an agency's exemption request shall be in writing and include a statement of the specific reasons for the denial. Acceptance or denial of an agency's exemption request shall constitute final agency action.

Any state or local agency that discloses the program participant's confidential address provided by the Office of the Attorney General shall be immune from civil liability unless the agency acted with gross negligence or willful misconduct.

A program participant's actual address shall be disclosed pursuant to a court order.

G. Records submitted to or provided by the Office of the Attorney General in accordance with this section shall be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) to the extent such records contain information identifying a past or current program participant,

including such person's name, actual and designated address, telephone number, and any email address. However, access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of a program participant in cases where the program participant is a minor child or an incapacitated person, except when the parent or legal guardian is named as the program participant's assailant.

H. Neither the Office of the Attorney General, its officers or employees, or others who have a responsibility to a program participant under this section shall have any liability nor shall any cause of action arise against them in their official or personal capacity from the failure of a program participant to receive any first class mail forwarded to him by the Office of the Attorney General pursuant to this section. Nor shall any such liability or cause of action arise from the failure of a program participant to timely receive any first class mail forwarded by the Office of the Attorney General pursuant to this section.

§ 9.1-900. Purpose of the Sex Offender and Crimes Against Minors Registry.

The purpose of the Sex Offender and Crimes Against Minors Registry (Registry) shall be to assist the efforts of law-enforcement agencies and others to protect their communities and families from repeat ~~sex~~ offenders and to protect children from becoming victims of criminal offenders by helping to prevent such individuals from being allowed to work directly with children.

§ 9.1-901. Persons for whom registration required.

A. Every person convicted on or after July 1, 1994, including a juvenile tried and convicted in the circuit court pursuant to § 16.1-269.1, whether sentenced as an adult or juvenile, of an offense set forth in § 9.1-902 and every juvenile found delinquent of an offense for which registration is required under subsection ~~G~~ *C* of § 9.1-902 shall register ~~and~~, reregister*, and verify his registration information* as required by this chapter. Every person serving a sentence of confinement on or after July 1, 1994, for a conviction of an offense set forth in § 9.1-902 shall register ~~and~~, reregister*, and verify his registration information* as required by this chapter. Every person under community supervision as defined by § 53.1-1 or any similar form of supervision under the laws of the United States or any political subdivision thereof, on or after July 1, 1994, resulting from a conviction of an offense set forth in § 9.1-902 shall register ~~and~~, reregister*, and verify his registration information* as required by this chapter.

B. Every person found not guilty by reason of insanity on or after July 1, 2007, of an offense set forth in § 9.1-902 shall register ~~and~~, reregister*, and verify his registration information* as required by this chapter. Every person in the custody of the Commissioner of Behavioral Health and Developmental Services, or on conditional release on or after July 1, 2007, because of a finding of not guilty by reason of insanity of an offense set forth in § 9.1-902 shall register ~~and~~, reregister*, and verify his registration information* as required by this chapter.

C. Unless a specific effective date is otherwise provided, all provisions of the Sex Offender and Crimes Against Minors Registry Act shall apply retroactively. This subsection is declaratory of existing law.

§ 9.1-902. Offenses requiring registration.

A. For purposes of this chapter:

"Murder" means a violation of, attempted violation of, or conspiracy to violate § 18.2-31 or 18.2-32 where the victim is (i) under 15 years of age or (ii) where the victim is at least 15 years of age but under 18 years of age and the murder is related to an offense listed in this section or a violation of former § 18.1-21 where the victim is (a) under 15 years of age or (b) at least 15 years of age but under 18 years of age and the murder is related to an offense listed in this section.

"Offense for which registration is required" includes:

1. Any *Tier I, Tier II, or Tier III* offense ~~listed in subsection B~~;

2. ~~Criminal homicide;~~

~~3.~~ Murder;

~~4. A sexually violent offense;~~

~~5.~~ *3.* Any offense similar to ~~those listed in subdivisions 1 through~~ 4 *a Tier I, Tier II, or Tier III offense* under the laws of any foreign country or any political subdivision thereof or the United States or any political subdivision thereof; and

~~6.~~ *4.* Any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted.

~~B. The offenses included under this subsection include~~*"Tier I offense" means (i) any homicide in conjunction with a violation of, attempted violation of, or conspiracy to violate clause (i) of § 18.2-371 or § 18.2-371.1, when the offenses arise out of the same incident, or (ii)* any violation of, attempted violation of, or conspiracy to violate:

1. § 18.2-63 unless registration is required pursuant to subdivision ~~E~~ 1 *of the definition of Tier III offense*; ~~§ 18.2-64.1;~~ former § 18.2-67.2:1; § 18.2-90 with the intent to commit rape; former § 18.1-88 with the intent to commit rape; any felony violation of § 18.2-346; any violation of subdivision (4) of § 18.2-355; any violation of subsection C of § 18.2-357.1; subsection B ~~or C~~ of § 18.2-374.1:1; former subsection D of § 18.2-374.1:1 as it was in effect from July 1, 1994, through June 30, 2007; former

clause (iv) of subsection B of § 18.2-374.3 as it was in effect on June 30, 2007; subsection B~~, C, or D~~ of § 18.2-374.3; or a third or subsequent conviction of (i) § 18.2-67.4, (ii) § 18.2-67.4:2, (iii) subsection C of § 18.2-67.5, or (iv) § 18.2-386.1.

If the offense was committed on or after July 1, 2006, § 18.2-91 with the intent to commit any felony offense listed in this section; subsection A of § 18.2-374.1:1; or a felony under § 18.2-67.5:1.

2. Where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection A of § 18.2-47, clause (i) of § 18.2-48, § 18.2-67.4, subsection C of § 18.2-67.5, § 18.2-361, § 18.2-366, or a felony violation of former § 18.1-191.

3. § 18.2-370.6.

4. If the offense was committed on or after July 1, 2016, and where the perpetrator is 18 years of age or older and the victim is under the age of 13, any violation of § 18.2-51.2.

5. If the offense was committed on or after July 1, 2016, any violation of § 18.2-356 punishable as a Class 3 felony or any violation of § 18.2-357 punishable as a Class 3 felony.

6. If the offense was committed on or after July 1, 2019, any felony violation of § 18.2-348 or 18.2-349.

~~C. "Criminal homicide" means a homicide in conjunction with a violation of, attempted violation of, or conspiracy to violate clause (i) of § 18.2-371 or § 18.2-371.1, when the offenses arise out of the same incident.~~

~~D. "Murder" means a violation of, attempted violation of, or conspiracy to violate § 18.2-31 or § 18.2-32 where the victim is (i) under 15 years of age or (ii) where the victim is at least 15 years of age but under 18 years of age and the murder is related to an offense listed in this section or a violation of former § 18.1-21 where the victim is (a) under 15 years of age or (b) at least 15 years of age but under 18 years of age and the murder is related to an offense listed in this section.~~

~~E. "Sexually violent offense"~~ *"Tier II offense" means any violation of, attempted violation of, or conspiracy to violate § 18.2-64.1, subsection C of § 18.2-374.1:1, or subsection C, D, or E of § 18.2-374.3.*

"Tier III offense" means a violation of, attempted violation of, or conspiracy to violate:

1. Clause (ii) and (iii) of § 18.2-48, former § 18.1-38 with the intent to defile or, for the purpose of concubinage or prostitution, a felony violation of subdivision (2) or (3) of former § 18.1-39 that involves assisting or aiding in such an abduction, § 18.2-61, former § 18.1-44 when such act is accomplished against the complaining witness's will, by force, or through the use of the complaining witness's mental incapacity or physical helplessness, or if the victim is under 13 years of age, subsection A of § 18.2-63 where the perpetrator is more than five years older than the victim, § 18.2-67.1, § 18.2-67.2, § 18.2-67.3, former § 18.1-215 when the complaining witness is under 13 years of age, § 18.2-67.4 where the perpetrator is 18 years of age or older and the victim is under the age of six, subsections A and B of § 18.2-67.5, § 18.2-370, subdivision (1), (2), or (4) of former § 18.1-213, former § 18.1-214, § 18.2-370.1, or § 18.2-374.1;

2. § 18.2-63, § 18.2-64.1, former § 18.2-67.2:1, § 18.2-90 with the intent to commit rape or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection A of § 18.2-47, § 18.2-67.4, subsection C of § 18.2-67.5, clause (i) of § 18.2-48, § 18.2-361, § 18.2-366, or subsection C of § 18.2-374.1:1. An offense listed under this subdivision shall be deemed a ~~sexually violent~~ *Tier III* offense only if the person has been convicted or adjudicated delinquent of any two or more such offenses, provided that person had been at liberty between such convictions or adjudications;

3. If the offense was committed on or after July 1, 2006, § 18.2-91 with the intent to commit any felony offense listed in this section. An offense listed under this subdivision shall be deemed a ~~sexually violent~~ *Tier III* offense only if the person has been convicted or adjudicated delinquent of any two or more such offenses, provided that the person had been at liberty between such convictions or adjudications; or

4. Chapter 117 (18 U.S.C. § 2421 et seq.) of Title 18 of the United States Code or sex trafficking (as described in § 1591 of Title 18, U.S.C.).

~~F. "Any offense listed in subsection B," "criminal homicide"~~ *B. "Tier I offense"* as defined in this section, *"Tier II offense" as defined in this section, "Tier III offense" as defined in this section, and* "murder" as defined in this section~~, and "sexually violent offense" as defined in this section includes (i)~~ *includes* any similar offense under the laws of any foreign country or any political subdivision thereof or the United States or any political subdivision thereof ~~or (ii) any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted~~.

~~G.~~ *C.* Juveniles adjudicated delinquent shall not be required to register; however, where the offender is a juvenile over the age of 13 at the time of the offense who is tried as a juvenile and is adjudicated delinquent on or after July 1, 2005, of any offense for which registration is required, the court may, in its discretion and upon motion of the attorney for the Commonwealth, find that the circumstances of the offense require offender registration. In making its determination, the court shall consider all of the following factors that are relevant to the case: (i) the degree to which the delinquent act was committed

with the use of force, threat, or intimidation, (ii) the age and maturity of the complaining witness, (iii) the age and maturity of the offender, (iv) the difference in the ages of the complaining witness and the offender, (v) the nature of the relationship between the complaining witness and the offender, (vi) the offender's prior criminal history, and (vii) any other aggravating or mitigating factors relevant to the case. The attorney for the Commonwealth may file such a motion at any time during which the offender is within the jurisdiction of the court for the offense that is the basis for such motion. Prior to any hearing on such motion, the court shall appoint a qualified and competent attorney-at-law to represent the offender unless an attorney has been retained and appears on behalf of the offender or counsel has already been appointed.

~~H.~~ *D.* Prior to entering judgment of conviction of an offense for which registration is required if the victim of the offense was a minor, physically helpless, or mentally incapacitated, when the indictment, warrant, or information does not allege that the victim of the offense was a minor, physically helpless, or mentally incapacitated, the court shall determine by a preponderance of the evidence whether the victim of the offense was a minor, physically helpless, or mentally incapacitated, as defined in § 18.2-67.10, and shall also determine the age of the victim at the time of the offense if it determines the victim to be a minor. When such a determination is required, the court shall advise the defendant of its determination and of the defendant's right to make a motion to withdraw a plea of guilty or nolo contendere pursuant to § 19.2-296. If the court grants the defendant's motion to withdraw his plea of guilty or of nolo contendere, his case shall be heard by another judge, unless the parties agree otherwise. Failure to make such determination or so advise the defendant does not otherwise invalidate the underlying conviction.

§ 9.1-903. Registration and reregistration procedures.

A. Every person convicted, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, whether sentenced as an adult or juvenile, of an offense for which registration is required and every juvenile found delinquent of an offense for which registration is required under subsection ~~G~~ *C* of § 9.1-902 shall be required upon conviction to register ~~and~~, reregister, *and verify his registration information* with the Department of State Police. The court shall order the person to provide to the local law-enforcement agency of the county or city where he physically resides all information required by the State Police for inclusion in the Registry. The court shall immediately remand the person to the custody of the local law-enforcement agency for the purpose of obtaining the person's fingerprints and photographs of a type and kind specified by the State Police for inclusion in the Registry. Upon conviction, the local law-enforcement agency shall forthwith forward to the State Police all the necessary registration information.

B. Every person required to register shall register in person within three days of his release from confinement in a state, local or juvenile correctional facility, in a state civil commitment program for sexually violent predators or, if a sentence of confinement is not imposed, within three days of suspension of the sentence or in the case of a juvenile of disposition. A person required to register shall register, and as part of the registration shall submit to be photographed, submit to have a sample of his blood, saliva, or tissue taken for DNA (deoxyribonucleic acid) analysis and submission to the DNA databank to determine identification characteristics specific to the person, provide electronic mail address information, any instant message, chat or other Internet communication name or identity information that the person uses or intends to use, submit to have his fingerprints and palm prints taken, provide information regarding his place of employment, and provide motor vehicle, watercraft and aircraft registration information for all motor vehicles, watercraft and aircraft owned by him. The local law-enforcement agency shall obtain from the person who presents himself for registration or reregistration one set of fingerprints, electronic mail address information, any instant message, chat or other Internet communication name or identity information that the person uses or intends to use, one set of palm prints, place of employment information, motor vehicle, watercraft and aircraft registration information for all motor vehicles, watercraft and aircraft owned by the registrant, proof of residency and a photograph of a type and kind specified by the State Police for inclusion in the Registry and advise the person of his duties regarding reregistration *and verification of his registration information*. The local law-enforcement agency shall obtain from the person who presents himself for registration a sample of his blood, saliva or tissue taken for DNA (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person. If a sample has been previously taken from the person, as indicated by the Local Inmate Data System (LIDS), no additional sample shall be taken. The local law-enforcement agency shall forthwith forward to the State Police all necessary registration information.

C. To establish proof of residence in Virginia, a person who has a permanent physical address shall present one photo-identification form issued by a governmental agency of the Commonwealth which contains the person's complete name, gender, date of birth and complete physical address. The local law-enforcement agency shall forthwith forward to the State Police a copy of the identification presented by the person required to register.

D. Any person required to register shall also reregister in person with the local law-enforcement agency following any change of name or any change of residence, whether within or without the

Commonwealth. The person shall register in person with the local law-enforcement agency within three days following his change of name. If his new residence is within the Commonwealth, the person shall register in person with the local law-enforcement agency where his new residence is located within three days following his change in residence. If the new residence is located outside of the Commonwealth, the person shall register in person with the local law-enforcement agency where he previously registered within 10 days prior to his change of residence. If a probation or parole officer becomes aware of a change of name or residence for any of his probationers or parolees required to register, the probation or parole officer shall notify the State Police forthwith of learning of the change. Whenever a person subject to registration changes residence to another state, the State Police shall notify the designated law-enforcement agency of that state.

E. Any person required to register shall reregister in person with the local law-enforcement agency where his residence is located within three days following any change of the place of employment, whether within or without the Commonwealth. If a probation or parole officer becomes aware of a change of the place of employment for any of his probationers or parolees required to register, the probation or parole officer shall notify the State Police forthwith upon learning of the change of the person's place of employment. Whenever a person subject to registration changes his place of employment to another state, the State Police shall notify the designated law-enforcement agency of that state.

F. Any person required to register shall reregister in person with the local law-enforcement agency where his residence is located within three days following any change of owned motor vehicle, watercraft and aircraft registration information, whether within or without the Commonwealth. If a probation or parole officer becomes aware of a change of owned motor vehicle, watercraft and aircraft registration information for any of his probationers or parolees required to register, the probation or parole officer shall notify the State Police forthwith upon learning of the change of the person's owned motor vehicle, watercraft and aircraft registration information. Whenever a person required to register changes his owned motor vehicle, watercraft and aircraft registration information to another state, the State Police shall notify the designated law-enforcement agency of that state.

G. Any person required to register shall reregister either in person or electronically with the local law-enforcement agency where his residence is located within 30 minutes following any change of the electronic mail address information, any instant message, chat or other Internet communication name or identity information that the person uses or intends to use, whether within or without the Commonwealth. If a probation or parole officer becomes aware of a change of the electronic mail address information, any instant message, chat or other Internet communication name or identity information for any of his probationers or parolees required to register, the probation or parole officer shall notify the State Police forthwith upon learning of the change.

H. *Every person required to register shall submit to be photographed by a local law-enforcement agency every two years, during such person's required verification month and time interval pursuant to subsection B of § 9.1-904, commencing with the date of initial verification. The local law-enforcement agency shall forthwith forward the photograph of a type and kind specified by the State Police to the State Police. Where practical, the local law-enforcement agency may electronically transfer a digital photograph containing the required information to the Registry.*

I. Upon registration and every two years thereafter during such person's required verification month and time interval pursuant to subsection B of § 9.1-904, every person required to register shall be required to execute a consent form consistent with applicable law that authorizes a business or organization that offers electronic communications or remote computer services to provide to the Department of State Police any information pertaining to that person necessary to determine the veracity of his electronic identity information in the Registry.

J. The registration shall be maintained in the Registry and shall include the person's name, any former name if he has lawfully changed his name during the period for which he is required to register, all aliases that he has used or under which he may have been known, the date and locality of the conviction for which registration is required, his fingerprints and a photograph of a type and kind specified by the State Police, his date of birth, social security number, current physical and mailing address and a description of the offense or offenses for which he was convicted. The registration shall also include the locality of the conviction and a description of the offense or offenses for previous convictions for the offenses set forth in § 9.1-902.

~~I.~~ *K.* The local law-enforcement agency shall forthwith forward to the State Police all necessary registration or reregistration information received by it. Upon receipt of registration or reregistration information the State Police shall forthwith notify the chief law-enforcement officer of the locality listed as the person's address on the registration and reregistration.

~~J.~~ *L.* If a person required to register does not have a legal residence, such person shall designate a location that can be located with reasonable specificity where he resides or habitually locates himself. For the purposes of this section, "residence" shall include such a designated location. If the person wishes to change such designated location, he shall do it pursuant to the terms of this section.

§ 9.1-904. (Effective July 1, 2020) Periodic verification.

A. ~~Every person required to register shall reregister with the State Police on a schedule pursuant to this section. Reregistration~~ *For purposes of this chapter, "verify his registration information"* means that the person *required to register* has notified the State Police; confirmed his current physical and mailing address and electronic mail address information and any instant message, chat, or other Internet communication name or identity information that he uses or intends to use; and provided such other information, including identifying information, that the State Police may require. ~~Upon registration and as may be necessary thereafter, the~~

B. Any person required to register shall verify his registration information with the State Police, during such person's required verification month and time interval, commencing with the date of initial registration, as follows:

1. Any person convicted of a Tier III offense or murder, four times each year at three-month intervals, including the person's birth month; and

2. Any person convicted of a violation of § 18.2-472.1, in which such person was included on the Registry for a conviction of a Tier III offense or murder, every month.

C. The State Police shall ~~provide~~ *make available to* the person ~~with~~ an address verification form to be used for ~~reregistration~~ *verification of his registration information*. The form shall contain in bold print a statement indicating that failure to comply with the ~~registration~~ *verification* required is punishable as provided in § 18.2-472.1. Copies of all forms to be used for ~~reregistration~~ *verification* and guidelines for submitting such forms, including month and time ~~reregistration~~ *verification* intervals ~~pursuant to subsections C and D~~, shall be available through distribution by the State Police, from local law-enforcement agencies, and in a format capable of being downloaded and printed from a website maintained by the State Police. ~~Upon registration and as may be necessary thereafter, the person shall likewise be required to execute a consent form consistent with applicable law that authorizes a business or organization that offers electronic communications or remote computer services to provide to the Department of State Police any information pertaining to that person necessary to determine the veracity of his electronic identity information in the registry.~~

~~B. Every person required to register pursuant to this chapter shall submit to be photographed by a local law-enforcement agency every two years, during such person's required reregistration month and time interval pursuant to subsections C and D, commencing with the date of initial reregistration. Photographs shall be in color, be taken with the registrant facing the camera, and clearly show the registrant's face and shoulders only. No person other than the registrant may appear in the photograph submitted. The photograph shall indicate the registrant's full name, date of birth and the date the photograph was taken. The local law-enforcement agency shall forthwith forward the photograph and the registration form to the State Police. Where practical, the local law-enforcement agency may electronically transfer a digital photograph containing the required information to the Sex Offender and Crimes Against Minors Registry within the State Police.~~

~~C. Every person required to register, other than a person convicted of a sexually violent offense or murder, shall reregister with the State Police once each year during such person's birth month. Every person convicted of a sexually violent offense or murder shall reregister with the State Police four times each year at three-month intervals, including the person's birth month. Any person convicted of a violation of § 18.2-472.1, other than a person convicted of a sexually violent offense or murder, shall reregister with the State Police twice each year: once in the person's birth month and once in the month that is six months from the person's birth month. Any person convicted of a violation of § 18.2-472.1, in which such person was included on the Registry for a conviction of a sexually violent offense or murder, shall reregister with the State Police every month.~~

D. Persons required to register with last names beginning with A through L shall ~~reregister~~ *verify their registration information* with the State Police from the first to the fifteenth of such person's ~~reregistration~~ *verification* months pursuant to subsection ~~C~~ *B*, and persons required to register with last names beginning with M through Z shall ~~reregister~~ *verify their registration information* with the State Police from the sixteenth to the last day of the month during such person's ~~reregistration~~ *verification* months pursuant to subsection ~~C~~ *B*. The last name shall be the last name in the person's name pursuant to § 9.1-903 as it appears in the Registry.

E. For the period of July 1, 2020, to July 1, 2021, any person required to ~~reregister~~ *verify his registration information* shall continue to ~~reregister~~ *verify his resignation information* with the State Police on such person's ~~reregistration~~ *verification* schedule in place prior to July 1, 2020, until such person has ~~reregistered~~ *verified his registration information* pursuant to the new ~~reregistration~~ *verification* schedule provided in ~~subsections C and D~~ *subsection B*, at which time such person shall continue to ~~reregister~~ *verify his registration information* pursuant to the new ~~reregistration~~ *verification* schedule ~~provided in subsections C and D~~.

§ 9.1-906. Enrollment or employment at institution of higher education; information required.

A. Persons required to register ~~or~~, reregister, *or verify their registration information* who are enrolled in or employed at institutions of higher education shall, in addition to other registration requirements, indicate on their registration ~~and~~, reregistration, *and verification* form the name and location of the institution attended by or employing the registrant whether such institution is within or without the

Commonwealth. In addition, persons required to register ~~or~~, reregister, *or verify their registration information* shall notify the local law-enforcement agency in person within three days of any change in their enrollment or employment status with an institution of higher education. The local law-enforcement agency shall forthwith forward to the State Police all necessary registration or reregistration information received by it.

B. Upon receipt of a registration ~~or~~, reregistration, *or verification of registration information* indicating enrollment or employment with an institution of higher education or notification of a change in status, the State Police shall notify the chief law-enforcement officer of the institution's law-enforcement agency or, if there is no institutional law-enforcement agency, the local law-enforcement agency serving that institution, of the registration, reregistration, *verification of registration information,* or change in status. The law-enforcement agency receiving notification under this section shall make such information available upon request.

C. For purposes of this section:

"Employment" includes full- or part-time, temporary or permanent or contractual employment at an institution of higher education either with or without compensation.

"Enrollment" includes both full- and part-time.

"Institution of higher education" means any postsecondary school, trade or professional institution, or institution of higher education.

§ 9.1-907. Procedures upon a failure to register, reregister, or verify registration information.

A. Whenever it appears from the records of the State Police that a person has failed to comply with the duty to register ~~or~~, reregister, *or verify his registration information,* the State Police shall promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person last registered ~~or~~, reregistered, *or verified his registration information* or, if the person failed to comply with the duty to register, in the jurisdiction in which the person was last convicted of an offense for which registration or reregistration is required or if the person was convicted of an offense requiring registration outside the Commonwealth, in the jurisdiction in which the person resides. The State Police shall forward to the jurisdiction an affidavit signed by a custodian of the records that such person failed to comply with the duty to register ~~or~~, reregister, *or verify his registration information*. If such affidavit is admitted into evidence, it shall constitute prima facie evidence of the failure to comply with the duty to register ~~or~~, reregister, *or verify his registration information* in any trial or hearing for the violation of § 18.2-472.1, provided that in a trial or hearing other than a preliminary hearing, the requirements of subsection G of § 18.2-472.1 have been satisfied and the accused has not objected to the admission of the affidavit pursuant to subsection H of § 18.2-472.1. The State Police shall also promptly notify the local law-enforcement agency of the jurisdiction of the person's last known residence as shown in the records of the State Police.

B. Nothing in this section shall prohibit a law-enforcement officer employed by a sheriff's office or police department of a locality from enforcing the provisions of this chapter, including obtaining a warrant, or assisting in obtaining an indictment for a violation of § 18.2-472.1. The local law-enforcement agency shall notify the State Police forthwith of such actions taken pursuant to this chapter or under the authority granted pursuant to this section.

C. The State Police shall physically verify or cause to be physically verified the registration information within 30 days of the initial registration and semiannually each year thereafter and within 30 days of a change of address of those persons who are not under the control of the Department of Corrections or community supervision as defined by § 53.1-1, who are required to register pursuant to this chapter. Whenever it appears that a person has provided false registration information, the State Police shall promptly investigate and, if there is probable cause to believe that a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person last registered ~~or~~, reregistered, *or verified his registration information.* The State Police shall forward to the jurisdiction an affidavit signed by a custodian of the records that such person failed to comply with the provisions of this chapter. If such affidavit is admitted into evidence, it shall constitute prima facie evidence of the failure to comply with the provisions of this chapter in any trial or hearing for the violation of § 18.2-472.1, provided that in a trial or hearing other than a preliminary hearing, the requirements of subsection G of § 18.2-472.1 have been satisfied and the accused has not objected to the admission of the affidavit pursuant to subsection H of § 18.2-472.1. The State Police shall also promptly notify the local law-enforcement agency of the jurisdiction of the person's last known residence as shown in the records of the State Police.

D. The Department of Corrections or community supervision as defined by § 53.1-1 shall physically verify or cause to be physically verified by the State Police the registration information within 30 days of the original registration and semiannually each year thereafter and within 30 days of a change of address of all persons who are under the control of the Department of Corrections or community supervision, and those who are under supervision pursuant to § 37.2-919, who are required to register pursuant to this chapter. The Department of Corrections or community supervision, upon request, shall provide the State Police the verification information, in an electronic format approved by the State

Police, regarding persons under their control who are required to register pursuant to the chapter. Whenever it appears that a person has provided false registration information, the Department of Corrections or community supervision shall promptly notify the State Police, who shall investigate and, if there is probable cause to believe that a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person last registered ~~or~~, reregistered, *or verified his registration information*. The State Police shall forward to the jurisdiction an affidavit signed by a custodian of the records that such person failed to comply with the provisions of this chapter. If such affidavit is admitted into evidence, it shall constitute prima facie evidence of the failure to comply with the provisions of this chapter in any trial or hearing for the violation of § 18.2-472.1, provided that in a trial or hearing other than a preliminary hearing, the requirements of subsection G of § 18.2-472.1 have been satisfied and the accused has not objected to the admission of the affidavit pursuant to subsection H of § 18.2-472.1. The State Police shall also promptly notify the local law-enforcement agency of the jurisdiction of the person's last known residence as shown in the records of the State Police.

§ 9.1-908. Duration of registration requirement.

Any person required to register ~~or~~, reregister, *or verify his registration information* shall be required to register until the duty to register ~~and~~, reregister, *or verify his registration information* is terminated by a court order as set forth in § 9.1-910, except that any person who has been convicted of (i) any ~~sexually violent~~ *Tier III* offense, (ii) murder or (iii) former § 18.2-67.2:1 shall have a continuing duty to reregister *or verify his registration information* for life.

Any period of confinement in a federal, state, or local correctional facility, hospital, or any other institution or facility during the otherwise applicable period shall toll the registration *or verification* period and the duty to reregister *or verify his registration information* shall be extended. Persons confined in a federal, state, or local correctional facility shall not be required to reregister *or verify his registration information* until released from custody. Persons civilly committed pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2 shall not be required to reregister *or verify his registration information* until released from custody. Persons confined in a federal, state, or local correctional facility or civilly committed pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2 shall notify the Registry within three days following any change of name.

§ 9.1-909. Relief from registration, reregistration, or verification.

A. Upon expiration of three years from the date upon which the duty to register as a ~~sexually violent~~ *Tier III* offender or murderer is imposed, the person required to register may petition the court in which he was convicted or, if the conviction occurred outside of the Commonwealth, the circuit court in the jurisdiction where he currently resides, for relief from the requirement to ~~reregister every 90 days~~ *verify his registration information four times each year at three-month intervals*. After five years from the date of his last conviction for a violation of § 18.2-472.1, a ~~sexually violent~~ *Tier III* offender or murderer may petition for relief from the requirement to ~~reregister monthly~~ *verify his registration information every month*. A person who is required to register may similarly petition the circuit court for relief from the requirement to ~~reregister every 180 days~~ *verify his registration twice each year* after five years from the date of his last conviction for a violation of § 18.2-472.1. The court shall hold a hearing on the petition, on notice to the attorney for the Commonwealth, to determine whether the person suffers from a mental abnormality or a personality disorder that makes the person a menace to the health and safety of others or significantly impairs his ability to control his sexual behavior. Prior to the hearing the court shall order a comprehensive assessment of the applicant by a panel of three certified sex offender treatment providers as defined in § 54.1-3600. A report of the assessment shall be filed with the court prior to the hearing. The costs of the assessment shall be taxed as costs of the proceeding.

If, after consideration of the report and such other evidence as may be presented at the hearing, the court finds by clear and convincing evidence that the person does not suffer from a mental abnormality or a personality disorder that makes the person a menace to the health and safety of others or significantly impairs his ability to control his sexual behavior, the petition shall be granted and the duty to ~~reregister~~ *verify his registration information* more frequently than once a year shall be terminated. The court shall promptly notify the State Police upon entry of an order granting the petition. The person shall, however, be under a continuing duty to register annually for life. If the petition is denied, the duty to ~~reregister~~ *verify his registration information* with the same frequency as before shall continue. An appeal from the denial of a petition shall lie to the Supreme Court.

A petition for relief pursuant to this subsection may not be filed within three years from the date on which any previous petition for such relief was denied.

B. The duly appointed guardian of a person convicted of an offense requiring registration ~~or~~, reregistration, *or verification of his registration information* as either a ~~sex offender, sexually violent~~ *Tier I, Tier II, or Tier III* offender or murderer, who due to a physical condition is incapable of (i) reoffending and (ii) reregistering *or verifying his registration information*, may petition the court in which the person was convicted for relief from the requirement to reregister *or verify his registration information*. The court shall hold a hearing on the petition, on notice to the attorney for the Commonwealth, to determine whether the person suffers from a physical condition that makes the

person (i) no longer a menace to the health and safety of others and (ii) incapable of reregistering *or verifying his registration information*. Prior to the hearing the court shall order a comprehensive assessment of the applicant by at least two licensed physicians other than the person's primary care physician. A report of the assessment shall be filed with the court prior to the hearing. The costs of the assessment shall be taxed as costs of the proceeding.

If, after consideration of the report and such other evidence as may be presented at the hearing, the court finds by clear and convincing evidence that due to his physical condition the person (i) no longer poses a menace to the health and safety of others and (ii) is incapable of reregistering *or verifying his registration information*, the petition shall be granted and the duty to reregister *or verify his registration information* shall be terminated. However, for a person whose duty to reregister *or verify his registration information* was terminated under this subsection, the Department of State Police shall, annually for ~~sex offenders~~ *Tier I or Tier II offenders* and quarterly for persons convicted of ~~sexually violent~~ *Tier III* offenses and murder, verify and report to the attorney for the Commonwealth in the jurisdiction in which the person resides that the person continues to suffer from the physical condition that resulted in such termination.

The court shall promptly notify the State Police upon entry of an order granting the petition to terminate the duty to reregister.

If the petition is denied, the duty to reregister shall continue. An appeal from the denial of a petition shall be to the Virginia Supreme Court.

A petition for relief pursuant to this subsection may not be filed within three years from the date on which any previous petition for such relief was denied.

If, at any time, the person's physical condition changes so that he is capable of reoffending ~~or~~, reregistering, *or verifying his registration information*, the attorney for the Commonwealth shall file a petition with the circuit court in the jurisdiction where the person resides and the court shall hold a hearing on the petition, with notice to the person and his guardian, to determine whether the person still suffers from a physical condition that makes the person (i) no longer a menace to the health and safety of others and (ii) incapable of reregistering *or verifying his registration information*. If the petition is granted, the duty to reregister shall commence from the date of the court's order. An appeal from the denial or granting of a petition shall be to the Virginia Supreme Court. Prior to the hearing the court shall order a comprehensive assessment of the applicant by at least two licensed physicians other than the person's primary care physician. A report of the assessment shall be filed with the court prior to the hearing. The costs of the assessment shall be taxed as costs of the proceeding.

§ 9.1-910. Removal of name and information from Registry.

A. Any person required to register, other than a person who has been convicted of any (i) ~~sexually violent~~ *Tier III* offense, (ii) two or more offenses for which registration is required, (iii) a violation of former § 18.2-67.2:1, or (iv) murder, may petition the circuit court in which he was convicted or the circuit court in the jurisdiction where he then resides for removal of his name and all identifying information from the Registry. A *person who is required to register for a single Tier I offense may* petition ~~may not be filed~~ *the court no* earlier than 15 years~~, or 25 years for violations of § 18.2-64.1, subsection C of § 18.2-374.1:1, or subsection C, D, or E of § 18.2-374.3, or of any similar offense under the laws of any foreign country or any political subdivision thereof or the United States or any political subdivision thereof, after~~ *from the later of* the date of initial registration ~~nor earlier than 15 years, or 25 years for violations of § 18.2-64.1, subsection C of § 18.2-374.1:1, or subsection C, D, or E of § 18.2-374.3, or of any similar offense under the laws of any foreign country or any political subdivision thereof or the United States or any political subdivision thereof, from~~ *or* the date of his last conviction for (a) a violation of § 18.2-472.1 or (b) any felony. *A person who is required to register for a single Tier II offense may petition the court no earlier than 25 years from the later of the date of initial registration or the date of his last conviction for (1) a violation of § 18.2-472.1 or (2) any felony.*

B. A petition may not be filed until all court ordered treatment, counseling, and restitution has been completed. The court shall obtain a copy of the petitioner's complete criminal history and registration ~~and~~, reregistration, *and verification of registration information* history from the Registry and then hold a hearing on the petition at which the applicant and any interested persons may present witnesses and other evidence. The Commonwealth shall be made a party to any action under this section. If, after such hearing, the court is satisfied that such person no longer poses a risk to public safety, the court shall grant the petition. In the event the petition is not granted, the person shall wait at least 24 months from the date of the denial to file a new petition for removal from the Registry.

~~B.~~ *C.* The State Police shall remove from the Registry the name of any person and all identifying information upon receipt of an order granting a petition pursuant to subsection ~~A~~ *B*.

§ 9.1-911. Registry maintenance.

The Registry shall include conviction data received from the courts, including the disposition records for juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, on convictions for offenses for which registration is required and registrations ~~and~~, reregistrations, *and verifications of registration information* received from persons required to do so. The Registry shall also include a separate indication that a person has been convicted of a ~~sexually violent~~ *Tier III* offense. The State

Police shall forthwith transmit the appropriate information as required by the Federal Bureau of Investigation for inclusion in the National Sex Offender Registry.

§ 9.1-912. Registry access and dissemination; fees.

A. Except as provided in § 9.1-913 and subsection B or C of this section, Registry information shall be disseminated upon request made directly to the State Police or to the State Police through a local law-enforcement agency. Such information may be disclosed to any person requesting information on a specific individual in accordance with subsection B. The State Police shall make Registry information available, upon request, to criminal justice agencies including local law-enforcement agencies through the Virginia Criminal Information Network (VCIN). Registry information provided under this section shall be used for the purposes of the administration of criminal justice, for the screening of current or prospective employees or volunteers or otherwise for the protection of the public in general and children in particular. The Superintendent of State Police may by regulation establish a fee not to exceed $15 for responding to requests for information from the Registry. Any fees collected shall be deposited in a special account to be used to offset the costs of administering the Registry.

B. Information regarding a specific person shall be disseminated upon receipt of an official request form that may be submitted directly to the State Police or to the State Police through a local law-enforcement agency. The official request form shall include a statement of the reason for the request; the name and address of the person requesting the information; the name, address and, if known, the social security number of the person about whom information is sought; and such other information as the State Police may require to ensure reliable identification.

C. Registry information regarding all registered offender's electronic mail address information, any instant message, chat or other Internet communication name or identity information may be electronically transmitted by the Department of State Police to a business or organization that offers electronic communication or remote computing services for the purpose of prescreening users or for comparison with information held by the requesting business or organization. In order to obtain the information from the Department of State Police, the requesting business or organization that offers electronic communication or remote computing services shall agree to notify the Department of State Police forthwith when a comparison indicates that any such registered ~~sex~~ offender's electronic mail address information, any instant message, chat or other Internet communication name or identity information is being used on their system. The requesting business or organization shall also agree that the information will not be further disseminated.

§ 9.1-913. Public dissemination by means of the Internet.

The State Police shall develop and maintain a system for making certain Registry information on persons convicted of an offense for which registration is required publicly available by means of the Internet. The information to be made available shall include the offender's name; all aliases that he has used or under which he may have been known; the date and locality of the conviction and a brief description of the offense; his age, current address, and photograph; his current work address; the name of any institution of higher education at which he is currently enrolled; and such other information as the State Police may from time to time determine is necessary to preserve public safety, including but not limited to the fact that an individual is wanted for failing to register ~~or~~, reregister, *or verify his registration information*. The system shall be secure and not capable of being altered except by the State Police. The system shall be updated each business day with newly received registrations ~~and~~, reregistrations *and verifications of registration information*. The State Police shall remove all information that it knows to be inaccurate from the Internet system.

§ 9.1-914. Automatic notification of registration to certain entities; electronic notification to requesting persons.

Any school, day-care service and child-minding service, state-regulated or state-licensed child day center, child day program, children's residential facility, family day home, assisted living facility or foster home as defined in § 63.2-100, nursing home or certified nursing facility as defined in § 32.1-123, association of a common interest community as defined in § 54.1-2345, and institution of higher education may request from the State Police and, upon compliance with the requirements therefor established by the State Police, shall be eligible to receive from the State Police electronic notice of the registration ~~or~~, reregistration, *or verification of registration information* of any ~~sex~~ offender and if such entities do not have the capability of receiving such electronic notice, the entity may register with the State Police to receive written notification of ~~sex~~ offender registration ~~or~~, reregistration, *or verification of registration information*. Within three business days of receipt by the State Police of registration ~~or~~, reregistration, *or verification of registration information*, the State Police shall electronically or in writing notify an entity listed above that has requested such notification, has complied with the requirements established by the State Police and is located in the same or a contiguous zip code area as the address of the offender as shown on the registration.

The Virginia Council for Private Education shall annually provide the State Police, in an electronic format approved by the State Police, with the location of every private school in the Commonwealth that is accredited through one of the approved accrediting agencies of the Council, and an electronic mail address for each school if available, for purposes of receiving notice under this section.

Any person may request from the State Police and, upon compliance with the requirements therefor established by the State Police, shall be eligible to receive from the State Police electronic notice of the registration ~~or~~, reregistration, *or verification of registration information* of any ~~sex~~ offender. Within three business days of receipt by the State Police of registration ~~or~~, reregistration, *or verification of registration information*, the State Police shall electronically notify a person who has requested such notification, has complied with the requirements established by the State Police and is located in the same or a contiguous zip code area as the address of the offender as shown on the registration.

The State Police shall establish reasonable guidelines governing the automatic dissemination of Registry information, which may include the payment of a fee, whether a one-time fee or a regular assessment, to maintain the electronic access. The fee, if any, shall defray the costs of establishing and maintaining the electronic notification system and notice by mail.

For the purposes of this section:

"Child-minding service" means provision of temporary custodial care or supervisory services for the minor child of another;

"Day-care service" means provision of supplementary care and protection during a part of the day for the minor child of another; and

"School" means any public, religious or private educational institution, including any preschool, elementary school, secondary school, post-secondary school, trade or professional institution, or institution of higher education.

§ 9.1-918. Misuse of registry or supplement information; penalty.

Use of registry information or information from the Supplement to the Registry established pursuant to § 9.1-923 for purposes not authorized by this chapter is prohibited, the unlawful use of the information contained in or derived from the Registry or Supplement for purposes of intimidating or harassing another is prohibited, and a willful violation of this chapter is a Class 1 misdemeanor. For purposes of this section, absent other aggravating circumstances, the mere republication or reasonable distribution of material contained on or derived from the publicly available Internet ~~sex~~ offender database shall not be deemed intimidation or harassment.

§ 15.2-2283.1. Prohibition of sexual offender treatment office in residentially zoned subdivision.

Notwithstanding any other provision of law, no individual shall knowingly provide sex offender treatment services to a ~~convicted~~ ~~sex~~ ~~offender~~ *person required to register with the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1* in an office or similar facility located in a residentially zoned subdivision.

