

**Summary of Selected Victim Related Legislation
Considered During the 2005 Session of the General
Assembly**

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Selected Bills of Interest That PASSED in 2005

HB 1542 Bail; denied due to multiple sex offenses.

An Act to amend and reenact § 19.2-120

Summary as passed:

Release of a sex offender on bail. Extends the presumption against bail to situations where a person is arrested for a sex offense enumerated in § 18.2-67.5:2 and the person had previously been convicted of an offense that is substantially similar to one listed in § 18.2-67.5:2 under the laws of another state or the United States. Current law does not specify that an offense in another jurisdiction creates the same presumption as an enumerated Virginia offense.

Patrons: Black and Lingamfelter

HB 1741 Filming, videotaping or photographing of another; penalty when permission not given.

A BILL to amend and reenact § 18.2-386.1

Summary as passed House:

Photographs of undergarments, etc., without consent; penalty. Provides that the creation of a videotape, photograph, film or videographic or still image record created by placing the lens or image-gathering component of a recording device in a position to capture an image of the person's undergarments or intimate parts, when the undergarments or intimate parts, would not otherwise be visible is punishable as a Class 1 misdemeanor.

Patron: Cosgrove

HB 1756 Watercraft or motorboat; involuntary manslaughter while driving intoxicated.

A BILL to amend and reenact §§ 46.2-208 and 46.2-382 and to add section 18.2-36.2

Summary as introduced:

Involuntary manslaughter for a death caused by drunk boating; penalties. Provides

that any person who, as a result of operating a watercraft or motorboat while intoxicated, unintentionally causes the death of another person, is guilty of involuntary manslaughter.

Patron: Janis

HB 1977 Circuit courts; dismissal of warrants, etc., pretrial appeal may be taken by State.

A BILL to amend and reenact § 19.2-398

Summary as passed House:

Criminal appeals by the Commonwealth. Provides that in a felony case, a pretrial appeal from a circuit court may be taken by the Commonwealth from an order of a circuit court dismissing a warrant, information or indictment or any count or charge thereof, on the ground that the speedy trial statute was violated or that the defendant was subjected to double jeopardy.

Patron: Janis

HB 1997 Sex offenders; numerous changes authorizing release of information to Attorney General.

A BILL to amend and reenact §§ 9.1-101, 19.2-389, 19.2-389.1, 37.1-70.1, 37.1-70.2, 37.1-70.4 through 37.1-70.6, 37.1-70.9 through 37.1-70.11, and 37.1-70.13

and to add 37.1-70.20

Summary as passed House:

Civil commitment of sexually violent predators. Makes numerous changes authorizing the release of various information concerning the offender to the Attorney General, mental health examiners and the Department of Mental Health, Mental Retardation and Substance Abuse Services. If the offender commits a new felony or misdemeanor while in the custody of the Department of Mental Health, Mental Retardation and Substance Abuse Services, the offender must be placed in jail without bond until the conclusion of the new criminal procedure. The bill redefines "sexually violent offense" to include the commission of aggravated sexual battery against a person younger than 13.

Patrons: Griffith, Albo, Athey, Black, Byron and McDonnell

HB 2006 Restitution; provision for paying interest.

A BILL to amend and reenact § 19.2-305.4

Summary as passed House:

Criminal Procedure; when interest is paid on an award of restitution. Provides that interest on an award of restitution runs from the date of the loss or damage unless the court orders interest to run from a different date. (This bill is identical to SB695; Reynolds).

Patron: Armstrong

HB 2247 Sexual assault; crime when committed on physically helpless person of any age.

A BILL to amend and reenact § 18.2-67.3

Summary as introduced:

What constitutes aggravated sexual battery; penalty. Provides that the crime of aggravated sexual battery, a felony punishable by up to 20 years in prison, is committed when a person sexually abuses a person of any age who is physically helpless. Currently, sexual abuse of a person who is physically helpless is only punishable as aggravated sexual battery if the abused person is 13 or 14 years old. Sexual abuse of any child under age 13 is aggravated sexual battery.

Patron: Bell

HB 2248 Sexual crimes against spouses; changes in provisions.

A BILL to amend and reenact §§ 9.1-902, 9.1-908, 9.1-910, 16.1-69.48:1, 17.1-275.1, 17.1-275.2, 17.1-275.7, 17.1-805, 18.2-61, 18.2-67.1, 18.2-67.2, 19.2-218.1, 19.2-218.2, 19.2-299, 19.2-303.4, 19.2-335 and 19.2-336 of the Code of Virginia and to repeal § 18.2-67.2:1

Summary as passed:

Sexual crimes. Eliminates in the rape, forcible sodomy and object sexual penetration statutes the different standard that defines the offense if the victim and perpetrator are married to each other. This includes removing from the forcible sodomy and object sexual penetration statutes the provision that such crimes cannot be committed against a spouse unless the spouses were living separate and apart or there was bodily injury caused by force or violence, as the 2002 General Assembly did in the rape statute (often called the marital rape exemption). Because of the equalization of the elements of the

offense in the rape, forcible sodomy and object sexual penetration statutes, the marital sexual assault statute is repealed. The bill retains the provisions that allow for counseling and therapy, and allows discharge and dismissal if there has not been a previous discharge and dismissal under the statute.

Patrons: Bell and Ebbin

HB 2363 Health records; emphasizes right of an individual to have access thereto, exceptions.

An Act to amend and reenact § 32.1-127.1:03

Summary as introduced:

Health records privacy. Emphasizes the right of an individual to have access to his health records with certain exceptions; defines the term "psychotherapy notes"; clarifies the list of persons to whom disclosure of protected health information may be made; underscores the confidentiality of psychotherapy notes and prohibits the disclosure of such psychotherapy notes, with exceptions for training programs, legal processes, protection of third parties, and various law-enforcement and regulatory investigations; and states specifically that state law controls the procedures for requesting health records.

Patron: Melvin

HB 2482 Personal Information Privacy Act; restricting use of social security numbers.

A BILL to amend and reenact §§ 2.2-2818, 59.1-200, and 59.1-444 and to add section numbered 59.1-443.2

Summary as passed:

Personal Information Privacy Act; restricting the use of social security numbers. Prohibits any person from (i) intentionally communicating an individual's social security number to the general public; (ii) printing an individual's social security number on any card required for the individual to access or receive products or services; (iii) requiring an individual to use his social security number to access an Internet website, unless an authentication device is also required; or (iv) mailing a package with the social security number visible from the outside. The bill exempts public bodies and public records. A violation is a prohibited practice under the Virginia Consumer Protection Act. The measure also requires the state employee's health insurance plan to use identification numbers that are not the employee's social security number.

Patron: May

HB 2632 Central Criminal Records Exchange; changes in allowances for law-enforcement agencies.

A BILL to amend and reenact § 19.2-390 and to add section numbered 19.2-390.02

Summary as passed:

Criminal procedure; criminal records exchange. Requires, as of January 1, 2006, the law-enforcement agency making a report to the exchange to include within its report, along with the fingerprints, a photograph of the individual arrested. The State Police and local law enforcement are required to establish written procedures for conducting in-person and photographic lineups.

Patrons: Moran, Albo, Kilgore and McDonnell; *Senators:* Howell, Norment and Stolle

HB 2647 Defendants in circuit court; counsel may provide with presentence report.

A BILL to amend and reenact § 19.2-299

Summary as introduced:

Availability of presentence report to defendant. Allows counsel for the accused to provide the accused with his presentence report. (This bill is identical to SB910; Norment).

Patron: Hurt

HB 2657 Juvenile work release program; established.

A BILL to amend the Code of Virginia by adding sections numbered 66-25.1:1 through 66-25.1:4

Summary as passed House:

Department of Juvenile Justice; juvenile work release program established; penalties. Authorizes the Director of the Department of Juvenile Justice to establish work release programs whereby (i) a juvenile who is proficient in any trade or occupation, and who meets the work release criteria established by the Director, may be approved for employment by private individuals, corporations, or state agencies at places of business; or (ii) a juvenile who the Director is satisfied meets the work release criteria and is capable of receiving substantial benefit from educational or other related community activity programs that are not available within a juvenile correctional center may attend such programs outside of the juvenile correctional facility. The bill requires the

Department of Juvenile Justice to provide juveniles committed to the Department with opportunities to work and participate in career training or technical education programs as operated by the Department or by the Department of Correctional Education, and sets forth provisions relating to eligibility for work release, compensation, custody, and penalties for violating the terms of work release.