§ 16.1-228. Definitions.

When used in this chapter, unless the context otherwise requires:

"Abused or neglected child" means any child:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child;

3. Whose parents or other person responsible for his care abandons such child;

4. Whose parents or other person responsible for his care commits or allows to be committed any sexual act upon a child in violation of the law;

5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian, or other person standing in loco parentis;

6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § 55.1-2000, with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a ~~violent~~ ~~sexual~~ *Tier III* offender pursuant to § 9.1-902; or

7. Who has been identified as a victim of sex trafficking or severe forms of trafficking as defined in the Trafficking Victims Protection Act of 2000, 22 U.S.C § 7102 et seq., and in the Justice for Victims of Trafficking Act of 2015, 42 U.S.C. § 5101 et seq.

If a civil proceeding under this chapter is based solely on the parent having left the child at a hospital or emergency medical services agency, it shall be an affirmative defense that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended emergency

medical services agency that employs emergency medical services personnel, within 14 days of the child's birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

"Adoptive home" means the place of residence of any natural person in which a child resides as a member of the household and in which he has been placed for the purposes of adoption or in which he has been legally adopted by another member of the household.

"Adult" means a person 18 years of age or older.

"Ancillary crime" or "ancillary charge" means any delinquent act committed by a juvenile as a part of the same act or transaction as, or which constitutes a part of a common scheme or plan with, a delinquent act which would be a felony if committed by an adult.

"Boot camp" means a short term secure or nonsecure juvenile residential facility with highly structured components including, but not limited to, military style drill and ceremony, physical labor, education and rigid discipline, and no less than six months of intensive aftercare.

"Child," "juvenile," or "minor" means a person less than 18 years of age.

"Child in need of services" means (i) a child whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of the child or (ii) a child under the age of 14 whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of another person; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be a child in need of services, nor shall any child who habitually remains away from or habitually deserts or abandons his family as a result of what the court or the local child protective services unit determines to be incidents of physical, emotional or sexual abuse in the home be considered a child in need of services for that reason alone.

However, to find that a child falls within these provisions, (i) the conduct complained of must present a clear and substantial danger to the child's life or health or to the life or health of another person, (ii) the child or his family is in need of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

"Child in need of supervision" means:

1. A child who, while subject to compulsory school attendance, is habitually and without justification absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of any and all educational services and programs that are required to be provided by law and which meet the child's particular educational needs, (ii) the school system from which the child is absent or other appropriate agency has made a reasonable effort to effect the child's regular attendance without success, and (iii) the school system has provided documentation that it has complied with the provisions of § 22.1-258; or

2. A child who, without reasonable cause and without the consent of his parent, lawful custodian or placement authority, remains away from or deserts or abandons his family or lawful custodian on more than one occasion or escapes or remains away without proper authority from a residential care facility in which he has been placed by the court, and (i) such conduct presents a clear and substantial danger to the child's life or health, (ii) the child or his family is in need of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

"Child welfare agency" means a child-placing agency, child-caring institution or independent foster home as defined in § 63.2-100.

"The court" or the "juvenile court" or the "juvenile and domestic relations court" means the juvenile and domestic relations district court of each county or city.

"Delinquent act" means (i) an act designated a crime under the law of the Commonwealth, or an ordinance of any city, county, town, or service district, or under federal law, (ii) a violation of § 18.2-308.7, or (iii) a violation of a court order as provided for in § 16.1-292, but shall not include an act other than a violation of § 18.2-308.7, which is otherwise lawful, but is designated a crime only if committed by a child. For purposes of §§ 16.1-241 and 16.1-278.9, the term shall include a refusal to take a breath test in violation of § 18.2-268.2 or a similar ordinance of any county, city, or town.

"Delinquent child" means a child who has committed a delinquent act or an adult who has committed a delinquent act prior to his 18th birthday, except where the jurisdiction of the juvenile court has been terminated under the provisions of § 16.1-269.6.

"Department" means the Department of Juvenile Justice and "Director" means the administrative head in charge thereof or such of his assistants and subordinates as are designated by him to discharge the duties imposed upon him under this law.

"Family abuse" means any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by a person against such person's family or household member. Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault in violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable

apprehension of death, sexual assault, or bodily injury.

"Family or household member" means (i) the person's spouse, whether or not he or she resides in the same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents and grandchildren, regardless of whether such persons reside in the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, (v) any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time, or (vi) any individual who cohabits or who, within the previous 12 months, cohabited with the person, and any children of either of them then residing in the same home with the person.

"Fictive kin" means persons who are not related to a child by blood or adoption but have an established relationship with the child or his family.

"Foster care services" means the provision of a full range of casework, treatment and community services for a planned period of time to a child who is abused or neglected as defined in § 63.2-100 or in need of services as defined in this section and his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between the local board of social services or a public agency designated by the community policy and management team and the parents or guardians where legal custody remains with the parents or guardians, (iii) has been committed or entrusted to a local board of social services or child welfare agency, or (iv) has been placed under the supervisory responsibility of the local board pursuant to § 16.1-293.

"Independent living arrangement" means placement of (i) a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency by the local board or licensed child-placing agency or (ii) a child at least 16 years of age or a person between the ages of 18 and 21 who was committed to the Department of Juvenile Justice immediately prior to placement by the Department of Juvenile Justice, in a living arrangement in which such child or person does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older and who has been committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. "Independent living services" may also mean services and activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached the age of 21 years; (ii) is between the ages of 18 and 21 and who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of a local board of social services; or (iii) is a child at least 16 years of age or a person between the ages of 18 and 21 who was committed to the Department of Juvenile Justice immediately prior to placement in an independent living arrangement. Such services shall include counseling, education, housing, employment, and money management skills development and access to essential documents and other appropriate services to help children or persons prepare for self-sufficiency.

"Intake officer" means a juvenile probation officer appointed as such pursuant to the authority of this chapter.

"Jail" or "other facility designed for the detention of adults" means a local or regional correctional facility as defined in § 53.1-1, except those facilities utilized on a temporary basis as a court holding cell for a child incident to a court hearing or as a temporary lock-up room or ward incident to the transfer of a child to a juvenile facility.

"The judge" means the judge or the substitute judge of the juvenile and domestic relations district court of each county or city.

"This law" or "the law" means the Juvenile and Domestic Relations District Court Law embraced in this chapter.

"Legal custody" means (i) a legal status created by court order which vests in a custodian the right to have physical custody of the child, to determine and redetermine where and with whom he shall live, the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal status created by court order of joint custody as defined in § 20-107.2.

"Permanent foster care placement" means the place of residence in which a child resides and in which he has been placed pursuant to the provisions of §§ 63.2-900 and 63.2-908 with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or 63.2-1517. A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

"Qualified individual" means a trained professional or licensed clinician who is not an employee of the local board of social services or licensed child-placing agency that placed the child in a qualified residential treatment program and is not affiliated with any placement setting in which children are

placed by such local board of social services or licensed child-placing agency.

"Qualified residential treatment program" means a program that (i) provides 24-hour residential placement services for children in foster care; (ii) has adopted a trauma-informed treatment model that meets the clinical and other needs of children with serious emotional or behavioral disorders, including any clinical or other needs identified through assessments conducted pursuant to clause (viii) of this definition; (iii) employs registered or licensed nursing and other clinical staff who provide care, on site and within the scope of their practice, and are available 24 hours a day, 7 days a week; (iv) conducts outreach with the child's family members, including efforts to maintain connections between the child and his siblings and other family; documents and maintains records of such outreach efforts; and maintains contact information for any known biological family and fictive kin of the child; (v) whenever appropriate and in the best interest of the child, facilitates participation by family members in the child's treatment program before and after discharge and documents the manner in which such participation is facilitated; (vi) provides discharge planning and family-based aftercare support for at least six months after discharge; (vii) is licensed in accordance with 42 U.S.C. § 671(a)(10) and accredited by an organization approved by the federal Secretary of Health and Human Services; and (viii) requires that any child placed in the program receive an assessment within 30 days of such placement by a qualified individual that (a) assesses the strengths and needs of the child using an age-appropriate, evidence-based, validated, and functional assessment tool approved by the Commissioner of Social Services; (b) identifies whether the needs of the child can be met through placement with a family member or in a foster home or, if not, in a placement setting authorized by 42 U.S.C. § 672(k)(2), including a qualified residential treatment program, that would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the short-term and long-term goals established for the child in his foster care or permanency plan; (c) establishes a list of short-term and long-term mental and behavioral health goals for the child; and (d) is documented in a written report to be filed with the court prior to any hearing on the child's placement pursuant to § 16.1-281, 16.1-282, 16.1-282.1, or 16.1-282.2.

"Residual parental rights and responsibilities" means all rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship of the person, including but not limited to the right of visitation, consent to adoption, the right to determine religious affiliation and the responsibility for support.

"Secure facility" or "detention home" means a local, regional or state public or private locked residential facility that has construction fixtures designed to prevent escape and to restrict the movement and activities of children held in lawful custody.

"Shelter care" means the temporary care of children in physically unrestricting facilities.

"State Board" means the State Board of Juvenile Justice.

"Status offender" means a child who commits an act prohibited by law which would not be criminal if committed by an adult.

"Status offense" means an act prohibited by law which would not be an offense if committed by an adult.

"Violent juvenile felony" means any of the delinquent acts enumerated in subsection B or C of § 16.1-269.1 when committed by a juvenile 14 years of age or older.

§ 18.2-348.1. Promoting travel for prostitution; penalty.

It is unlawful for any travel agent to knowingly promote travel services, as defined in § 59.1-445, for the purposes of prostitution or any act in violation of an offense set forth in subdivision ~~E~~ 1 of *the definition of Tier III offense as defined in* § 9.1-902, made punishable within the Commonwealth, whether committed within or without. Violation of this section shall constitute a separate and distinct offense, and any person violating this section is guilty of a Class 1 misdemeanor. Punishment for a violation of this section shall be separate and apart from any punishment received from any other offense. For the purposes of this section "travel agent" means any person who for a consideration consults with or advises persons concerning travel services in the course of his business.

§ 18.2-370.5. Offenses prohibiting entry onto school or other property; penalty.

A. Every adult who is convicted of a ~~sexually violent~~ *Tier III* offense, as defined in § 9.1-902, shall be prohibited from entering or being present (i) during school hours, and during school-related or school-sponsored activities upon any property he knows or has reason to know is a public or private elementary or secondary school or child day center property; (ii) on any school bus as defined in § 46.2-100; or (iii) upon any property, public or private, during hours when such property is solely being used by a public or private elementary or secondary school for a school-related or school-sponsored activity.

B. The provisions of clauses (i) and (iii) of subsection A shall not apply to such adult if (i) he is a lawfully registered and qualified voter, and is coming upon such property solely for purposes of casting his vote; (ii) he is a student enrolled at the school; or (iii) he has obtained a court order pursuant to subsection C allowing him to enter and be present upon such property, has obtained the permission of the school board or of the owner of the private school or child day center or their designee for entry within all or part of the scope of the lifted ban, and is in compliance with such school board's, school's

or center's terms and conditions and those of the court order.

C. Every adult who is prohibited from entering upon school or child day center property pursuant to subsection A may after notice to the attorney for the Commonwealth and either (i) the proprietor of the child day center, (ii) the Superintendent of Public Instruction and the chairman of the school board of the school division in which the school is located, or (iii) the chief administrator of the school if such school is not a public school, petition the circuit court in the county or city where the school or child day center is located for permission to enter such property. The court shall direct that the petitioner shall cause notice of the time and place of the hearing on his petition to be published once a week for two successive weeks in a newspaper meeting the requirements of § 8.01-324. The newspaper notice shall contain a provision stating that written comments regarding the petition may be submitted to the clerk of court at least five days prior to the hearing. For good cause shown, the court may issue an order permitting the petitioner to enter and be present on such property, subject to whatever restrictions of area, reasons for being present, or time limits the court deems appropriate.

D. A violation of this section is punishable as a Class 6 felony.

§ 18.2-472.1. Providing false information or failing to provide registration information; penalty; prima facie evidence.

A. Any person subject to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, other than a person convicted of a ~~sexually violent~~ *Tier III* offense or murder as defined in § 9.1-902, who knowingly fails to register ~~or~~, reregister, *or verify his registration information*, or who knowingly provides materially false information to the Sex Offender and Crimes Against Minors Registry is guilty of a Class 1 misdemeanor. A second or subsequent conviction for an offense under this subsection is a Class 6 felony.

B. Any person convicted of a ~~sexually violent~~ *Tier III* offense or murder, as defined in § 9.1-902, who knowingly fails to register ~~or~~, reregister, *or verify his registration information*, or who knowingly provides materially false information to the Sex Offender and Crimes Against Minors Registry is guilty of a Class 6 felony. A second or subsequent conviction for an offense under this subsection is a Class 5 felony.

C. A prosecution pursuant to this section shall be brought in the city or county where the offender can be found or where the offender last registered ~~or~~, reregistered, *or verified his registration information* or, if the offender failed to comply with the duty to register, where the offender was last convicted of an offense for which registration or reregistration is required.

D. At any preliminary hearing pursuant to this section, an affidavit from the State Police issued as required in § 9.1-907 shall be admitted into evidence as prima facie evidence of the failure to comply with the duty to register ~~or~~, reregister, *or verify his registration information*. A copy of such affidavit shall be provided to the registrant or his counsel seven days prior to hearing or trial by the attorney for the Commonwealth.

E. The accused in any preliminary hearing in which an affidavit from the State Police issued as required in § 9.1-907 is offered into evidence pursuant to this section shall have the right to summon and call a custodian of records issuing the affidavit and examine him in the same manner as if he had been called as an adverse witness. Such witness shall appear at the cost of the Commonwealth.

F. At any trial or hearing other than a preliminary hearing conducted pursuant to this section, an affidavit from the State Police issued as required in § 9.1-907 shall constitute prima facie evidence of the failure to comply with the duty to register ~~or~~, reregister, *or verify his registration information*, provided the requirements of subsection G have been satisfied and the accused has not objected to the admission of the affidavit pursuant to subsection H.

G. If the attorney for the Commonwealth intends to offer the affidavit into evidence in lieu of testimony at a trial or hearing, other than a preliminary hearing, he shall:

1. Provide by mail, delivery, or otherwise, a copy of the affidavit to counsel of record for the accused, or to the accused if he is proceeding pro se, at no charge, no later than 28 days prior to the hearing or trial;

2. Provide simultaneously with the copy of the affidavit so provided under subdivision 1 a notice to the accused of his right to object to having the affidavit admitted without the presence and testimony of a custodian of the records; and

3. File a copy of the affidavit and notice with the clerk of the court hearing the matter on the day that the affidavit and notice are provided to the accused.

H. In any trial or hearing, other than a preliminary hearing, the accused may object in writing to admission of the affidavit, in lieu of testimony, as evidence of the facts stated therein. Such objection shall be filed with the court hearing the matter, with a copy to the attorney for the Commonwealth, no more than 14 days after the affidavit and notice were filed with the clerk by the attorney for the Commonwealth, or the objection shall be deemed waived. If timely objection is made, the affidavit shall not be admissible into evidence unless (i) the objection is waived by the accused or his counsel in writing or before the court, or (ii) the parties stipulate before the court to the admissibility of the affidavit.

I. Where a custodian of the records is not available for hearing or trial and the attorney for the Commonwealth has used due diligence to secure the presence of the person, the court shall order a

continuance. Any continuances ordered pursuant to this subsection shall total not more than 90 days if the accused has been held continuously in custody and not more than 180 days if the accused has not been held continuously in custody.

J. Any objection by counsel for the accused, or the accused if he is proceeding pro se, to timeliness of the receipt of notice required by subsection G shall be made before hearing or trial upon his receipt of actual notice unless the accused did not receive actual notice prior to hearing or trial. A showing by the Commonwealth that the notice was mailed, delivered, or otherwise provided in compliance with the time requirements of this section shall constitute prima facie evidence that the notice was timely received by the accused. If the court finds upon the accused's objection made pursuant to this subsection, that he did not receive timely notice pursuant to subsection G, the accused's objection shall not be deemed waived and if the objection is made prior to hearing or trial, a continuance shall be ordered if requested by either party. Any continuance ordered pursuant to this subsection shall be subject to the time limitations set forth in subsection I.

K. For the purposes of this section any conviction for a substantially similar offense under the laws of (i) any foreign country or any political subdivision thereof, or (ii) any state or territory of the United States or any political subdivision thereof, the District of Columbia, or the United States shall be considered a prior conviction.

§ 22.1-79. Powers and duties.

A school board shall:

1. See that the school laws are properly explained, enforced and observed;

2. Secure, by visitation or otherwise, as full information as possible about the conduct of the public schools in the school division and take care that they are conducted according to law and with the utmost efficiency;

3. Care for, manage and control the property of the school division and provide for the erecting, furnishing, equipping, and noninstructional operating of necessary school buildings and appurtenances and the maintenance thereof by purchase, lease, or other contracts;

4. Provide for the consolidation of schools or redistricting of school boundaries or adopt pupil assignment plans whenever such procedure will contribute to the efficiency of the school division;

5. Insofar as not inconsistent with state statutes and regulations of the Board of Education, operate and maintain the public schools in the school division and determine the length of the school term, the studies to be pursued, the methods of teaching and the government to be employed in the schools;

6. In instances in which no grievance procedure has been adopted prior to January 1, 1991, establish and administer by July 1, 1992, a grievance procedure for all school board employees, except the division superintendent and those employees covered under the provisions of Article 2 (§ 22.1-293 et seq.) and Article 3 (§ 22.1-306 et seq.) of Chapter 15 of this title, who have completed such probationary period as may be required by the school board, not to exceed 18 months. The grievance procedure shall afford a timely and fair method of the resolution of disputes arising between the school board and such employees regarding dismissal or other disciplinary actions, excluding suspensions, and shall be consistent with the provisions of the Board of Education's procedures for adjusting grievances. Except in the case of dismissal, suspension, or other disciplinary action, the grievance procedure prescribed by the Board of Education pursuant to § 22.1-308 shall apply to all full-time employees of a school board, except supervisory employees;

7. Perform such other duties as shall be prescribed by the Board of Education or as are imposed by law;

8. Obtain public comment through a public hearing not less than 10 days after reasonable notice to the public in a newspaper of general circulation in the school division prior to providing (i) for the consolidation of schools; (ii) the transfer from the public school system of the administration of all instructional services for any public school classroom or all noninstructional services in the school division pursuant to a contract with any private entity or organization; or (iii) in school divisions having 15,000 pupils or more in average daily membership, for redistricting of school boundaries or adopting any pupil assignment plan affecting the assignment of 15 percent or more of the pupils in average daily membership in the affected school. Such public hearing may be held at the same time and place as the meeting of the school board at which the proposed action is taken if the public hearing is held before the action is taken. If a public hearing has been held prior to the effective date of this provision on a proposed consolidation, redistricting or pupil assignment plan which is to be implemented after the effective date of this provision, an additional public hearing shall not be required;

9. (Expires July 1, 2025) At least annually, survey the school division to identify critical shortages of teachers and administrative personnel by subject matter, and report such critical shortages to the Superintendent of Public Instruction and to the Virginia Retirement System; however, the school board may request the division superintendent to conduct such survey and submit such report to the school board, the Superintendent, and the Virginia Retirement System; and

10. Ensure that the public schools within the school division are registered with the Department of State Police to receive from the State Police electronic notice of the registration ~~or~~, reregistration, *or verification of registration information* of any ~~sex offender~~ *person required to register with the Sex*

Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1 within that school division pursuant to § 9.1-914.

§ 23.1-407. Reporting of enrollment information to Sex Offender and Crimes Against Minors Registry.

A. Each associate-degree-granting and baccalaureate (i) public institution of higher education and (ii) private institution of higher education shall electronically transmit the complete name, social security number or other identifying number, date of birth, and gender of each applicant accepted to attend the institution to the Department of State Police, in a format approved by the Department of State Police, for comparison with information contained in the Virginia Criminal Information Network and National Crime Information Center Sex Offender Registry File. Such data shall be transmitted (a) before an accepted applicant becomes a student in attendance pursuant to 20 U.S.C. § 1232g(a)(6) or (b) in the case of institutions with a rolling or instantaneous admissions policy, in accordance with guidelines developed by the Department of State Police in consultation with the Council.

B. Whenever it appears from the records of the Department of State Police that an accepted applicant has failed to comply with the duty to register ~~or~~, reregister, *or verify his registration information* pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, the Department of State Police shall promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the institution of higher education is located.

§ 32.1-127. Regulations.

A. The regulations promulgated by the Board to carry out the provisions of this article shall be in substantial conformity to the standards of health, hygiene, sanitation, construction and safety as established and recognized by medical and health care professionals and by specialists in matters of public health and safety, including health and safety standards established under provisions of Title XVIII and Title XIX of the Social Security Act, and to the provisions of Article 2 (§ 32.1-138 et seq.).

B. Such regulations:

1. Shall include minimum standards for (i) the construction and maintenance of hospitals, nursing homes and certified nursing facilities to ensure the environmental protection and the life safety of its patients, employees, and the public; (ii) the operation, staffing and equipping of hospitals, nursing homes and certified nursing facilities; (iii) qualifications and training of staff of hospitals, nursing homes and certified nursing facilities, except those professionals licensed or certified by the Department of Health Professions; (iv) conditions under which a hospital or nursing home may provide medical and nursing services to patients in their places of residence; and (v) policies related to infection prevention, disaster preparedness, and facility security of hospitals, nursing homes, and certified nursing facilities. For purposes of this paragraph, facilities in which five or more first trimester abortions per month are performed shall be classified as a category of "hospital";

2. Shall provide that at least one physician who is licensed to practice medicine in this Commonwealth shall be on call at all times, though not necessarily physically present on the premises, at each hospital which operates or holds itself out as operating an emergency service;

3. May classify hospitals and nursing homes by type of specialty or service and may provide for licensing hospitals and nursing homes by bed capacity and by type of specialty or service;

4. Shall also require that each hospital establish a protocol for organ donation, in compliance with federal law and the regulations of the Centers for Medicare and Medicaid Services (CMS), particularly 42 C.F.R. § 482.45. Each hospital shall have an agreement with an organ procurement organization designated in CMS regulations for routine contact, whereby the provider's designated organ procurement organization certified by CMS (i) is notified in a timely manner of all deaths or imminent deaths of patients in the hospital and (ii) is authorized to determine the suitability of the decedent or patient for organ donation and, in the absence of a similar arrangement with any eye bank or tissue bank in Virginia certified by the Eye Bank Association of America or the American Association of Tissue Banks, the suitability for tissue and eye donation. The hospital shall also have an agreement with at least one tissue bank and at least one eye bank to cooperate in the retrieval, processing, preservation, storage, and distribution of tissues and eyes to ensure that all usable tissues and eyes are obtained from potential donors and to avoid interference with organ procurement. The protocol shall ensure that the hospital collaborates with the designated organ procurement organization to inform the family of each potential donor of the option to donate organs, tissues, or eyes or to decline to donate. The individual making contact with the family shall have completed a course in the methodology for approaching potential donor families and requesting organ or tissue donation that (a) is offered or approved by the organ procurement organization and designed in conjunction with the tissue and eye bank community and (b) encourages discretion and sensitivity according to the specific circumstances, views, and beliefs of the relevant family. In addition, the hospital shall work cooperatively with the designated organ procurement organization in educating the staff responsible for contacting the organ procurement organization's personnel on donation issues, the proper review of death records to improve identification of potential donors, and the proper procedures for maintaining potential donors while necessary testing and placement of potential donated organs, tissues, and eyes takes place. This process shall be followed,

without exception, unless the family of the relevant decedent or patient has expressed opposition to organ donation, the chief administrative officer of the hospital or his designee knows of such opposition, and no donor card or other relevant document, such as an advance directive, can be found;

5. Shall require that each hospital that provides obstetrical services establish a protocol for admission or transfer of any pregnant woman who presents herself while in labor;

6. Shall also require that each licensed hospital develop and implement a protocol requiring written discharge plans for identified, substance-abusing, postpartum women and their infants. The protocol shall require that the discharge plan be discussed with the patient and that appropriate referrals for the mother and the infant be made and documented. Appropriate referrals may include, but need not be limited to, treatment services, comprehensive early intervention services for infants and toddlers with disabilities and their families pursuant to Part H of the Individuals with Disabilities Education Act, 20 U.S.C. § 1471 et seq., and family-oriented prevention services. The discharge planning process shall involve, to the extent possible, the father of the infant and any members of the patient's extended family who may participate in the follow-up care for the mother and the infant. Immediately upon identification, pursuant to § 54.1-2403.1, of any substance-abusing, postpartum woman, the hospital shall notify, subject to federal law restrictions, the community services board of the jurisdiction in which the woman resides to appoint a discharge plan manager. The community services board shall implement and manage the discharge plan;

7. Shall require that each nursing home and certified nursing facility fully disclose to the applicant for admission the home's or facility's admissions policies, including any preferences given;

8. Shall require that each licensed hospital establish a protocol relating to the rights and responsibilities of patients which shall include a process reasonably designed to inform patients of such rights and responsibilities. Such rights and responsibilities of patients, a copy of which shall be given to patients on admission, shall be consistent with applicable federal law and regulations of the Centers for Medicare and Medicaid Services;

9. Shall establish standards and maintain a process for designation of levels or categories of care in neonatal services according to an applicable national or state-developed evaluation system. Such standards may be differentiated for various levels or categories of care and may include, but need not be limited to, requirements for staffing credentials, staff/patient ratios, equipment, and medical protocols;

10. Shall require that each nursing home and certified nursing facility train all employees who are mandated to report adult abuse, neglect, or exploitation pursuant to § 63.2-1606 on such reporting procedures and the consequences for failing to make a required report;

11. Shall permit hospital personnel, as designated in medical staff bylaws, rules and regulations, or hospital policies and procedures, to accept emergency telephone and other verbal orders for medication or treatment for hospital patients from physicians, and other persons lawfully authorized by state statute to give patient orders, subject to a requirement that such verbal order be signed, within a reasonable period of time not to exceed 72 hours as specified in the hospital's medical staff bylaws, rules and regulations or hospital policies and procedures, by the person giving the order, or, when such person is not available within the period of time specified, co-signed by another physician or other person authorized to give the order;

12. Shall require, unless the vaccination is medically contraindicated or the resident declines the offer of the vaccination, that each certified nursing facility and nursing home provide or arrange for the administration to its residents of (i) an annual vaccination against influenza and (ii) a pneumococcal vaccination, in accordance with the most recent recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention;

13. Shall require that each nursing home and certified nursing facility register with the Department of State Police to receive notice of the registration ~~or~~, reregistration, *or verification of registration information* of any ~~sex offender~~ *person required to register with the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1* within the same or a contiguous zip code area in which the home or facility is located, pursuant to § 9.1-914;

14. Shall require that each nursing home and certified nursing facility ascertain, prior to admission, whether a potential patient is ~~a registered sex offender~~ *required to register with the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1*, if the home or facility anticipates the potential patient will have a length of stay greater than three days or in fact stays longer than three days;

15. Shall require that each licensed hospital include in its visitation policy a provision allowing each adult patient to receive visits from any individual from whom the patient desires to receive visits, subject to other restrictions contained in the visitation policy including, but not limited to, those related to the patient's medical condition and the number of visitors permitted in the patient's room simultaneously;

16. Shall require that each nursing home and certified nursing facility shall, upon the request of the facility's family council, send notices and information about the family council mutually developed by the family council and the administration of the nursing home or certified nursing facility, and provided to the facility for such purpose, to the listed responsible party or a contact person of the resident's

choice up to six times per year. Such notices may be included together with a monthly billing statement or other regular communication. Notices and information shall also be posted in a designated location within the nursing home or certified nursing facility. No family member of a resident or other resident representative shall be restricted from participating in meetings in the facility with the families or resident representatives of other residents in the facility;

17. Shall require that each nursing home and certified nursing facility maintain liability insurance coverage in a minimum amount of $1 million, and professional liability coverage in an amount at least equal to the recovery limit set forth in § 8.01-581.15, to compensate patients or individuals for injuries and losses resulting from the negligent or criminal acts of the facility. Failure to maintain such minimum insurance shall result in revocation of the facility's license;

18. Shall require each hospital that provides obstetrical services to establish policies to follow when a stillbirth, as defined in § 32.1-69.1, occurs that meet the guidelines pertaining to counseling patients and their families and other aspects of managing stillbirths as may be specified by the Board in its regulations;

19. Shall require each nursing home to provide a full refund of any unexpended patient funds on deposit with the facility following the discharge or death of a patient, other than entrance-related fees paid to a continuing care provider as defined in § 38.2-4900, within 30 days of a written request for such funds by the discharged patient or, in the case of the death of a patient, the person administering the person's estate in accordance with the Virginia Small Estates Act (§ 64.2-600 et seq.);

20. Shall require that each hospital that provides inpatient psychiatric services establish a protocol that requires, for any refusal to admit (i) a medically stable patient referred to its psychiatric unit, direct verbal communication between the on-call physician in the psychiatric unit and the referring physician, if requested by such referring physician, and prohibits on-call physicians or other hospital staff from refusing a request for such direct verbal communication by a referring physician and (ii) a patient for whom there is a question regarding the medical stability or medical appropriateness of admission for inpatient psychiatric services due to a situation involving results of a toxicology screening, the on-call physician in the psychiatric unit to which the patient is sought to be transferred to participate in direct verbal communication, either in person or via telephone, with a clinical toxicologist or other person who is a Certified Specialist in Poison Information employed by a poison control center that is accredited by the American Association of Poison Control Centers to review the results of the toxicology screen and determine whether a medical reason for refusing admission to the psychiatric unit related to the results of the toxicology screen exists, if requested by the referring physician;

21. Shall require that each hospital that is equipped to provide life-sustaining treatment shall develop a policy governing determination of the medical and ethical appropriateness of proposed medical care, which shall include (i) a process for obtaining a second opinion regarding the medical and ethical appropriateness of proposed medical care in cases in which a physician has determined proposed care to be medically or ethically inappropriate; (ii) provisions for review of the determination that proposed medical care is medically or ethically inappropriate by an interdisciplinary medical review committee and a determination by the interdisciplinary medical review committee regarding the medical and ethical appropriateness of the proposed health care; and (iii) requirements for a written explanation of the decision reached by the interdisciplinary medical review committee, which shall be included in the patient's medical record. Such policy shall ensure that the patient, his agent, or the person authorized to make medical decisions pursuant to § 54.1-2986 (a) are informed of the patient's right to obtain his medical record and to obtain an independent medical opinion and (b) afforded reasonable opportunity to participate in the medical review committee meeting. Nothing in such policy shall prevent the patient, his agent, or the person authorized to make medical decisions pursuant to § 54.1-2986 from obtaining legal counsel to represent the patient or from seeking other remedies available at law, including seeking court review, provided that the patient, his agent, or the person authorized to make medical decisions pursuant to § 54.1-2986, or legal counsel provides written notice to the chief executive officer of the hospital within 14 days of the date on which the physician's determination that proposed medical treatment is medically or ethically inappropriate is documented in the patient's medical record;

22. Shall require every hospital with an emergency department to establish protocols to ensure that security personnel of the emergency department, if any, receive training appropriate to the populations served by the emergency department, which may include training based on a trauma-informed approach in identifying and safely addressing situations involving patients or other persons who pose a risk of harm to themselves or others due to mental illness or substance abuse or who are experiencing a mental health crisis;

23. Shall require that each hospital establish a protocol requiring that, before a health care provider arranges for air medical transportation services for a patient who does not have an emergency medical condition as defined in 42 U.S.C. § 1395dd(e)(1), the hospital shall provide the patient or his authorized representative with written or electronic notice that the patient (i) may have a choice of transportation by an air medical transportation provider or medically appropriate ground transportation by an emergency medical services provider and (ii) will be responsible for charges incurred for such transportation in the event that the provider is not a contracted network provider of the patient's health insurance carrier or

such charges are not otherwise covered in full or in part by the patient's health insurance plan; and

24. Shall establish an exemption, for a period of no more than 30 days, from the requirement to obtain a license to add temporary beds in an existing hospital or nursing home when the Commissioner has determined that a natural or man-made disaster has caused the evacuation of a hospital or nursing home and that a public health emergency exists due to a shortage of hospital or nursing home beds.

C. Upon obtaining the appropriate license, if applicable, licensed hospitals, nursing homes, and certified nursing facilities may operate adult day care centers.

D. All facilities licensed by the Board pursuant to this article which provide treatment or care for hemophiliacs and, in the course of such treatment, stock clotting factors, shall maintain records of all lot numbers or other unique identifiers for such clotting factors in order that, in the event the lot is found to be contaminated with an infectious agent, those hemophiliacs who have received units of this contaminated clotting factor may be apprised of this contamination. Facilities which have identified a lot which is known to be contaminated shall notify the recipient's attending physician and request that he notify the recipient of the contamination. If the physician is unavailable, the facility shall notify by mail, return receipt requested, each recipient who received treatment from a known contaminated lot at the individual's last known address.

§ 46.2-116. Registration with Department of Criminal Justice Services required for tow truck drivers; penalty.

A. As used in this section and §§ 46.2-117, 46.2-118, and 46.2-119:

"Consumer" means a person who (i) has vested ownership, dominion, or title to the vehicle; (ii) is the authorized agent of the owner as defined in clause (i); or (iii) is an employee, agent, or representative of an insurance company representing any party involved in a collision that resulted in a police-requested tow who represents in writing that the insurance company had obtained the oral or written consent of the title owner or his agent or the lessee of the vehicle to obtain possession of the vehicle.

"Department" means the Department of Criminal Justice Services.

"Tow truck driver" means an individual who drives a tow truck as defined in § 46.2-100.

"Towing and recovery operator" means any person engaging in the business of providing or offering to provide services involving the use of a tow truck and services incidental to use of a tow truck. "Towing and recovery operator" shall not include a franchised motor vehicle dealer as defined in § 46.2-1500 using a tow truck owned by a dealer when transporting a vehicle to or from a repair facility owned by the dealer when the dealer does not receive compensation from the vehicle owner for towing of the vehicle or when transporting a vehicle in which the dealer has an ownership or security interest.

B. On and after January 1, 2013, no tow truck driver shall drive any tow truck without being registered with the Department, except that this requirement shall not apply to any holder of a tow truck driver authorization document issued pursuant to former § 46.2-2814 until the expiration date of such document. The Department may offer a temporary registration or driver authorization document that is effective upon the submission of an application and that expires upon the issuance or denial of a permanent registration. Every applicant for an initial registration or renewal of registration pursuant to this section shall submit his registration application, fingerprints, and personal descriptive information to the Department and a nonrefundable application fee of $100. The Department shall forward the personal descriptive information along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining a national criminal history record check regarding such applicant. The cost of the fingerprinting and criminal history record check shall be paid by the applicant.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall make a report to the Department. If an applicant is denied registration as a tow truck driver because of the information appearing in his criminal history record, the Department shall notify the applicant that information obtained from the Central Criminal Records Exchange contributed to such denial. The information shall not be disseminated except as provided in this section.

C. No registration shall be issued to any person who (i) is required to register ~~as a sex offender as provided in § 9.1-901~~ *with the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1* or in a substantially similar law of any other state, the United States, or any foreign jurisdiction; (ii) has been convicted of a violent crime as defined in subsection C of § 17.1-805 unless such person held a valid tow truck driver authorization document on January 1, 2013, issued by the Board of Towing and Recovery Operators pursuant to former Chapter 28 (§ 46.2-2800 et seq.), and has not been convicted of a violent crime as defined in subsection C of § 17.1-805 subsequent to the abolition of the Board; or (iii) has been convicted of any crime involving the driving of a tow truck, including drug or alcohol offenses, but not traffic infraction convictions. Any person registered pursuant to this section shall report to the Department within 10 days of conviction any convictions for felonies or misdemeanors that occur while he is registered with the Department.

D. Any tow truck driver failing to register with the Department as required by this section is guilty of a Class 3 misdemeanor. A tow truck driver registered with the Department shall have such registration in his possession whenever driving a tow truck on the highways.

E. Registrations issued by the Department pursuant to this section shall be valid for a period not to exceed 24 months, unless revoked or suspended by the Department in accordance with § 46.2-117.

§ 46.2-117. Revocation and suspension of registration of tow truck driver; notice and hearing; assessment of costs.

A. Upon receipt of written notice from the Division of Consumer Counsel of the Office of the Attorney General that it has obtained a civil judgment against a tow truck driver for a violation of subsection A of § 46.2-118 or § 46.2-1217, 46.2-1231, or 46.2-1233.1 or upon the failure of a tow truck driver to report to the Department within 10 days any conviction for a felony or misdemeanor that occurred while he is registered in accordance with § 46.2-116, the Department may revoke or suspend the registration of a tow truck driver after notice and hearing as provided in subsection C.

B. Furthermore, the Department shall, after notice and hearing as provided in subsection C, revoke or suspend the registration of a tow truck driver for:

1. Conviction of any crime for which a person must register ~~as a sex offender as provided in § 9.1-901~~ *with the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1* or in a substantially similar law of any other state, the United States, or any foreign jurisdiction;

2. Conviction of a violent crime as defined in subsection C of § 17.1-805; or

3. Conviction of any crime involving the driving of a tow truck, including drug or alcohol offenses, but not traffic infraction convictions.

C. Before suspending or revoking any registration, reasonable notice of such proposed action shall be given to the tow truck driver by the Department in accordance with the provisions of § 2.2-4020 of the Administrative Process Act. In suspending or revoking the registration of a tow truck driver, the Department may assess the tow truck driver the cost of conducting the hearing unless the Department determines that the violation was inadvertent or done in a good faith belief that such act did not violate a statute. Any costs assessed by the Department shall be limited to (i) the reasonable hourly rate of the hearing officer and (ii) the actual cost of recording the hearing.

§ 46.2-118. Prohibited acts by tow truck drivers and towing and recovery operators.

A. No tow truck driver shall:

1. Use fraud or deceit in the offering or delivering of towing and recovery services;

2. Conduct his business or offer services in such a manner as to endanger the health and welfare of the public;

3. Use alcohol or drugs to the extent such use renders him unsafe to provide towing and recovery services;

4. Obtain any fee by fraud or misrepresentation;

5. Remove or tow a trespassing vehicle, as provided in § 46.2-1231, or a vehicle towed or removed at the request of a law-enforcement officer to any location outside the Commonwealth; or

6. Violate, or assist, induce, or cooperate with others to violate, any provision of law related to the offering or delivery of towing and recovery services.

B. No towing and recovery operator shall:

1. Use fraud or deceit in the offering or delivering of towing and recovery services;

2. Conduct his business or offer services in such a manner as to endanger the health and welfare of the public;

3. Use alcohol or drugs to the extent such use renders him unsafe to provide towing and recovery services;

4. Neglect to maintain on record at the towing and recovery operator's principal office a list of all drivers employed by the towing and recovery operator;

5. Obtain any fee by fraud or misrepresentation;

6. Advertise services in any manner that deceives, misleads, or defrauds the public;

7. Advertise or offer services under a name other than one's own name;

8. Fail to accept for payment cash, insurance company check, certified check, money order, or at least one of two commonly used, nationally recognized credit cards, except those towing and recovery operators who have an annual gross income of less than $10,000 derived from the performance of towing and recovery services shall not be required to accept credit cards, other than when providing police-requested towing as defined in § 46.2-1217, but shall be required to accept personal checks;

9. Fail to display at the towing and recovery operator's principal office in a conspicuous place a listing of all towing, recovery, and processing fees for vehicles;

10. Fail to have readily available at the towing and recovery operator's principal office, at the customer's request, the maximum fees normally charged by the towing and recovery operator for basic services for towing and initial hookup of vehicles;

11. Knowingly charge excessive fees for towing, storage, or administrative services or charge fees for services not rendered;

12. Fail to maintain all towing records, which shall include itemized fees, for a period of one year from the date of service;

13. Willfully invoice payment for any services not stipulated or otherwise incorporated in a contract

for services rendered between the towing and recovery operator and any locality or political subdivision of the Commonwealth;

14. Employ a driver required to register ~~as a sex offender as provided in § 9.1-901~~ *with the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1*;

15. Remove or tow a trespassing vehicle, as provided in § 46.2-1231, or a vehicle towed or removed at the request of a law-enforcement officer to any location outside the Commonwealth;

16. Refuse, at the towing and recovery operator's place of business, to make change, up to $100, for the owner of the vehicle towed without the owner's consent if the owner pays in cash for charges for towing and storage of the vehicle;

17. Violate, or assist, induce, or cooperate with others to violate, any provision of law related to the offering or delivery of towing and recovery services; or

18. Fail to provide the owner of a stolen vehicle written notice of his right under law to be reimbursed for towing and storage of his vehicle out of the state treasury from the appropriation for criminal charges as required in § 46.2-1209.

C. No tow truck driver as defined in § 46.2-116 or towing and recovery operator as defined in § 46.2-100 shall knowingly permit another person to occupy a motor vehicle as defined in § 46.2-100 while such motor vehicle is being towed.

§ 46.2-323. Application for driver's license; proof of completion of driver education program; penalty.

A. Every application for a driver's license, temporary driver's permit, learner's permit, or motorcycle learner's permit shall be made on a form prescribed by the Department and the applicant shall write his usual signature in ink in the space provided on the form. The form shall include notice to the applicant of the duty to register with the Department of State Police as provided in Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, if the applicant has been convicted of an offense for which registration with the Sex Offender and Crimes Against Minors Registry is required.

B. Every application shall state the full legal name, year, month, and date of birth, social security number, sex, and residence address of the applicant; whether or not the applicant has previously been licensed as a driver and, if so, when and by what state, and whether or not his license has ever been suspended or revoked and, if so, the date of and reason for such suspension or revocation. The Department, as a condition for the issuance of any driver's license, temporary driver's permit, learner's permit, or motorcycle learner's permit shall require the surrender of any driver's license or, in the case of a motorcycle learner's permit, a motorcycle license issued by another state and held by the applicant. The applicant shall also answer any questions on the application form or otherwise propounded by the Department incidental to the examination. The applicant may also be required to present proof of identity, residency, and social security number or non-work authorized status, if required to appear in person before the Department to apply.

The Commissioner shall require that each application include a certification statement to be signed by the applicant under penalty of perjury, certifying that the information presented on the application is true and correct.

If the applicant fails or refuses to sign the certification statement, the Department shall not issue the applicant a driver's license, temporary driver's permit, learner's permit or motorcycle learner's permit.

Any applicant who knowingly makes a false certification or supplies false or fictitious evidence shall be punished as provided in § 46.2-348.

C. Every application for a driver's license shall include a photograph of the applicant supplied under arrangements made by the Department. The photograph shall be processed by the Department so that the photograph can be made part of the issued license.

D. Notwithstanding the provisions of § 46.2-334, every applicant for a driver's license who is under 18 years of age shall furnish the Department with satisfactory proof of his successful completion of a driver education program approved by the State Department of Education.

E. Every application for a driver's license submitted by a person less than 18 years old and attending a public school in the Commonwealth shall be accompanied by a document, signed by the applicant's parent or legal guardian, authorizing the principal, or his designee, of the school attended by the applicant to notify the juvenile and domestic relations district court within whose jurisdiction the minor resides when the applicant has had 10 or more unexcused absences from school on consecutive school days.

F. The Department shall electronically transmit application information to the Department of State Police, in a format approved by the State Police, for comparison with information contained in the Virginia Criminal Information Network and National Crime Information Center Convicted Sexual Offender Registry Files, at the time of issuance of a driver's license, temporary driver's permit, learner's permit, or motorcycle learner's permit. Whenever it appears from the records of the State Police that a person has failed to comply with the duty to register ~~or~~, reregister, *or verify his registration information* pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, the State Police shall promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person made application

of licensure.

§ 46.2-324. Applicants and license holders to notify Department of change of address; fee.

A. Whenever any person, after applying for or obtaining a driver's license or special identification card shall move from the address shown in the application or on the license or special identification card, he shall, within 30 days, notify the Department of his change of address. If the Department receives notification from the person or any court or law-enforcement agency that a person's residential address has changed to a non-Virginia address, unless the person (i) is on active duty with the armed forces of the United States, (ii) provides proof that he is a U.S. citizen and resides outside the United States because of his employment or the employment of a spouse or parent, or (iii) provides proof satisfactory to the Commissioner that he is a bona fide resident of Virginia, the Department shall (i) mail, by first-class mail, no later than three days after the notice of address change is received by the Department, notice to the person that his license and/or special identification card will be cancelled by the Department and (ii) cancel the driver's license and/or special identification card 30 days after notice of cancellation has been mailed.

B. The Department may contract with the United States Postal Service or an authorized agent to use the National Change of Address System for the purpose of obtaining current address information for a person whose name appears in customer records maintained by the Department. If the Department receives information from the National Change of Address System indicating that a person whose name appears in a Department record has submitted a permanent change of address to the Postal Service, the Department may then update its records with the mailing address obtained from the National Change of Address System.

C. There may be imposed upon anyone failing to notify the Department of his change of address as required by this section a fee of $5, which fee shall be used to defray the expenses incurred by the Department. Notwithstanding the foregoing provision of this subsection, no fee shall be imposed on any person whose address is obtained from the National Change of Address System.

D. The Department shall electronically transmit change of address information to the Department of State Police, in a format approved by the State Police, for comparison with information contained in the Virginia Criminal Information Network and National Crime Information Center Convicted Sexual Offender Registry Files, at the time of the change of address. Whenever it appears from the records of the State Police that a person has failed to comply with the duty to register ~~or~~, reregister, *or verify his registration information* pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, the State Police shall promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person last registered ~~or~~, reregistered, *or verified his registration information* or in the jurisdiction where the person made application for change of address.

E. For any summons issued for a violation of this section, the court may, in its discretion, dismiss the summons, where proof of compliance with this section is provided to the court on or before the court date.

§ 46.2-330. Expiration and renewal of licenses; examinations required.

A. Every driver's license shall expire on the applicant's birthday at the end of the period of years for which a driver's license has been issued. At no time shall any driver's license be issued for more than eight years or less than five years, unless otherwise provided by law. Thereafter the driver's license shall be renewed on or before the birthday of the licensee and shall be valid for a period not to exceed eight years except as otherwise provided by law. Any driver's license issued to a person age 75 or older shall be issued for a period not to exceed five years. Notwithstanding these limitations, the Commissioner may extend the validity period of an expiring license if (i) the Department is unable to process an application for renewal due to circumstances beyond its control, (ii) the extension has been authorized under a directive from the Governor, and (iii) the license was not issued as a temporary driver's license under the provisions of subsection B of § 46.2-328.1. However, in no event shall the validity period be extended more than 90 days per occurrence of such conditions. In determining the number of years for which a driver's license shall be renewed, the Commissioner shall take into consideration the examinations, conditions, requirements, and other criteria provided under this title that relate to the issuance of a license to operate a vehicle. Any driver's license issued to a person required to register pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1 shall expire on the applicant's birthday in years which the applicant attains an age equally divisible by five.

B. Within one year prior to the date shown on the driver's license as the date of expiration, the Department shall send notice, to the holder thereof, at the address shown on the records of the Department in its driver's license file, that his license will expire on a date specified therein, whether he must be reexamined, and when he may be reexamined. Nonreceipt of the notice shall not extend the period of validity of the driver's license beyond its expiration date. The license holder may request the Department to send such renewal notice to an email or other electronic address, upon provision of such address to the Department.

Any driver's license may be renewed by application after the applicant has taken and successfully completed those parts of the examination provided for in §§ 46.2-311, 46.2-325, and the Virginia

Commercial Driver's License Act (§ 46.2-341.1 et seq.), including vision and written tests, other than the parts of the examination requiring the applicant to drive a motor vehicle. All drivers applying in person for renewal of a license shall take and successfully complete the examination each renewal year. Every applicant for a renewal shall appear in person before the Department, unless specifically notified by the Department that renewal may be accomplished in another manner as provided in the notice. Applicants who are required to appear in person before the Department to apply for a renewal may also be required to present proof of identity, legal presence, residency, and social security number or non-work authorized status.

C. Notwithstanding any other provision of this section, the Commissioner, in his discretion, may require any applicant for renewal to be fully examined as provided in §§ 46.2-311 and 46.2-325 and the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). Furthermore, if the applicant is less than 75 years old, the Commissioner may waive the vision examination for any applicant for renewal of a driver's license that is not a commercial driver's license and the requirement for the taking of the written test as provided in subsection B of this section, § 46.2-325, and the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). However, in no case shall there be any waiver of the vision examination for applicants for renewal of a commercial driver's license or of the knowledge test required by the Virginia Commercial Driver's License Act for the hazardous materials endorsement on a commercial driver's license. No driver's license or learner's permit issued to any person who is 75 years old or older shall be renewed unless the applicant for renewal appears in person and either (i) passes a vision examination or (ii) presents a report of a vision examination, made within 90 days prior thereto by an ophthalmologist or optometrist, indicating that the applicant's vision meets or exceeds the standards contained in § 46.2-311.

D. Every applicant for renewal of a driver's license, whether renewal shall or shall not be dependent on any examination of the applicant, shall appear in person before the Department to apply for renewal, unless specifically notified by the Department that renewal may be accomplished in another manner as provided in the notice.

E. This section shall not modify the provisions of § 46.2-221.2.

F. 1. The Department shall electronically transmit application information, including a photograph, to the Department of State Police, in a format approved by the State Police, for comparison with information contained in the Virginia Criminal Information Network and National Crime Information Center Convicted Sexual Offender Registry files, at the time of the renewal of a driver's license. Whenever it appears from the records of the State Police that a person has failed to comply with the duty to register ~~or~~, reregister, *or verify his registration information* pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, the State Police shall promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person last registered ~~or~~, reregistered, *or verified his registration information* or in the jurisdiction where the person made application for licensure. The Department of State Police shall electronically transmit to the Department, in a format approved by the Department, for each person required to register pursuant to Chapter 9 of Title 9.1, registry information consisting of the person's name, all aliases that he has used or under which he may have been known, his date of birth, and his social security number as set out in § 9.1-903.

2. For each person required to register pursuant to Chapter 9 of Title 9.1, the Department may not waive the requirement that each such person shall appear for each renewal or the requirement to obtain a photograph in accordance with subsection C of § 46.2-323.

§ 46.2-345. Issuance of special identification cards; fee; confidentiality; penalties.

A. On the application of any person who is a resident of the Commonwealth or the parent or legal guardian of any such person who is under the age of 15, the Department shall issue a special identification card to the person, provided that:

1. Application is made on a form prescribed by the Department and includes the applicant's full legal name; year, month, and date of birth; social security number; sex; and residence address;

2. The applicant presents, when required by the Department, proof of identity, legal presence, residency, and social security number or non-work authorized status;

3. The Department is satisfied that the applicant needs an identification card or the applicant shows he has a bona fide need for such a card; and

4. The applicant does not hold a driver's license, commercial driver's license, temporary driver's permit, learner's permit, motorcycle learner's permit, or special identification card without a photograph.

Persons 70 years of age or older may exchange a valid Virginia driver's license for a special identification card at no fee. Special identification cards subsequently issued to such persons shall be subject to the regular fees for special identification cards.

B. The fee for the issuance of an original, duplicate, reissue, or renewal special identification card is $2 per year, with a $10 minimum fee. Persons 21 years old or older may be issued a scenic special identification card for an additional fee of $5.

C. Every special identification card shall expire on the applicant's birthday at the end of the period of years for which a special identification card has been issued. At no time shall any special identification

card be issued for less than three nor more than eight years, except under the provisions of subsection B of § 46.2-328.1 and except that those cards issued to children under the age of 15 shall expire on the child's sixteenth birthday. Notwithstanding these limitations, the Commissioner may extend the validity period of an expiring card if (i) the Department is unable to process an application for renewal due to circumstances beyond its control, (ii) the extension has been authorized under a directive from the Governor, and (iii) the card was not issued as a temporary special identification card under the provisions of subsection B of § 46.2-328.1. However, in no event shall the validity period be extended more than 90 days per occurrence of such conditions. Any special identification card issued to a person required to register pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1 shall expire on the applicant's birthday in years which the applicant attains an age equally divisible by five. For each person required to register pursuant to Chapter 9 of Title 9.1, the Department may not waive the requirement that each such person shall appear for each renewal or the requirement to obtain a photograph in accordance with subsection C of § 46.2-323.

D. A special identification card issued under this section may be similar in size, shape, and design to a driver's license, and include a photograph of its holder, but the card shall be readily distinguishable from a driver's license and shall clearly state that it does not authorize the person to whom it is issued to drive a motor vehicle. Every applicant for a special identification card shall appear in person before the Department to apply for a renewal, duplicate or reissue unless specifically permitted by the Department to apply in another manner.

E. Special identification cards, for persons at least 15 years old but less than 21 years old, shall be immediately and readily distinguishable from those issued to persons 21 years old or older. Distinguishing characteristics shall include unique design elements of the document and descriptors within the photograph area to identify persons who are at least 15 years old but less than 21 years old. These descriptors shall include the month, day, and year when the person will become 21 years old.

F. Special identification cards for persons under age 15 shall bear a full face photograph. The special identification card issued to persons under age 15 shall be readily distinguishable from a driver's license and from other special identification cards issued by the Department. Such cards shall clearly indicate that it does not authorize the person to whom it is issued to drive a motor vehicle.

G. Unless otherwise prohibited by law, a valid Virginia driver's license shall be surrendered upon application for a special identification card without the applicant's having to present proof of legal presence as required by § 46.2-328.1 if the Virginia driver's license is unexpired and it has not been revoked, suspended, or cancelled. The special identification card shall be considered a reissue and the expiration date shall be the last day of the month of the surrendered driver's license's month of expiration.

H. Any personal information, as identified in § 2.2-3801, which is retained by the Department from an application for the issuance of a special identification card is confidential and shall not be divulged to any person, association, corporation, or organization, public or private, except to the legal guardian or the attorney of the applicant or to a person, association, corporation, or organization nominated in writing by the applicant, his legal guardian, or his attorney. This subsection shall not prevent the Department from furnishing the application or any information thereon to any law-enforcement agency.

I. Any person who uses a false or fictitious name or gives a false or fictitious address in any application for an identification card or knowingly makes a false statement or conceals a material fact or otherwise commits a fraud in any such application shall be guilty of a Class 2 misdemeanor. However, where the name or address is given, or false statement is made, or fact is concealed, or fraud committed, with the intent to purchase a firearm or where the identification card is obtained for the purpose of committing any offense punishable as a felony, a violation of this section shall constitute a Class 4 felony.

J. The Department shall utilize the various communications media throughout the Commonwealth to inform Virginia residents of the provisions of this section and to promote and encourage the public to take advantage of its provisions.

K. The Department shall electronically transmit application information to the Department of State Police, in a format approved by the State Police, for comparison with information contained in the Virginia Criminal Information Network and National Crime Information Center Convicted Sexual Offender Registry Files, at the time of issuance of a special identification card. Whenever it appears from the records of the State Police that a person has failed to comply with the duty to register ~~or~~, reregister, *or verify his registration information* pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, the State Police shall promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person made application for the special identification card.

L. When requested by the applicant, the applicant's parent if the applicant is a minor, or the applicant's guardian, and upon presentation of a signed statement by a licensed physician confirming the applicant's condition, the Department shall indicate on the applicant's special identification card that the applicant has any condition listed in subsection K of § 46.2-342 or that the applicant is blind or vision impaired.

§ 46.2-2011.33. Prohibition on taxicab operators; registered sex offender.

No person who is required to register with the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1 for a ~~sexually violent~~ *Tier III* offense, as defined in ~~subsection E of~~ § 9.1-902, or who is listed on the U.S. Department of Justice's National Sex Offender Public Website for an offense that is similar to a ~~sexually violent~~ *Tier III* offense may operate a taxicab for the transportation of passengers for remuneration over the highways of the Commonwealth.

§ 63.2-100. Definitions.

As used in this title, unless the context requires a different meaning:

"Abused or neglected child" means any child less than 18 years of age:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health. However, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child. Further, a decision by parents who have legal authority for the child or, in the absence of parents with legal authority for the child, any person with legal authority for the child, who refuses a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such decision is made jointly by the parents or other person with legal authority and the child; (ii) the child has reached 14 years of age and is sufficiently mature to have an informed opinion on the subject of his medical treatment; (iii) the parents or other person with legal authority and the child have considered alternative treatment options; and (iv) the parents or other person with legal authority and the child believe in good faith that such decision is in the child's best interest. Nothing in this subdivision shall be construed to limit the provisions of § 16.1-278.4;

3. Whose parents or other person responsible for his care abandons such child;

4. Whose parents or other person responsible for his care commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law;

5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco parentis;

6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § 55.1-2000, with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a ~~violent sexual~~ *Tier III* offender pursuant to § 9.1-902; or

7. Who has been identified as a victim of sex trafficking or severe forms of trafficking as defined in the Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7102 et seq., and in the Justice for Victims of Trafficking Act of 2015, 42 U.S.C. § 5101 et seq.

If a civil proceeding under this title is based solely on the parent having left the child at a hospital or emergency medical services agency, it shall be an affirmative defense that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended emergency medical services agency that employs emergency medical services providers, within 14 days of the child's birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

"Adoptive home" means any family home selected and approved by a parent, local board or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult as defined in § 63.2-1603.

"Adult day care center" means any facility that is either operated for profit or that desires licensure and that provides supplementary care and protection during only a part of the day to four or more aged, infirm or disabled adults who reside elsewhere, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, and (ii) the home or residence of an individual who cares for only persons related to him by blood or marriage. Included in this definition are any two or more places, establishments or institutions owned, operated or controlled by a single entity and providing such supplementary care and protection to a combined total of four or more aged, infirm or disabled adults.

"Adult exploitation" means the illegal, unauthorized, improper, or fraudulent use of an adult as defined in § 63.2-1603 or his funds, property, benefits, resources, or other assets for another's profit, benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives the adult of his rightful use of or access to such funds, property, benefits, resources, or other assets. "Adult exploitation" includes (i) an intentional breach of a fiduciary obligation to an adult to his detriment or an intentional failure to use the financial resources of an adult in a manner that results in neglect of such adult; (ii) the acquisition, possession, or control of an adult's financial resources or property through the use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for goods or services or perform services against his will for another's profit, benefit, or advantage if the adult did not agree, or was tricked, misled, or defrauded into agreeing, to pay for such goods or services or to perform such services.

"Adult foster care" means room and board, supervision, and special services to an adult who has a physical or mental condition. Adult foster care may be provided by a single provider for up to three adults.

"Adult neglect" means that an adult as defined in § 63.2-1603 is living under such circumstances that he is not able to provide for himself or is not being provided services necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being. However, no adult shall be considered neglected solely on the basis that such adult is receiving religious nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such treatment or care is performed in good faith and in accordance with the religious practices of the adult and there is a written or oral expression of consent by that adult.

"Adult protective services" means services provided by the local department that are necessary to protect an adult as defined in § 63.2-1603 from abuse, neglect or exploitation.

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least a moderate level of assistance with activities of daily living.

"Assisted living facility" means any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214, when such facility is licensed by the Department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.), but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual.

"Auxiliary grants" means cash payments made to certain aged, blind or disabled individuals who receive benefits under Title XVI of the Social Security Act, as amended, or would be eligible to receive these benefits except for excess income.

"Birth family" or "birth sibling" means the child's biological family or biological sibling.

"Birth parent" means the child's biological parent and, for purposes of adoptive placement, means parent(s) by previous adoption.

"Board" means the State Board of Social Services.

"Child" means any natural person under 18 years of age.

"Child day center" means a child day program offered to (i) two or more children under the age of 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more children at any location.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

"Child-placing agency" means (i) any person who places children in foster homes, adoptive homes or independent living arrangements pursuant to § 63.2-1819, (ii) a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221, or (iii) an entity that assists parents with the process of delegating parental and legal custodial powers of their children pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20. "Child-placing agency" does not include the persons to whom such parental or legal custodial powers are delegated pursuant to Chapter 10 (§ 20-166 et seq.) of Title

20. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child-protective services" means the identification, receipt and immediate response to complaints and reports of alleged child abuse or neglect for children under 18 years of age. It also includes assessment, and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child support services" means any civil, criminal or administrative action taken by the Division of Child Support Enforcement to locate parents; establish paternity; and establish, modify, enforce, or collect child support, or child and spousal support.

"Child-welfare agency" means a child day center, child-placing agency, children's residential facility, family day home, family day system, or independent foster home.

"Children's residential facility" means any facility, child-caring institution, or group home that is maintained for the purpose of receiving children separated from their parents or guardians for full-time care, maintenance, protection and guidance, or for the purpose of providing independent living services to persons between 18 and 21 years of age who are in the process of transitioning out of foster care. Children's residential facility shall not include:

1. A licensed or accredited educational institution whose pupils, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than two months of summer vacation;

2. An establishment required to be licensed as a summer camp by § 35.1-18; and

3. A licensed or accredited hospital legally maintained as such.

"Commissioner" means the Commissioner of the Department, his designee or authorized representative.

"Department" means the State Department of Social Services.

"Department of Health and Human Services" means the Department of Health and Human Services of the United States government or any department or agency thereof that may hereafter be designated as the agency to administer the Social Security Act, as amended.

"Disposable income" means that part of the income due and payable of any individual remaining after the deduction of any amount required by law to be withheld.

"Energy assistance" means benefits to assist low-income households with their home heating and cooling needs, including, but not limited to, purchase of materials or substances used for home heating, repair or replacement of heating equipment, emergency intervention in no-heat situations, purchase or repair of cooling equipment, and payment of electric bills to operate cooling equipment, in accordance with § 63.2-805, or provided under the Virginia Energy Assistance Program established pursuant to the Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35), as amended.

"Family and permanency team" means the group of individuals assembled by the local department to assist with determining planning and placement options for a child, which shall include, as appropriate, all biological relatives and fictive kin of the child, as well as any professionals who have served as a resource to the child or his family, such as teachers, medical or mental health providers, and clergy members. In the case of a child who is 14 years of age or older, the family and permanency team shall also include any members of the child's case planning team that were selected by the child in accordance with subsection A of § 16.1-281.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. The provider of a licensed or registered family day home shall disclose to the parents or guardians of children in their care the percentage of time per week that persons other than the provider will care for the children. Family day homes serving five through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all related to the provider by blood or marriage shall not be required to be licensed.

"Family day system" means any person who approves family day homes as members of its system; who refers children to available family day homes in that system; and who, through contractual arrangement, may provide central administrative functions including, but not limited to, training of operators of member homes; technical assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.

"Fictive kin" means persons who are not related to a child by blood or adoption but have an established relationship with the child or his family.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board where legal custody remains with the parents or guardians or (ii) an

entrustment or commitment of the child to the local board or licensed child-placing agency. "Foster care placement" does not include placement of a child in accordance with a power of attorney pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20.

"Foster home" means a residence licensed by a child-placing agency or local board in which any child, other than a child by birth or adoption of such person or a child who is the subject of a power of attorney to delegate parental or legal custodial powers by his parents or legal custodian to the natural person who has been designated the child's legal guardian pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20 and who exercises legal authority over the child on a continuous basis for at least 24 hours without compensation, resides as a member of the household.

"General relief" means money payments and other forms of relief made to those persons mentioned in § 63.2-802 in accordance with the regulations of the Board and reimbursable in accordance with § 63.2-401.

"Independent foster home" means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed therein independently of a child-placing agency except (i) a home in which are received only children related by birth or adoption of the person who maintains such home and children of personal friends of such person; (ii) a home in which is received a child or children committed under the provisions of subdivision A 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision A 13 of § 16.1-278.8; and (iii) a home in which are received only children who are the subject of a properly executed power of attorney pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20.

"Independent living" means a planned program of services designed to assist a child age 16 and over and persons who are former foster care children or were formerly committed to the Department of Juvenile Justice and are between the ages of 18 and 21 in transitioning to self-sufficiency.

"Independent living arrangement" means placement of (i) a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency by the local board or licensed child-placing agency or (ii) a child at least 16 years of age or a person between the ages of 18 and 21 who was committed to the Department of Juvenile Justice immediately prior to placement by the Department of Juvenile Justice, in a living arrangement in which such child or person does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older who was committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. "Independent living services" may also mean services and activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached the age of 21 years; (ii) is between the ages of 18 and 21 and who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of a local board of social services; or (iii) is a child at least 16 years of age or a person between the ages of 18 and 21 who was committed to the Department of Juvenile Justice immediately prior to placement in an independent living arrangement. Such services shall include counseling, education, housing, employment, and money management skills development, access to essential documents, and other appropriate services to help children or persons prepare for self-sufficiency.

"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the residence.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care placement or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

"Kinship care" means the full-time care, nurturing, and protection of children by relatives.

"Kinship guardian" means the adult relative of a child in a kinship guardianship established in accordance with § 63.2-1305 who has been awarded custody of the child by the court after acting as the child's foster parent.

"Kinship guardianship" means a relationship established in accordance with § 63.2-1305 between a child and an adult relative of the child who has formerly acted as the child's foster parent that is intended to be permanent and self-sustaining as evidenced by the transfer by the court to the adult relative of the child of the authority necessary to ensure the protection, education, care and control, and custody of the child and the authority for decision making for the child.

"Kinship Guardianship Assistance program" means a program consistent with 42 U.S.C. § 673 that provides, subject to a kinship guardianship assistance agreement developed in accordance with § 63.2-1305, payments to eligible individuals who have received custody of a relative child of whom

they had been the foster parents.

"Local board" means the local board of social services representing one or more counties or cities.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Local director" means the director or his designated representative of the local department of the city or county.

"Merit system plan" means those regulations adopted by the Board in the development and operation of a system of personnel administration meeting requirements of the federal Office of Personnel Management.

"Parental placement" means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Public assistance" means Temporary Assistance for Needy Families (TANF); auxiliary grants to the aged, blind and disabled; medical assistance; energy assistance; food stamps; employment services; child care; and general relief.

"Qualified assessor" means an entity contracting with the Department of Medical Assistance Services to perform nursing facility pre-admission screening or to complete the uniform assessment instrument for a home and community-based waiver program, including an independent physician contracting with the Department of Medical Assistance Services to complete the uniform assessment instrument for residents of assisted living facilities, or any hospital that has contracted with the Department of Medical Assistance Services to perform nursing facility pre-admission screenings.

"Qualified individual" means a trained professional or licensed clinician who is not an employee of the local board of social services or licensed child-placing agency that placed the child in a qualified residential treatment program and is not affiliated with any placement setting in which children are placed by such local board of social services or licensed child-placing agency.

"Qualified residential treatment program" means a program that (i) provides 24-hour residential placement services for children in foster care; (ii) has adopted a trauma-informed treatment model that meets the clinical and other needs of children with serious emotional or behavioral disorders, including any clinical or other needs identified through assessments conducted pursuant to clause (viii) of this definition; (iii) employs registered or licensed nursing and other clinical staff who provide care, on site and within the scope of their practice, and are available 24 hours a day, 7 days a week; (iv) conducts outreach with the child's family members, including efforts to maintain connections between the child and his siblings and other family; documents and maintains records of such outreach efforts; and maintains contact information for any known biological family and fictive kin of the child; (v) whenever appropriate and in the best interest of the child, facilitates participation by family members in the child's treatment program before and after discharge and documents the manner in which such participation is facilitated; (vi) provides discharge planning and family-based aftercare support for at least six months after discharge; (vii) is licensed in accordance with 42 U.S.C. § 671(a)(10) and accredited by an organization approved by the federal Secretary of Health and Human Services; and (viii) requires that any child placed in the program receive an assessment within 30 days of such placement by a qualified individual that (a) assesses the strengths and needs of the child using an age-appropriate, evidence-based, validated, and functional assessment tool approved by the Commissioner of Social Services; (b) identifies whether the needs of the child can be met through placement with a family member or in a foster home or, if not, in a placement setting authorized by 42 U.S.C. § 672(k)(2), including a qualified residential treatment program, that would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the short-term and long-term goals established for the child in his foster care or permanency plan; (c) establishes a list of short-term and long-term mental and behavioral health goals for the child; and (d) is documented in a written report to be filed with the court prior to any hearing on the child's placement pursuant to § 16.1-281, 16.1-282, 16.1-282.1, or 16.1-282.2.

"Registered family day home" means any family day home that has met the standards for voluntary registration for such homes pursuant to regulations adopted by the Board and that has obtained a certificate of registration from the Commissioner.

"Residential living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. The definition of "residential living care" includes the services provided by independent living facilities that voluntarily become licensed.

"Sibling" means each of two or more children having one or more parents in common.

"Social services" means foster care, adoption, adoption assistance, child-protective services, domestic violence services, or any other services program implemented in accordance with regulations adopted by the Board. Social services also includes adult services pursuant to Article 4 (§ 51.5-144 et seq.) of Chapter 14 of Title 51.5 and adult protective services pursuant to Article 5 (§ 51.5-148) of Chapter 14 of Title 51.5 provided by local departments of social services in accordance with regulations and under the supervision of the Commissioner for Aging and Rehabilitative Services.

"Special order" means an order imposing an administrative sanction issued to any party licensed

pursuant to this title by the Commissioner that has a stated duration of not more than 12 months. A special order shall be considered a case decision as defined in § 2.2-4001.

"Temporary Assistance for Needy Families" or "TANF" means the program administered by the Department through which a relative can receive monthly cash assistance for the support of his eligible children.

"Temporary Assistance for Needy Families-Unemployed Parent" or "TANF-UP" means the Temporary Assistance for Needy Families program for families in which both natural or adoptive parents of a child reside in the home and neither parent is exempt from Virginia Initiative for Education and Work (VIEW) participation under § 63.2-609.

"Title IV-E Foster Care" means a federal program authorized under §§ 472 and 473 of the Social Security Act, as amended, and administered by the Department through which foster care is provided on behalf of qualifying children.

§ 63.2-1205.1. Certain offenders prohibited from adopting a child.

No petition for adoption shall be granted if the person seeking to adopt has been convicted of ~~a sexually violent offense or~~ an offense requiring registration pursuant to § 9.1-902.

§ 63.2-1503. Local departments to establish child-protective services; duties.

A. Each local department shall establish child-protective services under a departmental coordinator within such department or with one or more adjacent local departments that shall be staffed with qualified personnel pursuant to regulations adopted by the Board. The local department shall be the public agency responsible for receiving and responding to complaints and reports, except that (i) in cases where the reports or complaints are to be made to the court and the judge determines that no local department within a reasonable geographic distance can impartially respond to the report, the court shall assign the report to the court services unit for evaluation; and (ii) in cases where an employee at a private or state-operated hospital, institution or other facility, or an employee of a school board is suspected of abusing or neglecting a child in such hospital, institution or other facility, or public school, the local department shall request the Department and the relevant private or state-operated hospital, institution or other facility, or school board to assist in conducting a joint investigation in accordance with regulations adopted by the Board, in consultation with the Departments of Education, Health, Medical Assistance Services, Behavioral Health and Developmental Services, Juvenile Justice and Corrections.

B. The local department shall ensure, through its own personnel or through cooperative arrangements with other local agencies, the capability of receiving reports or complaints and responding to them promptly on a 24-hours-a-day, seven-days-per-week basis.

C. The local department shall widely publicize a telephone number for receiving complaints and reports.

D. The local department shall notify the local attorney for the Commonwealth and the local law-enforcement agency of all complaints of suspected child abuse or neglect involving (i) any death of a child; (ii) any injury or threatened injury to the child in which a felony or Class 1 misdemeanor is also suspected; (iii) any sexual abuse, suspected sexual abuse or other sexual offense involving a child, including but not limited to the use or display of the child in sexually explicit visual material, as defined in § 18.2-374.1; (iv) any abduction of a child; (v) any felony or Class 1 misdemeanor drug offense involving a child; or (vi) contributing to the delinquency of a minor in violation of § 18.2-371, immediately, but in no case more than two hours of receipt of the complaint, and shall provide the attorney for the Commonwealth and the local law-enforcement agency with records and information of the local department, including records related to any complaints of abuse or neglect involving the victim or the alleged perpetrator, related to the investigation of the complaint. The local department shall notify the local attorney for the Commonwealth of all complaints of suspected child abuse or neglect involving the child's being left alone in the same dwelling with a person to whom the child is not related by blood or marriage and who has been convicted of an offense against a minor for which registration is required as a ~~violent sexual~~ *Tier III* offender pursuant to § 9.1-902, immediately, but in no case more than two hours of receipt of the complaint, and shall provide the attorney for the Commonwealth with records and information of the local department that would help determine whether a violation of post-release conditions, probation, parole, or court order has occurred due to the nonrelative ~~sexual~~ offender's contact with the child. The local department shall not allow reports of the death of the victim from other local agencies to substitute for direct reports to the attorney for the Commonwealth and the local law-enforcement agency. The local department shall develop, when practicable, memoranda of understanding for responding to reports of child abuse and neglect with local law enforcement and the attorney for the Commonwealth.

In each case in which the local department notifies the local law-enforcement agency of a complaint pursuant to this subsection, the local department shall, within two business days of delivery of the notification, complete a written report, on a form provided by the Board for such purpose, which shall include (a) the name of the representative of the local department providing notice required by this subsection; (b) the name of the local law-enforcement officer who received such notice; (c) the date and time that notification was made; (d) the identity of the victim; (e) the identity of the person alleged to

have abused or neglected the child, if known; (f) the clause or clauses in this subsection that describe the reasons for the notification; and (g) the signatures, which may be electronic signatures, of the representatives of the local department making the notification and the local law-enforcement officer receiving the notification. Such report shall be included in the record of the investigation and may be submitted either in writing or electronically.

E. When abuse or neglect is suspected in any case involving the death of a child, the local department shall report the case immediately to the regional medical examiner and the local law-enforcement agency.

F. The local department shall use reasonable diligence to locate (i) any child for whom a report of suspected abuse or neglect has been received and is under investigation, receiving family assessment, or for whom a founded determination of abuse and neglect has been made and a child-protective services case opened and (ii) persons who are the subject of a report that is under investigation or receiving family assessment, if the whereabouts of the child or such persons are unknown to the local department.

G. When an abused or neglected child and the persons who are the subject of an open child-protective services case have relocated out of the jurisdiction of the local department, the local department shall notify the child-protective services agency in the jurisdiction to which such persons have relocated, whether inside or outside of the Commonwealth, and forward to such agency relevant portions of the case record. The receiving local department shall arrange protective and rehabilitative services as required by this section.

H. When a child for whom a report of suspected abuse or neglect has been received and is under investigation or receiving family assessment and the child and the child's parents or other persons responsible for the child's care who are the subject of the report that is under investigation or family assessment have relocated out of the jurisdiction of the local department, the local department shall notify the child-protective services agency in the jurisdiction to which the child and such persons have relocated, whether inside or outside of the Commonwealth, and complete such investigation or family assessment by requesting such agency's assistance in completing the investigation or family assessment. The local department that completes the investigation or family assessment shall forward to the receiving agency relevant portions of the case record in order for the receiving agency to arrange protective and rehabilitative services as required by this section.

I. Upon receipt of a report of child abuse or neglect, the local department shall determine the validity of such report and shall make a determination to conduct an investigation pursuant to § 63.2-1505 or, if designated as a child-protective services differential response agency by the Department according to § 63.2-1504, a family assessment pursuant to § 63.2-1506.

J. The local department shall foster, when practicable, the creation, maintenance and coordination of hospital and community-based multidisciplinary teams that shall include where possible, but not be limited to, members of the medical, mental health, social work, nursing, education, legal and law-enforcement professions. Such teams shall assist the local departments in identifying abused and neglected children; coordinating medical, social, and legal services for the children and their families; developing innovative programs for detection and prevention of child abuse; promoting community concern and action in the area of child abuse and neglect; and disseminating information to the general public with respect to the problem of child abuse and neglect and the facilities and prevention and treatment methods available to combat child abuse and neglect. These teams may be the family assessment and planning teams established pursuant to § 2.2-5207. Multidisciplinary teams may develop agreements regarding the exchange of information among the parties for the purposes of the investigation and disposition of complaints of child abuse and neglect, delivery of services and child protection. Any information exchanged in accordance with the agreement shall not be considered to be a violation of the provisions of § 63.2-102, 63.2-104, or 63.2-105.

The local department shall also coordinate its efforts in the provision of these services for abused and neglected children with the judge and staff of the court.

K. The local department may develop multidisciplinary teams to provide consultation to the local department during the investigation of selected cases involving child abuse or neglect, and to make recommendations regarding the prosecution of such cases. These teams may include, but are not limited to, members of the medical, mental health, legal and law-enforcement professions, including the attorney for the Commonwealth or his designee; a local child-protective services representative; and the guardian ad litem or other court-appointed advocate for the child. Any information exchanged for the purpose of such consultation shall not be considered a violation of § 63.2-102, 63.2-104, or 63.2-105.

L. The local department shall report annually on its activities concerning abused and neglected children to the court and to the Child-Protective Services Unit in the Department on forms provided by the Department.

M. Statements, or any evidence derived therefrom, made to local department child-protective services personnel, or to any person performing the duties of such personnel, by any person accused of the abuse, injury, neglect or death of a child after the arrest of such person, shall not be used in evidence in the case-in-chief against such person in the criminal proceeding on the question of guilt or innocence over the objection of the accused, unless the statement was made after such person was fully advised (i)

of his right to remain silent, (ii) that anything he says may be used against him in a court of law, (iii) that he has a right to the presence of an attorney during any interviews, and (iv) that if he cannot afford an attorney, one will be appointed for him prior to any questioning.

N. Notwithstanding any other provision of law, the local department, in accordance with Board regulations, shall transmit information regarding reports, complaints, family assessments, and investigations involving children of active duty members of the United States Armed Forces or members of their household to family advocacy representatives of the United States Armed Forces.

O. The local department shall notify the custodial parent and make reasonable efforts to notify the noncustodial parent as those terms are defined in § 63.2-1900 of a report of suspected abuse or neglect of a child who is the subject of an investigation or is receiving family assessment, in those cases in which such custodial or noncustodial parent is not the subject of the investigation.

P. The local department shall (i) notify the Superintendent of Public Instruction without delay when an individual holding a license issued by the Board of Education is the subject of a founded complaint of child abuse or neglect and shall transmit identifying information regarding such individual if the local department knows the person holds a license issued by the Board of Education and (ii) notify the Superintendent of Public Instruction without delay if the founded complaint of child abuse or neglect is dismissed following an appeal pursuant to § 63.2-1526. Nothing in this subsection shall be construed to affect the rights of any individual holding a license issued by the Board of Education to any hearings or appeals otherwise provided by law. Any information exchanged for the purpose of this subsection shall not be considered a violation of § 63.2-102, 63.2-104, or 63.2-105.

§ 63.2-1506. Family assessments by local departments.

A. A family assessment requires the collection of information necessary to determine:

1. The immediate safety needs of the child;

2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;

3. Risk of future harm to the child;

4. Whether the mother of a child who was exposed in utero to a controlled substance sought substance abuse counseling or treatment prior to the child's birth; and

5. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services.

B. When a local department has been designated as a child-protective services differential response system participant by the Department pursuant to § 63.2-1504 and responds to the report or complaint by conducting a family assessment, the local department shall:

1. Conduct an immediate family assessment and, if the report or complaint was based upon one of the factors specified in subsection B of § 63.2-1509, the local department may file a petition pursuant to § 16.1-241.3;

2. Obtain and consider the results of a search of the child abuse and neglect registry for any individual who is the subject of a family assessment. The local board shall determine whether the individual has resided in another state within at least the preceding five years, and, if he has resided in another state, the local board shall request a search of the child abuse and neglect registry or equivalent registry maintained by such state. The local board also may obtain and consider, in accordance with regulations of the Board, statewide criminal history record information from the Central Criminal Records Exchange for any individual who is the subject of a family assessment;

3. Immediately contact the subject of the report and the family of the child alleged to have been abused or neglected and give each a written and an oral explanation of the family assessment procedure. The family assessment shall be in writing and shall be completed in accordance with Board regulation;

4. Complete the family assessment within 45 days and transmit a report to such effect to the Department and to the person who is the subject of the family assessment. However, upon written justification by the local department, the family assessment may be extended, not to exceed a total of 60 days;

5. Consult with the family to arrange for necessary protective and rehabilitative services to be provided to the child and his family. Families have the option of declining the services offered as a result of the family assessment. If the family declines the services, the case shall be closed unless the local department determines that sufficient cause exists to redetermine the case as one that needs to be investigated. In no instance shall a case be redetermined as an investigation solely because the family declines services;

6. Petition the court for services deemed necessary;

7. Make no disposition of founded or unfounded for reports in which a family assessment is completed. Reports in which a family assessment is completed shall not be entered into the central registry contained in § 63.2-1515; and

8. Commence an immediate investigation, if at any time during the completion of the family assessment, the local department determines that an investigation is required.

C. When a local department has been designated as a child-protective services differential response agency by the Department, the local department may investigate any report of child abuse or neglect,

but the following valid reports of child abuse or neglect shall be investigated: (i) sexual abuse, (ii) child fatality, (iii) abuse or neglect resulting in serious injury as defined in § 18.2-371.1, (iv) cases involving a child's being left alone in the same dwelling with a person to whom the child is not related by blood or marriage and who has been convicted of an offense against a minor for which registration is required as a ~~violent~~ ~~sexual~~ *Tier III* offender pursuant to § 9.1-902, (v) child has been taken into the custody of the local department, or (vi) cases involving a caretaker at a state-licensed child day center, religiously exempt child day center, licensed, registered or approved family day home, private or public school, hospital or any institution. If a report or complaint is based upon one of the factors specified in subsection B of § 63.2-1509, the local department shall (a) conduct a family assessment, unless an investigation is required pursuant to this subsection or other provision of law or is necessary to protect the safety of the child, and (b) develop a plan of safe care in accordance with federal law, regardless of whether the local department makes a finding of abuse or neglect.

D. Any individual who is the subject of a family assessment conducted under this section shall notify the local department prior to changing his place of residence and provide the local department with the address of his new residence.