The bill provides that the Department shall promulgate emergency regulations, and provide the services set forth in the bill at one location on a pilot program basis beginning July 1, 2005, and ending July 1, 2006. The Department shall report to the General Assembly concerning the implementation of the pilot program. Aside from the pilot program, the bill has a delayed effective date of July 1, 2006.

Patrons: BaCote, Albo, Brink, Ebbin, Eisenberg, Hamilton, Melvin, Oder and Sickles;
Senator: Locke

HB 2823 Parole, Board of; power and duties.

A BILL to amend and reenact § 53.1-136

Summary as passed House:

Board of Parole; power and duties; parole. Requires that the Board's rules for parole and eligibility be published and posted for public review and that the monthly statement published by the Board regarding action taken by the Board on the parole of prisoners shall include the basis for denial of parole.

Patrons: Rust, Albo, Athey, McDonnell, Moran and Reid; *Senator:* Devolites Davis

HB 2906 Hepatitis B or C; persons charged with sexual assault to be tested for viruses.

A BILL to amend and reenact § 18.2-62

Summary as passed House:

Crime victims; testing of certain persons for human immunodeficiency, hepatitis B or C viruses. Provides that whenever a victim of a crime, as defined in subdivision B (i) of § 19.2-11.01, is directly exposed to body fluids of a person in a manner which may, according to the then-current guidelines of the Centers for Disease Control, transmit human immunodeficiency virus or hepatitis B or C viruses, the person arrested for the crime shall be deemed to have consented to testing for infection with human immunodeficiency virus or hepatitis B or C viruses. The bill provides for testing of the person arrested when the crime is assault and battery.

Patrons: Shuler and Keister

SB 858 Landlord & tenant; installation of new lock or security device after entry of certain court orders.

A BILL to amend the Code of Virginia by adding sections numbered 55-225.5 and 55-248.18:1

Summary as introduced:

Landlord and tenant law; access after entry of certain court orders. Provides that a tenant who has obtained an order from a court of competent jurisdiction pursuant to § 16.1-279.1 or subsection B of § 20-103 granting such tenant possession of the premises to the exclusion of one or more co-tenants or authorized occupants may provide the landlord with a copy of that court order and request that the landlord either (i) install a new lock or other security devices on the exterior doors of the dwelling unit at the landlord's actual cost or (ii) permit the tenant to do so, provided: installation of the new lock or security devices does no permanent damage to any part of the dwelling unit and a duplicate copy of all keys and instructions of how to operate all devices are given to the landlord. The bill further provides that upon termination of the tenancy, the tenant shall be responsible for payment to the landlord of the reasonable costs incurred for the removal of all such devices installed and repairs to all damaged areas. A landlord who has received a copy of a court order in accordance with subsection A is prohibited from providing copies of any keys to the dwelling unit to any person excluded from the premises by such order. The bill provides that it shall not apply when the court order excluding a person was issued ex parte. The bill amends the general law governing landlords and tenants as well as the Virginia Residential Landlord and Tenant Act. The goal of the bill is to protect victims of domestic abuse.

Patron: Howell

SB 1110 Health care providers; elim. provisions governing disclosure of patient info. to third party payors.

A BILL to repeal Chapter 12 (§§ 37.1-225 through 37.1-233) of Title 37.1

Summary as introduced:

Disclosure of patient information by certain health care providers. Repeals provisions governing disclosure of patient information to third party payors by mental health, mental retardation, and substance abuse professionals. This bill is a recommendation of the Joint Commission on Health Care.

Patrons: Blevins; Delegates: Hamilton and Landes

SB 1131 Criminal Injuries Compensation Fund; various changes to allowances.