§ 63.2-1732. Regulations for assisted living facilities.

A. The Board shall have the authority to adopt and enforce regulations to carry out the provisions of this subtitle and to protect the health, safety, welfare and individual rights of residents of assisted living facilities and to promote their highest level of functioning. Such regulations shall take into consideration cost constraints of smaller operations in complying with such regulations and shall provide a procedure whereby a licensee or applicant may request, and the Commissioner may grant, an allowable variance to a regulation pursuant to § 63.2-1703.

B. Regulations shall include standards for staff qualifications and training; facility design, functional design and equipment; services to be provided to residents; administration of medicine; allowable medical conditions for which care can be provided; and medical procedures to be followed by staff, including provisions for physicians' services, restorative care, and specialized rehabilitative services. The Board shall adopt regulations on qualifications and training for employees of an assisted living facility in a direct care position. "Direct care position" means supervisors, assistants, aides, or other employees of a facility who assist residents in their daily living activities.

C. Regulations for a Medication Management Plan in a licensed assisted living facility shall be developed by the Board, in consultation with the Board of Nursing and the Board of Pharmacy. Such regulations shall (i) establish the elements to be contained within a Medication Management Plan, including a demonstrated understanding of the responsibilities associated with medication management by the facility; standard operating and record-keeping procedures; staff qualifications, training and supervision; documentation of daily medication administration; and internal monitoring of plan conformance by the facility; (ii) include a requirement that each assisted living facility shall establish and maintain a written Medication Management Plan that has been approved by the Department; and (iii) provide that a facility's failure to conform to any approved Medication Management Plan shall be subject to the sanctions set forth in § 63.2-1709 or 63.2-1709.2.

D. Regulations shall require all licensed assisted living facilities with six or more residents to be able to connect by July 1, 2007, to a temporary emergency electrical power source for the provision of electricity during an interruption of the normal electric power supply. The installation shall be in compliance with the Uniform Statewide Building Code.

E. Regulations for medical procedures in assisted living facilities shall be developed in consultation with the State Board of Health and adopted by the Board, and compliance with these regulations shall be determined by Department of Health or Department inspectors as provided by an interagency agreement between the Department and the Department of Health.

F. In developing regulations to determine the number of assisted living facilities for which an assisted living facility administrator may serve as administrator of record, the Board shall consider (i) the number of residents in each of the facilities, (ii) the travel time between each of the facilities, and (iii) the qualifications of the on-site manager under the supervision of the administrator of record.

G. Regulations shall require that each assisted living facility register with the Department of State Police to receive notice of the registration ~~or~~, reregistration*, or verification of registration information* of any ~~sex offender~~ *person required to register with the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1* within the same or a contiguous zip code area in which the facility is located, pursuant to § 9.1-914.

H. Regulations shall require that each assisted living facility ascertain, prior to admission, whether a potential resident is ~~a registered sex offender~~ *required to register with the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1*, if the facility anticipates the potential resident will have a length of stay greater than three days or in fact stays longer than three days.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is $0 for periods of imprisonment in state adult correctional facilities and

cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

Code of Virginia
Title 9.1. Commonwealth Public Safety
Chapter 9. Sex Offender and Crimes Against Minors Registry Act

§ 9.1-902. Offenses requiring registration

A. For purposes of this chapter:

"Murder" means a violation of, attempted violation of, or conspiracy to violate § 18.2-31 or 18.2-32 where the victim is (i) under 15 years of age or (ii) where the victim is at least 15 years of age but under 18 years of age and the murder is related to an offense listed in this section or a violation of former § 18.1-21 where the victim is (a) under 15 years of age or (b) at least 15 years of age but under 18 years of age and the murder is related to an offense listed in this section.

"Offense for which registration is required" includes:

1. Any Tier I, Tier II, or Tier III offense;

2. Murder;

3. Any offense similar to a Tier I, Tier II, or Tier III offense under the laws of any foreign country or any political subdivision thereof or the United States or any political subdivision thereof; and

4. Any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted.

"Tier I offense" means (i) any homicide in conjunction with a violation of, attempted violation of, or conspiracy to violate clause (i) of § 18.2-371 or § 18.2-371.1, when the offenses arise out of the same incident, or (ii) any violation of, attempted violation of, or conspiracy to violate:

1. § 18.2-63 unless registration is required pursuant to subdivision 1 of the definition of Tier III offense; former § 18.2-67.2:1;§ 18.2-90 with the intent to commit rape; former § 18.1-88 with the intent to commit rape; any felony violation of § 18.2-346;any violation of subdivision (4) of § 18.2-355;any violation of subsection C of § 18.2-357.1;subsection B of § 18.2-374.1:1;former subsection D of § 18.2-374.1:1 as it was in effect from July 1, 1994, through June 30, 2007; former clause (iv) of subsection B of § 18.2-374.3 as it was in effect on June 30, 2007; subsection B of § 18.2-374.3;or a third or subsequent conviction of § 18.2-67.4, § 18.2-67.4:2, subsection C of § 18.2-67.5, § 18.2-386.1, or, if the offense was committed on or after July 1, 2020, § 18.2-386.2.

If the offense was committed on or after July 1, 2006, § 18.2-91 with the intent to commit any felony offense listed in this section; subsection A of § 18.2-374.1:1;or a felony under § 18.2-67.5:1.

2. Where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection A of § 18.2-47, clause (i) of § 18.2-48, § 18.2-67.4, subsection C of § 18.2-67.5, § 18.2-361, § 18.2-366, or a felony violation of former § 18.1-191.

3. § 18.2-370.6.

4. If the offense was committed on or after July 1, 2016, and where the perpetrator is 18 years of age or older and the victim is under the age of 13, any violation of § 18.2-51.2.

5. If the offense was committed on or after July 1, 2016, any violation of § 18.2-356 punishable as

a Class 3 felony or any violation of § 18.2-357 punishable as a Class 3 felony.

6. If the offense was committed on or after July 1, 2019, any felony violation of § 18.2-348 or 18.2-349.

"Tier II offense" means any violation of, attempted violation of, or conspiracy to violate § 18.2-64.1, subsection C of § 18.2-374.1:1, or subsection C, D, or E of § 18.2-374.3.

"Tier III offense" means a violation of, attempted violation of, or conspiracy to violate:

1. Clause (ii) and (iii) of § 18.2-48, former § 18.1-38 with the intent to defile or, for the purpose of concubinage or prostitution, a felony violation of subdivision (2) or (3) of former § 18.1-39 that involves assisting or aiding in such an abduction, § 18.2-61, former § 18.1-44 when such act is accomplished against the complaining witness's will, by force, or through the use of the complaining witness's mental incapacity or physical helplessness, or if the victim is under 13 years of age, subsection A of § 18.2-63 where the perpetrator is more than five years older than the victim, § 18.2-67.1, § 18.2-67.2, § 18.2-67.3, former § 18.1-215 when the complaining witness is under 13 years of age, § 18.2-67.4 where the perpetrator is 18 years of age or older and the victim is under the age of six, subsections A and B of § 18.2-67.5, § 18.2-370, subdivision (1), (2), or (4) of former § 18.1-213, former § 18.1-214, § 18.2-370.1, or § 18.2-374.1;

2. § 18.2-63, § 18.2-64.1, former § 18.2-67.2:1, § 18.2-90 with the intent to commit rape or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection A of § 18.2-47, § 18.2-67.4, subsection C of § 18.2-67.5, clause (i) of § 18.2-48, § 18.2-361, § 18.2-366, or subsection C of § 18.2-374.1:1. An offense listed under this subdivision shall be deemed a Tier III offense only if the person has been convicted or adjudicated delinquent of any two or more such offenses, provided that person had been at liberty between such convictions or adjudications;

3. If the offense was committed on or after July 1, 2006, § 18.2-91 with the intent to commit any felony offense listed in this section. An offense listed under this subdivision shall be deemed a Tier III offense only if the person has been convicted or adjudicated delinquent of any two or more such offenses, provided that the person had been at liberty between such convictions or adjudications; or

4. Chapter 117 (18 U.S.C. § 2421 et seq.) of Title 18 of the United States Code or sex trafficking (as described in § 1591 of Title 18, U.S.C.).

B. "Tier I offense" as defined in this section, "Tier II offense" as defined in this section, "Tier III offense" as defined in this section, and "murder" as defined in this section includes any similar offense under the laws of any foreign country or any political subdivision thereof or the United States or any political subdivision thereof.

C. 1. Any offense under the laws of any foreign country or any political subdivision thereof or the United States or any political subdivision thereof that is similar to (i) any Tier I, II, or III offense or (ii) murder as defined in this section shall require registration and reregistration in accordance with this chapter in a manner consistent with the registration and reregistration obligations imposed by the similar offense listed or defined in this section, unless such offense requires more stringent registration and reregistration obligations under the laws of the jurisdiction where the offender was convicted. In instances where more stringent registration and reregistration obligations are required under the laws of the jurisdiction where the offender was convicted, the

offender shall register and reregister as required by this chapter in a manner most similar with the registration obligations imposed under the laws of the jurisdiction where the offender was convicted.

2. Any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted shall require registration and reregistration in accordance with this chapter in the manner most similar with the registration and reregistration obligations imposed under the laws of the jurisdiction where the offender was convicted unless such offense is similar to (i) any Tier I, II, or III offense or (ii) murder as defined in this section and the registration and reregistration obligations imposed by the similar offense listed or defined in this section are more stringent than those registration and reregistration obligations imposed under the laws of the jurisdiction where the offender was convicted. In instances where the similar offense listed or defined in this section imposes more stringent registration and reregistration obligations, the offender shall register and reregister as required by this chapter in a manner consistent with the registration and reregistration obligations imposed by the similar offense listed or defined in this section.

D. Juveniles adjudicated delinquent shall not be required to register; however, where the offender is a juvenile over the age of 13 at the time of the offense who is tried as a juvenile and is adjudicated delinquent on or after July 1, 2005, of any offense for which registration is required, the court may, in its discretion and upon motion of the attorney for the Commonwealth, find that the circumstances of the offense require offender registration. In making its determination, the court shall consider all of the following factors that are relevant to the case: (i) the degree to which the delinquent act was committed with the use of force, threat, or intimidation, (ii) the age and maturity of the complaining witness, (iii) the age and maturity of the offender, (iv) the difference in the ages of the complaining witness and the offender, (v) the nature of the relationship between the complaining witness and the offender, (vi) the offender's prior criminal history, and (vii) any other aggravating or mitigating factors relevant to the case. The attorney for the Commonwealth may file such a motion at any time during which the offender is within the jurisdiction of the court for the offense that is the basis for such motion. Prior to any hearing on such motion, the court shall appoint a qualified and competent attorney-at-law to represent the offender unless an attorney has been retained and appears on behalf of the offender or counsel has already been appointed.

E. Prior to entering judgment of conviction of an offense for which registration is required if the victim of the offense was a minor, physically helpless, or mentally incapacitated, when the indictment, warrant, or information does not allege that the victim of the offense was a minor, physically helpless, or mentally incapacitated, the court shall determine by a preponderance of the evidence whether the victim of the offense was a minor, physically helpless, or mentally incapacitated, as defined in § 18.2-67.10, and shall also determine the age of the victim at the time of the offense if it determines the victim to be a minor. When such a determination is required, the court shall advise the defendant of its determination and of the defendant's right to make a motion to withdraw a plea of guilty or nolo contendere pursuant to § 19.2-296. If the court grants the defendant's motion to withdraw his plea of guilty or of nolo contendere, his case shall be heard by another judge, unless the parties agree otherwise. Failure to make such determination or so advise the defendant does not otherwise invalidate the underlying conviction.

2003, cc. 584, 732;2004, cc. 414, 444;2005, cc. 586, 603, 631;2006, cc. 857, 875, 914, 931;2007, cc.

463, 718, 759, 823;2008, cc. 592, 747, 772, 877;2010, c. 858;2012, c. 243;2013, cc. 750, 781;2014, cc. 546, 649, 706;2015, cc. 690, 691;2016, c. 586;2019, c. 617;2020, cc. 389, 826, 829.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia
Title 63.2. Welfare (Social Services)
Chapter 12. Adoption

§ 63.2-1205.1. Certain offenders prohibited from adopting a child

No petition for adoption shall be granted if the person seeking to adopt has been convicted of an offense requiring registration pursuant to § 9.1-902.

2006, c. 384;2020, c. 829.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

CHAPTER 65

An Act to amend and reenact §§ 16.1-283.1 and 63.2-1220.2 of the Code of Virginia, relating to post-adoption contact and communication agreements.

[S 1139]

Approved February 19, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-283.1 and 63.2-1220.2 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-283.1. Authority to enter into voluntary post-adoption contact and communication agreement.

A. In any case in which a child has been placed in foster care as a result of *(i)* court commitment, *(ii)* an entrustment agreement entered into by the parent or parents, or *(iii)* other voluntary relinquishment by the parent or parents, or in *any case in* which the parent or parents have voluntarily consented to the adoption of the child, the child's birth parent or parents may enter into a written post-adoption contact and communication agreement with the pre-adoptive parent or parents as provided in Article 1.1 (§ 63.2-1220.2 et seq.) of Chapter 12 of Title 63.2. *Unless the parental rights of the birth parent or parents have been terminated pursuant to subsection E of § 16.1-283, a local board of social services or child welfare agency required to file a petition for a permanency planning hearing pursuant to § 16.1-282.1 may inform the birth parent or parents and shall inform the adoptive parent or parents that they may enter into such an agreement and shall inform the child if he is 14 years of age or older that he may consent to such an agreement.*

B. The court may consider the appropriateness of a written post-adoption contact and communication agreement entered into pursuant to subsection A and in accordance with Article 1.1 (§ 63.2-1220.2 et seq.) of Chapter 12 of Title 63.2 at the permanency planning hearing pursuant to § 16.1-282.1 and, if the court finds that all of the requirements of subsection A and Article 1.1 (§ 63.2-1220.2 et seq.) of Chapter 12 of Title 63.2 have been met, shall incorporate the written post-adoption contact and communication agreement into an order entered at the conclusion of such hearing.

§ 63.2-1220.2. Authority to enter into post-adoption contact and communication agreements.

A. In any proceeding for adoption pursuant to this chapter, the birth parent(s) and the adoptive parent(s) of a child may enter into a written post-adoption contact and communication agreement. A post-adoption contact and communication agreement may include, but is not limited to, provisions related to contact and communication between the child, the birth parent(s), and the adoptive parent(s) and provisions for the sharing of information about the child, including sharing of photographs of the child and information about the child's education, health, and welfare. *Unless the parental rights of the birth parent or parents have been terminated pursuant to subsection E of § 16.1-283, a local board of social services or child welfare agency required to file a petition for a permanency planning hearing pursuant to § 16.1-282.1 may inform the birth parent or parents and shall inform the adoptive parent or parents that they may enter into such an agreement and shall inform the child if he is 14 years of age or older that he may consent to such an agreement.*

B. Any post-adoption contact and communication agreement entered into by the birth parent(s) and the adoptive parent(s) of a child shall include acknowledgment by the birth parent(s) that the adoption of the child is irrevocable, even if the adoptive parent(s) do not abide by the post-adoption contact and communication agreement, and acknowledgment by the adoptive parent(s) that the agreement grants the birth parent(s) the right to seek to enforce the post-adoption contact and communication provisions set forth in the agreement. The petitioner for adoption shall file such agreement with other documents filed in the circuit court having jurisdiction over the child's adoption.

C. In no event shall failure to enter into a post-adoption contact and communication agreement with identified adoptive parent(s) after a valid entrustment agreement or consent to the child's adoption is executed, or failure to comply with a post-adoption contact and communication agreement, affect the validity of (i) the consent to the adoption, (ii) the voluntary relinquishment of parental rights, (iii) the voluntary or involuntary termination of parental rights, or (iv) the finality of the adoption.

D. No birth parent(s) or adoptive parent(s) of a child shall be required to enter into a post-adoption contact and communication agreement.

Code of Virginia
Title 63.2. Welfare (Social Services)
Chapter 12. Adoption

§ 63.2-1220.2. Authority to enter into post-adoption contact and communication agreements

A. In any proceeding for adoption pursuant to this chapter, the birth parent(s) and the adoptive parent(s) of a child may enter into a written post-adoption contact and communication agreement. A post-adoption contact and communication agreement may include, but is not limited to, provisions related to contact and communication between the child, the birth parent(s), and the adoptive parent(s) and provisions for the sharing of information about the child, including sharing of photographs of the child and information about the child's education, health, and welfare. Unless the parental rights of the birth parent or parents have been terminated pursuant to subsection E of § 16.1-283, a local board of social services or child welfare agency required to file a petition for a permanency planning hearing pursuant to § 16.1-282.1 may inform the birth parent or parents and shall inform the adoptive parent or parents that they may enter into such an agreement and shall inform the child if he is 14 years of age or older that he may consent to such an agreement.

B. Any post-adoption contact and communication agreement entered into by the birth parent(s) and the adoptive parent(s) of a child shall include acknowledgment by the birth parent(s) that the adoption of the child is irrevocable, even if the adoptive parent(s) do not abide by the post-adoption contact and communication agreement, and acknowledgment by the adoptive parent(s) that the agreement grants the birth parent(s) the right to seek to enforce the post-adoption contact and communication provisions set forth in the agreement. The petitioner for adoption shall file such agreement with other documents filed in the circuit court having jurisdiction over the child's adoption.

C. In no event shall failure to enter into a post-adoption contact and communication agreement with identified adoptive parent(s) after a valid entrustment agreement or consent to the child's adoption is executed, or failure to comply with a post-adoption contact and communication agreement, affect the validity of (i) the consent to the adoption, (ii) the voluntary relinquishment of parental rights, (iii) the voluntary or involuntary termination of parental rights, or (iv) the finality of the adoption.

D. No birth parent(s) or adoptive parent(s) of a child shall be required to enter into a post-adoption contact and communication agreement.

2010, c. 331;2019, cc. 65, 84.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

CHAPTER 9

An Act to amend and reenact §§ 19.2-392.02 and 63.2-1242 of the Code of Virginia, relating to adoption by stepparent; background check.

[H 227]

Approved February 22, 2018

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-392.02 and 63.2-1242 of the Code of Virginia are amended and reenacted as follows:

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

A. For purposes of this section:

"Barrier crime" means (i) a felony violation of § 16.1-253.2; any violation of § 18.2-31, 18.2-32, 18.2-32.1, 18.2-32.2, 18.2-33, 18.2-35, 18.2-36, 18.2-36.1, 18.2-36.2, 18.2-41, or 18.2-42; any felony violation of § 18.2-46.2, 18.2-46.3, 18.2-46.3:1, or 18.2-46.3:3; any violation of § 18.2-46.5, 18.2-46.6, or 18.2-46.7; any violation of subsection A or B of § 18.2-47; any violation of § 18.2-48, 18.2-49, or 18.2-50.3; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-51.5, 18.2-51.6, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, 18.2-55, 18.2-55.1, 18.2-56, 18.2-56.1, 18.2-56.2, 18.2-57, 18.2-57.01, 18.2-57.02, 18.2-57.2, 18.2-58, 18.2-58.1, 18.2-59, 18.2-60, or 18.2-60.1; any felony violation of § 18.2-60.3 or 18.2-60.4; any violation of § 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-67.5, 18.2-67.5:1, 18.2-67.5:2, 18.2-67.5:3, 18.2-77, 18.2-79, 18.2-80, 18.2-81, 18.2-82, 18.2-83, 18.2-84, 18.2-85, 18.2-86, 18.2-87, 18.2-87.1, or 18.2-88; any felony violation of § 18.2-279, 18.2-280, 18.2-281, 18.2-282, 18.2-282.1, 18.2-286.1, or 18.2-287.2; any violation of § 18.2-289, 18.2-290, 18.2-300, 18.2-308.4, or 18.2-314; any felony violation of § 18.2-346; any violation of § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1; any violation of subsection B of § 18.2-361; any violation of § 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-370.2, 18.2-370.3, 18.2-370.4, 18.2-370.5, 18.2-370.6, 18.2-371.1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, 18.2-374.4, 18.2-379, 18.2-386.1, or 18.2-386.2; any felony violation of § 18.2-405 or 18.2-406; any violation of § 18.2-408, 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, 18.2-433.2, 18.2-472.1, 18.2-474.1, 18.2-477, 18.2-477.1, 18.2-477.2, 18.2-478, 18.2-479, 18.2-480, 18.2-481, 18.2-484, 18.2-485, 37.2-917, or 53.1-203; or any substantially similar offense under the laws of another jurisdiction; (ii) any violation of § 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, or 18.2-94 or any substantially similar offense under the laws of another jurisdiction; (iii) any felony violation of § 18.2-248, 18.2-248.01, 18.2-248.02, 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-251.2, 18.2-251.3, 18.2-255, 18.2-255.2, 18.2-258, 18.2-258.02, 18.2-258.1, or 18.2-258.2 or any substantially similar offense under the laws of another jurisdiction; (iv) any felony violation of § 18.2-250 or any substantially similar offense under the laws of another jurisdiction; (v) any offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901, including any finding that a person is not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2 of an offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901; any substantially similar offense under the laws of another jurisdiction; or any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted; or (vi) any other felony not included in clause (i), (ii), (iii), (iv), or (v) unless five years have elapsed from the date of the conviction.

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

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

"Department" means the Department of State Police.

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

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

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

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

"Qualified entity" means a business or organization that provides care to children or the elderly or disabled, whether governmental, private, for profit, nonprofit or voluntary, except organizations exempt pursuant to subdivision A 10 of § 63.2-1715.

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

1. Been fingerprinted; and

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

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

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

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

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

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

H. Notwithstanding any provisions in this section to the contrary, a spouse of a birth parent or parent by adoption who is not the birth parent of a child and has filed a petition for adoption of such child in circuit court may request the Department of State Police to conduct a national criminal background check on such prospective adoptive parent at his cost for purposes of § 63.2-1242. Such background checks shall otherwise be conducted in accordance with the provisions of this section.

§ 63.2-1242. Investigation and report at discretion of circuit court.

For adoptions under this article, an investigation and report shall be undertaken only if the circuit court in its discretion determines that there should be an investigation before a final order of adoption is entered. *In determining whether an investigation and report should be required, the circuit court shall consider the results of a national criminal history background check conducted on the prospective adoptive parent in accordance with the provisions of § 19.2-392.02, which shall be provided to the court by such prospective adoptive parent.* If the circuit court ~~makes such a determination~~ *determines that an investigation and report should be required*, it shall refer the matter to the local director for an investigation and report to be completed within such time as the circuit court designates. If an

investigation is ordered, the circuit court shall forward a copy of the petition and all exhibits thereto to the local director and the provisions of § 63.2-1208 shall apply.

2. That the provisions of this act shall expire on July 1, 2020.

Code of Virginia
Title 63.2. Welfare (Social Services)
Chapter 12. Adoption

§ 63.2-1242. Investigation and report at discretion of circuit court

For adoptions under this article, an investigation and report shall be undertaken only if the circuit court in its discretion determines that there should be an investigation before a final order of adoption is entered. If the circuit court makes such a determination, it shall refer the matter to the local director for an investigation and report to be completed within such time as the circuit court designates. If an investigation is ordered, the circuit court shall forward a copy of the petition and all exhibits thereto to the local director and the provisions of § 63.2-1208 shall apply.

Code 1950, § 63-356.1; 1950, p. 626; 1956, c. 300; 1968, c. 578, § 63.1-231; 1974, c. 421; 1975, c. 364; 1977, c. 526; 1979, c. 339; 1986, cc. 481, 482; 1987, c. 482; 1992, c. 607; 1995, cc. 772, 826; 2000, c. 830, § 63.1-219.49; 2002, c. 747;2018, c. 9.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

CHAPTER 377

An Act to amend and reenact § 63.2-1242.1 of the Code of Virginia, relating to adoption by relative.

[H 2208]

Approved March 14, 2019

Be it enacted by the General Assembly of Virginia:

1. That § 63.2-1242.1 of the Code of Virginia is amended and reenacted as follows:

§ 63.2-1242.1. Relative adoption.

A. For the purposes of this chapter, a "close relative placement" shall be an adoption by the child's grandparent, great-grandparent, adult nephew or niece, adult brother or sister, adult uncle or aunt, ~~or~~ adult great uncle or great aunt, *stepparent, adult stepbrother or stepsisters, or other adult relatives of the child by marriage or adoption.*

B. In a close relative placement the court may accept the written and signed consent of the birth parent(s) that is signed under oath and acknowledged by an officer authorized by law to take such ~~acknowledgements~~ *acknowledgments*.

Appendix 5-B

Department of Planning and Budget
2019 Fiscal Impact Statement

1. **Bill Number:** HB2208

House of Origin	☒	Introduced	☐	Substitute	☐ Engrossed
Second House	☐	In Committee	☐	Substitute	☐ Enrolled

2. **Patron:** Brewer

3. **Committee:** Health, Welfare and Institutions

4. **Title:** Adoption by relative.

5. **Summary:** Expands the applicability of adoption procedures for a child's close relatives to all of the child's adult relatives, including blood relatives whether of the whole or half blood, stepparents, stepbrothers, or stepsisters.

6. **Budget Amendment Necessary**: No.

7. **Fiscal Impact Estimates:** See Item 8.

8. **Fiscal Implications:** This legislation is consistent with the Virginia Children's Service Practice Model and expands the applicability of adoption procedures for a child's close relatives to all of the child's adult relatives, including blood relatives and step-relatives. This bill only requires a minor update to adoption guidance and minimal staff training at local departments of social services.

9. **Specific Agency or Political Subdivisions Affected:** Department of Social Services, local departments of social services

10. **Technical Amendment Necessary:** No.

11. **Other Comments:** None.

Code of Virginia
Title 63.2. Welfare (Social Services)
Chapter 12. Adoption

§ 63.2-1242.1. Relative adoption

A. For the purposes of this chapter, a "close relative placement" shall be an adoption by the child's grandparent, great-grandparent, adult nephew or niece, adult brother or sister, adult uncle or aunt, adult great uncle or great aunt, stepparent, adult stepbrother or stepsisters, or other adult relatives of the child by marriage or adoption.

B. In a close relative placement the court may accept the written and signed consent of the birth parent(s) that is signed under oath and acknowledged by an officer authorized by law to take such acknowledgments.

2006, cc. 825, 848;2019, c. 377.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

CHAPTER 4

An Act to amend and reenact §§ 63.2-1242.2 and 63.2-1242.3 of the Code of Virginia, relating to close relative adoption.

[H 241]

Approved February 19, 2018

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-1242.2 and 63.2-1242.3 of the Code of Virginia are amended and reenacted as follows:

§ 63.2-1242.2. Close relative adoption; child in home less than two years.

A. When the child has continuously resided in the home or has been in the continuous physical custody of the prospective adoptive parent(s) who is a close relative for less than ~~three~~ *two* years, the adoption proceeding, including court approval of the home study, shall commence in the juvenile and domestic relations district court pursuant to the parental placement adoption provisions of this chapter with the following exceptions:

1. The birth parent(s)' consent does not have to be executed in juvenile and domestic relations district court in the presence of the prospective adoptive parents.

2. The simultaneous meeting specified in § 63.2-1231 is not required.

3. No hearing is required for this proceeding.

B. Upon the juvenile and domestic relations district court issuing an order accepting consents or otherwise dealing with birth parents rights and appointing the close relative(s) custodians of the child, the close relative(s) may file a petition in the circuit court as provided in Article 1 (§ 63.2-1200 et seq.) of this chapter.

C. For adoptions under this section:

1. An order of reference, an investigation and a report shall not be made if the home study report is filed with the circuit court unless the circuit court in its discretion requires an investigation and report to be made.

2. The circuit court may omit the probationary period and the interlocutory order and enter a final order of adoption when the court is of the opinion that the entry of an order would otherwise be proper.

3. If the circuit court determines that there is a need for an additional investigation, it shall refer the matter to the licensed child-placing agency that drafted the home study report for an investigation and report, which shall be completed within such times as the circuit court designates.

4. The circuit court may waive appointment of a guardian ad litem for the child.

§ 63.2-1242.3. Close relative placement; child in home for two years or more.

When the child has continuously resided in the home or has been in the continuous physical custody of the prospective adoptive parent(s) who is a close relative for ~~three~~ *two* or more years, the parental placement provisions of this chapter shall not apply and the adoption proceeding shall commence in the circuit court.

For adoptions under this section:

1. An order of reference, an investigation and a report shall not be made unless the circuit court in its discretion shall require an investigation and report to be made.

2. The circuit court may omit the probationary period and the interlocutory order and enter a final order of adoption when the court is of the opinion that the entry of an order would otherwise be proper.

3. If the circuit court determines the need for an investigation, it shall refer the matter to the local director of the department of social services for an investigation and report, which shall be completed in such time as the circuit court designates.

4. The circuit court may waive appointment of a guardian ad litem for the child.

Code of Virginia
Title 63.2. Welfare (Social Services)
Chapter 12. Adoption

§ 63.2-1242.2. Close relative adoption; child in home less than two years

A. When the child has continuously resided in the home or has been in the continuous physical custody of the prospective adoptive parent(s) who is a close relative for less than two years, the adoption proceeding, including court approval of the home study, shall commence in the juvenile and domestic relations district court pursuant to the parental placement adoption provisions of this chapter with the following exceptions:

1. The birth parent(s)' consent does not have to be executed in juvenile and domestic relations district court in the presence of the prospective adoptive parents.

2. The simultaneous meeting specified in § 63.2-1231 is not required.

3. No hearing is required for this proceeding.

B. Upon the juvenile and domestic relations district court issuing an order accepting consents or otherwise dealing with birth parents rights and appointing the close relative(s) custodians of the child, the close relative(s) may file a petition in the circuit court as provided in Article 1 (§ 63.2-1200 et seq.) of this chapter.

C. For adoptions under this section:

1. An order of reference, an investigation and a report shall not be made if the home study report is filed with the circuit court unless the circuit court in its discretion requires an investigation and report to be made.

2. The circuit court may omit the probationary period and the interlocutory order and enter a final order of adoption when the court is of the opinion that the entry of an order would otherwise be proper.

3. If the circuit court determines that there is a need for an additional investigation, it shall refer the matter to the licensed child-placing agency that drafted the home study report for an investigation and report, which shall be completed within such times as the circuit court designates.

4. The circuit court may waive appointment of a guardian ad litem for the child.

2006, cc. 825, 848;2010, c. 306;2018, c. 4.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

CHAPTER 200

An Act to amend and reenact §§ 16.1-277.01, 17.1-275, 20-88.35, 63.2-900, 63.2-1201, 63.2-1202, 63.2-1222, 63.2-1224, 63.2-1233, 63.2-1249, 63.2-1250, 63.2-1252, and 63.2-1253 of the Code of Virginia, relating to Putative Father Registry.

[H 2216]

Approved February 23, 2017

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-277.01, 17.1-275, 20-88.35, 63.2-900, 63.2-1201, 63.2-1202, 63.2-1222, 63.2-1224, 63.2-1233, 63.2-1249, 63.2-1250, 63.2-1252, and 63.2-1253 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-277.01. Approval of entrustment agreement.

A. In any case in which a child has been entrusted pursuant to § 63.2-903 or 63.2-1817 to the local board of social services or to a child welfare agency, a petition for approval of the entrustment agreement by the board or agency:

1. Shall be filed within a reasonable period of time, no later than 89 days after the execution of an entrustment agreement for less than 90 days, if the child is not returned to the caretaker from whom he was entrusted within that period;

2. Shall be filed within a reasonable period of time, not to exceed 30 days after the execution of an entrustment agreement for 90 days or longer or for an unspecified period of time, if such entrustment agreement does not provide for the termination of all parental rights and responsibilities with respect to the child; and

3. May be filed in the case of a permanent entrustment agreement which provides for the termination of all parental rights and responsibilities with respect to the child.

The board or agency shall file a foster care plan pursuant to § 16.1-281 to be heard with any petition for approval of an entrustment agreement.

B. Upon the filing of a petition for approval of an entrustment agreement pursuant to subsection A of § 16.1-241, the court shall appoint a guardian ad litem to represent the child in accordance with the provisions of § 16.1-266, and shall schedule the matter for a hearing to be held as follows: within 45 days of the filing of a petition pursuant to subdivision A 1, A 2 or A 3, except where an order of publication has been ordered by the court, in which case the hearing shall be held within 75 days of the filing of the petition. The court shall provide notice of the hearing and a copy of the petition to the following, each of whom shall be a party entitled to participate in the proceeding:

1. The local board of social services or child welfare agency;

2. The child, if he is 12 years of age or older;

3. The guardian ad litem for the child; and

4. The child's parents, guardian, legal custodian or other person standing in loco parentis to the child. No such notification shall be required, however, if the judge certifies on the record that the identity of the parent or guardian is not reasonably ascertainable. A birth father shall be given notice of the proceedings if he is an acknowledged father pursuant to § 20-49.1, adjudicated pursuant to § 20-49.8, or presumed pursuant to § 63.2-1202, or has registered with the ~~Putative~~ *Virginia Birth* Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.). An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit. Failure to register with the ~~Putative~~ *Virginia Birth* Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) of Chapter 12 of Title 63.2 shall be evidence that the identity of the father is not reasonably ascertainable. The hearing shall be held and an order may be entered, although a parent, guardian, legal custodian or person standing in loco parentis fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort. However, when a petition seeks approval of a permanent entrustment agreement which provides for the termination of all parental rights and responsibilities with respect to the child, a summons shall be served upon the parent or parents and the other parties specified in § 16.1-263. The summons or notice of hearing shall clearly state the consequences of a termination of residual parental rights. Service shall be made pursuant to § 16.1-264. The remaining parent's parental rights may be terminated even though that parent has not entered into an entrustment agreement if the court finds, based upon clear and convincing evidence, that it is in the best interest of the child and that (i) the identity of the parent is not reasonably ascertainable; (ii) the identity and whereabouts of the parent are known or reasonably ascertainable, and the parent is personally served

with notice of the termination proceeding pursuant to § 8.01-296 or 8.01-320; (iii) the whereabouts of the parent are not reasonably ascertainable and the parent is given notice of the termination proceedings by certified or registered mail to the last known address and such parent fails to object to the proceedings within 15 days of the mailing of such notice; or (iv) the whereabouts of the parent are not reasonably ascertainable and the parent is given notice of the termination proceedings through an order of publication pursuant to §§ 8.01-316 and 8.01-317, and such parent fails to object to the proceedings.

C. At the hearing held pursuant to this section, the court shall hear evidence on the petition filed and shall review the foster care plan for the child filed by the local board or child welfare agency in accordance with § 16.1-281.

D. At the conclusion of the hearing, the court shall make a finding, based upon a preponderance of the evidence, whether approval of the entrustment agreement is in the best interest of the child. However, if the petition seeks approval of a permanent entrustment agreement which provides for the termination of all parental rights and responsibilities with respect to the child, the court shall make a finding, based upon clear and convincing evidence, whether termination of parental rights is in the best interest of the child. If the court makes either of these findings, the court may make any of the orders of disposition permitted in a case involving an abused or neglected child pursuant to § 16.1-278.2. Any such order transferring legal custody of the child shall be made in accordance with the provisions of subdivision A 5 of § 16.1-278.2 and shall be subject to the provisions of subsection D1. This order shall include, but need not be limited to, the following findings: (i) that there is no less drastic alternative to granting the requested relief; and (ii) that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child, if the order transfers legal custody of the child to a local board of social services. At any time subsequent to the transfer of legal custody of the child pursuant to this section, a birth parent or parents of the child and the pre-adoptive parent or parents may enter into a written post-adoption contact and communication agreement in accordance with the provisions of § 16.1-283.1 and Article 1.1 (§ 63.2-1220.2 et seq.) of Chapter 12 of Title 63.2. The court shall not require a written post-adoption contact and communication agreement as a precondition to entry of an order in any case involving the child.

The effect of the court's order approving a permanent entrustment agreement is to terminate an entrusting parent's residual parental rights. Any order terminating parental rights shall be accompanied by an order (i) continuing or granting custody to a local board of social services or to a licensed child-placing agency or (ii) granting custody or guardianship to a relative or other interested individual. Such an order continuing or granting custody to a local board of social services or to a licensed child-placing agency shall indicate whether that board or agency shall have the authority to place the child for adoption and consent thereto. A final order terminating parental rights pursuant to this section renders the approved entrustment agreement irrevocable. Such order may be appealed in accordance with the provisions of § 16.1-296.

D1. Any order transferring custody of the child to a relative or other interested individual pursuant to subsection D shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative or other interested individual is one who (i) after an investigation as directed by the court, is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a relative or other interested individual should further provide for, as appropriate, any terms and conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

E. The local board or licensed child-placing agency to which authority is given to place the child for adoption and consent thereto after an order terminating parental rights is entered pursuant to this section shall file a written Adoption Progress Report with the juvenile court on the progress being made to place the child in an adoptive home. The report shall be filed with the court every six months from the date of the final order terminating parental rights until a final order of adoption is entered on behalf of the child in the circuit court. At the conclusion of the hearing at which termination of parental rights is ordered and authority is given to the local board or licensed child-placing agency to place the child for adoption, the juvenile court shall schedule a date by which the board or agency shall file the first Adoption Progress Report required by this section. A copy of the Adoption Progress Report shall be sent by the court to the guardian ad litem for the child. The court may schedule a hearing on the report with or without the request of a party.

§ 17.1-275. Fees collected by clerks of circuit courts; generally.

A. A clerk of a circuit court shall, for services performed by virtue of his office, charge the following fees:

1. [Repealed.]

2. For recording and indexing in the proper book any writing and all matters therewith, or for recording and indexing anything not otherwise provided for, $16 for an instrument or document consisting of 10 or fewer pages or sheets; $30 for an instrument or document consisting of 11 to 30

pages or sheets; and $50 for an instrument or document consisting of 31 or more pages or sheets. Whenever any writing to be recorded includes plat or map sheets no larger than eight and one-half inches by 14 inches, such plat or map sheets shall be counted as ordinary pages for the purpose of computing the recording fee due pursuant to this section. A fee of $15 per page or sheet shall be charged with respect to plat or map sheets larger than eight and one-half inches by 14 inches. Only a single fee as authorized by this subdivision shall be charged for recording a certificate of satisfaction that releases the original deed of trust and any corrected or revised deeds of trust. One dollar and fifty cents of the fee collected for recording and indexing shall be designated for use in preserving the permanent records of the circuit courts. The sum collected for this purpose shall be administered by The Library of Virginia in cooperation with the circuit court clerks.

3. For appointing and qualifying any personal representative, committee, trustee, guardian, or other fiduciary, in addition to any fees for recording allowed by this section, $20 for estates not exceeding $50,000, $25 for estates not exceeding $100,000 and $30 for estates exceeding $100,000. No fee shall be charged for estates of $5,000 or less.

4. For entering and granting and for issuing any license, other than a marriage license or a hunting and fishing license, and administering an oath when necessary, $10.

5. For issuing a marriage license, attaching certificate, administering or receiving all necessary oaths or affidavits, indexing and recording, $10. For recording an order to celebrate the rites of marriage pursuant to § 20-25, $25 to be paid by the petitioner.

6. For making out any bond, other than those under § 17.1-267 or subdivision A 4, administering all necessary oaths and writing proper affidavits, $3.

7. For all services rendered by the clerk in any garnishment or attachment proceeding, the clerk's fee shall be $15 in cases not exceeding $500 and $25 in all other cases.

8. For making out a copy of any paper, record, or electronic record to go out of the office, which is not otherwise specifically provided for herein, a fee of $0.50 for each page or, if an electronic record, each image. From such fees, the clerk shall reimburse the locality the costs of making out the copies and pay the remaining fees directly to the Commonwealth. The funds to recoup the cost of making out the copies shall be deposited with the county or city treasurer or Director of Finance, and the governing body shall budget and appropriate such funds to be used to support the cost of copies pursuant to this subdivision. For purposes of this section, the costs of making out the copies authorized under this section shall include costs included in the lease and maintenance agreements for the equipment and the technology needed to operate electronic systems in the clerk's office used to make out the copies, but shall not include salaries or related benefits. The costs of copies shall otherwise be determined in accordance with § 2.2-3704. However, there shall be no charge to the recipient of a final order or decree to send an attested copy to such party.

9. For annexing the seal of the court to any paper, writing the certificate of the clerk accompanying it, the clerk shall charge $2 and for attaching the certificate of the judge, if the clerk is requested to do so, the clerk shall charge an additional $0.50.

10. In any case in which a person is convicted of a violation of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or is subject to a disposition under § 18.2-251, the clerk shall assess a fee of $150 for each felony conviction and each felony disposition under § 18.2-251 which shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and Treatment Fund.

11. In any case in which a person is convicted of a violation of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or is subject to a disposition under § 18.2-251, the clerk shall assess a fee for each misdemeanor conviction and each misdemeanor disposition under § 18.2-251, which shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and Treatment Fund as provided in § 17.1-275.8.

12. Upon the defendant's being required to successfully complete traffic school, a mature driver motor vehicle crash prevention course, or a driver improvement clinic in lieu of a finding of guilty, the court shall charge the defendant fees and costs as if he had been convicted.

13. In all civil actions that include one or more claims for the award of monetary damages the clerk's fee chargeable to the plaintiff shall be $100 in cases seeking recovery not exceeding $49,999; $200 in cases seeking recovery exceeding $49,999, but not exceeding $100,000; $250 in cases seeking recovery exceeding $100,000, but not exceeding $500,000; and $300 in cases seeking recovery exceeding $500,000. Ten dollars of each such fee shall be apportioned to the Courts Technology Fund established under § 17.1-132. A fee of $25 shall be paid by the plaintiff at the time of instituting a condemnation case, in lieu of any other fees. There shall be no fee charged for the filing of a cross-claim or setoff in any pending action. However, the fees prescribed by this subdivision shall be charged upon the filing of a counterclaim or a claim impleading a third-party defendant. The fees prescribed above shall be collected upon the filing of papers for the commencement of civil actions. This subdivision shall not be applicable to cases filed in the Supreme Court of Virginia.

13a. For the filing of any petition seeking court approval of a settlement where no action has yet been filed, the clerk's fee, chargeable to the petitioner, shall be $50, to be paid by the petitioner at the

time of filing the petition.

14. In addition to the fees chargeable for civil actions, for the costs of proceedings for judgments by confession under §§ 8.01-432 through 8.01-440, the clerk shall tax as costs (i) the cost of registered or certified mail; (ii) the statutory writ tax, in the amount required by law to be paid on a suit for the amount of the confessed judgment; (iii) for the sheriff for serving each copy of the order entering judgment, $12; and (iv) for docketing the judgment and issuing executions thereon, the same fees as prescribed in subdivision A 17.

15. For qualifying notaries public, including the making out of the bond and any copies thereof, administering the necessary oaths, and entering the order, $10.

16. For each habeas corpus proceeding, the clerk shall receive $10 for all services required thereunder. This subdivision shall not be applicable to such suits filed in the Supreme Court of Virginia.

17. For docketing and indexing a judgment from any other court of the Commonwealth, for docketing and indexing a judgment in the new name of a judgment debtor pursuant to the provisions of § 8.01-451, but not when incident to a divorce, for noting and filing the assignment of a judgment pursuant to § 8.01-452, a fee of $5; and for issuing an abstract of any recorded judgment, when proper to do so, a fee of $5; and for filing, docketing, indexing and mailing notice of a foreign judgment, a fee of $20.

18. For all services rendered by the clerk in any court proceeding for which no specific fee is provided by law, the clerk shall charge $10, to be paid by the party filing said papers at the time of filing; however, this subdivision shall not be applicable in a divorce cause prior to and including the entry of a decree of divorce from the bond of matrimony.

19, 20. [Repealed.]

21. For making the endorsements on a forthcoming bond and recording the matters relating to such bond pursuant to the provisions of § 8.01-529, $1.

22. For all services rendered by the clerk in any proceeding pursuant to § 57-8 or 57-15, $10.

23. For preparation and issuance of a subpoena duces tecum, $5.

24. For all services rendered by the clerk in matters under § 8.01-217 relating to change of name, $20; however, this subdivision shall not be applicable in cases where the change of name is incident to a divorce.

25. For providing court records or documents on microfilm, per frame, $0.50.

26. In all divorce and separate maintenance proceedings, and all civil actions that do not include one or more claims for the award of monetary damages, the clerk's fee chargeable to the plaintiff shall be $60, $10 of which shall be apportioned to the Courts Technology Fund established under § 17.1-132 to be paid by the plaintiff at the time of instituting the suit, which shall include the furnishing of a duly certified copy of the final decree. The fees prescribed by this subdivision shall be charged upon the filing of a counterclaim or a claim impleading a third-party defendant. However, no fee shall be charged for (i) the filing of a cross-claim or setoff in any pending suit or (ii) the filing of a counterclaim or any other responsive pleading in any annulment, divorce, or separate maintenance proceeding. In divorce cases, when there is a merger of a divorce of separation a mensa et thoro into a decree of divorce a vinculo, the above mentioned fee shall include the furnishing of a duly certified copy of both such decrees.

27. For the acceptance of credit or debit cards in lieu of money to collect and secure all fees, including filing fees, fines, restitution, forfeiture, penalties and costs, the clerk shall collect from the person presenting such credit or debit card a reasonable convenience fee for the processing of such credit or debit card. Such convenience fee shall not exceed four percent of the amount paid for the transaction or a flat fee of $2 per transaction. The clerk may set a lower convenience fee for electronic filing of civil or criminal proceedings pursuant to § 17.1-258.3. Nothing herein shall be construed to prohibit the clerk from outsourcing the processing of credit and debit card transactions to a third-party private vendor engaged by the clerk. Convenience fees shall be used to cover operational expenses as defined in § 17.1-295.

28. For the return of any check unpaid by the financial institution on which it was drawn or notice is received from the credit or debit card issuer that payment will not be made for any reason, the clerk may collect a fee of $50 or 10 percent of the amount of the payment, whichever is greater.

29. For all services rendered, except in cases in which costs are assessed pursuant to § 17.1-275.1, 17.1-275.2, 17.1-275.3, or 17.1-275.4, in an adoption proceeding, a fee of $20, in addition to the fee imposed under § 63.2-1246, to be paid by the petitioner or petitioners. For each petition for adoption filed pursuant to § 63.2-1201, except those filed pursuant to subdivisions 5 and 6 of § 63.2-1210, an additional $50 filing fee as required under § 63.2-1201 shall be deposited in the ~~Putative~~ *Virginia Birth* Father Registry Fund pursuant to § 63.2-1249.

30. For issuing a duplicate license for one lost or destroyed as provided in § 29.1-334, a fee in the same amount as the fee for the original license.

31. For the filing of any petition as provided in §§ 33.2-1023, 33.2-1024, and 33.2-1027, a fee of $5 to be paid by the petitioner; and for the recordation of a certificate or copy thereof, as provided for in § 33.2-1021, as well as for any order of the court relating thereto, the clerk shall charge the same fee as

for recording a deed as provided for in this section, to be paid by the party upon whose request such certificate is recorded or order is entered.

32. For making up, certifying and transmitting original record pursuant to the Rules of the Supreme Court, including all papers necessary to be copied and other services rendered, except in cases in which costs are assessed pursuant to § 17.1-275.1, 17.1-275.2, 17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8, or 17.1-275.9, a fee of $20.

33. [Repealed.]

34. For filings, etc., under the Uniform Federal Lien Registration Act (§ 55-142.1 et seq.), the fees shall be as prescribed in that Act.

35. For filing the appointment of a resident agent for a nonresident property owner in accordance with § 55-218.1, a fee of $10.

36. [Repealed.]

37. For recordation of certificate and registration of names of nonresident owners in accordance with § 59.1-74, a fee of $10.

38. For maintaining the information required under the Overhead High Voltage Line Safety Act (§ 59.1-406 et seq.), the fee as prescribed in § 59.1-411.

39. For lodging, indexing and preserving a will in accordance with § 64.2-409, a fee of $2.

40. For filing a financing statement in accordance with § 8.9A-505, the fee shall be as prescribed under § 8.9A-525.

41. For filing a termination statement in accordance with § 8.9A-513, the fee shall be as prescribed under § 8.9A-525.

42. For filing assignment of security interest in accordance with § 8.9A-514, the fee shall be as prescribed under § 8.9A-525.

43. For filing a petition as provided in §§ 64.2-2001 and 64.2-2013, the fee shall be $10.

44. For issuing any execution, and recording the return thereof, a fee of $1.50.

45. For the preparation and issuance of a summons for interrogation by an execution creditor, a fee of $5. If there is no outstanding execution, and one is requested herewith, the clerk shall be allowed an additional fee of $1.50, in accordance with subdivision A 44.

B. In accordance with § 17.1-281, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A 18 if applicable, A 20, A 22, A 24, A 26, A 29, and A 31 to be designated for courthouse construction, renovation or maintenance.

C. In accordance with § 17.1-278, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A 18 if applicable, A 20, A 22, A 24, A 26, A 29, and A 31 to be designated for services provided for the poor, without charge, by a nonprofit legal aid program.

D. In accordance with § 42.1-70, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A 18 if applicable, A 20, A 22, A 24, A 26, A 29, and A 31 to be designated for public law libraries.

E. All fees collected pursuant to subdivision A 27 and § 17.1-276 shall be deposited by the clerk into a special revenue fund held by the clerk, which will restrict the funds to their statutory purpose.

F. The provisions of this section shall control the fees charged by clerks of circuit courts for the services above described.

§ 20-88.35. Bases for jurisdiction over nonresident.

In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of the Commonwealth may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

1. The individual is personally served with process within the Commonwealth;

2. The individual submits to the jurisdiction of the Commonwealth by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

3. The individual resided with the child in the Commonwealth;

4. The individual resided in the Commonwealth and paid prenatal expenses or provided support for the child;

5. The child resides in the Commonwealth as a result of the acts or directives of the individual;

6. The individual engaged in sexual intercourse in the Commonwealth and the child may have been conceived by the act of intercourse;

7. The individual asserted parentage of a child in the ~~putative father registry~~ *Virginia Birth Father Registry* maintained in the Commonwealth by the Department of Social Services;

8. The exercise of personal jurisdiction is authorized under subdivision A 8 of § 8.01-328.1; or

9. There is any other basis consistent with the constitutions of the Commonwealth and the United States for the exercise of personal jurisdiction.

The bases of personal jurisdiction set forth in this section or any other law of the Commonwealth may not be used to acquire personal jurisdiction for a tribunal of the Commonwealth to modify a child support order issued by a tribunal of another state unless the requirements of § 20-88.76 or 20-88.77:3 are met.

§ 63.2-900. Accepting children for placement in homes, facilities, etc., by local boards.

A. Pursuant to § 63.2-319, a local board shall have the right to accept for placement in suitable family homes, children's residential facilities or independent living arrangements, subject to the supervision of the Commissioner and in accordance with regulations adopted by the Board, such persons under 18 years of age as may be entrusted to it by the parent, parents or guardian, committed by any court of competent jurisdiction, or placed through an agreement between it and the parent, parents or guardians where legal custody remains with the parent, parents, or guardians.

The Board shall adopt regulations for the provision of foster care services by local boards, which shall be directed toward the prevention of unnecessary foster care placements and towards the immediate care of and permanent planning for children in the custody of or placed by local boards and that shall achieve, as quickly as practicable, permanent placements for such children. The local board shall first seek out kinship care options to keep children out of foster care and as a placement option for those children in foster care, if it is in the child's best interests, pursuant to § 63.2-900.1. In cases in which a child cannot be returned to his prior family or placed for adoption and kinship care is not currently in the best interests of the child, the local board shall consider the placement and services that afford the best alternative for protecting the child's welfare. Placements may include but are not limited to family foster care, treatment foster care and residential care. Services may include but are not limited to assessment and stabilization, diligent family search, intensive in-home, intensive wraparound, respite, mentoring, family mentoring, adoption support, supported adoption, crisis stabilization or other community-based services. The Board shall also approve in foster care policy the language of the agreement required in § 63.2-902. The agreement shall include at a minimum a Code of Ethics and mutual responsibilities for all parties to the agreement.

Within 30 days of accepting for foster care placement a person under 18 years of age whose father is unknown, the local board shall request a search of the ~~Putative~~ *Virginia Birth* Father Registry established pursuant to Article 7 (§ 63.2-1249 et seq.) of Chapter 12 to determine whether any man has registered as the putative father of the child. If the search results indicate that a man has registered as the putative father of the child, the local board shall contact the man to begin the process to determine paternity.

The local board shall, in accordance with the regulations adopted by the Board and in accordance with the entrustment agreement or other order by which such person is entrusted or committed to its care, have custody and control of the person so entrusted or committed to it until he is lawfully discharged, has been adopted or has attained his majority.

Whenever a local board places a child where legal custody remains with the parent, parents or guardians, the board shall enter into an agreement with the parent, parents or guardians. The agreement shall specify the responsibilities of each for the care and control of the child.

The local board shall have authority to place for adoption, and to consent to the adoption of, any child properly committed or entrusted to its care when the order of commitment or entrustment agreement between the parent or parents and the agency provides for the termination of all parental rights and responsibilities with respect to the child for the purpose of placing and consenting to the adoption of the child.

The local board shall also have the right to accept temporary custody of any person under 18 years of age taken into custody pursuant to subdivision B of § 16.1-246 or § 63.2-1517. The placement of a child in a foster home, whether within or without the Commonwealth, shall not be for the purpose of adoption unless the placement agreement between the foster parents and the local board specifically so stipulates.

B. Prior to the approval of any family for placement of a child, a home study shall be completed and the prospective foster or adoptive parents shall be informed that information about shaken baby syndrome, its effects, and resources for help and support for caretakers is available on a website maintained by the Department as prescribed in regulations adopted by the Board.

C. Prior to placing any such child in any foster home or children's residential facility, the local board shall enter into a written agreement with the foster parents, pursuant to § 63.2-902, or other appropriate custodian setting forth therein the conditions under which the child is so placed pursuant to § 63.2-902. However, if a child is placed in a children's residential facility licensed as a temporary emergency shelter, and a verbal agreement for placement is secured within eight hours of the child's arrival at the facility, the written agreement does not need to be entered into prior to placement, but shall be completed and signed by the local board and the facility representative within 24 hours of the child's arrival or by the end of the next business day after the child's arrival.

D. Within 72 hours of placing a child of school age in a foster care placement, as defined in § 63.2-100, the local social services agency making such placement shall, in writing, (i) notify the principal of the school in which the student is to be enrolled and the superintendent of the relevant school division or his designee of such placement, and (ii) inform the principal of the status of the parental rights.

If the documents required for enrollment of the foster child pursuant to § 22.1-3.1, 22.1-270 or 22.1-271.2, are not immediately available upon taking the child into custody, the placing social services agency shall obtain and produce or otherwise ensure compliance with such requirements for the foster

child within 30 days after the child's enrollment.

§ 63.2-1201. Filing of petition for adoption; venue; jurisdiction; and proceedings.

Proceedings for the adoption of a minor child and for a change of name of such child shall be instituted only by petition to a circuit court in the county or city in which the petitioner resides, in the county or city in which the child-placing agency that placed the child is located, or in the county or city in which a birth parent executed a consent pursuant to § 63.2-1233. Such petition may be filed by any natural person who resides in the Commonwealth, or who has custody of a child placed by a child-placing agency of the Commonwealth, or by an adopting parent of a child who was subject to a consent proceeding held pursuant to § 63.2-1233, or by intended parents who are parties to a surrogacy contract. The petition shall ask leave to adopt a minor child not legally the petitioner's by birth and, if it is so desired by the petitioner, also to change the name of such child. In the case of married persons, or persons who were previously married who are permitted to adopt a child under § 63.2-1201.1, the petition shall be the joint petition of the husband and wife or former spouses but, in the event the child to be adopted is legally the child by birth or adoption of one of the petitioners, such petitioner shall unite in the petition for the purpose of indicating consent to the prayer thereof only. If any procedural provision of this chapter applies to only one of the adoptive parents, then the court may waive the application of the procedural provision for the spouse of the adoptive parent to whom the provision applies. The petition shall contain a full disclosure of the circumstances under which the child came to live, and is living, in the home of the petitioner. Each petition for adoption shall be signed by the petitioner as well as by counsel of record, if any. In any case in which the petition seeks the entry of an adoption order without referral for investigation, the petition shall be under oath.

A single petition for adoption under the provisions of this section shall be sufficient for the concurrent adoption by the same petitioners of two or more children who have the same birth parent or parents, and nothing in this section shall be construed as having heretofore required a separate petition for each of such children.

The petition for adoption, except those filed pursuant to subdivisions 5 and 6 of § 63.2-1210, shall include an additional $50 filing fee that shall be used to fund the ~~Putative~~ *Virginia Birth* Father Registry established in Article 7 (§ 63.2-1249 et seq.) of this chapter.

A petition filed while the child is under 18 years of age shall not become invalid because the child reaches 18 years of age prior to the entry of a final order of adoption. Any final order of adoption entered pursuant to § 63.2-1213 after a child reaches 18 years of age, where the petition was filed prior to the child turning 18 years of age, shall have the same effect as if the child was under 18 years of age at the time the order was entered by the circuit court provided the court has obtained the consent of the adoptee.

§ 63.2-1202. Parental, or agency, consent required; exceptions.

A. No petition for adoption shall be granted, except as hereinafter provided in this section, unless written consent to the proposed adoption is filed with the petition. Such consent shall be in writing, signed under oath and acknowledged before an officer authorized by law to take acknowledgments. The consent of a birth parent for the adoption of his child placed directly by the birth parent shall be executed as provided in § 63.2-1233, and the circuit court may accept a certified copy of an order entered pursuant to § 63.2-1233 in satisfaction of all requirements of this section, provided the order clearly evidences compliance with the applicable notice and consent requirements of § 63.2-1233.

B. A birth parent who has not reached the age of 18 shall have legal capacity to give consent to adoption and perform all acts related to adoption, and shall be as fully bound thereby as if the birth parent had attained the age of 18 years.

C. Consent shall be executed:

1. By the birth mother and by any man who:

a. Is an acknowledged father under § 20-49.1;

b. Is an adjudicated father under § 20-49.8;

c. Is a presumed father under subsection D; or

d. Has registered with the ~~Putative~~ *Virginia Birth* Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.).

Verification of compliance with the notice provisions of the ~~Putative~~ *Virginia Birth* Father Registry shall be provided to the court.

2. By the child-placing agency or the local board having custody of the child, with right to place him for adoption, through court commitment or parental agreement as provided in § 63.2-900, 63.2-903, or 63.2-1221; or an agency outside the Commonwealth that is licensed or otherwise duly authorized to place children for adoption by virtue of the laws under which it operates; and

3. By the child if he is 14 years of age or older, unless the circuit court finds that the best interests of the child will be served by not requiring such consent.

D. A man shall be presumed to be the father of a child if:

1. He and the mother of the child are married to each other and the child is born during the marriage;

2. He and the mother of the child were married to each other and the child is born within 300 days

of their date of separation, as evidenced by a written agreement or decree of separation, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce; or

3. Before the birth of the child, he and the mother of the child married each other in apparent compliance with the law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within 300 days of their date of separation, as evidenced by a written agreement or decree of separation, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce.

Such presumption may be rebutted by sufficient evidence that would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation with the birth mother for a period of at least 300 days prior to the birth of the child.

E. No consent shall be required of a birth father if he denies under oath and in writing the paternity of the child. Such denial of paternity may be withdrawn no more than 10 days after it is executed. Once the child is 10 days old, any executed denial of paternity is final and constitutes a waiver of all rights with respect to the adoption of the child and cannot be withdrawn.

F. No consent shall be required of the birth father of a child when the birth father is convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, and the child was conceived as a result of such violation.

G. No notice or consent shall be required of any person whose parental rights have been terminated by a court of competent jurisdiction, including foreign courts that have competent jurisdiction. No notice or consent is required of any birth parent of a child for whom a guardianship order was granted when the child was approved by the United States Citizenship and Immigration Services for purposes of adoption.

H. No consent shall be required of a birth parent who, without just cause, has neither visited nor contacted the child for a period of six months immediately prior to the filing of the petition for adoption or the filing of a petition to accept consent to an adoption. The prospective adoptive parent(s) shall establish by clear and convincing evidence that the birth parent(s), without just cause, has neither visited nor contacted the child for a period of six months immediately prior to the filing of the petition for adoption or the filing of a petition to accept consent to an adoption. This provision shall not infringe upon the birth parent's right to be noticed and heard on the allegation of abandonment. For purposes of this section, the payment of child support, in the absence of other contact with the child, shall not be considered contact.

I. A birth father of the child may consent to the termination of all of his parental rights prior to the birth of the child.

J. The failure of the nonconsenting party to appear at any scheduled hearing, either in person or by counsel, after proper notice has been given to said party, shall constitute a waiver of any objection and right to consent to the adoption.

K. If a birth parent, legal guardian, or prospective adoptee, executing a consent, entrustment, or other documents related to the adoption, cannot provide the identification required pursuant to § 47.1-14, the birth parent, legal guardian, or prospective adoptee may execute a self-authenticating affidavit as to his identity subject to the penalties contained in § 63.2-1217.

§ 63.2-1222. Execution of entrustment agreement by birth parent(s); exceptions; notice and objection to entrustment; copy required to be furnished; requirement for agencies outside the Commonwealth.

A. For the purposes of this section, a birth parent who is less than 18 years of age shall be deemed fully competent and shall have legal capacity to execute a valid entrustment agreement, including an agreement that provides for the termination of all parental rights and responsibilities, and perform all acts related to adoption and shall be as fully bound thereby as if such birth parent had attained the age of 18 years.

B. An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child born out of wedlock if the identity of the birth father is not reasonably ascertainable or such birth father did not register with the ~~Putative~~ *Virginia Birth* Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) or the birth father named by the birth mother denies under oath and in writing the paternity of the child. An affidavit signed by the birth mother stating that the identity of the birth father is unknown may be filed with the court alleging that the identity of the birth father is not known or reasonably ascertainable. A birth father shall be given notice of the entrustment if he is an acknowledged father pursuant to § 20-49.1, an adjudicated father pursuant to § 20-49.8, a presumed father pursuant to § 63.2-1202, or a putative father who has registered with ~~Putative~~ *the Virginia Birth* Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.). If the putative father's identity is reasonably ascertainable, he shall be given notice pursuant to the requirements of § 63.2-1250.

C. When a birth father is required to be given notice, he may be given notice of the entrustment by registered or certified mail to his last known address. If he fails to object to the entrustment within 15 days of the mailing of such notice, his entrustment shall not be required. An objection to an entrustment

agreement shall be in writing, signed by the objecting party or counsel of record for the objecting party and filed with the agency that mailed the notice of entrustment within the time period specified in § 63.2-1223.

D. The execution of an entrustment agreement shall be required of a presumed father except under the following circumstances: (i) if he denies paternity under oath and in writing in accordance with § 63.2-1202; (ii) if the presumption is rebutted by sufficient evidence, satisfactory to the circuit court, which would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation of the birth mother and her husband for a period of at least 300 days preceding the birth of the child; (iii) if another man admits, in writing and under oath, that he is the biological father; or (iv) if an adoptive placement has been determined to be in the best interests of the child pursuant to § 63.2-1205.

E. When none of the provisions of subsections C and D apply, notice of the entrustment shall be given to the presumed father pursuant to the requirements of § 16.1-277.01.

F. An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child when the birth father has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, and the child was conceived as a result of such violation.

G. A birth father may execute an entrustment agreement for the termination of all of his parental rights prior to the birth of the child. Such entrustment shall be subject to the revocation provisions of § 63.2-1223.

H. No entrustment shall be required of a birth father if he denies under oath and in writing the paternity of the child. Such denial of paternity may be withdrawn no more than 10 days after it is executed. Once the child is 10 days old, any executed denial of paternity is final and constitutes a waiver of all rights with respect to the adoption of the child and cannot be withdrawn.

I. A copy of the entrustment agreement shall be furnished to all parties signing such agreement.

J. When any agency outside the Commonwealth, or its agent, that is licensed or otherwise duly authorized to place children for adoption by virtue of the laws under which it operates executes an entrustment agreement in the Commonwealth with a birth parent for the termination of all parental rights and responsibilities with respect to the child, the requirements of §§ 63.2-1221 through 63.2-1224 shall apply. The birth parent may expressly waive, under oath and in writing, the execution of the entrustment under the requirements of §§ 63.2-1221 through 63.2-1224 in favor of the execution of an entrustment or relinquishment under the laws of another state if the birth parent is represented by independent legal counsel. Such written waiver shall expressly state that the birth parent has received independent legal counsel advising of the laws of Virginia and of the other state and that Virginia law is expressly being waived. The waiver also shall include the name, address, and telephone number of such legal counsel. Any entrustment agreement that fails to comply with such requirements shall be void.

§ 63.2-1224. Explanation of process, legal effects of adoption required.

Prior to the placement of a child for adoption, the licensed child-placing agency or local board having custody of the child shall provide an explanation of the adoption process to the birth mother and, if reasonably available, the man who is an acknowledged father pursuant to § 20-49.1, an adjudicated father pursuant to § 20-49.8, a presumed father pursuant to § 63.2-1202, or a putative father who has registered with the ~~Putative~~ *Virginia Birth* Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) of this chapter.

§ 63.2-1233. Consent to be executed in juvenile and domestic relations district court; exceptions.

When the juvenile and domestic relations district court is satisfied that all requirements of § 63.2-1232 have been met with respect to at least one birth parent and the adoptive child is at least in the third calendar day of life, that birth parent or both birth parents, as the case may be, shall execute consent to the proposed adoption in compliance with the provisions of § 63.2-1202 while before the juvenile and domestic relations district court in person and in the presence of the prospective adoptive parents. The juvenile and domestic relations district court shall accept the consent of the birth parent(s) and transfer custody of the child to the prospective adoptive parents, pending notification to any nonconsenting birth parent, as described hereinafter.

1. a. The execution of consent before the juvenile and domestic relations district court shall not be required of a birth father if the birth father consents under oath and in writing to the adoption.

b. The consent of a birth father who is not married to the mother of the child at the time of the child's conception or birth shall not be required if the putative father named by the birth mother denies under oath and in writing the paternity of the child or if the putative father did not register with the ~~Putative~~ *Virginia Birth* Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) of this chapter. If the identity of the birth father is reasonably ascertainable, but the whereabouts of the birth father are not reasonably ascertainable, verification of compliance with the ~~Putative~~ *Virginia Birth* Father Registry shall be provided to the court.

c. When a birth father is required to be given notice, he may be given notice of the adoption by registered or certified mail to his last known address and if he fails to object to the adoption within 15

days of the mailing of such notice, his consent shall not be required. An objection shall be in writing, signed by the objecting party or counsel of record for the objecting party and shall be filed with the clerk of the juvenile and domestic relations district court in which the petition was filed during the business day of the court, within the time period specified in this section. When no timely objection is filed, no hearing on this issue is required. Failure of the objecting party to appear at any scheduled hearing, either in person or by counsel, shall constitute a waiver of such objection.

d. The juvenile and domestic relations district court may accept the written consent of the birth father at the time of the child's conception or birth, provided that his identifying information required in § 63.2-1232 is filed in writing with the juvenile and domestic relations district court of jurisdiction. Such consent shall advise the birth father of his opportunity for legal representation, shall identify the court in which the case was or is intended to be filed, and shall be presented to the juvenile and domestic relations district court for acceptance. The consent may waive further notice of the adoption proceedings and shall contain the name, address and telephone number of the birth father's legal counsel or an acknowledgment that he was informed of his opportunity to be represented by legal counsel and declined such representation. For good cause shown, the court may dispense with the requirements regarding the filing of the birth father's identifying information pursuant to this subdivision 1. d.

e. In the event that the birth mother's consent is not executed in the juvenile and domestic relations district court, the consent of the birth father shall be executed in the juvenile and domestic relations district court.

f. A child born to a married birth mother shall be presumed to be the child of her husband and his consent shall be required, unless the court finds that the father's consent is withheld contrary to the best interests of the child as provided in § 63.2-1205 or if his consent is unobtainable. The consent of such presumed father shall be under oath and in writing and may be executed in or out of court. The presumption that the husband is the father of the child may be rebutted by sufficient evidence, satisfactory to the juvenile and domestic relations district court, which would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation of the birth mother and her husband for a period of at least 300 days preceding the birth of the child, in which case the husband's consent shall not be required. The executed denial of paternity by the putative father shall be sufficient to rebut the presumption that he is the father of the child. If the court is satisfied that the presumption has been rebutted, notice of the adoption shall not be required to be given to the presumed father.

2. After the application of the provisions of subdivision 1, if a birth parent is entitled to a hearing, the birth parent shall be given notice of the date and location of the hearing and be given the opportunity to appear before the juvenile and domestic relations district court. Such hearing may occur subsequent to the proceeding wherein the consenting birth parent appeared but may not be held until 15 days after personal service of notice on the nonconsenting birth parent, or if personal service is unobtainable, 10 days after the completion of the execution of an order of publication against such birth parent. The juvenile and domestic relations district court may appoint counsel for the birth parent(s). If the juvenile and domestic relations district court finds that consent is withheld contrary to the best interests of the child, as set forth in § 63.2-1205, or is unobtainable, it may grant the petition without such consent and enter an order waiving the requirement of consent of the nonconsenting birth parent and transferring custody of the child to the prospective adoptive parents. No further consent or notice shall be required of a birth parent who fails to appear at any scheduled hearing, either in person or by counsel. If the juvenile and domestic relations district court denies the petition, the juvenile and domestic relations district court shall order that any consent given for the purpose of such placement shall be void and, if necessary, the court shall determine custody of the child as between the birth parents.

3. Except as provided in subdivisions 4 and 5, if consent cannot be obtained from at least one birth parent, the juvenile and domestic relations district court shall deny the petition and determine custody of the child pursuant to § 16.1-278.2.

4. If a child has been under the physical care and custody of the prospective adoptive parents and if both birth parents have failed, without good cause, to appear at a hearing to execute consent under this section for which they were given proper notice pursuant to § 16.1-264, the juvenile and domestic relations district court may grant the petition without the consent of either birth parent and enter an order waiving consent and transferring custody of the child to the prospective adoptive parents. Prior to the entry of such an order, the juvenile and domestic relations district court may appoint legal counsel for the birth parents and shall find by clear and convincing evidence (i) that the birth parents were given proper notice of the hearing(s) to execute consent and of the hearing to proceed without their consent; (ii) that the birth parents failed to show good cause for their failure to appear at such hearing(s); and (iii) that pursuant to § 63.2-1205, the consent of the birth parents is withheld contrary to the best interests of the child or is unobtainable. Under this subdivision, the court or the parties may waive the requirement of the simultaneous meeting under § 63.2-1231 and the requirements of subdivisions A 1, A 3, and A 7 of § 63.2-1232 where the opportunity for compliance is not reasonably available under the applicable circumstances.

5. If both birth parents are deceased, the juvenile and domestic relations district court, after hearing evidence to that effect, may grant the petition without the filing of any consent.

6. No consent shall be required from the birth father of a child placed pursuant to this section when such father is convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, and the child was conceived as a result of such violation, nor shall the birth father be entitled to notice of any of the proceedings under this section.

7. No consent shall be required of a birth father if he denies under oath and in writing the paternity of the child. Such denial of paternity may be withdrawn no more than 10 days after it is executed. Once the child is 10 days old, any executed denial of paternity is final and constitutes a waiver of all rights with the respect to the adoption of the child and cannot be withdrawn.

8. A birth father may consent to the adoption prior to the birth of the child.

9. The juvenile and domestic relations district court shall review each order entered under this section at least annually until such time as the final order of adoption is entered.

10. When there has been an interstate transfer of the child in a parental placement adoption in compliance with Chapter 10 (§ 63.2-1000 et seq.) of this title, all matters relating to the adoption of the child including, but not limited to, custody and parentage shall be determined in the court of appropriate jurisdiction in the state that was approved for finalization of the adoption by the interstate compact authorities.

§ 63.2-1249. Establishment of Registry.

A. A ~~Putative~~ *Virginia Birth* Father Registry is hereby established in the Department of Social Services.

B. There is hereby created in the state treasury a special nonreverting fund to be known as the ~~Putative~~ *Virginia Birth* Father Registry Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys collected under § 63.2-1201 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund by shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of administration of the ~~Putative~~ *Virginia Birth* Father Registry. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner or his designee.

§ 63.2-1250. Registration; notice; form.

A. ~~Except as otherwise provided in subsection C, a~~ *Any man who has engaged in sexual intercourse with a woman is deemed to be on legal notice that a child may be conceived and that the man is entitled to all legal rights and obligations resulting therefrom. Lack of knowledge of the pregnancy does not excuse failure to timely register with the Virginia Birth Father Registry.*

B. A man who desires to be notified of a placement of a child by a local board pursuant to § 63.2-900, a proceeding for adoption, or a proceeding for termination of parental rights regarding a child that he may have fathered shall register with the ~~Putative~~ *Virginia Birth* Father Registry ~~before the birth of the child or within 10 days after the birth. A registrant shall promptly notify the registry of any change in the information registered including but not limited to change of address. The Department shall incorporate all new information received into its records but is not required to obtain current information for incorporation in the registry~~.

C. Failure to timely register with the Virginia Birth Father Registry shall waive all rights of a man who is not acknowledged to be, presumed to be, or adjudicated the father to withhold consent to an adoption proceeding unless the man was led to believe through the birth mother's misrepresentation that (i) the pregnancy was terminated or the mother miscarried when in fact the baby was born or (ii) the child died when in fact the child is alive. Upon discovery of the misrepresentation, the man shall register with the Virginia Birth Father Registry within 10 days.

~~B.~~ *D.* A man will not prejudice any rights by failing to register if:

1. A father-child relationship between the man and the child has been established pursuant to § 20-49.1, 20-49.8, or if the man is a presumed father as defined in § 63.2-1202; or

2. The man commences a proceeding to adjudicate his paternity before a petition to accept consent or waive adoption consent is filed in the juvenile and domestic relations district court, or *before* a petition for adoption or a petition for the termination of his parental rights is filed with the court.

~~C. Failure to register pursuant to subsection A shall waive all rights of a man who is not an acknowledged, presumed, or adjudicated father to withhold consent to an adoption proceeding unless the man was led to believe through the birth mother's fraud that (i) the pregnancy was terminated or the mother miscarried when in fact the baby was born or (ii) that the child died when in fact the child is alive. Upon the discovery of the fraud, the man shall register with the Putative Father Registry within 10 days.~~

E. Registration is timely if it is received by the Department within (i) 10 days of the child's birth or (ii) the time specified in subsection C or F. Registration is complete when the signed registration form is first received by the Department. The signed registration form shall be submitted in the manner

prescribed by the Department.

F. In the event that the identity and whereabouts of the birth father are reasonably ascertainable, the child-placing agency or adoptive parents shall give written notice to the birth father of the existence of an adoption plan and the availability of registration with the Virginia Birth Father Registry. Such written notice shall be provided by personal service or by certified mailing to the birth father's last known address. Registration is timely if the signed registration form is received by the Department within 10 days of personal service of the written notice or within 13 days of the certified mailing date of the written notice. The personal service or certified mailing may be completed either prior to or after the birth of the child.

~~D.~~ *G.* The child-placing agency or adoptive parent(s) shall give notice *to a registrant who has timely registered* of a placement of a child by a local board pursuant to § 63.2-900, a proceeding for adoption, or a proceeding for termination of parental rights regarding a child ~~to a registrant who has timely registered pursuant to subsection A~~. Notice shall be given pursuant to the requirements of this chapter or § 16.1-277.01 for the appropriate adoption proceeding.

~~E. Any man who has engaged in sexual intercourse with a woman is deemed to be on legal notice that a child may be conceived and the man is entitled to all legal rights and obligations resulting therefrom. Lack of knowledge of the pregnancy does not excuse failure to timely register. In the event that the identity and whereabouts of the birth father are reasonably ascertainable, written notice of the existence of an adoption plan and the availability of registration with the Putative Father Registry shall be provided by personal service or by certified mailing to the man's last known address. The man shall have no more than 10 days from the date of such personal service or certified mailing to register. The personal service or certified mailing may be done either prior to or after the birth of the child.~~

~~F.~~ *H. 1.* The Department shall prepare a form for registering with the agency that shall require (i) the registrant's name, date of birth and social security number; (ii) the registrant's driver's license number and state of issuance; (iii) the registrant's home address, telephone number, and employer; (iv) the name, date of birth, ethnicity, address, and telephone number of the putative mother, if known; (v) the state of conception; (vi) the place and date of birth of the child, if known; (vii) the name and gender of the child, if known; and (viii) the signature of the registrant. No form for registering with the ~~Putative~~ *Virginia Birth* Father Registry ~~pursuant to this subsection~~ shall be complete unless signed by the registrant *and the signed registration form is received by the Department in the manner prescribed by the Department*.

~~G.~~ *2.* The form shall also state that (i) timely registration entitles the registrant to notice of a proceeding for adoption of the child or termination of the registrant's parental rights, (ii) registration does not commence a proceeding to establish paternity, (iii) the information disclosed on the form may be used against the registrant to establish paternity, (iv) services to assist in establishing paternity are available to the registrant through the Department, (v) the registrant should also register in another state if conception or birth of the child occurred in another state, (vi) information on registries of other states may be available from the Department, (vii) the form is signed under penalty of perjury, and (viii) procedures exist to rescind the registration of a claim of paternity.

3. A registrant shall promptly notify the Virginia Birth Father Registry of any change in information, including change of address. The Department shall incorporate all updated information received into its records but is not required to request or otherwise pursue current or updated information for incorporation in the registry.

§ 63.2-1252. Search of registry.

A. If no father-child relationship has been established pursuant to § 20-49.1, a petitioner for adoption shall obtain from the Department a certificate that a search of the ~~Putative~~ *Virginia Birth* Father Registry was performed. If the conception or birth of the child occurred in another state, a petitioner for adoption shall obtain a certificate from that state indicating that a search of the putative father registry was performed, if that state has a putative father registry.

B. The Department shall furnish to the requester a certificate of search of the registry upon the request of an individual, court, or agency listed in § 63.2-1251. Any such certificate shall be signed on behalf of the Department and state that a search has been made of the registry and a registration containing the information required to identify the registrant has been found and is attached to the certificate of search or has not been found. Within four business days from the receipt of the request, the Department shall mail the certificate to the requestor by United States mail. Upon request of the requestor and payment of any additional costs, the Department shall have the certificate delivered to the requestor by overnight mail, in person, by messenger, by facsimile or other electronic communication. The Department's certificate or an appropriate certificate from another state shall be sufficient proof the registry was searched.

C. A petitioner shall file the certificate of search with the court before a proceeding for adoption of, or termination of parental rights regarding, a child may be concluded.

D. A certificate of search of the ~~Putative~~ *Virginia Birth* Father Registry is admissible in a proceeding for adoption of, or termination of parental rights regarding, a child and, if relevant, in other legal proceedings.

§ 63.2-1253. Duty to publicize registry.

A. The Department shall produce and distribute a pamphlet or other publication informing the public about the ~~Putative~~ *Virginia Birth* Father Registry including (i) the procedures for voluntary acknowledgement of paternity, (ii) the consequences of acknowledgement and failure to acknowledge paternity pursuant to § 20-49.1, (iii) a description of the ~~Putative~~ *Virginia Birth* Father Registry including to whom and under what circumstances it applies, (iv) the time limits and responsibilities for filing, (v) paternal rights and associated responsibilities, and (vi) other appropriate provisions of this article.

B. Such pamphlet or publication shall include a detachable form that meets the requirements of subsection ~~F~~ *H* of § 63.2-1250, is suitable for United States mail, and is addressed to the ~~Putative~~ *Virginia Birth* Father Registry. Such pamphlet or publication shall be made available for distribution at all offices of the Department of Health and all local departments of social services. The Department shall also provide such pamphlets or publications to hospitals, libraries, medical clinics, schools, universities, and other providers of child-related services upon request.

C. The Department shall provide information to the public at large by way of general public service announcements, or other ways to deliver information to the public about the ~~Putative~~ *Virginia Birth* Father Registry and its services.

Code of Virginia
Title 63.2. Welfare (Social Services)
Chapter 12. Adoption

§ 63.2-1250. Registration; notice; form

A. Any man who has engaged in sexual intercourse with a woman is deemed to be on legal notice that a child may be conceived and that the man is entitled to all legal rights and obligations resulting therefrom. Lack of knowledge of the pregnancy does not excuse failure to timely register with the Virginia Birth Father Registry.

B. A man who desires to be notified of a placement of a child by a local board pursuant to § 63.2-900, a proceeding for adoption, or a proceeding for termination of parental rights regarding a child that he may have fathered shall register with the Virginia Birth Father Registry.

C. Failure to timely register with the Virginia Birth Father Registry shall waive all rights of a man who is not acknowledged to be, presumed to be, or adjudicated the father to withhold consent to an adoption proceeding unless the man was led to believe through the birth mother's misrepresentation that (i) the pregnancy was terminated or the mother miscarried when in fact the baby was born or (ii) the child died when in fact the child is alive. Upon discovery of the misrepresentation, the man shall register with the Virginia Birth Father Registry within 10 days.

D. A man will not prejudice any rights by failing to register if:

1. A father-child relationship between the man and the child has been established pursuant to § 20-49.1, 20-49.8, or if the man is a presumed father as defined in § 63.2-1202;or

2. The man commences a proceeding to adjudicate his paternity before a petition to accept consent or waive adoption consent is filed in the juvenile and domestic relations district court, or before a petition for adoption or a petition for the termination of his parental rights is filed with the court.

E. Registration is timely if it is received by the Department within (i) 10 days of the child's birth or (ii) the time specified in subsection C or F. Registration is complete when the signed registration form is first received by the Department. The signed registration form shall be submitted in the manner prescribed by the Department.