A BILL to amend and reenact §§ 16.1-301, 19.2-368.5, 19.2-368.10, and 19.2-368.11:1 and to add 19.2-368.5:2

Summary as passed Senate:

Criminal Injuries Compensation Fund. Increases the maximum funeral payout from \$3,500 to \$5,000, reconciles inconsistent language in the definition of victim, specifies that the lack of a restitution order does not preclude the Fund from exercising its subrogation rights, provides that upon the filing of a claim health care providers are prohibited from undertaking debt collection activities until an award is issued or determined to be noncompensable, and allows the Fund access to juvenile records in certain instances.

Patron: Howell

SB 1144 Domestic violence and prevention services; responsibilities of Department.

A BILL to amend and reenact § 63.2-1612

Summary as passed Senate:

Domestic violence and prevention services. Requires the Department of Social Services to (i) support, strengthen, evaluate, and monitor community-based domestic violence programs funded by the Department and act as the administrator for state grant funds and the disbursement of federal funds, (ii) collaborate with the Statewide Domestic Violence Coalition in developing and implementing community-based programs to respond to and prevent domestic violence, (iii) establish minimum standards of training and provide educational programs to train workers in the fields of child and adult protective services in local departments and community-based domestic violence programs funded by the Department to identify domestic violence and provide effective referrals for appropriate services, (iv) work with the Statewide Domestic Violence Coalition to implement methods to preserve the confidentiality of all domestic violence services records (v) work collaboratively with the Statewide Domestic Violence Coalition to operate the Virginia Family Violence and Sexual Assault 24-hour toll-free hotline and the Statewide Domestic Violence Database (Vadata), and (vi) promote interagency collaboration and cooperation to facilitate the appropriate response to victims of domestic violence. This bill is identical to HB 2433.

Patron: Deeds

SB 1170 Sexual offenses; change in age limitation, penalty.

A BILL to amend and reenact § 18.2-370

Summary as passed Senate:

Indecent liberties with children; penalties. Raises the age of the victim, for the purposes of committing the crime of taking indecent liberties with children, from 13 to 14.

Patron: Stolle

SB 1177 Criminal Procedure.

A BILL to amend and reenact §§ 19.2-266.2 and 19.2-398

Summary as passed Senate:

Criminal procedure. Requires defense objections on speedy trial or double jeopardy grounds be filed in writing at least seven days before trial. The bill also provides that the Commonwealth may appeal on speedy trial or double jeopardy grounds. Currently such appeal must be on the ground that a statute upon which the dismissal was based is unconstitutional.

Patron: Obenshain

SB 1192 Personal information; prohibits posting certain on Internet.

A BILL to amend and reenact § 2.2-3808.2 and to repeal the second enactment of Chapter 988 of the 2003 Acts of Assembly, relating to posting and availability of certain information on the Internet; prohibitions; sunset.

Summary as passed Senate:

Posting and availability of certain information on the Internet. Clarifies that clerks are able to provide secure remote access to any document which is filed among the land records in the circuit court and allows them to also provide secure remote access to any person and his counsel to documents filed in matters to which such person is a party. The bill defines land records. The bill also clarifies that the Supreme Court and other courts are not prohibited from providing online access to a case management system which may include abstracts of case filings and proceedings in the courts of the Commonwealth. Finally, the sunset clause applicable to this section is extended from July 1, 2005, to July 1, 2007.

Patron: Devolites Davis

SB 1217 Gangs; punishment for activity taking place in school, etc., penalty.

A BILL to amend and reenact §§ 18.2-46.1, 19.2-11.2, 48-7, 48-8, and 48-9 and to add 18.2-46.3:3.

Summary as passed Senate:

Criminal street gangs; penalties. Adds to the list of crimes defined as "predicate criminal act" the following: § 18.2-42, assault by mob; § 18.2-56.1, reckless handling of a firearm; § 18.2-59, extorting money; § 18.2-286.1, shooting from a motor vehicle; § 18.2-287.4, carrying a loaded firearm in public areas in certain localities; and § 18.2-308.1, possession of a firearm, stun weapon or taser on school property. In addition, the bill provides that "predicate criminal act" includes the violation of any offense substantially similar to these newly added crimes as well as the existing listed crimes when committed in another state or territory of the United States, the District of Columbia, or the United States. The bill provides enhanced punishments for gang activities taking place at or near schools, colleges and school buses. Finally, the bill treats criminal street gangs as public nuisances and allows for the enjoinder of such nuisance. 19.2-11.2 is amended to allow witnesses to certain gang offenses, in addition to victims, to request that criminal justice officials not disclose identifying information. Defense attorneys are added to the list of officials who may not disclose this information.