F. In the event that the identity and whereabouts of the birth father are reasonably ascertainable, the child-placing agency or adoptive parents shall give written notice to the birth father of the existence of an adoption plan and the availability of registration with the Virginia Birth Father Registry. Such written notice shall be provided by personal service or by certified mailing to the birth father's last known address. Registration is timely if the signed registration form is received by the Department within 10 days of personal service of the written notice or within 13 days of the certified mailing date of the written notice. The personal service or certified mailing may be completed either prior to or after the birth of the child.

G. The child-placing agency or adoptive parent(s) shall give notice to a registrant who has timely registered of a placement of a child by a local board pursuant to § 63.2-900, a proceeding for adoption, or a proceeding for termination of parental rights regarding a child. Notice shall be given pursuant to the requirements of this chapter or § 16.1-277.01 for the appropriate adoption proceeding.

H. 1. The Department shall prepare a form for registering with the agency that shall require (i) the registrant's name, date of birth and social security number; (ii) the registrant's driver's license number and state of issuance; (iii) the registrant's home address, telephone number, and employer; (iv) the name, date of birth, ethnicity, address, and telephone number of the putative mother, if known; (v) the state of conception; (vi) the place and date of birth of the child, if known; (vii) the name and gender of the child, if known; and (viii) the signature of the registrant. No form for registering with the Virginia Birth Father Registry shall be complete unless signed by the registrant and the signed registration form is received by the Department in the manner prescribed by the Department.

2. The form shall also state that (i) timely registration entitles the registrant to notice of a proceeding for adoption of the child or termination of the registrant's parental rights, (ii) registration does not commence a proceeding to establish paternity, (iii) the information disclosed on the form may be used against the registrant to establish paternity, (iv) services to assist in establishing paternity are available to the registrant through the Department, (v) the registrant should also register in another state if conception or birth of the child occurred in another state, (vi) information on registries of other states may be available from the Department, (vii) the form is signed under penalty of perjury, and (viii) procedures exist to rescind the registration of a claim of paternity.

3. A registrant shall promptly notify the Virginia Birth Father Registry of any change in information, including change of address. The Department shall incorporate all updated information received into its records but is not required to request or otherwise pursue current or updated information for incorporation in the registry.

2006, c. 825;2009, c. 805;2012, c. 424;2015, c. 531;2017, c. 200.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

VIRGINIA BEACH BAR ASSOCIATION/VIRGINIA BEACH JUVENILE AND DOMESTIC RELATINS DISTRICT COURT LIAISON COMMITTEE ANNUAL CLE PRESENTS:

ETHICAL CONSIDERATIONS IN THE TIME OF PANDEMIC: HOW TO MAINTAIN THE HIGHEST STANDARDS OF ETHICS AND PROFESSIONALISM WHILE PRACTING SOCIAL DISTANCING AND REMOTE HEARINGS, MEETINGS, AND MEDIATIONS

INTRODUCTION

At some point during the Reagan administration, while he was trying to impress Ally Sheedy, Matthew Broderick accidentally entered codes to begin a nuclear war with his Apple II. Luckily, with about 2 seconds left, he was able to recall the missile launch and avert the war. It is safe to assume that young Broderick later realized that Ally Sheedy's dishonest attempt to change her grades had produced a majorly undesirable outcome, at which time he began his relationship with Sarah Jessica Parker. As far as I know, they are still married and have three children. Whew.

Unfortunately, we are not all as fortunate as the future Ferris Bueller, who haplessly prevented global destruction, skirted Principal Rooney's punishments, and married the coolest girl in New York. The rest of us have to work hard, learn how to use technology properly and securely, and yes, even follow the rules. Our rules require us to know the possible pitfalls of new methods of communication as they present themselves. The Legal Ethics Rules mandate that attorneys be diligent in understanding the technology they use well enough to foresee and prevent breaches to the security of the clients they serve. And technology is currently in a state of constant change.

Aside from the advanced age of the presenters, you may be wondering, "Why the fixation on the 80's in the introduction to this Ethics program?" Here's why – the 80's was the first decade during which regular, everyday people, regardless of their global location, age, or income, gained access to confidential, sensitive and sometimes dangerous information *via* an invisible, undetectable connection. Acts of spying, theft and piracy suddenly became something that politicians didn't have to do by having members of their staff awkwardly break into a building thereby causing the downfall and eventual resignation of a very paranoid, arguably mentally ill president who swore he was not a crook. These nefarious acts are now able to be accomplished by foreign governments, disenfranchised citizens, terrorists, and anyone with a computer and wireless internet connection.

We now find ourselves in 2020. From 1980 to 2020, technology has grown in ways that Reagan could not have foreseen, yet with these advances, hackers have made advances of their own. Many of the safety and security concerns of lawyers remain the same as they were decades ago, with more confusion surrounding how to protect sensitive information and preserve confidentiality. This program will examine the Virginia Ethical Rules and will hopefully guide and inspire practitioners to protect the public to the greatest extent possible.

Kellam Parks, Esquire, a cyber-security leader within the Virginia Bar has prepared these materials to assist and educate us on how to best serve our clients and remain in ethical compliance. *The "2020 Comments" and hypotheticals have been added by Bretta Z. Lewis, Esq. to address specific concerns related to the global disaster that is 2020 … with a specific eye to concerns of VBJDRC practitioners including those who serve as CACs and GALs*. Enjoy.

I. Ethical duties with use of Technology

a. Technological Competence in the Practice of Law[1]

i. Duty of Competence – Rule 1.1

1. Overview

The American Bar Association ("ABA") tackled the issue of technology with its August, 2012 Amendment to Comment 8 to Model Rule ("MR") 1.1 on general competence: "To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, *including the benefits and risks associated with relevant technology*, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject."

The accompanying Report states: "[T]he proposed amendment, which appears in a Comment, does not impose any new obligations on lawyers. Rather, the amendment is intended to serve as a reminder to lawyers that they should remain aware of technology, including the benefits and risks associated with it, as part of a lawyer's general ethical duty to remain competent." This accompanying statement indicates the ABA's intent was not to add new obligations to attorneys, but rather to at least bring technology into counsel's field of vision as they consider their ethical duty of competence. It is arguably irresponsible, and perhaps even towing the line of unethical, to overlook the available technological resources when representing your clients.

The Virginia State Bar had proposed a change to Virginia Rule 1.1 in late 2014 that would have adopted a duty of Virginia lawyers to educate themselves about technology much like the ABA comment; however, there was substantial pushback by the membership, and it was substantially watered down when voted on by the VSB on February 15, 2015. The Supreme Court approved a modification to Rule 1.1 that went into effect on March 1, 2016; however, the approved change, as it pertains to the duty of competence with technology, merely adds a sentence to Comment [6] that "[a]ttention should be paid to the benefits and risks associated with relevant technology." The first VSB-proposed change would have added to the Rule itself the clause "including the benefits and risks associated with technology relevant to the lawyer's practice" onto a lawyer's duty to "maintain the requisite knowledge and skill, a lawyer should engage in continuing study and education…" The final approved Rule change reflects a pushback and concern from lawyers perceiving, rightly or wrongly, that the VSB is attempting to mandate them to adopt modern technology into the legal profession.[2]

2020 Comment: In 2020, it is more interesting than ever to contemplate a Virginia practitioner who simply refuses to use a smart phone, never reads email, will not agree to a video hearing, and shuns any methods other than face to face meetings, dictated letters, and paper notes. In the hypothetical below, you will be asked to contemplate attorney Lenny Luddite, who has had a large family practice since 1976, but has failed (out of "a genuine concern for the safety of his clients' right to privacy,") to adopt any measures consistent with the changing times. During the mandatory closing of his firm to the public due to Covid-19 concerns, many of his clients were left completely in the dark other than dictated letters sent by U.S. Mail, which were typed by Lenny's assistant (whom he still refers to as "his girl' and brags that she is the best in the state at shorthand), and were largely outdated when they arrived. Implicated Rules: 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.6 (Confidentiality), 1.15 (e)(1,2) Recordkeeping Requirements

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[1] My thanks to Jim McCauley, Ethics Counsel at the Virginia State Bar, for his assistance on some of the materials contained in this section of CLE. They were used, in part, in ethics CLEs put on across Virginia through the VSB's former Special Committee on Technology and the Practice of Law, which I chaired.

[2] http://www.vsb.org/pro-guidelines/index.php/rules/client-lawyer-relationship/rule1-1/

ii. Safeguarding Client Information
Duty of Confidence (Rule 1.6)
a. Overview

Rule 1.6 ("Confidentiality of Information") governs the protection of client information. Included in this Rule is subsection (d) – "A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information protected under this Rule." [3] This Rule was amended alongside Rule 1.1, discussed earlier, in March, 2016. The amendments to Rule 1.6 further fleshed out the concept of "reasonable care" and what that means for protecting client data.

The new Rule adds subsection (d), which states "[a] lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information protected under this Rule." Also, added comment [19] reads:

> [19] Paragraph (d) requires a lawyer to act reasonably to safeguard information protected under this rule against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1, and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of confidential information does not constitute a violation of this Rule if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the employment or engagement of persons competent with technology, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g. by making a device or important piece of software excessively difficult to use).
>
> 19[a] Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other laws, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of this Rule.

When considering the proposed Rule change, the Supreme Court wanted additional clarifications added beyond subsection (d) and Comment [19] and after working with the Virginia State Bar, came up with Comments [20] and [21]:

> [20] Paragraph (d) makes clear that a lawyer is not subject to discipline under this Rule if the lawyer has made reasonable efforts to protect electronic data, even if there is a data breach, cyber-attack or other incident resulting in the loss, destruction, misdelivery or theft of confidential client information. Perfect online security and data protection is not attainable. Even large businesses and government organizations with sophisticated data security systems have suffered data breaches. Nevertheless, security and data breaches have become so prevalent that some security measures must be reasonably expected of all businesses, including lawyers and law firms. Lawyers have an ethical

[3] http://www.vsb.org/pro-guidelines/index.php/rules/client-lawyer-relationship/rule1-6/

obligation to implement reasonable information security practices to protect the confidentiality of client data. What is "reasonable" will be determined in part by the size of the firm. *See* Rules 5.1 (a)-(b) and 5.3(a)-(b). The sheer amount of personal, medical and financial information of clients kept by lawyers and law firms requires reasonable care in the communication and storage of such information. A lawyer or law firm complies with paragraph (d) if they have acted reasonably to safeguard client information by employing appropriate data protection measures for any devices used to communicate or store client confidential information.

To comply with this Rule, a lawyer does not need to have all the required technology competencies. The lawyer can and more likely must turn to the expertise of staff or an outside technology professional. Because threats and technology both change, lawyers should periodically review both and enhance their security as needed; steps that are reasonable measures when adopted may become outdated as well.

[21] Because of evolving technology, and associated evolving risks, law firms should keep abreast on an ongoing basis of reasonable methods for protecting client confidential information, addressing such practices as:

> (a) Periodic staff security training and evaluation programs, including precautions and procedures regarding data security;
>
> (b) Policies to address departing employee's future access to confidential firm data and return of electronically stored confidential data;
>
> (c) Procedures addressing security measures for access of third parties to stored information;
>
> (d) Procedures for both the backup and storage of firm data and steps to securely erase or wipe electronic data from computing devices before they are transferred, sold, or reused;
>
> (e) The use of strong passwords or other authentication measures to log on to their network, and the security of password and authentication measures; and
>
> (f) The use of hardware and/or software measures to prevent, detect and respond to malicious software and activity.

b. Case Example

i. ***Bile v. RREMC, LLC and Denny's Corp*** Civ. Action. No. 3:15cv051 (Eastern Dist. Va., J. Payne, Aug. 24. 2016)

Plaintiff and Defendant reached a settlement of an employment discrimination lawsuit. Each side filed motions to enforce the settlement after Defendant's counsel inadvertently delivered to a hacker the settlement proceeds. At a settlement conference, the parties agreed to settle the case for $63,000 and executed a settlement agreement. A hacker obtained access to Plaintiff's e-mail account, obtained knowledge of the pending settlement and sent an e-mail to defense counsel, posing as Plaintiff's counsel, with instructions to wire the settlement funds

to an account purporting to be the Plaintiff's account in London. Defense counsel complied and wired the settlement funds to the account as instructed. Two days later Plaintiff's counsel called Defense counsel to inquire about the status of the funds at which point counsel realized that the e-mail with the wire transfer instructions did not originate from Plaintiff's counsel. Defendant's counsel unsuccessfully tried to claw back the wired funds. Plaintiff refused to discontinue the lawsuit and Defendant refused to pay another $63,000.

At issue was the fact that Plaintiff's counsel earlier received an email from an "aoi.com" account that was visually similar to Plaintiff's legitimate aol.com account, with instructions to wire the settlement funds to a particular account in Plaintiff's name at Barclay's in London. Shortly thereafter, Plaintiff's counsel verified that his client did not send that particular email. Plaintiff's counsel deleted the email without alerting Defendants' counsel or the Court to the fact that his client's email account was compromised and that he had received what he considered a fraudulent email. Judge Payne made a finding that Plaintiff and his counsel had actual knowledge a malicious third party was targeting the settlement for a fraudulent transfer to an overseas account that did not belong to Plaintiff.

Judge Payne found that Defendants substantially performed under the settlement agreement and therefore were entitled to substantial performance by Plaintiff under the agreement. Citing UCC law regarding third-party fraud and depositing checks at a bank, the Court noted that a party whose failure to take ordinary care results in loss must be the party to bear that loss. The Court also noted that a blameless party [defendants] is entitled to rely on reasonable representations, even when those representations are made by fraudsters. The Court stated:

> The parties have cited no decision articulating that an attorney has an obligation to notify opposing counsel when the attorney has actual knowledge that a third party has gained access to information that should be confidential, such as the terms of a settlement agreement, or the attorney has knowledge that the funds to be paid pursuant to a settlement agreement have been the target of an attempted fraud. Nor has the Court located such authority. However, the principle is an eminently sensible one . . . that attorneys have an obligation to contact [opposing] counsel when and if they receive suspicious emails instructing [them] to wire settlement funds to a foreign country where such [a] request has never been made during the course of performance of the parties. . . . [Plaintiff's counsel] failed to act with the ordinary care that he, correctly, says should govern this case.
>
> Two days before the fraud was perpetrated on [defense counsel], both [plaintiff's counsel] and [plaintiff] were aware that an unidentified third party had targeted the settlement funds for diversion to a Barclay's account that had nothing to do with [Plaintiff]. Additionally, [both] knew that the email account [for Plaintiff's counsel] was being used in an effort to perpetrate a fraud. [Plaintiff's counsel] failed to pass this information along to Defendants, defense counsel or the Court. This failure substantially contributed to the loss of $63,000 within the meaning of U.C.C. §3-406.
>
> *2020 Comment: Do ethical rules automatically, without official comment, evolve in the bizarro-world of 2020, when new technologies are being tested in the midst of an emergency, or do we have to use logic and reason to fit these new 2020 solutions into the official, codified and adopted ethical constructs, and if so, how do we do that with any degree of certainty that we are doing in correctly?*

For instance, do the ends justify the means if a lawyer's first attempt at a video conference is invaded by teenagers just as the client is discussing private details of his or her substance abuse and infidelity, but the only other alternative was not to meet with the client until it was safe to go back into the office?

Do the safeguards we are expected to use to protect confidentiality have to be foolproof, or does that fact that we are all learning this together allow for some understandable mistakes as the technology is emerging and the practitioners who are brave enough to use it learn the pitfalls so that the rest of us can learn? Even if the Bar and the ethics rules don't come down so hard on the lawyers who have unforeseen technological issues, does that really assuage the breach to the client who has to fear that his or her secrets were overheard by hackers?

Can a lawyer reasonably ask a diabetic client to sign a waiver assuming the possible risk of agreeing to use new technology when it has not been thoroughly vetted due to the exigent circumstances, when the client has an urgent need for a consultation but has to do it remotely due to pandemic safety concerns?

Below, we will examine a hypothetical that asks these questions and asks you to consider the possible answers, knowing there are not yet comments or rules dealing with remote meeting platforms such as Zoom, Microsoft Teams, Webex, and others. Neither the Committee on Lawyer Discipline (COLD), nor the Bar has officially addressed or answered these questions due to the novelty of the situations we fact in 2020. All of us have to weigh the issues raised by the ever-changing times, and hopefully with an educated, logical, mindful approach, we can be confident that we are taking the required reasonable efforts to protect our clients, even in the face of the unknown.

iii. Cybersecurity

1. Cybersecurity Basics

The 2019 annual ABA TECHREPORT ("the Report") found that 26% of total law firm respondents reported experiencing a security breach.[4] Perhaps more alarming is that 19% of survey respondents reported not knowing whether their firm has ever experienced a security breach. The Report cites ABA Formal Opinion 477, Securing Communication of Protected Client Information (May 11, 2017)[5] as to the current threat environment:

> At the same time, the term "cybersecurity" has come into existence to encompass the broad range of issues relating to preserving individual privacy from intrusion by nefarious actors throughout the Internet. Cybersecurity recognizes a … world where law enforcement discusses hacking and data loss in terms of "when," and not "if." Law firms are targets for two general reasons: (1) they obtain, store and use highly sensitive information about their clients while at times utilizing safeguards to shield that information that may be inferior to those deployed by the client, and (2) the information in their possession is more likely to be of interest to a hacker and likely less voluminous than that held by the client.

[4] https://www.americanbar.org/groups/law_practice/publications/techreport/abatechreport2019/cybersecurity2019/

[5] https://www.americanbar.org/content/dam/aba/administrative/law_national_security/ABA%20Formal%20Opinion%20477.authcheckdam.pdf

The Report gives numerous recommendations – at the core, it echoes the ABA's 2014 resolution on cybersecurity; that law firms should develop, implement, and maintain a cybersecurity program. This program should address people, policies, procedures, and technology.

2. Ethical Standards

While lawyers have a general ethical duty to make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, client information[6], what shape that duty will take depends on a number of factors (e.g. sensitivity of the information, size of the firm, cost, etc.). As discussed earlier, Comment [21] of Rule 1.6 lists six specific areas in which law firms should keep abreast and should be referred to as a base-level competency and should be referred to for guidance.

The National Institute of Standards and Technology ("NIST") is a government agency whose mission includes the development and use of standards for cybersecurity. It has a report, "Framework for Improving Critical Infrastructure Cybersecurity," ("Framework") which most recently updated to Version 1.1 on April 16, 2018.[7] This good fundamental resource discusses industry standards and best practices to help manage cybersecurity risks. The Framework addresses five core concepts with cybersecurity ("Functions")– identify, protect, detect, respond, and recover.

In addition to NIST, the Association of Corporate Counsel issued guidelines in March 2017 for law firm cybersecurity measures. While these guidelines are not binding on individual law firms, they were generated to assist in-house counsel as to expectations for outside vendors (including outside counsel) as to data security. It lists several topics to consider:

- Policies and Procedures
- Retention and Return/Destruction
- Data Handling
  - Encryption
  - Data Breach Reporting
- Physical Security
- Logical Access Controls
- Monitoring
- Vulnerability Controls and Risk Assessments
- System Administration and Network Security
- Security Review Rights
- Industry Certification/Additional Security Requirements
- Background Screening of Outside Counsel Employees, Subcontractors, and Contingent Workers
- Cyber Liability Insurance
- Subcontractors

3. Cloud Computing

Cloud computing is the practice of using a network of remote servers hosted on the internet to store, manage, and process data, rather than a local server. "Cloud Computing" encompasses several

[6] Virginia Rules of Professional Conduct - Rule 1.6(d): http://www.vsb.org/proguidelines/index.php/rules/client-lawyer-relationship/rule1-6/

[7] https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf

similar types of services under different names and brands, some of which overlap, including: web-based e-mail (e.g. Gmail, Yahoo), online data storage (e.g. Google Drive, OneDrive (formerly SkyDrive), DropBox), software-as-a-service ("SaaS") (e.g. Microsoft 365, Clio, Rocket Matter), platform-as-a-service ("PaaS")(e.g. Facebook), and infrastructure-as-a-service ("IaaS"), ("Amazon EC2").

Rule 1.6's duty to safeguard client information applies to cloud computing. There have been several ethics opinions across the U.S. dealing with this topic; as of August 2018, three were 20. All jurisdictions end up with a "reasonable care" standard, with varying detail of considerations and information.

In LEO 1872 (2013), the Virginia State Bar's Standing Committee on Legal Ethics made this statement in regard to a lawyer's use of "cloud computing":

> A lawyer must always act competently to protect the confidentiality of clients' information, regardless of how that information is stored/transmitted, but this task may be more difficult when the information is being transmitted and/or stored electronically through third-party software and storage providers. The lawyer is not required, of course, to absolutely guarantee that a breach of confidentiality cannot occur when using an outside service provider. Rule 1.6 only requires the lawyer to act with reasonable care to protect information relating to the representation of a client. When a lawyer is using cloud computing or any other technology that involves the use of a third party for the storage or transmission of data, the lawyer must follow Rule 1.6(b)(6) and exercise care in the selection of the vendor, have a reasonable expectation that the vendor will keep the data confidential and inaccessible by others, and instruct the vendor to preserve the confidentiality of the information. The lawyer will have to examine the third-party provider's use of technology and terms of service in order to know whether it adequately safeguards client information, and if the lawyer is not able to make this assessment on her own, she will have to consult with someone qualified to make that determination.

Counsel must be careful when they choose a data provider to ensure not only that information stored with the provider does not inadvertently leak, but also that the information is not accessible by others outside the lawyer's employment, even inadvertently. With new Rule 1.6 now in effect, lawyers have a better roadmap of their responsibilities.

4. LCCA Standards on Cloud Computing

The Legal Cloud Computing Association (LCCA) is an organization whose purpose is to facilitate adoption of cloud computing technology within the legal profession, consistent with the highest standards of professionalism and ethical and legal obligations.

On March 17, 2016, at the ABA TECHSHOW, LCCA released the first set of cloud security standards crafted specifically for the legal industry.[8] The following is a summary of these new LCAA Security Standards:

I. Physical and Environmental Measures:

[8] http://www.legalcloudcomputingassociation.org/standards/

- Must disclose where data is housed—physically and geographically
- Must meet certain industry certifications (SOC 2, or ISO 27001 or 27018)
- Geographical redundancy— must have data centers in multiple locations

II. Data Integrity Measures:

- Encryption for storage at and transmitting data to and from data center
- Disclose practices and frequency of testing for hacking and vulnerability
- Disclose policies on limiting access by third parties and requests/subpoenas by third parties to obtain customer data, including customer notification
- Data retention policy

III. Users and Access Control:

- End user authentication (multi-factor, password strength, device authentication, certificate protocols)
- Addition/Deletion of Authorized users
- Tracking, use of audit logs
- End User's ability to add or delete data
- Ability to retrieve data in a non-proprietary format; restoration or back up of inadvertently deleted data

IV. Terms of Service and Privacy Policy:

- Terms of Service understandable to end user.
- Privacy policy and restrictions on employee access
- Uptime guaranty or assurance
- Confidentiality of user's data
- Ownership of Data
- Data Breach Notification
- Disaster Recovery

5. Security Software

There is a plethora of security choices for a law firm to employ. At the core, every law firm should have the basics in place – a firewall, anti-virus, and anti-malware.

A firewall is a network security system that monitors, and controls incoming and outgoing network traffic based on certain security rules. Your office's internet router almost certainly has a hardware firewall that is protecting your network. In addition to this hardware firewall, both Windows and Mac iOS come with a software firewall.

As to anti-virus software, if you run a Windows environment, you can have Business 365 installed, which unifies your systems and includes security systems, including anti-virus. If you are not a 365 user, Windows 10 comes with Defender, the free-built-in antivirus that's pretty good. There are

more comprehensive stand-alone choices for anti-virus and an internet search will quickly provide up-to-date quality offerings. It is imperative that your office is running something, however.

Many of the stand-alone internet security packages include an anti-malware product. If you are using Windows Defender, or some other stand-alone anti-virus product, you should also get anti-malware software. There are several good resources, such as Malwarebytes, whose free offering works well, just requiring manual scanning instead of active monitoring.

As for Mac iOS, it is Unix-based, which offers a number of built-in security features and Apple has included what it terms "Gatekeeper," which blocks software that hasn't been digitally approved by Apple from running on your Mac without your agreement. Most Mac users don't install third-party anti-virus software, but there are offerings to ensure the highest level of protection for your system. Apple also has built-in anti-malware protection – when you open a file, your iOS will check it against a list of malware and won't open the file if it is on that list. It also has a malware scanning tool, Xprotect, which runs in the background.

Independent of these basics of anti-virus and anti-malware, a suggested addition is an intrusion detection system ("IDS"). An IDS works by monitoring network/system activity and giving alerts if there is unusual activity (e.g. spikes in data transfers, connections to overseas IP address, etc.) IDS systems are not too expensive, often costing a few hundred dollars for the hardware and then a reasonable subscription cost. One highly rated IDS is Meraki by Cisco.[9]

6. Passwords

NIST also publishes standards on passwords as part of its "Digital Identity Guidelines." The most recent guidelines were published in June 2017, with updates, as of the drafting of these materials, of March 2, 2020.[10] This most recent revision stresses that length of your password beats complexity and that frequent changing of passwords is not necessary. It is recommended to have a password length of 14-64 characters.

A suggested password would be a passphrase, as it will allow a long password that can be easily remembered and not easily guessed (nor hacked given the length). You can substitute numbers for characters and include special characters to add security as well. Example: "I_l0ve_hor5e5_the-m0st!"

It is not recommended to use the same password everywhere, as if you are compromised one place, will lead to other security breaches. The best advice to ensure unique passwords at every required location is to use a password manager. These services (some installed programs, some cloud-based) allow you to securely store passwords accessible by you with one-secure-remembered-password. Some examples of well-known password managers include LastPass, eWallet, Keeper, and Dashlane.

You should also enable Two-Factor Authentication ("2FA") wherever possible. These are mechanisms that provide an extra step to logins. This is something you have (such as a phone or physical fob), something you are (such as a biometric (e.g. fingerprint), or something you know (such as a personal identification number ("PIN")). The latter is the most common, a typical example being

[9] https://meraki.cisco.com/
[10] http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-63b.pdf

when you login to a service, such as Drobox, and get a text to a pre-selected phone number with a PIN to enter to access your account.

7. Wireless Best Practices

The first step to ensure secure wireless access is your firm's router. If you have wireless internet at your office, you should ensure that the default login and password to the router have been changed. You'd be surprised how often they are not, and these defaults are known to anyone that can use a browser. Assuming you've taken this first step, the next security measure is what level of security you've enabled for the wireless access. You should always enable the most secure offered on the device, which is currently WPA2-PSK (AES). This may appear as "WPA2" or "WPA2-PSK." The next iteration of wireless security, WPA3, was announced in January 2018 and made official in June 2018. Implementation is still optional, and this standard is likely not going to be mandatory for Wi-Fi Alliance certification for some time (it has been slow going); however, it is coming.

The password to access the wireless network should be secure, of course, and not shared outside of your office. If you are going to offer wireless access to visitors to your firm, be sure to enable a "guest" access and have that access restricted from the office's network itself. That will allow the convenience and courtesy of providing internet to guests, without compromising your office's security.

Beyond wireless access at your office, it is important that you never access an unsecure wireless access point with your work-related devices (and really any devices). By "unsecured," this means the free internet access at public locations (e.g. libraries, airports, coffee shops, etc.). This can even include your local courts that provide access to attorneys. The problem with public wi-fi is that data transmitted through these can be easily intercepted and some of the wi-fi access points could even be fake – traps to lure you into accessing a compromised network.

If you do not have your own internet hotspot to use (either a separate internet device, or using the tether function available on most phones and data plans to use your phone as a hotspot) and must use a public network, you can use a Virtual Public Network ("VPN"), which is a service that essentially creates a "private tunnel" encrypting your data that passes through the network. These services are relatively cheap, and a quick internet search will identify the top providers.

8. Training & Employee Policies

All the security in the world won't help if your employees don't use the security or create vulnerabilities. It is important to train your staff as to the firm's policies and procedures.

First consideration is who has access to your firm's data. Best practice is to limit access to only those persons that need the information. This would include who is an administrator in the system and folder access. There should be a policy put in place to monitor access controls on a set schedule and control who sets the access. This may be a gap in your current firm's systems, could be the defaults that were never reviewed and leave vulnerabilities.

Another important part to ensure you have a secure environment at the office is to initially train your personnel on the office's cybersecurity and possible avenues of vulnerabilities, and then have regular reminder/updates to that training. One common attack is a phishing email.

Phishing is the attempt to obtain sensitive information by disguising as a trustworthy entity. A common example would be an email sent purportedly by your credit card company indicating there has been a security issue and offering a link to verify information. The email looks genuine but is actually providing a link that takes the recipient to a website that installs a virus. Another example would be an email from a mail carrier, such as UPS, that asks for the recipient to download a receipt and in doing so, installs malicious software on the system. Recently, law firms are reporting email messages that appear to be from opposing counsel, colleagues, clients, and vendors with whom the firm interacts regularly. The message invites you to click on a link purportedly to access a document the sender wants you to read. Clicking on the link will infect your computer with an executable malware.

Phishing is how ransomware is often installed. Ransomware is a type of malware that prevents or limits users from accessing their system, more recently by encrypting victims' data and only releasing the key to that encryption if a ransom is paid (via cryptocurrency). The software security company Symantec publishes a comprehensive Internet Security Threat Report each year; the most recent being 2019, discussing statistics and trends.[11]

Training your people about best practices (don't download any attachments or click any links without permission/verification, for instance) can prevent a lot of the potential issues. Create a comprehensive manual and update that manual at least once a year to share with your staff.

On the opposite end of training is what to do with the terminated employee. Do you have procedures in place? It is important to establish a universal protocol to ensure no steps are missed. Once an employee is terminated, his or her access to all firm property should be cut off, that includes physical access to computers and all firm-owned cell phones. Remote access should be terminated and his or her mailbox should be forwarded to someone else (and eventually terminated).

Best practices would include an exit process that includes an in-person interview. This can be helpful for firm-management in addition to cybersecurity reasons. For every terminated employee, put into writing the reasons for termination and include a confirmation that they have no firm data in their possession and acknowledging that access post-termination is a criminal act. Your IT person (or whomever is responsible in your firm) can make the required changes to the terminated employee's access during the meeting and you can also gather any physical equipment (electronic devices, keys, security cards, etc.).

9. Encryption

What was once a difficult, expensive, time-consuming process, encryption is now easy, cheap, and fast. While Virginia has not tackled the issue yet, as briefly discussed earlier, the ABA issued an ethics opinion on May 11, 2017 on lawyers' responsibility as to encryption. While lawyers have the general duty to take reasonable efforts to prevent inadvertent or unauthorized access to client data, encryption in the usual course of business is not necessarily required; however, it may be required "when required by an agreement with the client or by law, or when the nature of the information requires a higher degree of security."[12] Given the sensitive information involved with most real estate

[11] https://docs.broadcom.com/doc/istr-24-2019-en

[12] https://www.americanbar.org/content/dam/aba/administrative/law_national_security/ABA%20Formal%20Opinion%20477.authcheckdam.pdf

transactions, encrypting the documents and communications may be required, and, even if not ethically required, certainly recommended.

There are two general categories of encryption to consider – that of objects (e.g. hard drives, documents) and transmission (e.g. emails):

a. Objects

i. Physical Systems

First turning to physical systems, you can encrypt the whole hard drive, or just part of it. It is recommended to encrypt the whole hard drive to ensure sensitive information isn't accidently saved in a non-encryption partition. This process is extremely easy and baked into the operating systems of both Windows and Mac.

For Windows 10, your system may have "Device Encryption" enabled by default. If it doesn't, or you want a more powerful solution, there is BitLocker for Windows 10 Pro and Enterprise owners. If your device has a TMP chip installed (Trusted Platform Module), you can just turn on this feature. If your motherboard doesn't have a TPM chip, you can still enable it, but requires a bit more work and knowledge. You can also use a third-party software solution to encrypt.

For a Mac system, so long as you are running OS X Lion or later, you can turn on FileVault 2, which encrypts your hard drive. There are also third-party software solutions available.

In addition to operating system/third-party software solutions to encrypt, you can also have hardware solutions, such as the aforementioned TPM or Biometrics.

ii. Documents

The easiest way to encrypt a document is to password protect it. Microsoft Word and Adobe .pdf, the two most common document types used by lawyers, have this feature baked in. For Word, go to "File" and then "Info" and select "Protect Document," adding a password. For Adobe, how to do this depends on what version of Adobe you are using, but generally you find the option under either "Tools" (more recent versions) or "Advanced" (older versions of Adobe). Once you add a password, the document is encrypted.

You can, as you might imagine, also purchase a software or cloud-based encryption solution to store files as well.

b. Transmission

In the past, encrypting emails was a chore, requiring both the sender and the recipient to have the software to encrypt/de-crypt and exchange keys to enter to unlock. Things have fortunately progressed in this arena.

Some emails are automatically encrypted, such as Gmail (if both the sender and the recipient are using Gmail) and can be used with Outlook. A better alternative to ensure every email is encrypted is to use a third-party solution. There are many to choose from, such as EdgeWave, ZipCorp, Mimecast, Sophos, and Cryptzone. These offerings generally work by filtering your sent emails (from whatever

email platform you use (Outlook, Gmail, etc.) through a secure server/system or hardware device to encrypt, and then the recipient gets an email with a hyperlink to retrieve the sent email. The user will need to create an account the first time, but then every email sent will be received in this manner, ensuring 100% encryption, every time.

10. Duty to Inform Clients in the Event of a Breach?

ABA Formal Op. 483 (October 17, 2018) holds that a lawyer's communication duty under Rule 1.4 requires that: "When a data breach occurs involving, or having a substantial likelihood of involving, material client information, lawyers have a duty to notify clients of the breach and to take other reasonable steps consistent with their obligations under these Model Rules."

What may reasonably be expected of an attorney in the event of a cyberattack or breach of security will depend on the extent to which client data is affected, the nature of the cyber incident, the ability of the attorney to know about the facts and circumstances surrounding the cyber incident, and the attorney's roles, level of authority, and responsibility in the law firm's operations. A cyberattack which will trigger obligations to inform clients are those in which material client confidential information is misappropriated, destroyed or otherwise compromised, or where a lawyer's ability to perform the legal services for which the lawyer is hired is significantly impaired by the episode. This ethical duty is separate from any legal duties under state or federal breach notification laws. When a data breach occurs involving, or having a substantial likelihood of involving, material client confidential information a lawyer has a duty to notify the client of the breach. This is because MR 1.4 requires a lawyer to keep a client reasonably informed and to communicate information material to the representation of the affected client.

For example, no notification is required if the lawyer's office file server was subject to a ransomware attack but no information relating to the representation of a client was inaccessible for any material amount of time or was not accessed by or disclosed to unauthorized persons. Conversely, disclosure will be required if material client information was actually or reasonably suspected to have been accessed, disclosed or lost in a breach.

At a minimum, disclosure must be made to all affected clients under Rule 1.4 that there has been unauthorized access to or disclosure of their information, or that unauthorized access or disclosure is reasonably suspected of having occurred. If known, the lawyer must advise the client of the extent to which the client's information was affected; or advise the client that reasonable steps have or will be taken to determine the extent of information affected by the breach. If reasonable steps have failed to identify the extent to which the client's information has been affected, the lawyer must inform the client of that fact. Best practices should also include informing the client of what actions or measures the lawyer is taking to recover information and what further steps are being taken to enhance cybersecurity.

If personally identifiable information of clients or others is compromised as a result of a data beach, the lawyer should evaluate the lawyer's obligations under state and federal law (i.e., HIPAA or Graham-Leach-Bliley Act). All fifty states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands have statutory breach notification laws. Those statutes require that private or governmental entities notify individuals of breaches involving loss or disclosure of personally identifiable information. In addition to the duty to communicate under Rule 1.4, the duty to competently represent a client requires that a lawyer evaluate and determine his or her legal requirements under applicable breach notification laws.

Note that according to this ABA opinion, the breach notification duty is owed to *current* clients, but the opinion does not extend the duty to *former* clients. Rule 1.9(c) and Rule 1.6 prohibit an attorney from using or disclosing confidential information and require that an attorney use reasonable care to protect former client information. The rules, however, do not require communication with a former client to inform that their data has been compromised, lost, intercepted, destroyed or accessed by unauthorized persons. However, to the extent that federal or state breach notifications laws are triggered by the unauthorized disclosure of personal identifying information, for example, a lawyer may be required to notify a former client that protected information has been affected by a breach.

The committee acknowledged that Rule 1.16 imposes some duties to former clients upon termination of the representation to deliver to the client his or her file upon request or papers in the lawyer's possession. But the RPC does not require the lawyer to retain a former client's file and lawyers should include provisions regarding document retention in their agreement with the client.

11. Inadvertent Disclosure

The advancement of technology has caused inadvertent disclosures of information by counsel to third parties to increase. When the main form of communication was by letter, which took time to write and often involved administrative staff review before being sent out of the office, inadvertent disclosures were rare. However, with the advent of emails, texting, and other modern forms of communication, inadvertent disclosures have been on the rise.

Perhaps the first disruptive technology to this practice is e-mail. E-mails are sent by lawyers themselves without review. Moreover, the issue is often not what is in the e-mail, but to whom the e-mail is sent. Many e-mail programs have auto-fill systems for recipients, and it is easy to accidently copy someone other than the intended party.

[As a practical tip, some have argued to disable auto-fill; however, an alternate and less disruptive change is to set up a two-minute delay before all outgoing mail leaves the outbox. This will allow the review of the recipients and can also give the added bonus of allowing a buffer so as to not send emails as a knee-jerk response when a more thoughtful reply is warranted].

a. ABA Model Rules

ABA Model Rule 4.4 Transactions with Persons Other than Clients - Respect for Rights of Third Persons

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.

In August 2012, the ABA revised Comment 2 to this rule:

> Paragraph (b) recognizes that lawyers sometimes receive a document **or electronically stored information** that was mistakenly sent or produced by opposing parties or their lawyers. **A document or electronically stored information is inadvertently sent when it is accidentally transmitted, such as when an email or letter is misaddressed, or a document or electronically stored information is accidentally included with information that was intentionally transmitted.** If a lawyer knows or reasonably should know that such a document or electronically stored information was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps…is a matter of law beyond the scope of these Rules… (*emphasis added*)

MR 1.6 [Confidentiality of Information] and its Comment 18 complicates matters:

…(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

[18] Paragraph (c) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3. **The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see Rule 5.3, Comments [3]-[4].** (*emphasis added*)

b. <u>Virginia Rules</u>

LEO 1702 opines generally that a lawyer must notify the sender of an inadvertently sent and privileged document and follow the sender's instructions regarding use and disposition of the transmitted document. Most notably, LEO 1702 does not allow a lawyer who inadvertently received a privileged document to use the information therein to his client's benefit. However, LEO 1702 does not apply to an inadvertent disclosure in pre-trial discovery because of Virginia Rule of Supreme Court 4:1(b)(6)(ii).

Rule 4:1(b)(6) (ii) [General Provisions Governing Discovery, Claims of Privilege or Protection of Trial Preparation Materials]: If a party believes that a document or electronically stored information that has already been produced is privileged or its confidentiality is otherwise protected the producing party may notify any other party of such claim and the basis for the claimed privilege or protection. Upon receiving such notice, any party holding a copy of the designated material shall sequester or destroy its copies thereof and shall not duplicate or disseminate such material pending disposition of the claim of privilege or protection by agreement, or upon motion by any party. If a receiving party has disclosed the information before being notified of the claim of privilege or other protection, that party must take reasonable steps to retrieve the designated material. The producing party must preserve the information until the claim of privilege or other protection is resolved.

The analysis of Legal Ethics Opinion 1871 supports this. LEO 1871 applied this Rule and LEO 1702 to a hypothetical where counsel discovered arguably privileged documentation in reviewing other counsel's file pursuant to a production of documents request. LEO 1871 also cited the case below that discussed the five-part test courts apply to determine if privilege was waived by an inadvertent disclosure.

Walton v. Mid-Atlantic Spine Specialists, P.C., 280 Va. 113 (2010)

A plaintiff lawyer in a medical malpractice case inadvertently received a privileged letter that the defendant doctor wrote to his attorney regarding potential negligence in his examination of the plaintiff's x-rays. The letter was produced to the plaintiff during discovery. In considering whether the defendant doctor waived the attorney-client privilege upon inadvertent disclosure, the Court applied a five-factor test, weighing: (1) the reasonableness of precautions taken, (2) the time taken to rectify the mistake, (3) the scope of discovery, (4) the extent of disclosure, and (5) whether the party asserting the claim of privilege protection for the communication used its unavailability for a misleading or otherwise improper or overreaching purpose in the litigation. Based on this analysis, the court found that privilege was waived.

c. Updated Rules

As discussed earlier, there were changes to Rule 1.6 in 2016 that impact this analysis. The new subsection (d) states: "[a] lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information protected under this rule." Restating the Comments that flesh out this duty:

[19] Paragraph (d) requires a lawyer to act reasonably to safeguard information protected under this rule against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1, and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of confidential information does not constitute a violation of this Rule if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the employment or engagement of persons

competent with technology, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g. by making a device or important piece of software excessively difficult to use).

19[a] Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other laws, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of this Rule.

[20] Paragraph (d) makes clear that a lawyer is not subject to discipline under this Rule if the lawyer has made reasonable efforts to protect electronic data, even if there is a data breach, cyber-attack or other incident resulting in the loss, destruction, misdelivery or theft of confidential client information. Perfect online security and data protection is not attainable. Even large businesses and government organizations with sophisticated data security systems have suffered data breaches. Nevertheless, security and data breaches have become so prevalent that some security measures must be reasonably expected of all businesses, including lawyers and law firms. Lawyers have an ethical obligation to implement reasonable information security practices to protect the confidentiality of client data. What is "reasonable" will be determined in part by the size of the firm. *See* Rules 5.1 (a)-(b) and 5.3(a)-(b). The sheer amount of personal, medical and financial information of clients kept by lawyers and law firms requires reasonable care in the communication and storage of such information. A lawyer or law firm complies with paragraph (d) if they have acted reasonably to safeguard client information by employing appropriate data protection measures for any devices used to communicate or store client confidential information.

To comply with this Rule, a lawyer need not have all the required technology competencies. The lawyer can and more likely must turn to the expertise of staff or an outside technology professional. Because threats and technology both change, lawyers should periodically review both and enhance their security as needed; steps that are reasonable measures when adopted may become outdated as well.

[21] Because of evolving technology, and associated evolving risks, law firms should keep abreast on an ongoing basis of reasonable methods for protecting client confidential information, addressing such practices as:

(a) Periodic staff security training and evaluation programs, including precautions and procedures regarding data security;
(b) Policies to address departing employee's future access to confidential firm data and return of electronically stored confidential data;
(c) Procedures addressing security measures for access of third parties to stored information;
(d) Procedures for both the backup and storage of firm data and steps to securely erase or wipe electronic data from computing devices before they are transferred, sold, or reused;

(e) The use of strong passwords or other authentication measures to log on to their network, and the security of password and authentication measures; and

(f) The use of hardware and/or software measures to prevent, detect and respond to malicious software and activity.

In other words, counsel have a duty to take reasonable measures to guard against accidentally disclosing a privileged communication to a non-privileged person, including safeguarding the information. If counsel did not take "reasonable" precautions to prevent inadvertent disclosure, then they could be sanctioned by the Bar for their carelessness.

d. Rule 4:4 Change

Effective December 1, 2019, Rule of Professional Conduct 4:4 was amended to codify the guidance found in LEO 1702 by adding a paragraph (b) to the Rule, as well as additional Comments addressing same.[13]

Paragraph (b) states: "A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that document or electronically stored information is privileged and was inadvertently sent shall immediately terminate review or use of the document or electronically stored information, promptly notify the sender, and abide by the sender's instructions to return or destroy the document or electronically stored information."

Comment 2 further explains the scope of the Rule by defining when a document is inadvertently sent and when the lawyer knows or reasonably should know that that is the case. Comment 2 also clarifies that the Rule does not apply to information that was wrongfully obtained rather than inadvertently obtained, and that it only applies to metadata if the metadata is privileged and inadvertently disclosed. Finally, Comment 3 explains that the rule, and LEO 1702, are justified by the extreme importance of preserving lawyer-client confidences, and that the duties established by the proposed rule override the lawyer's duty of communication under Rule 1.4. Comment 3 concludes by distinguishing situations involving pre-trial discovery and other situations where rules of court or other law permit the receiving lawyer to contest a sender's claim of privilege following an inadvertent disclosure; the proposed rule does not prohibit such actions and the recipient is permitted to sequester the inadvertently sent document pending use of such a process.

[13] https://www.vsb.org/docs/Rule_4.4b_petition.pdf

HYPOTHETICALS RELATED TO CYBERSECURITY ISSUES

Lenny Luddite, has had a large practice since 1976. He represents private clients in matters of divorce, custody, and some related trust and estate work. He does not trust laptop computers, cellular phones, emails, faxes, or conference or video calls. He adamantly states that he refuses "out of a genuine concern for the safety of his clients' right to privacy," he will not adopt any measures consistent with the changing times. Lenny has several partners who do not share his views, and his partners regularly use a more typical level of modern technology, so if a client has an issue with Lenny's staunch anti-tech stance, he will bring in an associate to manage those aspects of the case.

From March 12 2020 – July 31, 2020, over Lenny's strenuous objection, his firm adopted a policy to limit staff and in-office hours due to Covid-19 concerns. As a result, and due to the quick response required to protect the staff and clients, many of Lenny's older or ill clients who had not developed relationships with the other partners or associates were left completely in the dark while the office was shut down. Lenny's clients received little information other than dictated letters sent by U.S. Mail, which were typed by Lenny's assistant (whom he still refers to as "his girl' and brags that she is the best in the state at shorthand), and were largely outdated when they arrived, because they all contain information about the various supreme court and executive mandates about when Courts and businesses will reopen. By the time the letters arrived, new orders had been issued. It was not possible for Lenny's clients to keep up with the situation and many of them grew frustrated and filed Bar Complaints.

A. 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication)

Client Betty Bismarck, a 67 year old diabetic divorce client, hired Lenny because her knitting club friends recommended him due to his traditional practice style and "hands-on" approach. Betty is uncomfortable with email, credit cards, and the internet generally. Betty likes that Lenny does not use these methods of communication. She lives next door to her adult children and visits her friends in person. She regularly sends cards and letters to her extended family. Betty is used to coming into Lenny's office regularly, and appreciates that Lenny can usually see her on very short notice, many times the same day she calls from her landline.

Betty's husband, Bob, who is 45 years old, whom she married shortly after her first husband passed away in 2014, left her on New Years' Day 2020. He moved in with his girlfriend, leaving Betty in the home with the cash in her drawer and the joint checkbook. Even though Bob continued to deposit his paychecks into the joint checking account for a few months, Betty has no assurances that he will do so long term, and without access to Bob's income, Betty is unsure how to pay the mortgage and expenses, because her husbands have always managed the finances. Bob did all of the banking online, and through some research, Lenny has determined that Bob moved Betty's savings and retirement accounts into joint accounts. He changed all of the passwords so that she, who does not use online banking, has no access to information unless she is able to go personally into the bank to speak to a teller.

Lenny set a Pendente Lite hearing for March 16, 2020 in Chesapeake Circuit Court, hoping to freeze Betty's accounts, obtain a spousal support award, gain exclusive use and possession of the home, and get Bob under control so he does not deplete Betty's assets. Due to Covid-19 closures, continuances, concerns about Betty's health, and Lenny's refusal to agree to

remote hearings and conferences, Betty still has not obtained a Pendente Lite Order. She believed, based on letters and copies of Motions and Notices sent to her in May, June and July, that she would have her day in court, but unfortunately, each time, Betty would show up at Court only to find out that the hearing had been postponed due to an unexpected closure or a change in the order. Within a few days, Betty would always get a letter, signed "dictated but not read" that had been send to her via US Mail, and many times, the same day, after coming home from the courthouse, she would discover a message on her vintage landline answering machine left the morning of the hearing by Lenny's office, but Betty was not in the habit of checking the machine before she left the house, and many times, the message would come in just as she was leaving or had just left.

1. Does Lenny have an obligation under Rules 1.1, 1.3, and/or 1.4 to communicate in any way other than the landline and US Mail? Does the general use of younger or other lawyers or staff in his office impact any obligation he has?

2. Does Betty's preference for landline and in person communications matter here under any of these Rules? Should Lenny's staff ask Betty to make an exception to use email or a cell phone, especially when they have had issues with not being able to inform her of cancelled or postpone hearings?

3. Does the pandemic make the lawyer's obligations more stringent or less stringent under 1.1, 1.3 and 1.4?

4. If Bob stops depositing his paycheck, no PL hearing is held, and Betty ends up missing mortgage payments or losing her home, what culpability does Lenny have in this situation? Should Lenny reasonably have foreseen damage to the client resulting from the lack of access to the Courts, and if so, what should or he could have done?

5. Does Betty have a valid bar complaint if she accumulates additional financial penalties or legal fees trying to save her home due to this situation, or is this simply an unforeseeable problem caused by a novel virus and closures that were not Lenny's fault?

B. 1.6 (Confidentiality), 1.15 (e)(1,2) Recordkeeping Requirements

1. If Betty clearly chose Lenny because she does not prefer email or electronic communications, is Lenny obligated to protect her information in the way that she has requested? Does Betty's fear of electronic communication impact Lenny's duties under these rules, or does a "reasonable" effort mean the same thing for all practitioners regardless of client preference, lawyer age, or lawyer preference?

2. If Lenny decided in assisting Betty with her case that it was critically important for him to meet with her face to face, despite her misgivings about technology, and Lenny called in a young associate to set up a Zoom call so that Betty and Lenny could talk with her about her finances and the latest Court closings and executive orders, would Lenny be wise to have Betty sign a waiver stating that she is aware that the technology is new and that Lenny would not be held responsible for any inadvertent breaches in confidentiality?

If the Zoom call is somehow hacked and Betty's personal information is inadvertently disclosed to a random hacker, is Lenny guilty of a breach of 1.6? If Betty refuses to get a cell phone, but then she blames Lenny that she has arrived at Court only to find out that she did not have the most recent information, can the Bar hold him accountable? Is it "reasonable" in 2020 for a lawyer to dictate letters and refuse to use email or any faster method of communication, especially when the office is closed and the dictation tapes many times may sit on the assistant's desk while she is out of the office or working remotely?

3. Is it possible in 2020 to adhere to Lenny's traditional policies despite the recordkeeping requirements of the Bar? If Betty has $50,000 held in Lenny's trust account as advance fees, and the current records of her account include only a notebook in Lenny's drawer and a ledger kept in Lenny's paper file for Betty, has Lenny adhered to his duties under the Rules?

C. ***Tips for Protecting Confidentiality on Zoom, Microsoft Teams, WebEx and other Remote Platforms***

Generally, since everyone suddenly has had to adjust to remote meetings, classes, hearings, and conferences, how do we define "reasonable" efforts to protect client confidences? Below are some discussion points as these platforms are becoming better understood and some practitioners have had the chance to explore the features:

- *Look for an icon that indicates if the meeting, hearing, conference, or class is being recorded. If you are the HOST, be sure if you have automatically set it up to be recorded. DO NOT record a meeting unless you are sure you want it recorded and that you can securely store and manage the security. DO NOT record anything that you would not record with a tape recorder or that the client or anyone else involved would not want recorded.*

- *Make sure every meeting or conference has a unique ID and Password. DO NOT provide your password or ID to anyone, and be sure you do not set up your meetings without generating a new meeting number and password.*

- *Breakout rooms and meetings within meetings can be a safe and secure way to talk with clients, however in virtual mediations and settlement conferences it is a good idea to minimize the opportunity for the wrong people to be in the meeting, so if you are not completely comfortable with your ability to set up the breakout rooms successfully and monitor the participants, it is best to open separate meetings with unique ID's and passwords.*

- *Check the participant list in the margins. Use the waiting room feature and make sure you check frequently to ensure nobody has joined your meeting. It is safer to require each participant to keep their camera turned on so that nobody else can log in as the participant without the knowledge of the others in the conference.*

- *If one participant is logged in under an email address with which you are not familiar, it is best to make a voice call to a cell, office, or landline number you have on file for the client or other attorney, confirm there are not third parties listening, and be sure you have the right person and only the right person before you discuss anything sensitive.*

Professionalism: Sexism, Racism, and How An Honest Discussion of Model Rules 3.4, 8.1- 8.4 Can Promote Cultural Awareness in the Practice of Law

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Introduction: Anyone had enough of 2020 yet? As indisputably weird as 2020 has been, and as much as the full impact of 2020 on society, the economy, our colleagues, and our clients is yet unknown, perhaps we as professionals can find some ways to turn negatives into positives. As we view the wreckage of 2020 in terms of the pandemic and the unrest that has shed light on some deep cultural and societal wounds, we as lawyers may have an opportunity to examine ways to be healers and ambassadors of civility and professionalism in a time of chaos. Sadly, attorneys who spend significant time in the juvenile court and family law arenas often see litigants (and sometimes attorneys) engaging in hostility and overt rudeness, which has been exacerbated by the issues that 2020 has brought to the forefront of societal awareness.

Some attorneys, particularly with the increasing stress that 2020 has caused, have been increasingly inattentive, hostile, and unprofessional. Rather than remain professional in furthering the interests of our clients, some attorneys have engaged in outright insults and name-calling, offering the excuse of frustration, fatigue, or a bad day to defend an overt act of unprofessional behavior. These transgressions are easy to understand in 2020, as we have all been tempted, after a long day of stressful news and isolation, to hit "send" on an ill-conceived email or slam down the phone after saying something regrettable and arguably unprofessional. 2020 has, thus far, created intense feelings of fear, concern for economic sustainability, and concern for the safety of ourselves and our loved ones. 2020 has presented childcare issues and marital challenges, as well as spikes in abuse, neglect, and substance abuse issues in family law and DHS cases. 2020 has created an unprecedented lag in access to justice, and has left the already unpredictable realm of litigation with even more uncertainty.

The general "covid-madness" that has challenged our ability to care properly for ourselves and each other, has also been exacerbated by an unusually contentious political season, cultural and social upheaval after the deaths of several citizens of color at the hands of police, and the resulting protests. Of course, the events of 2020 have also arrived on the heels of the 100th anniversary of women's suffrage, as women were just beginning to address the power imbalances created by gender issues in the workplace and society. As the social discourse of gender and racial inequity has become increasingly urgent, and the internet is full of extremely disturbing, yet intoxicating, videos of random people screaming at each other about masks, politics, and protests, we lawyers must consider opening a mindful, thoughtful discussion of how to address sensitive issues that face our clients and us. If civility is lost in the courtroom, where justice is sought and expected, how can we expect it to return in the streets (or in WalMart)?

The Model Rules of Professional Conduct may give us a guide to return to problem solving, assisting our clients, and even helping each other elevate the cultural discourse, even when we feel uncomfortable opening a dialogue. With the specialized training we all have in delving into passionate arguments on behalf of our clients without sacrificing professionalism, it is entirely possible that lawyers are well-equipped to discuss issues about which we feel strongly, including injustices we have witnessed, suffered, or even inflicted. This course hopes to help us in opening this dialogue and elevating our goals for professionalism and reaching our best practice goals.

Rule 3.4

Note: Rules or portions of Rules printed in red are the rules that most purposely implicated in the hypotheticals below, however, discussion of all portions of the Rules are encouraged in this and any other format.

Fairness To Opposing Party And Counsel

A lawyer shall not:

- (a) Obstruct another party's access to evidence or alter, destroy or conceal a document or other material having potential evidentiary value for the purpose of obstructing a party's access to evidence. A lawyer shall not counsel or assist another person to do any such act.
- (b) Advise or cause a person to secrete himself or herself or to leave the jurisdiction of a tribunal for the purpose of making that person unavailable as a witness therein.
- (c) Falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law. But a lawyer may advance, guarantee, or pay:
  - (1) reasonable expenses incurred by a witness in attending or testifying;
  - (2) reasonable compensation to a witness for lost earnings as a result of attending or testifying;
  - (3) a reasonable fee for the professional services of an expert witness.
- (d) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.
- (e) Make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party.
- (f) In trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused.
- **(g) Intentionally or habitually violate any established rule of procedure or of evidence, where such conduct is disruptive of the proceedings.**
- (h) Request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
  - (1) the information is relevant in a pending civil matter;
  - (2) the person in a civil matter is a relative or a current or former employee or other agent of a client; and
  - (3) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

- (i) Present or threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.
- **(j) File a suit, initiate criminal charges, assert a position, conduct a defense, delay a trial, or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.**

Rules 8.1 - 8.5 - Maintaining the Integrity of the Profession

Rule 8.2

Judicial Officials

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or other judicial officer.

Comment

[1] False statements by a lawyer concerning the qualifications or integrity of a judge can unfairly undermine public confidence in the administration of justice. To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

Virginia Code Comparison

There was no direct counterpart to Rule 8.2 in the Virginia Code. EC 8-6 stated: "While a lawyer as a citizen has a right to criticize [judges and other judicial officers], he should be certain of the merit of his complaint, use appropriate language, and avoid petty criticisms, for unrestrained and intemperate statements tend to lessen public confidence in our legal system."

Committee Commentary

The Committee adopted this Rule because it addressed a subject not explicitly addressed by the Virginia Code. However, the Committee deleted ABA Model Rule language which brought candidates for judicial office under the protection of this Rule and which required such candidates to abide by applicable provisions of the Virginia Code -- concluding that such requirements and protections were neither necessary nor advisable for lawyers who are being considered for judicial office. While the dignity of courts and the attendant requirement that judicial officials be treated with respect acts as a restraint on lawyer criticism of those officials, the Committee concluded that to extend this Rule to those being considered for judicial office might have a chilling effect on free discussion of judicial candidates' qualifications.

Rule 8.3

Reporting Misconduct

- ***(a) A lawyer having reliable information that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness to practice law shall inform the appropriate professional authority.***
- ***(b) A lawyer having reliable information that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.***
- ***(c) If a lawyer serving as a third party neutral receives reliable information during the dispute resolution process that another lawyer has engaged in misconduct which the lawyer would otherwise be required to report but for its confidential nature, the lawyer shall attempt to obtain the parties' written agreement to waive confidentiality and permit disclosure of such information to the appropriate professional authority.***

- ***(d) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge who is a member of an approved lawyer's assistance program, or who is a trained intervenor or volunteer for such a program or committee, or who is otherwise cooperating in a particular assistance effort, when such information is obtained for the purposes of fulfilling the recognized objectives of the program.***
- ***(e) A lawyer shall inform the Virginia State Bar if:***
  - ***(1) the lawyer has been disciplined by a state or federal disciplinary authority, agency or court in any state, U.S. territory, or the District of Columbia, for a violation of rules of professional conduct in that jurisdiction;***
  - ***(2) the lawyer has been convicted of a felony in a state, U.S. territory, District of Columbia, or federal court;***
  - ***(3) the lawyer has been convicted of either a crime involving theft, fraud, extortion, bribery or perjury, or an attempt, solicitation or conspiracy to commit any of the foregoing offenses, in a state, U.S. territory, District of Columbia, or federal court.***

The reporting required by paragraph (e) of this Rule shall be made in writing to the Clerk of the Disciplinary System of the Virginia State Bar not later than 60 days following entry of any final order or judgment of conviction or discipline.

Comment

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] A report about misconduct is not required where it would involve violation of Rule 1.6. See Rule 1.6(c)(3).

[3] If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

[3a] In court-related dispute resolution proceedings, a third party neutral cannot disclose any information exchanged or observations regarding the conduct and demeanor of the parties and their counsel during the proceeding. Mediation sessions are covered by another statute, which is less restrictive, covering "any communication made in or in connection with the mediation which relates to the controversy being mediated." Thus a lawyer serving as a mediator or third party neutral may not be able to discharge his or her obligation to report the misconduct of another lawyer if the reporting lawyer's information is based on information protected as confidential under the statutes. However, both statutes permit the parties to agree in writing to waive confidentiality.

[3b] The Rule requires a third party neutral lawyer to attempt to obtain the parties' written consent to waive confidentiality as to professional misconduct, so as to permit the lawyer to reveal information regarding another lawyer's misconduct which the lawyer would otherwise be required to report.

[4] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer or judge whose professional conduct is in question. Such a situation is governed by the rules applicable to the client-lawyer relationship.

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in or cooperation with an approved lawyers or judges assistance program. In that circumstance, providing for the confidentiality of such information encourages lawyers and judges to seek treatment through such program. Conversely, without such confidentiality, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. The duty to report, therefore, does not apply to a lawyer who is participating in or cooperating with an approved lawyer assistance program such as the Virginia Bar Association's Committee on Substance Abuse and who learns of the confidences and secrets of another lawyer who is the object of a particular assistance effort when such information is obtained for the purpose of fulfilling the recognized objectives of the

program. Such confidences and secrets are to be protected to the same extent as the confidences and secrets of a lawyer's client in order to promote the purposes of the assistance program. On the other hand, a lawyer who receives such information would nevertheless be required to comply with the Rule 8.3 reporting provisions to report misconduct if the impaired lawyer or judge indicates an intent to engage in illegal activity, for example, the conversion of client funds to personal use.

[6] The duty of a lawyer to self-report a criminal conviction or professional discipline under paragraph (e) of this rule is triggered only after the conviction or decision has become final. Whether an offense is a felony shall be governed by the state, U.S. territory, District of Columbia or federal law under which the conviction is obtained. Thus, it is possible that an offense in another jurisdiction may be a misdemeanor crime for which there is no duty to self-report, even though under Virginia law the offense is a felony.

Virginia Code Comparison

Paragraph (a) is substantially similar to DR 1-103(A) when coupled with the reference to Rule 1.6 in paragraph (d). DR 1-103(A) stated: "A lawyer having information indicating that another lawyer has committed a violation of the Disciplinary Rules that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness to practice law in other respects, shall report such information to the appropriate professional authority, except as provided in DR 4-101."

Paragraph (c) has no counterpart in the Virginia Code.

With respect to paragraph (d), DR 1-103(B) effectively excluded from the disclosure requirements of DR 1-103(A) "any information gained in the performance of . . . duties" by "a lawyer who is a member of The Virginia Bar Association's Committee on Substance Abuse and/or who is a trained intervenor for the Committee."

Committee Commentary

These attorney misconduct reporting requirements do not differ substantially from those of the corresponding Disciplinary Rule, DR 1-103. Although paragraph (b), requiring the reporting of judicial misconduct, and paragraph (c), requiring reporting of lawyer misconduct by a third party neutral, have no counterpart in the Virginia Code, the Committee believed them to be appropriate additions. With respect to both paragraphs (a) and (b) and (c), the Committee believed that the phrase "reliable information" indicated more clearly than the ABA Model Rule's "knowledge" the sort of information which should support a report of attorney misconduct.

***The amendments effective September 26, 2002**, in the rule heading, deleted "Professional" before "Misconduct," in paragraph (a), substituted "to practice law" for "as a lawyer"; added paragraph (e); and added Comment [6].*

***The amendments effective February 1, 2016,** added the unnumbered paragraph immediately following 8.3(e)(3).*

Rule 8.4

Misconduct

It is professional misconduct for a lawyer to:

- ***(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;***
- ***(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;***
- ***(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;***
- ***(d) state or imply an ability to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official; or***
- ***(e) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.***

Comment

[1] ABA Model Rule Comment not adopted.

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offense carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be

construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.
[3] ABA Model Rule Comment not adopted.
[4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(c) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law. See also Rule 3.1, Rule 3.4(d).
[5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

Virginia Code Comparison

With regard to paragraphs (a) through (c), DR 1-102(A) provided that a lawyer shall not:

- *"(1) Violate a Disciplinary Rule or knowingly aid another to do so.*
- *(2) Circumvent a Disciplinary Rule through actions of another.*
- *(3) Commit a crime or other deliberately wrongful act that reflects adversely on the lawyer's fitness to practice law.*
- *(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation which reflects adversely on a lawyer's fitness to practice law."*

Paragraph (d) is substantially the same as DR 9-101(C).
There was no direct counterpart to paragraph (e) in the Disciplinary Rules of the Virginia Code. EC 7-31 stated in part that "[a] lawyer ... is never justified in making a gift or a loan to a [judicial officer] under circumstances which might give the appearance that the gift or loan is made to influence official action." EC 9-1 stated that a lawyer "should promote public confidence in our [legal] system and in the legal profession."

Committee Commentary

Much of this Rule parallels provisions of the Disciplinary Rules of the Virginia Code. Paragraph (e), however, sets forth a prohibition not in the Virginia Code, and the Committee believed it is an appropriate addition.
***The amendments effective March 25, 2003**, in paragraph (b), substituted "fitness to practice law" for "fitness as a lawyer"; in paragraph (c), deleted "professional" after present words "engage in" and added "which reflects adversely on the lawyer's fitness to practice law"; added the last sentence to Comment [5].*

HYPOTHETICALS FOR DISCUSSION

1. **Lenny Luddite**: Remember Lenny from the technology hypothetical in Segment I? Well, as we have discussed, Lenny is anti-technology. For purposes of this hypothetical, assume his bar number is -2. Lenny refers to his assistant as his "girl," and often states loudly in court that he doesn't understand why his female colleagues don't just stay home and take care of their children because he thinks they would enjoy that more than this "man's world" of litigation. Lenny often comments that various women attorneys are "too pretty" to be in Court, or remarks of various colleagues, "she doesn't look like she's had children." It is clear contextually that Lenny intends these comments positively.

   Conversely, if Lenny is having a difficult time with a colleague, he will sometimes, in conversation with others in his office, call her a "slob," or a "bitter shrew." Lenny often becomes aggressive in Court, particularly if he is challenged on a legal argument by a

female attorney. He often comments after court about how "disgusting" the woman's attempt to challenge him was, even though he is the only one who became aggressive. Since early in his practice, Lenny has been known to enjoy alcoholic beverages and to celebrate quite a bit at office events, often offering his female staff members and young associates the opportunity to sit on his lap if there are no chairs readily available. Everyone in the office is aware that Lenny is the founding partner of the firm. Nobody knows exactly how to handle the interactions, so the women often laugh it off and leave the general vicinity. They aren't sure to whom they should address any concerns, because the firm is very traditional and nobody wants to be called a "shrew" or a "slob."

Recently, Lenny has had some incidents that caused concern about whether he has been starting his happy hours early, particularly on Fridays. His recent Friday letters are not written well, have multiple grammatical and spelling errors, and sometimes contain uncharacteristically rude negative opinions of (male) opposing counsel, and even his own clients. On one occasion, Lenny sent a vulgar tape into his assistant containing a great deal of profane language directed at a client that he finds particularly annoying. The assistant discovered the tape in her inbox Monday morning and was not sure if Lenny realized what he had included in the content of the tape.

A. Has Lenny violated any Rules of Professional Conduct in terms of:
   - His positive comments about female lawyers?
   - His negative comments about female lawyers?
   - His behavior at office events (does this change if the behavior is in public? Or at bar association events?)?
   - The letters dictated to clients and opposing counsel after consuming alcohol?
   - Does your analysis change if, for purposes of this hypothetical, the dictated letters are emails that have already been sent rather than dictated letters that he edits after his assistant types them and he has had a chance to review them?
   - Is the "fitness to practice law" subjective under 8.4 or is there an objective test for fitness (Is Rule 3.4 regarding Fairness to Opposing Counsel possibly implicated here)?

B. Does anyone in Lenny's office, including his partners, have any duty to speak to Lenny about his behavior?

C. Does opposing Counsel or anyone in Lenny's office have any duty to address Lenny's behavior?

D. After reading this hypothetical, what does Lenny look like in your head?

2. **John Q. Judge:** John Q. Judge was recently appointed to the bench in Moon, Virginia. He graduated in 1997 from a prestigious law school where he wrote for the law review and had one of the highest GPAs in his class. John was well regarded by his colleagues at

his law firm, and served on multiple committees and boards of directors of charities before being appointed to the bench. There were several applicants for the open seat on the bench when John was appointed, and one of the other applicants, Adam Attorney, a similarly situated lawyer in the community, thought he had an inside track because he is a member of a country club where the "elite and powerful" in their community play golf. He was allegedly told by someone in the club that he was a "shoe in." After the appointment was made official, Adam was reportedly told, "sorry, but you know how these things go… politics … they needed to appoint the 'right type.'"

A. Question #1: What does John Judge look like in your head? What does Adam look like?

B. Question #2: Adam appeared in front of John Judge in a difficult case recently. John Judge ruled against Adam's client, granting sole custody to the opposing party, with supervised visits to Adam's client, citing the client's recent positive drug tests and 2018 arrest for possession of a controlled substance.

   Adam was overheard at the country club telling another lawyer in his firm (Dan Demure) that John got it wrong, because the other party was just as bad as his client, and that the opposing party committed adultery with impunity during the marriage. Adam also made a comment that he isn't surprised that the ruling was wrong, because John Judge's race clearly played a factor in the judicial selection, and that he should have been the one issuing the ruling today.

   What Rules are implicated here and does Adam's conduct give rise to a complaint if the colleague reports it? Does it matter that Adam and Dan are in the same firm? Does it change your answer if the GAL in the case was sitting at the bar in the country club and overheard the conversation and reports the comment to the Bar? Is Rule 8.3 implicated here?

C. Question #3: What does the GAL look like in your head? If the GAL reports Adam, does that change your mental picture?

3. **Joanna J. Judge:** Joanna J. Judge was recently appointed to the bench in Rural Retreat, Virginia. She graduated in 2002 from a local law school and had average grades at the school. It is well known that she was not perceived as a soaring intellectual, however, she is very personable and has served on many committees and community service organizations since becoming licensed. Her work with homeless children, indigent defendants, abused women, disabled veterans, and abandoned animals is legendary in the community, and she is well-liked for her extremely calm and professional demeanor, even in the most contentious cases. Joanna looks younger than her chronological age due to a genetic anomaly that also makes it impossible for her to gain weight no matter how many calories she consumes.

A. Question #1: Joanna Judge's husband is a partner at a local firm. He recently met with a client who was concerned about the custody case at bar. Mr. Judge reassured the client, stating, listen, my wife is on the bench. I know all of the judges and I can predict what they will do. I think we will be okay here, because you are a good parent and we have a good chance to prevail. Is Rule 8.4 implicated here? Why or why not?

B. Question #2: What does Joanna Judge look like in your head? Why?

C. Question #3: Carl Creeper wanted to be appointed to the same seat Joanna Judge is currently occupying. Carl and Lenny from Question 1 are BFFs even though Carl is younger than Lenny and uses email. Carl and Lenny were recently overheard at a local sports bar lamenting the appointment of Joanna after having several pitchers of beer. Carl is loudly explaining his strongly-held opinion that Joanna Judge did not deserve to be appointed and that he is aware, beyond a shadow of doubt that the only way Joanna Judge got appointed to the bench was because of a sexual favor she performed for someone important.

   Attorney Caren Creeper works in the same public defender's office that Joanna Judge used to work in right after law school. Caren can often be heard saying she "hates" Joanna Judge because she is so thin and eats ice cream every day. Caren has also been heard telling the same story as Carl about Joanna's appointment, but she's always careful to say that's only what Carl told her, and she doesn't think it's a true story, because she saw how hard Joanna worked and knows she is a really good lawyer and community asset.

   i. Is Carl's comment significantly different from Adam's comment in [B] above? Why or why not? Is Rule 8.2 implicated here?

   ii. Is Carl more guilty of a violation than Caren for telling the story, or are they equally situated here? How do Caren's comments about Joanna Judge's appearance compare to Lenny's comments in the first hypothetical?

   iii. Does the location of the comments about the judge's qualifications make a difference (office vs. private club vs. public bar)?

   iv. Does your analysis of the possible rule implications in the commentary about the judges change if you know that both lawyers in the conversation had been drinking?

END OF MATERIALS

Richmond Times-Dispatch

BREAKING

Va. State Bar suspends law license of ex-Petersburg city attorney convicted of lying to police about hoax racial threat

Telfair

By MARK BOWES Richmond Times-Dispatch
Oct 9, 2018

The Virginia State Bar has suspended for 90 days the law license of former Petersburg City Attorney Brian K. Telfair for professional misconduct in connection with his conviction last year of lying to police about a phony racial threat to city leaders he orchestrated in 2016.

Following a Sept. 28 hearing by the Virginia State Bar Disciplinary Board, the panel suspended Telfair's law license for violating three professional rules of conduct.

All are related to his guilty plea to making a false police report about a supposed 2016 threat to city officials in which he used a prepaid cellphone to call himself but claimed an unknown "redneck" caller made racist threats to the mayor and two other city leaders.

Telfair was sentenced to 12 months in jail with 11 months suspended for the misdemeanor offense and ordered to pay $7,411 to Virginia State Police for the cost of their investigation.

In a summary order filed Sept. 28, the Bar's disciplinary board said Telfair: violated or attempted to violate the rules of professional conduct by knowingly assisting or inducing another to do so; committed a criminal or deliberately wrongful act that reflects adversely on a lawyer's honesty, trustworthiness or fitness to practice law; and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on a lawyer's fitness to practice law.

The suspension of Telfair's license will be lifted in 90 days.

Telfair initially was convicted of lying to police after a Sept. 1, 2017, trial in Petersburg General District Court, where Judge Ray P. Lupold III declared Telfair committed a "calculated" crime and admonished him for the harm he caused to the community.

But Telfair immediately appealed his conviction to Petersburg Circuit Court, even though he admitted on the witness stand that he had concocted the entire episode and made the racist threat in a call to himself with a TracFone that he sent another employee to buy earlier that same day.

At Telfair's Sept. 1, 2017, trial in lower court, Telfair's attorney, Thomas Johnson, argued that although his client's actions were clearly wrong, he was under tremendous stress to cancel the Feb. 16, 2016 City Council meeting, and he was essentially acting at the behest of former Petersburg Mayor Howard Myers, who wanted the meeting scrapped.

Telfair's phony call led to the abrupt cancellation of the City Council meeting, after city officials received word that residents were upset about high water bills and other financial issues plaguing the city.

After appealing his conviction to Circuit Court, Telfair pleaded guilty to the same charge on Nov. 15, 2017.

Telfair initially lied to police about his involvement in the episode but eventually admitted he instructed the clerk of Petersburg City Council to buy a “burner phone” and have it activated.

The clerk testified that Telfair gave her money to purchase the phone and she made the transaction that morning at a Family Dollar store.

Later that day, Telfair claimed that a “male who he assumed was white because he spoke redneck” had called him on his office line and threatened to “kick [the] ass” of Myers, then-City Manager William E. Johnson II and then City-Finance Manager Irvin Carter. The caller, according to Telfair, also used profanity and racial slurs.

He later admitted to a state police investigator that he made the call to himself but said he did so to “preserve the institution of the city.”

Telfair resigned his city attorney position in March 2016.

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Tags Brian K. Telfair Law Criminal Law Legislation License

comments

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VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTERS OF **VSB Docket Nos. 17-032-108498**
BRIAN KRAIG TELFAIR

ORDER

THIS MATTER came to be heard on September 28, 2018, on the District Committee Determination for Certification by the Third District Committee, before a panel of the Virginia State Bar Disciplinary Board ("Board") consisting of Michael A. Beverly, Chair, Michael J. Sobey, Nancy L. Bloom, Lay Member, Carolyn V. Grady, and Bretta Z. Lewis, The Virginia State Bar (the "VSB") was represented by Laura A. Booberg ("Bar Counsel"). The Respondent Brian Kraig Telfair (hereinafter "the Respondent") was present and was represented by Leslie A.T. Haley. Tracy J. Stroh, court reporter, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

At the outset of the hearing, the Chair polled the members of the panel as to whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative.

All legal notices of the date and place were timely sent by the Clerk of the Disciplinary System ("Clerk") in the manner prescribed by the Rules of Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-18 of the Rules of Court.

Prior to the proceedings, VSB Exhibits 1-5 and Respondent's Exhibits 1-4 were admitted into evidence by the Chair without objection. By agreement between the VSB and the Respondent, the Respondent stipulated to Violations of Rules 8.4 (a), (b) and (c) of the Rules of

Professional Conduct, see Stipulations of Fact and Misconduct (herein incorporated by reference).

MISCONDUCT

Brian Kraig Telfair (hereinafter "the Respondent") was an attorney licensed to practice law in the Commonwealth of Virginia at all times relevant to the conduct set forth herein. Respondent and the VSB stipulated that he violated Rules 8.4 (a), (b) and (c). Specific Findings of Fact made by the District Committee, to which the Respondent stipulated regarding the nature and circumstances of his misconduct, are contained within the Stipulations of Fact and Misconduct. The Board moved directly to the sanctions phase of the proceedings and heard evidence of mitigation and aggravation.

SANCTION PHASE OF HEARING

The Bar admitted the Respondent's disciplinary record as Exhibit 6. During the Respondent's testimony, the Bar admitted Exhibits 7 – 9 with no objection from Respondent's Counsel. Exhibit 10 was admitted over the objection of Respondent's Counsel.

After opening arguments, the VSB called the Respondent, Brian Kraig Telfair, who testified regarding his legal experience, the stressful environment working as Petersburg City Attorney under the direction and control of the Petersburg City Council, his mental and emotional state as a result of this environment, his treatment with Dr. Sharlene P. Johnson, Clinical Psychologist, treatment with Lawyers Helping Lawyers, his inability to find consistent substantive legal work following his arrest and his lack of recollection of the facts and circumstances of his actions on February 16, 2016 that lead to his arrest for making a false police report. The VSB examined Respondent. After the VSB completed examination of Respondent, he was examined by his Counsel. After the conclusion of the examination of the Respondent, the Respondent answered questions asked by the panel members. During examination by the panel,

VSB Exhibit 11 was admitted without objection. After the close of the examination by the panel, VSB Exhibit 12 was admitted without objection. The Bar concluded its case.

The Respondent called Dr. Sharlene P. Johnson, Clinical Psychologist, as a witness. Dr. Johnson testified regarding the treatment she has provided to Respondent, including information that she diagnosed him with certain conditions and ruled out other conditions. She testified regarding diagnostic tools that she employed, as well as the Respondent's level of functioning when she first began treating him as well as her assessment of his current level of functioning. She testified that she believed that Respondent's issues that contributed to his actions in 2016 were exacerbated by the stress he was experiencing during his employment in the Petersburg City Attorney's Office. Dr. Johnson testified that she believes that Respondent is currently capable of functioning at a level that would allow him to perform his duties as an attorney, provided that he adheres to his treatment protocols including medications. During the VSB cross-examination of Dr. Johnson, her records regarding Mr. Telfair's treatment were admitted into evidence as VSB Exhibit 13 without objection.

The Respondent called James Leffler of Lawyers Helping Lawyers as a witness. He testified regarding the assistance he and his program have provided to Respondent. He offered the opinion that Respondent's mental state has improved greatly. Mr. Leffler offered the opinion that Respondent appears to be functioning in a manner that indicates that he is currently capable of performing the duties expected of a practicing attorney. Mr. Leffler was cross examined by the Bar. Members of the Panel asked questions of Mr. Leffler. The Respondent was called back to the stand by his Counsel for redirection. Members of the panel asked the Respondent questions. At the close of evidence, Counsel presented closing arguments.

THE BOARD'S FINDINGS & DISPOSITION

Having received and adopted the Stipulations of Fact, incorporated herein by reference, admitting the violations contained in the Certification received into evidence, and having considered the testimony and evidence presented regarding aggravation and mitigation at the hearing, the Board recessed to deliberate. After due deliberations, the Board reconvened in the hearing room and stated its finding for the record that the VSB and Respondent had stipulated to the Rule violations charged. After due deliberation and review of the findings of fact, upon review of Exhibits 1-13 presented by Bar Counsel on behalf of the VSB, upon review of Respondent's Exhibits 1-4, upon the testimony from the witness presented on behalf of the VSB and upon the testimony of witnesses presented by Respondent, the Board reconvened and stated its finding that aggravating factors include the Respondent's prior disciplinary record and his lack of candor before the tribunal related to his legal employment following his time as the Petersburg City Attorney. The Board stated that mitigating factors include Respondent's evidence regarding his personal and emotional problems during the period in which the violations occurred, the diagnoses to which Dr. Johnson testified, his cooperative attitude towards the Bar during the investigation of this incident, his interim rehabilitation with Lawyers Helping Lawyers, the imposition of other penalties, such as his incarceration, restitution, and his inability to obtain consistent substantive legal employment, and his statement of remorse. The Board also notes that the Respondent has taken action to rectify his conduct and prevent future violations, including attending counseling and adhering to a regimen of medication as recommended by his treatment providers.

Therefore, upon consideration of the evidence and the nature of the misconduct committed by the Respondent, it is ORDERED, by unanimous vote of the Board, that the Respondent's license to practice law in the Commonwealth of Virginia is suspended for a period of ninety (90) days, effective September 28, 2018.

It is further ORDERED that, as directed in the Board's September 28, 2018 Order in this matter, Respondent must comply with the requirements of Part Six, § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the ninety (90) day suspension of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. Respondent shall give such notice within 14 days of the effective date of September 28, 2018 and make such arrangements as are required herein within 45 days of the effective date of the suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the suspension that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of September 28, 2018, the Respondent shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar within 60 days of the effective day of the suspension. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, which may impose a sanction of Revocation or additional Suspension for failure to comply with the requirements of this subparagraph.

It is further ORDERED that pursuant to Part Six, § IV, ¶ 13-9 E. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Opinion and Order to Respondent, Brian Kraig Telfair, at his address of record with the Virginia State Bar, being 3007 Brook Road, Richmond, Virginia, 23227, by certified mail, return receipt requested; by regular mail to Respondent's Counsel, Lesley A.T. Haley, Park Haley, LLP, 1011 East Main Street, Suite 300, Richmond, Virginia 23219; and by hand delivery

to Laura Booberg Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026.

This Order is final.

ENTERED this 15th day of October, 2018.