Patron: Mims

SB 1320 Confidentiality of juvenile records; exception.

A BILL to amend and reenact § 16.1-309.1

Summary as passed Senate:

Confidentiality of juvenile records; escape exception. Amends provisions allowing the public release of juvenile information (name, age, physical description, photograph, charge, and other information that might expedite apprehension) when a juvenile has escaped to apply to juveniles who are being held in custody by a law-enforcement officer or in a secure facility. Under current law release of this information is allowed only if the juvenile is charged with certain felonies (rape, robbery, burglary, or a Class 1, 2, or 3). Current law provides that the information may be released only upon court order. This bill provides that if the juvenile becomes a fugitive through escape at a time when court is not in session, the Department of Juvenile Justice, attorney for the Commonwealth or a court services unit may release such information.

Patron: Reynolds

SJ 273 Prisoners; joint subcommittee to study program for reentry to society.

Summary as introduced:

Study; prisoner reentry; report. Establishes a joint subcommittee to study the Commonwealth's program for prisoner reentry to society. In conducting its study, the joint subcommittee shall continue the work of the Prisoner Reentry State Policy Academy established by the National Governors Association in identifying and developing strategies to address key needs and overcome barriers for offenders, prior to and upon leaving prison, to reduce the incidence of reincarceration and increase their successful social adaptation and integration into their communities.

Patron: Puller

Selected Bills of Interest That FAILED in 2005

HB 1517 Assault and battery; anger management for persons charged with first offense against family member.

A BILL to amend and reenact § 18.2-57.3

Summary as introduced:

Anger management for persons accused of family violence. Allows a court to require a person who is accused of family violence to enter, along with the victim who agrees to such a course of action, an education or treatment program focused upon anger management and designed to retrain the parties on how to disagree effectively and peacefully, if such a program is available. The court, when such a program is not available, may require education or treatment services such as, in the opinion of the court, may be best suited to the needs of the accused.

Patrons: Reese and Eisenberg

HB 2076 Protective orders; temporary possession of motor vehicle to last no more than two years.

A BILL to amend and reenact § 16.1-279.1

Summary as introduced:

Protective orders; temporary possession of motor vehicle. Authorizes the court to grant temporary possession of a motor vehicle to a petitioner for a protective order until the parties agree to a division of property or the court enters an equitable distribution order. In no event may the period of temporary possession last more than two years from the date of the protective order.

Patrons: Plum and Brink

HB 2201 Deferred disposition; allows for expungement of criminal record.

A BILL to amend and reenact §§ 19.2-392.1 and 19.2-392.2

Summary as introduced:

Expungement following a deferred disposition. Specifically allows for expungement of a criminal record when a court defers disposition of a case upon a plea of not guilty and then dismisses the charges upon completion of terms and conditions imposed.

Patron: Marrs

HB 2463 Sex offenders; licensed professionals to give notice of their registration to customers, , etc.

A BILL to amend and reenact the Code of Virginia by adding a section numbered 9.1-914.1

Summary as passed House:

Requirement that licensed professionals give notice of their sex offender registration to customers, clients or patients; penalty. Requires that a professional licensed by the Commonwealth who is also a registered sex offender and who may be expected to encounter a person under the age of 18 during the course of his profession give verbal and written notice to each customer, client or patient and to the parent, guardian or person standing in loco parentis to a minor or person under a disability that he is a registered sex offender.

Patron: Nixon

HB 2467 Online Dating Safety Act; created.

A BILL to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 47, consisting of sections numbered 59.1-530 through 59.1-533

Summary as introduced:

Online dating safety; penalty. Requires online dating services to conduct criminal background checks on its members and make specific disclosures and warnings. Aggrieved parties and the Attorney General can bring actions for damages. In addition, this bill makes violations Class 4 misdemeanors. Services that conduct criminal background checks are immune from liability under the provisions of this bill.