VIRGINIA STATE BAR DISCIPLINARY BOARD

Michael A. Beverly
Chair

V I R G I N I A:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF	)		
RHETTA MOORE DANIEL	)	**VSB DOCKET NOS.:**	**18-032-110445**
	)		**18-032-111046**
	)		**18-032-111733**

ORDER

On February 21-22, 2019, the above-referenced matters were heard by the Virginia State Bar Disciplinary Board (the "Board") pursuant to Notice served upon the Respondent, Rhetta Moore Daniel (the "Respondent"), in the manner provided by the Rules of the Supreme Court of Virginia (the "*Rules*"), Part Six, § IV, ¶ 13-18. A duly convened panel of the Board consisting of Michael A. Beverly, Second Vice Chair; Yvonne S. Gibney; Bretta M. Z. Lewis; Melissa W. Robinson; and Martha J. Goodman, Lay Member, heard the matter. Elizabeth K. Schoenfeld, Assistant Bar Counsel, and Prescott L. Prince, Assistant Bar Counsel, represented the Virginia State Bar (the "Bar"). The Respondent did not appear during the Bar's presentation of its evidence and testimony for the misconduct phase of the proceeding, but she was represented by Henry E. Howell III, Esquire[1], during her absence from the proceeding. The court reporter for the proceeding, Tracy J. Stroh of Chandler & Halasz, Post Office Box 9349, Richmond, Virginia 23227, telephone: (804) 730-1222, after duly being sworn by the Chair, reported the hearing and transcribed the proceedings. The Chair polled the members of the Board as to whether any of them had any personal or financial interest or bias that would preclude any of them from fairly

[1] Mr. Howell represented Respondent during the misconduct phase of the proceedings only. At the conclusion of the testimony of Respondent's witnesses during the misconduct phase, Respondent announced to the Board that she wished to terminate Mr. Howell as her legal representative. The Board thereupon ruled that Mr. Howell would remain available to Respondent as a legal advisor during the remainder of the proceeding.

hearing this matter and serving on the panel. Each member, including the Chair, responded that there were no such conflicts.

These matters came before the Board on the Subcommittee Determination (Certification) by the Third District Committee, Section II Subcommittee of the Bar, pursuant to Part Six, § IV, ¶ 13-18 of the *Rules*. The Certification was sent to Respondent on September 20, 2018.

Prior to the proceedings, at a hearing on Respondent's Motion for Hearing Continuance, the hearing of these matters was continued from February 14-15, 2019 until February 21-22, 2019. In addition, on February 20, 2019, in response to correspondence from Respondent's counsel asserting potential conflicts by two members of the Board assigned to sit on the panel for the hearing of these matters, the Chair, after consultation with all members of the panel, entered an Order determining that no conflict existed, in accordance with Part Six, § IV, ¶ 13-14(D) of the *Rules*.

At the final Prehearing Conference on February 13, 2019, Bar Exhibits 1-111 were admitted into evidence by the Chair, without objection from Respondent.[2]

The Board first announced that it overruled Respondent's challenge to the authority of the Bar to discipline Virginia attorneys.

The Board admitted the Bar's Exhibits 112 and 113 and Respondent's Exhibits 7, 8, 9, and 10 during the proceeding.[3]

The Board heard testimony from the following individuals on behalf of the Bar: John K. Burke, Jr., Esquire; Matthew T. Paulk, Esquire; and Alison R. Zizzo, Esquire.

[2] Because counsel for Respondent timely entered an appearance in this proceeding, the Bar's Motion to Appoint Guardian *Ad Litem* to represent Respondent at the hearing, pursuant to Part Six, § IV, ¶ 13-23(G) of the *Rules*, is dismissed as moot.

[3] Respondent did not move the admission of any other documents into evidence.

The Board heard testimony from the following individuals on behalf of Respondent during the misconduct phase of the proceeding: the Respondent; Glen M. Robertson, Esquire; E. Grier Ferguson, Esquire; and David Reinhardt, Esquire. Two of the witnesses called by Respondent to testify on her behalf, Robin Mehfoud Ruffin and Mary Margaret Jones, declined to provide their testimony under oath and, accordingly, were not permitted to testify during the proceeding. Following Respondent's proffer of the testimony of Cina Wong and James E. Whitener, the Board sustained the Bar's objections to their testimony. The Board admitted into evidence Respondent's Exhibit 8, however, which had been prepared by Mr. Whitener. During the sanction phase of the proceeding the Board also heard testimony from the following individuals on behalf of Respondent: Mark J. Mills, M.D.; James E. Whitener; David W. Diggs; and Ellett R. McGeorge III.

The Board considered the witness testimony and the exhibits; heard argument of counsel for the Bar and counsel for Respondent, as well as argument of Respondent; and met in private to consider its decision. All of the factual findings made by the Board were found to have been proven by clear and convincing evidence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board makes the following findings of fact and conclusions of law on the basis of the evidence presented:

1. Respondent has been licensed to practice law in the Commonwealth of Virginia for more than forty years.

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2. Complainants Alison Zizzo, Vanessa Stillman, and Glen Robertson are attorneys licensed to practice law in Virginia. They represented E. Grier Ferguson, a defendant in

litigation in the Circuit Court of the City of Suffolk in which Respondent represented the plaintiff, Mary Margaret Jones, beginning in or about September 2016: In Re: William Wellington Jones, Deceased: Mary Margaret Jones v. E. Grier Ferguson, Esq., Case No. CL15000254 ("Suffolk lawsuit"). Robertson's complaint focused on Respondent's conduct in the Suffolk lawsuit, particularly with respect to Respondent's statements about and interactions with the presiding judge, Retired Judge John F. Daffron, Jr. *Bar Exhibit 73*. The complaint of Zizzo and Stillman also focused on Respondent's conduct in the Suffolk lawsuit, particularly with respect to Respondent's communications with Judge Daffron concerning settlement discussions and with respect to Respondent's handling of pretrial discovery. *Bar Exhibit 83*.

3. Respondent's communications with and about the presiding judge in the Suffolk lawsuit reflected a profound disrespect for the judge's authority and impugned the judge's integrity. For example, in a September 14, 2017 email to Judge Daffron, which she copied to opposing counsel and to the Executive Director of the Bar, Respondent wrote, "I am tired of everyone's lies, including your [Judge Daffron's] blatant misrepresentations on the record." *Bar Exhibits 72 and 112*. The "blatant misrepresentations" to which she referred pertain to Judge Daffron's statement that Respondent had not provided her available trial dates, a statement Judge Daffron made during a September 6, 2017 hearing that Respondent did not attend. *Bar Exhibit 71 at VSB(RD) – 001851 - 001852*. Respondent's September 14, 2017 email went on to say that "Everyone, including your [Judge Daffron's] office received my available dates on August 31 or in the morning of September 1, that I sent on August 31." *Bar Exhibits 72 and 112*.

In fact, Respondent had not provided her available dates for scheduling the trial. In an email dated August 31, 2017 to opposing counsel and copied to the judge concerning the scheduling of hearings and the trial, Respondent provided her available dates for "pretrial

hearings for 2017" and stated, "I will also provide you with my available Trial Dates for 2018, but I have no idea of the availability of my witnesses." *Bar Exhibit 72 at VSB(RD) – 001861*. Respondent also sent Judge Daffron a facsimile just prior to the hearing on September 6, 2017, from which Judge Daffron read out loud during the hearing. He read that Respondent had written:

> I do not have any sets of trial dates for a three-day or four-day trial, but I am working on obtaining these dates in 2018. As soon as I have dates for a three to four-day trial, I will send them to the court and opposing counsel. I am having to contact 30 to 40 witnesses at least for trial dates.

Bar Exhibit 71 at VSB(RD) – 001852.

During a hearing on October 23, 2017, the Respondent resumed her accusation that Judge Daffron was not truthful – again concerning whether she had provided the Court with her available trial dates:

> [RESPONDENT]: What was said on that transcript, which is attached, was a ball-faced lie, and I'm not going to stand for it.
>
> THE COURT: What was a lie?
>
> [RESPONDENT]: You said you had not received any dates, that I told you that I might get around to getting some, and they said that I hadn't given them any dates, which was totally untrue . . . .

Bar Exhibit 74 at VSB(RD) – 001888. She continued her attack on the judge moments later:

> So when they sat here in this courtroom and represented to this court that I had not sent dates, they were not telling the truth. And when you said you hadn't received any dates, that was not the truth, either, Your Honor.

Id. at VSB(RD) – 001889.

Later in the same hearing she took issue with a decision by Judge Daffron to suspend subpoenas for "a lawyer's trust account" that Respondent had requested. She said: "Judge, why are you raping the trust of money . . . when you know that is not going to work?" *Id. at VSB(RD)*

– *001908-001909*. Respondent later repeated this accusation in her response to Mr. Robertson's bar complaint against her. Respondent wrote, "Mr. Ferguson and his attorneys, with the help of Judge Daffron, are draining (raping) my client's and her son's Trust (the William Wellington Jones Revocable Trust) as fast as they can." *Bar Exhibit 76 at VSB(RD) – 001990*. Respondent then continued her attack on Judge Daffron in the same response to the bar complaint by claiming that her client was "a victim of elderly abuse and exploitation" by Judge Daffron. *Id. at VSB(RD) – 001992*.

When questioned by the Board during the hearing whether she had taken any actions to withdraw or apologize for her statements to and about Judge Daffron, Respondent testified that she had taken no such action. *Hearing Transcript of In the Matter of Rhetta M. Daniel, VSB Docket Nos. 18-032-110445, 18-032-111046 and 18-023-111733, February 21-22, 2019 ("Tr.") at 392-93*.

4. The statements by Respondent about and to Judge Daffron set forth above constitute misconduct in violation of the following provisions of the *Rules*:

RULE 3.5 Impartiality and Decorum of the Tribunal

(f) A lawyer shall not engage in conduct intended to disrupt a tribunal.

RULE 8.2 Judicial Officials

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or other judicial officer.

5. Respondent made statements to the Court in the Suffolk lawsuit that contained intentional misrepresentations concerning settlement following the Court-ordered judicial settlement conference.

The parties and their counsel participated in a settlement conference on November 21, 2017 at the direction of the Court. *Bar Exhibit 77*. Although they did not reach a settlement during the conference, Retired Judge Randolph West, who facilitated the settlement conference, encouraged Mr. Ferguson and his counsel to convey a settlement proposal to Respondent and her client that would remain open for a week for Respondent's client to consider. Mr. Ferguson's counsel did so and Judge West conveyed to Respondent and her client the outline of their settlement proposal during the conference. *Tr. at 417*.

Later in the day, after the settlement conference concluded, Respondent sent an email to opposing counsel requesting them to send her their "Proposed Settlement Agreement and Mutual Release tomorrow, but no later than this Friday, Nov. 24." *Id. at VSB(RD) – 001997*. Because of the intervening Thanksgiving holiday, opposing counsel provided the requested draft settlement agreement on November 29, 2017. *Bar Exhibit 78*. The November 29 draft they sent included provisions requiring Respondent, her client, and her client's son, Francesco Bruno-Bossio,[4] to release their claims against Mr. Ferguson and his legal counsel, and requiring Respondent and her client to remove and retract any postings, comments, emails, or statements made by them about the Suffolk lawsuit to third parties. *Bar Exhibit 78 at VSB(RD) – 002004-002008*.

Respondent expressed her disagreement with the terms of the November 29 draft shortly after receiving it from opposing counsel, writing,

> Francesco Bruno-Bossio was not a party to the Judicial Settlement Conference and is not a party in the litigation in either case.
>
> Mary Margaret Jones cannot release any claims he may have.

[4]According to the allegations of the Complaint filed to initiate the Suffolk lawsuit, Respondent's client's son, Francesco Bruno-Bossio, was "an interested or necessary party as he is a beneficiary of the . . . Trust [that was the subject of the lawsuit]." *Respondent's Exhibit 7* ("Coe" Complaint, ¶5).

His name will have to be removed from the Proposed Agreement.

Bar Exhibit 79. Nevertheless, two days later Respondent sent a facsimile to Judge Daffron in which she stated:

> I am delighted to advise you that Mary Margaret Jones has accepted the Settlement Terms presented by the Defendant, E. Grier Ferguson, Esquire, and Judge West at the November 21, 2017 Court Ordered Judicial Settlement Conference.
>
> I would appreciate your immediately sending to Judge West the attached Signed and Dated Acceptance of the Judicial Settlement Terms by Mary Margaret Jones as presented at the Settlement Conference by the Defendant, E. Grier Ferguson, Esquire, for the pending Will and Trust consolidated cases, commonly referred to as CL 15-254.

Bar Exhibit 80. The document Respondent attached to the facsimile was not the November 29 draft. Among other differences, it contained no language releasing Respondent or her client's son's claims and, with respect to removing postings and retracting statements to third parties, the document stated "I have no control over any Internet Posts and cannot remove any Internet Posts that were disseminated by someone other than me or Rhetta M. Daniel, Esquire, my lawyer." *Id.* The most significant feature of the document Respondent attached to her facsimile was the fact that it had not been signed by Mr. Ferguson.

In her facsimile to Judge Daffron Respondent requested him to enter various orders transferring real estate to her client, revoking the trust her client was challenging in the Suffolk lawsuit, and dismissing the lawsuit. *Id.* Respondent did not copy Mr. Ferguson's attorneys on her facsimile to Judge Daffron, however, until more than six hours later. *Id.*

6. The statements by Respondent to Judge Daffron inaccurately representing that the parties had reached a settlement in the Suffolk lawsuit, constitute misconduct in violation of the following provisions of the *Rules*:

RULE 3.3 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal[.]

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

. . .

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflect adversely on the lawyer's fitness to practice law[.]

7. During the course of Respondent's involvement in the Suffolk lawsuit, she responded to discovery requests propounded by Mr. Ferguson through his legal counsel. The discovery responses provided by Respondent on behalf of her client were the subject of motions to compel filed by opposing counsel on February 22, 2017, April 7, 2017, and April 25, 2017. *Bar Exhibits 65 and 65A- 65C*. The Court considered the three motions to compel in a hearing on May 3, 2017, granting each motion and directing Respondent and her client to provide complete responses to the discovery. *Bar Exhibit 67*. The following response to a request for admission is an example of the discovery responses that gave rise to the motions to compel:

> 1. Admit that Exhibit "A" of your complaint, "William Wellington Jones Revocable Trust Agreement," dated November 19, 2007, to the best of your knowledge, is a true and accurate copy of the original.
>
> RESPONSE:
>
> I ADMIT MY FATHER WAS COMPETENT TO HANDLE ALL HIS LEGAL AND PERSONAL AFFAIRS AT LEAST THROUGH THE DATE OF DECEMBER 2014.
>
> THIS ADMISSION AS TO MY FATHER'S COMPENTENCY ON JUNE 2, 2014 IS BASED ON THE DEFENDANT'S WITNESSING THE ALLEGED JUNE 2, 2011-AMENDMENT BY WILLIAM WELLINGTON JONES TO THE ALLEGED 2007-WILLIAM WELLINGTON JONES REVOCABLE TRUST DOCUMENT IN QUESTION IN THIS REQUEST FOR ADMISSIONS AND ON THE 2014-DOCUMENTS EXECUTED BY MY FATHER IN 2014 AND ACCEPTED BY THE COURT IN DECEMBER 2014.
>
> I CANNOT ADMIT OR DENY THAT THE DOCUMENTS REFERRED TO AS EXHIBIT "A" ARE TRUE AND ACCURATE COPIES OF SOME ORIGINAL DOCUMENTS, BUT I DO NOT KNOW IF THESE DOCUMENTS ARE VALID

> WILLIAM WELLINGTON JONES REVOCABLE TRUST AGREEMENT OR AMENDMENT.
>
> I DO NOT KNOW IF MY FATHER HAD ANY OTHER TRUSTS OR MORE RECENT TRUSTS.
>
> l CANNOT ADMIT OR DENY ANYTHING UNLESS THE ORIGINAL DOCUMENTS ARE COMPARED TO THE COPIES OF THE DOCUMENT IN ISSUE. I CANNOT ADMIT OR DENY IF THE REFERENCED AMENDMENT IS A VALID OR EFFECTIVE DOCUMENTS BASED ON THE DEFECTS IN THE DOCUMENTS.

Bar Exhibit 65C at VSB(RD) – 001475 (capitalization in the original).

The responses Respondent and her client provided following the Court's direction in the May 3, 2017 hearing became the subject of a motion for sanctions filed by opposing counsel on July 19, 2017 (*Bar Exhibit 68*), which the Court considered in a hearing on October 23, 2017. *Bar Exhibit 74*. The Court took the motion for sanctions under advisement until April 26, 2018, when it announced its decision to award sanctions against Respondent and her client. *Bar Exhibit 103*. With respect to the discovery responses provided by Respondent and her client the Court stated:

> Now, the most consequential action deals with the discovery abuse. The – it's stunning to see the ineptitude in erroneous discovery responses that have been filed ….
>
> There was a motion to compel. That was not done. Defense counsel have filed notices, I believe more than one, asking to compel the answers and asking for sanctions. The misbehavior, illegal actions, unethical actions are so severe that as a consequence of that, I am dismissing [Respondent's client's] case. This is clearly provided for in the rules of court, and the errors and the ineptitude and inappropriate practice are so severe that that is my judgment of what should occur.
> …
> … I intend to enter an order that says [Respondent] is removed for misconduct in the case[.]

Id. at VSB(RD) - 002169-002171.

The Court entered an order on May 18, 2018 that provided for an award of attorneys' fees, in an amount to be determined at a hearing scheduled for June 18, 2018, based on "the

misconduct by Plaintiff and her counsel, [Respondent], in this case, upon Plaintiff's failure to adequately and fully respond to the discovery propounded by the Defendant in this matter, and for the reasons set forth in the Court's ruling as reflected in the transcript attached hereto, the Defendant's Motions for Sanctions and for Costs are GRANTED." *Bar Ex 105*. The Order further provided that "[t]he sanctions . . . shall constitute a personal judgment against Mary Margaret Jones and her counsel [Respondent]." *Id.* The Order also removed Respondent as counsel for Mary Margaret Jones and "barred [her] from appearing in the Circuit Court for the City of Suffolk indefinitely." *Id.*

8. The inadequate and improper discovery responses provided by Respondent and her client in the Suffolk lawsuit, which required the Court's involvement to consider and rule on three motions to compel and a motion for sanctions, and which ultimately resulted in a sanctions award against Respondent and her client and in Respondent being barred from appearing in the Circuit Court for the City of Suffolk, constitute misconduct in violation of the following provisions of the *Rules*:

RULE 1.1 COMPETENCE

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:

. . .

(g) Intentionally or habitually violate any established rule of procedure or of evidence, where such conduct is disruptive of the proceedings.

9. During the course of Respondent's involvement in the Suffolk lawsuit, she made statements to the Suffolk Commonwealth's Attorney, the Suffolk police, the Supreme Court of

Virginia, various press outlets, and others about Mr. Ferguson and his legal counsel, accusing them of criminal and other wrongdoing.

In an April 28, 2017 email to Phillips Ferguson, the Commonwealth's Attorney for Suffolk, Respondent suggested that funds had been misappropriated, that federal and/or state tax fraud had occurred, and that a criminal investigation was warranted. *Bar Exhibit 66*. Two days later Respondent forwarded the email to opposing counsel in the Suffolk lawsuit, with this message to them:

> Please see the email I sent to Phillips Ferguson.
> My math was not correct.
> The approximate amount is now approximately 1.4 million dollars that Grier [Ferguson] has had under his control since 8/11/11.
> Where has the 1.4 million gone?

Id. When Glen Robertson brought this email to the Court's attention during a hearing on October 23, 2017, the Court and Respondent engaged in the following exchange:

> THE COURT: I think every lawyer in Virginia knows that it is unethical to threaten criminal prosecution to collect a debt.
>
> [RESPONDENT]: That's right. I don't – I don't deny that, but if there's criminal activity going on, I have a right to protect my client and even at my risk, and I'm going to do it.

Bar Exhibit 67 at VSB(RD) – 001590.

On February 8, 2018, Respondent sent another email to the Commonwealth's Attorney, which appeared to be a forwarded letter she had sent to Chief Justice Lemons of the Supreme Court of Virginia. In it she wrote:

> I urge the Virginia Supreme Court and the Virginia State Bar to act immediately to stop the Elder Abuse, Financial Exploitation and theft from the Jones Estate and the Jones Trust based on the evidence already presented to the Virginia State Bar of E. Grier Ferguson's 2017 theft of the discrete amount of $8,710.00 the Jones Estate.
>
> Mary Margaret Jones, and Elder, is being abused everyday by Mr. Ferguson and his attorneys who are refusing to repair the furnace for her home (it is unheated in this

> extreme weather), refusing to pay the Dominion Power bill that must be paid for her to even be able to use space heaters, failing to provide her with any funds to pay for the utilities for the Jones' Residence that belongs to the Jones' Trust, or to pay for her food and other necessities.

Bar Exhibit 90 at VSB(RD) – 002074.

On February 14, 2018, Respondent sent another email to the Commonwealth's Attorney, as well as to the Bar, the Supreme Court of Virginia, the Internal Revenue Service, the Department of Justice, opposing counsel, and various media outlets, using the subject matter "Re: Alleged Grand Larceny and Other Crimes - Jones Estate/Trust Funds." In it Respondent wrote:

> WHERE HAS ALL THE MONEY GONE SINCE DECEMBER 31, 2017, THAT PREVENTS E. GRIER FERGUSON, ESQUIRE, EXECUTOR & TRUSTEE FROM DISBURSING $5,000.00 TO MARY MARGARET JONES FOR FEBRUARY 2018 AND FROM PAYING THE DOMINION POWER ELECTRIC BILL FOR THE TRUST OWNED JONES' RESIDENCE IN WHICH MARY MARGARET JONES LIVES WITH NO CENTRAL HEAT?
>
> WHERE ARE THE BANK STATEMENTS FOR JANUARY 2018?
>
> WHY HAS E. GRIER FERGUSON LIQUIDATED AND DRAINED THE ASSETS OF WILLIAM WELLINGTON JONES, MARY MARGARET JONES AND THE JONES TRUST/ESTATE SINCE AUGUST 11, 2011?
>
> WHY ARE THEY [sic] PROPER AUTHORITIES ALLOWING THIS GRAND LARCENY, ELDER ABUSE, FINANCIAL EXPLOITATION, TAX FRAUD, INSURANCE FRAUD TO CONTINUE TO GO UNADDRESSED?
>
> THE VICTIM, MARY MARGARET JONES DESERVES IMMEDIATE ANSWERS AND ACTION FROM ALL APPROPRIATE AUTHORITIES WHO HAVE BEEN PUT ON NOTICE BEGINNING ON OCTOBER 16, 2016, AND CONTINUING THROUGH TODAY.

Bar Exhibit 89.

The effect of Respondent's scattershot tactics of communicating her accusations against her opposing counsel was addressed by Alison Zizzo during her testimony in this proceeding:

A . . . I spent an inordinate amount of time defending not only my client but the allegations that were lodged against me personally. The amount of time spent was massive in dealing with the written communication from [Respondent].

Q And how did that affect you mentally?

A There were many times when I questioned the practice of law in general because of this case. I had never been treated as poorly and, quite frankly, as disrespectfully as [Respondent] – by [Respondent].

Tr. at 176.

10. Respondent's communications to the Commonwealth's Attorney, the Supreme Court of Virginia and other authorities and media outlets in which she accused Mr. Ferguson and his legal counsel of grand larceny, tax fraud, insurance fraud, elder abuse, and financial exploitation, constitute misconduct in violation of the following provisions of the *Rules*:

RULE 3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:

. . .

(j) File suit, initiate criminal charges, assert a position, conduct a defense, delay a trial, or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

. . .

(c) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law[.]

Docket Nos. 18-032-111046 and 18-032-111733

11. The Bar's investigation of these two matters focused on Respondent's conduct toward the presiding judge and opposing counsel, and on Respondent's response to the court's orders in litigation in the Circuit Court of Charles City County: Timothy W. Ruffin v. Robin Mehfoud Ruffin, Case No. CL09-3800 ("Charles City lawsuit"), a divorce case in which Respondent entered an appearance on behalf of Robin Mehfoud Ruffin more than four years

after the case had ended. The investigation for Docket No. 18-032-111733 focused specifically on two facsimile communications from Respondent to the presiding judge, while the investigation for Docket No. 18-032-111046 addressed other conduct of Respondent during her involvement in the Charles City lawsuit, including the consequences of Respondent's conduct for her client, Ms. Ruffin.

12. Respondent noted her appearance in the Charles City lawsuit in mid-November 2016 (*Bar Exhibit 8*), at which time she filed a motion for a rule to show cause, seeking monetary sanctions against three law firms and individual attorneys who are current or former members of the firms. *Bar Exhibit 7*. Two weeks later Respondent filed a second motion for rule to show cause against two law firms – including one she targeted in the first show cause – as well as two individual attorneys who were members of the firms. *Bar Exhibit 9*. Like the first show cause motion, the second sought monetary sanctions, but also requested the Court to order a non-party – Thomas Gates, LLC – to convey to Respondent's client an interest in certain real estate. *Id.* The client's interest in the real estate in question had previously terminated in 2012 when her final divorce decree was entered. *Bar Exhibit 13 at VSB(RD) – 000552 – 000568*. During the hearing Respondent in fact admitted during her testimony that she "was wrong to include Ms. Mehfoud and ask the Court to transfer the property – her percentage of the property to her individually." *Tr. at 403*.

Through the first show cause motion, Respondent sought to re-litigate an issue that had been decided by the Court five years earlier. At that time Ms. Ruffin asserted that the law firm Hirschler Fleischer, P.C. ("HF") had a conflict of interest and should be disqualified from representing her husband. The Court agreed and disqualified HF from the representation. *Bar Exhibit 11 at VSB(RD – 000467*. Mr. Ruffin's choice to represent him after the Court's ruling

was Matthew Paulk, with the firm Matthew T. Paulk, P.C. Prior to accepting that representation, however, Mr. Paulk disclosed to the Court that his wife was a member of HF and requested the Court's permission to represent Mr. Ruffin. *Id. at VSB(RD) – 000468*. The Court confirmed its approval of Mr. Paulk's representation in a May 16, 2011 letter, expressly finding that "no conflict of interests exists because your wife is a partner in the Hirschler Fleischer law firm." *Id. at VSB(RD) – 000470.*

Respondent alleged in the first show cause motion that Matthew Paulk and his wife, Courtney Paulk, had previously represented the Ruffins and that HF continued to represent Mr. Ruffin in the Charles City litigation despite having been disqualified by the Court. *Bar Exhibit 7*. The HF billing records Respondent attached to her motion provided no support for these allegations. *Bar Exhibit 7 at VSB(RD) – 00068 – 000297*.

The law firms and attorneys targeted in the first motion filed responsive pleadings seeking the dismissal of the motion and in the response filed by Matthew Paulk, the imposition of monetary sanctions. *Bar Exhibits 10 and 11*. The Court heard their motions on July 21, 2017, announced from the bench that sanctions would be awarded to the moving parties, and directed opposing counsel to prepare an order reflecting the Court's ruling. *Bar Exhibits 37 and 45*. More than three months passed before the Court entered written orders because Respondent refused to endorse the orders prepared by opposing counsel. *Bar Exhibit 45*. Instead, on September 5, 2017 Respondent sent a 21-page order that she had prepared, contrary to the Court's direction. *Bar Exhibit 40*. In it she attacked the presiding judge, Judge B. Elliot Bondurant, in a litany of objections to his ruling that she included in her order. Her objections included the following:

> Judge Bondurant imposed the sanctions on Defendant's counsel to attempt to chill and prevent counsel for the Defendant from being able or willing to continue to represent the Defendant in the instant matters in Case No. CL 09-38 . . .
>
> Judge Bondurant deliberately took action to deceive the Defendant, Defendant's counsel on March 7, 2017, so Judge Bondurant could punish Defendant and Defendant's counsel out of spite because the Court knew in November/December 2016 that the Court had **no procedural jurisdiction** to conduct any Hearings . . .

Id. at VSB(RD) – 0001164 and 0001172 (emphasis in the original).

Citing health reasons, Respondent did not appear for the September 12, 2017 hearing that had been scheduled to determine the amount of sanctions to be assessed against Respondent and her client. *Bar Exhibit 42*. Six weeks later, Respondent filed a motion to withdraw as counsel. *Bar Exhibit 46*.

At a hearing on October 27, 2017 the Court awarded sanctions against Respondent and her client, jointly and severally, in the amount of $23,556.45 to be paid to HF. *Bar Exhibit 47*. The Court also awarded sanctions against Respondent in the amount of $3,000.00 to be paid to Matthew Paulk and Matthew T. Paulk, PC. *Bar Exhibit 48*. In the Order the Court found that Respondent's motions were "filed in violation of Va. Code § 8.01-271.1, in that [Ms. Ruffin] and [Respondent] are pursuing claims and arguments that are not warranted by Virginia law, or a good faith extension, modification or reversal of existing law, and [Ms. Ruffin's] Motion was filed for improper purposes and has needlessly increased the costs of litigation . . ." *Bar Exhibit 49 at VSB(RD) – 0001239-0001240*.

In her testimony during the hearing on these matters Respondent identified no evidence that supported the allegations in the motions for show cause in which she had requested the Court to hold the attorneys and law firms in contempt of court and to award Ms. Ruffin monetary sanctions, in addition to other relief. In what appeared to be a justification for these baseless motions, Respondent testified:

> We never had a hearing on the merits of those motions. Never. We did not have a hearing on the merits of those motions. Judge Bondurant would not entertain any evidence regarding the merits of those motions. Those motions were defective when filed and never should have gone forward. I never asked to have them brought forward.

Tr. at 525.

The second motion for show cause Respondent filed in the Charles City lawsuit sought monetary sanctions against Mr. Ruffin (the plaintiff); HF; James Cluverius, an HF attorney; Channing M. Hall, III; and Channing M. Hall, III, P.L.L.C., based on alleged fraud in a real estate transaction involving Thomas Gates, LLC. *Bar Exhibit 9*. Mr. Ruffin and the law firms and attorneys targeted in the second motion filed responsive pleadings seeking the dismissal of the motion and the imposition of monetary sanctions. *Bar Exhibits 12-14*. Four days before the Court was to hear the motions, Respondent filed a motion to recuse Judge Bondurant. *Bar Exhibit 17*.

At the March 7, 2017 hearing the Court denied the motion to recuse and granted the motions to dismiss and for sanctions. *Bar Exhibit 18 at VSB(RD) – 000819 and 000905-000906*. It ordered Respondent and Ms. Ruffin, jointly and severally, to pay attorneys' fees and costs of more than $14,000. *Id. at 000905-000906*. The Court stated that its grounds for awarding sanctions included that the motions were "done, not grounded in fact, nor warranted by existing law, and . . . imposed on improper purpose." *Id. at 000904*.

On April 21, 2017 the Court entered an order reflecting its ruling announced during the March 7 hearing. *Bar Exhibit 35*.

Ms. Ruffin subsequently appealed, *pro se*, the April 21, 2017 order, although the footer on some of the pleadings she filed stated: "[THIS DOCUMENT WAS PREPARED BY RHETTA M. DANIEL, ESQUIRE, FOR THE PRO SE APPELLANT.]" *Bar Exhibit 39*. The Court of Appeals denied the appeal on November 16, 2017, held that the appellees were "entitled

to a reasonable amount of attorney's fees and costs," and remanded the matter to the trial court to determine the amount of the award. *Bar Exhibits 51 and 52*. Following remand, the Court ordered Ms. Ruffin to pay more than $41,000 in attorneys' fees and noted that this award was "in addition to a judgment for fees and costs awarded in this Court's Order of April 21, 2017 against [Robin Ruffin] and [Respondent], jointly and severally . . ." *Bar Exhibit 57*.

13. With respect to Docket No. 18-032-111046, Respondent's conduct in the Charles City litigation in which she: filed defective pleadings that the trial court and Court of Appeals determined to be frivolous, resulting in awards of monetary sanctions against Respondent and her client; sought relief through those pleadings that could not be granted; did not withdraw the pleadings despite knowing that they were defective; and impugned the integrity and qualifications of Judge Bondurant in objections she included in a draft order she submitted to the Court, constitute misconduct in violation of the following provisions of the *Rules*:

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 3.1 Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

RULE 8.2 Judicial Officials

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or other judicial officer.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

. . .

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law.

14. Respondent continued to engage in obstinate conduct in the Charles City lawsuit in her response to Matthew Paulk's Petition for a Rule to Show Cause against Respondent when she disobeyed the Court's order and failed to pay the sanctions that had been awarded to Paulk. The misconduct investigated in Docket No. 18-032-111733 focused, in particular, on two facsimile communications from Respondent to Judge Bondurant concerning the hearing the Court had scheduled to consider Mr. Paulk's Petition.

On or about February 1, 2018 Respondent sent a facsimile to Judge Bondurant, copied to Ms. Ruffin and Mr. Paulk, that stated:

> **I will NOT be in court tomorrow at 1 pm or anytime soon.**
>
> **NOTICE TO YOU:**
>
> **Do not issue another Bench Rule to Show Cause for me because you do not believe I am sick when I notify you I am and I send you a valid Doctor's excuse and/or an email such as this one. Also, dont** [sic] **even thinkn** [sic] **about holding me in contempt of court, much less doing so.**
>
> **You are one of the main reasons I am in the hospital tonight with your ridiculous imposition of $45,000+ in punitive sanctions on my former client and me based on run-up, frivolous, completely unnecessary and unreasonable and crazy legal fees your** [sic] **buddies.**

Bar Exhibit 60 (bold face type in the original).

Respondent sent a second facsimile to Judge Bondurant shortly thereafter, which she again copied to Ms. Ruffin and Mr. Paulk. It included the following statement:

> Trust me, if I do not die of a heart attack before you are supposed to be considered for another round on the bench, I will appear before the General Assembly when that time comes.

I decided tonight lying in this hospital bed to not mince my words. If you try to punish me, I will fight you to the end.

There is plenty of evidence clearly documented in the Ruffin Hearing Transcripts in the pending cases to prove your unfitness to preside over any cases in any court.

I shall provide that evidence to JIRC if I survive to do so.

Bar Exhibit 61.

In her testimony during the hearing in these matters, Respondent admitted that she had taken no actions to withdraw her statements and that she meant everything she said about Judge Bondurant. *Tr. at 392*. In her closing statement, when she addressed her statements to Judge Bondurant, she conceded only that "They were not prudent." *Tr. at 543*.

15. With respect to Docket No. 18-032-111733, Respondent's statements to and about Judge Bondurant in the two facsimiles, assailing his qualifications and integrity, constitute misconduct in violation of the following provisions of the *Rules*:

RULE 8.2 Judicial Officials

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or other judicial officer.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

. . .

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law.

Sanction Phase of Hearing

After the Board announced its finding that the Respondent had committed the violations of the *Rules* as set forth above, the Board heard testimony and received further evidence regarding the appropriate sanction to be imposed.

Respondent's disciplinary record reflects no prior disciplinary history. *Bar Exhibit 113*.

Dr. Mark J. Mills, a forensic psychiatrist who testified on behalf of Respondent, opined that Respondent is competent to practice law based on his examination of her in person and over the phone, as well as his review of her medical records and the materials relied upon by the Bar in the misconduct proceeding. Dr. Mills did not reach a diagnosis of Post-Traumatic Stress Disorder (PTSD), as he saw no evidence of it.[5] He further testified that the two facsimiles Respondent sent to Judge Bondurant were a conscious choice made by Respondent.

Other witnesses called to testify on Respondent's behalf during the sanction phase of the hearing, including James E. Whitener, David W. Diggs, and Ellett R. McGeorge III, all testified to Respondent's compassionate and passionate representation of her clients, noting that she often represented her clients *pro bono*.

The Board considered the *ABA Annotated Standards for Imposing Lawyer Sanctions*[6] in reaching its decision. Those standards support the appropriateness of revocation in this matter. Revocation "is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding."[7]

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[5] In her testimony, Respondent attempted to explain her disobedient conduct toward the Chair during the hearing by claiming "some of the things that are happening with the reactions are actually the result of PTSD from all of the abuse that I have suffered in the last four years." *Tr. at 289*. Dr. Mills, Respondent's own witness, discredited this explanation for her conduct.

[6] ABA, *Annotated Standards for Imposing Lawyer Sanctions* (2015)

[7] *Id.*, Standard 6.21.

The evidence presented in this proceeding demonstrate that Respondent intentionally misused the judicial process by failing to abide by court rules concerning discovery in the Suffolk lawsuit, falsely accusing Judge Daffron and Judge Bondurant of improper or criminal behavior, submitting false information about settlement in the Suffolk lawsuit, and engaging in rude and disruptive behavior during hearings in both the Charles City and Suffolk lawsuits. The harmful consequences of Respondent's actions include awards of sanctions against her clients in both lawsuits, and the inevitable embarrassment and distress Judge Bondurant, Judge Daffron, and opposing counsel in both lawsuits endured as Respondent engaged in her years-long campaign of baseless attacks on their competence, reputation, and professionalism.[8] Revocation is further supported by Respondent's multiple acts of misconduct in both lawsuits, as they reflect a pattern of disdain for the courts and the judicial process.

In its consideration of aggravating and mitigating factors applicable to the appropriate sanction, the Board found that the absence of a prior disciplinary record, Respondent's lack of a dishonest motive, and the payment of restitution, albeit by Respondent's malpractice carrier, were mitigating factors.[9]

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[8] A compelling statement of the impact Respondent's conduct made on her targets came from the testimony of Glen Robertson, who described Respondent's statements about him:

> It's defamatory. And I've been practicing 30 years trying to establish a good reputation. I don't need somebody in – Madison County, the only thing they know about me is that I'm supposedly part of a criminal syndicate in Suffolk to protect a lawyer who's stealing money and, quote, killing the client, unquote.
> So, yeah, it's – it's affected me, too. . . . It's infuriating, and it's insulting.

Tr. at 441. Mr. Robertson testified further:

> I mean, that's not – you don't – that's not right. I mean, this is a profession. It's just not right.

Tr. at 443.

[9] *Id.*, Standard 9.32.

The aggravating factors far outweighed the mitigating factors, however. The evidence reflects a pattern of misconduct; multiple offenses; Respondent's bad faith obstruction of the disciplinary process by failing to comply with rules or orders of the disciplinary agency;[10] Respondent's refusal to acknowledge the wrongful nature of her misconduct; the vulnerability of Respondent's victims, her clients; and Respondent's substantial experience in the practice of law.[11]

Disposition

At the conclusion of the evidence in the sanction phase of this proceeding, Respondent requested that the Board not impose a revocation because Respondent was already suspended. The Bar requested the imposition of a revocation of Respondent's license to practice law.

After the Board recessed to deliberate the appropriate sanction, the Board reconvened and announced its decision. Having considered the testimony and evidence presented and the argument of Bar Counsel and Respondent, it is

ORDERED, by unanimous vote of the Board, that the Respondent's license to practice law in the Commonwealth of Virginia be, and it is hereby REVOKED, effective on February 22, 2019.

It is further ORDERED that Respondent must comply with the requirements of Part Six, § IV, ¶ 13-29 of the *Rules of the Supreme Court of Virginia*. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the revocation of her license to practice law in the Commonwealth of Virginia to all clients for whom she is currently handling matters

[10] This was particularly evident from Respondent's failure to appear for the Bar's presentation of the evidence concerning Respondent's misconduct and in Respondent's conduct at the end of the first day of the hearing when the Chair announced that the hearing would adjourn until the following morning. Respondent was displeased with this and stated "No. I want to finish this today." *Tr. at 279-280*. As the chair attempted to respond to her over her repeated interruptions, Respondent said, "Don't raise your voice, sir." *Id.* She then said, "You cannot control me." "You do not have contempt power." *Id*.

[11] ABA, *Annotated Standards for Imposing Lawyer Sanctions* (2015), Standard 9.22.

and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in her care in conformity with the wishes of her clients. Respondent shall give such notice within fourteen (14) days of the effective date of the revocation and make such arrangements as are required herein within forty five (45) days of the effective date of the revocation. Respondent shall also furnish proof to the Bar within sixty (60) days of the effective day of the revocation that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if Respondent is not handling any client matters on the effective date of revocation, she shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar within sixty (60) days of the effective day of the revocation. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, which may impose a sanction of Revocation or additional Suspension for failure to comply with the requirements of this subparagraph.

It is further ORDERED that pursuant to Part Six, § IV, ¶ 13-9(E) of the *Rules of the Supreme Court of Virginia*, the Clerk of the Disciplinary System shall assess all costs against Respondent.

It is further ORDERED that a copy *teste* of this Order shall be mailed by certified mail, return receipt requested, to Respondent at her last address of record with the Bar, at Rhetta Moore Daniel, Esquire, 3420 Short Pump Road, #170, Richmond, Virginia 23233, and a copy by regular mail to Henry E. Howell III, The Eminent Domain Litigation Group, P.L.C., 164 George Washington Highway South, Chesapeake, Virginia 23323, and hand delivered to Elizabeth K.

Shoenfeld, Assistant Bar Counsel, at Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026.

ENTERED THIS 22nd DAY OF MARCH, 2019

VIRGINIA STATE BAR DISCIPLINARY BOARD

Michael A. Beverly, Second Vice Chair