Patron: May

HB 2688 Stalking; increase in penalty if occurs within two year period.

A BILL to amend and reenact § 18.2-60.3

Summary as introduced:

Subsequent offenses of stalking. Provides that a second stalking conviction occurring within two years shall be a Class 6 felony rather than a Class 1 misdemeanor. Currently there is no such increased penalty. This would complement the existing increased penalty (from a Class 1 misdemeanor to a Class 6 felony) that results from a third or subsequent conviction within five years.

Patron: Pollard

HB 2802 Domestic violence or sexual assault; privileged communications between victims and advocates.

A BILL to amend the Code of Virginia by adding a section numbered 8.01-400.3, and by adding 19.2-271.4

Summary as introduced:

Confidential communications. Provides that all written and oral communications between a victim and a domestic violence or sexual assault advocate, serving in the capacity of an advocate, or an interpreter for an advocate or a victim, shall be confidential and shall not be subject to disclosure in any judicial or administrative proceeding, without the written consent of the victim.

Patron: Moran

HB 2876 Address Confidentiality Program; established to protect victims of domestic violence.

A BILL to amend the Code of Virginia by adding a section numbered 2.2-515.2

Summary as introduced:

Address Confidentiality Program; victims of domestic violence. Establishes in the Office of the Attorney General the "Address Confidentiality Program" to protect victims of domestic violence by authorizing the use of designated addresses for such victims.

Patrons: Miller, Armstrong, Baskerville, Ebbin, Miles, Scott, J.M., Sickles and Watts;
Senators: Ticer and Whipple

HB 2932 Child abuse or neglect; videotaped statements allowed as evidence for certain crimes.

A BILL to amend the Code of Virginia by adding a section numbered 18.2-67.9:1

Summary as introduced:

Videotape statements admissible for certain crimes against children. Provides that when a child is the victim of criminal abuse and neglect, his testimony may be offered at trial via videotaped statement, provided the child victim is age 12 or under at the time the testimony is offered, and provided the testimony meets certain trustworthiness and reliability criteria.

Patron: Bell

HJ 639 Constitutional officers; joint subcommittee to study operations, functions, and funding thereof.

Summary as introduced:

Study; constitutional officers. Establishes a joint subcommittee to study the operations, functions, and funding of constitutional officers. The joint subcommittee shall address (i) the current benefits provided by each constitutional officer to the Commonwealth and its localities, (ii) whether the benefits outweigh the costs, (iii) whether constitutional officers should be elected or appointed, (iv) whether the duties of constitutional officers are appropriate or duplicative in localities with different population sizes, (v) whether alternative methods of State financing for these officers would be feasible and advisable, and (vi) such other related issues as it deems appropriate.

Patron: Welch

SB 826 Misdemeanor and felony violations; increase of fees.

A BILL to amend and reenact §§ 16.1-69.48:1, 17.1-275.1, 17.1-275.2, 17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8, and 17.1-275.9

Summary as introduced:

Fixed misdemeanor and fixed felony fees. Increases the felony and misdemeanor fixed fees by \$3. The increase will go to the Virginia Crime Victim-Witness Fund, which is a nonreverting fund administered by the Department of Criminal Justice Services to support victim and witness programs.

Patrons: Mims; Delegate: Marshall, R.G.

SB 857 Adult Fatality Review Team; created, report.

A BILL to amend and reenact §§ 2.2-3705.5 and 63.2-1606 of the Code of Virginia, and to add a section numbered 63.2-1607.1

Summary as introduced:

Adult Fatality Review Team; duties; membership; confidentiality; etc.; penalties; report. Requires the Commissioner of the Department of Social Services and the Chief Medical Examiner to develop an Adult Fatality Review Team (“Team”) to conduct a retrospective review of suspicious deaths of certain adults for the purpose of identifying interventions that may reduce similar deaths in the future. The Team is charged with reviewing the death of any incapacitated adult aged 18 or older, and any adult aged 60 or older, whose death was due to violent or unnatural circumstances. The bill sets forth duties, membership, confidentiality, reporting, and other requirements for the Team.

Patron: Howell