

# Selected Victim Related Legislation Passed During the 2016 Session of the General Assembly

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## **Selected Victim Related Legislation Passed During the 2016 Session of the General Assembly**

### **HB 177 Sex Offender and Crimes Against Minors Registry Act; crimes against nature, penalty.**

*Chief patron:* Albo

An Act to amend and reenact § 9.1-902.

*Summary as passed:*

Adds to the offenses for which registration is required on the Sex Offender and Crimes Against Minors Registry the crimes of (i) procuring a person for prostitution and receiving money from the earnings of a person engaged in prostitution if the crime involves a minor and (ii) aggravated malicious wounding if the perpetrator of the crime was an adult and the victim was under the age of 13. The bill also provides that only persons who committed such crimes on or after July 1, 2016, are required to register. This bill incorporates HB 604 and HB 672.

### **HB 227 Hearsay exceptions; admissibility of statements by children in certain cases.**

*Chief patron:* Albo

An Act to amend the Code of Virginia by adding §19.2-268.3.

*Summary as passed:*

Establishes a hearsay exception to certain out-of-court statements made by a child under the age of 13 at the time of trial in cases involving a violation or attempted violation of "an offense against children." The bill contains a list of certain felony sex offenses and certain felony offenses resulting in physical injury that fall within the definition of "an offense against children." The court must hold a hearing prior to trial and find that the time, content, and totality of the circumstances provide sufficient indicia of reliability so as to render it inherently trustworthy. The bill provides factors for the court to consider in making such a determination. Notice of intent to offer the statement and the particulars of the statement must be given to the adverse party at least 14 days in advance of the proceedings. This bill is identical to SB 358 (McDougle); see also SB421 (Wexton).

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## **HB 373 Victims of certain crimes; confidentiality of information.**

*Chief patron:* Yancey

A BILL to amend and reenact § 63.2-104.1

*Summary as passed:*

§ 63.2-104.1 currently protects the confidentiality of records of persons receiving domestic, stalking and sexual violence services. This bill clarifies, through inclusion of specific statutes, that these protections extend to victims of human trafficking-related offenses and their families. Specifically, the bill includes adult and child victims of domestic violence, dating violence, sexual assault, or stalking, including any adult or child victim of a violation of § 18.2-48 (Abduction with intent to extort money or for immoral purpose), § 18.2-355 (Taking, detaining, etc., person for prostitution, etc., or consenting thereto; human trafficking), § 18.2-356 (Receiving money for procuring person; penalties), § 18.2-357 (Receiving money from earnings of male or female prostitute; penalties), or § 18.2-357.1 (Commercial sex trafficking; penalties) and their families. The bill also clarifies that a person is a victim for purposes of such confidentiality and privacy protections regardless of whether any person has been charged with or convicted of any offense. The bill also provides that an alleged abuser of a minor or incapacitated person or of the minor's other parent may not consent to the release of confidential information. This bill is identical to HB 373, as Enrolled. This bill incorporates HB 554 (Bulova); see also SB 253 (DeSteph), SB771 (Ebbin).

## **HB 485 Assault; person charged with simple assault against family or household member.**

*Chief patron:* McClellan

An Act to amend and reenact § 18.2-57.3

*Summary as passed:*

Provides that a first offense of simple assault against a family or household member may be subject to deferral and dismissal. Under current law, first offender status is only available to a person who commits assault and battery against a family or household member.

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### **HB 588 Protective orders; definition of "physical presence," authorization of emergency orders.**

*Chief patron:* Campbell

An Act to amend and reenact §§ 16.1-253.4 and 19.2-152.8.

*Summary as passed:*

Provides that an emergency protective order may prohibit the respondent from being in the physical presence of the petitioner or the petitioner's family or household members. The bill provides that the term "physical presence" includes (i) intentionally maintaining direct visual contact with the petitioner or (ii) unreasonably being within 100 feet from the petitioner's residence or place of employment.

### **HB 600 Child welfare; imposes certain mandates related to protection and encouragement of children.**

*Chief patron:* Bell, Richard P.

An Act to amend and reenact §§ 16.1-228, 16.1-281, 16.1-282.1, 63.2-100, 63.2-904, 63.2-905.2, 63.2-906, 63.2-908, and 63.2-1502 and adding a section numbered 63.2-905.3.

*Summary as passed:*

Imposes certain mandates related to the protection and encouragement of children, including a requirement that certain information and options be given to a child in connection with foster care plans, the imposition of certain age-appropriate restrictions, and requirements of both the courts and the Department of Social Services regarding foster care plans. The bill adds to the definition of abused or neglected child any child who has been identified as a victim of sex trafficking or severe forms of trafficking as defined by the federal law.

### **HB 610 Protective orders; penalty.**

*Chief patron:* Bell, Robert B.

An Act to amend and reenact §§ 16.1-253.2 and 18.2-60.4.

*Summary as passed:*

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Provides that it is a Class 6 felony to stalk a party protected by protective order or to commit an assault and battery upon a party protected by a protective order if such assault and battery results in bodily injury. Currently, the Class 6 felony is only applicable if the person commits an assault and battery that results in serious bodily injury to the protected party.

### **HB 624 Retention of court records; violent felonies and acts of violence.**

*Chief patron:* Bell, Robert B.

An Act to amend and reenact § 17.1-213.

*Summary as passed:*

Requires that the circuit court case files involving a conviction on crimes that are considered to be violent felonies or acts of violence be retained for 50 years or until the sentence term ends, whichever comes later.

### **HB 659 High school family life education curriculum; programs on prevention of dating violence, etc.**

*Chief patron:* Filler-Corn

An Act to amend and reenact § 22.1-207.1:1

*Summary as passed:*

Requires any high school family life education curriculum offered by a local school division to incorporate age-appropriate elements of effective and evidence-based programs on the prevention of dating violence, domestic abuse, sexual harassment, and sexual violence.

### **HB 667 Criminal Injury Compensation Fund; filing of claims.**

*Chief patron:* Peace

An Act to amend and reenact § 19.2-368.5

*Summary as passed:*

Provides that for crimes committed on or after July 1, 1977, and before July 1, 2000, where the period of time to file a claim with the Criminal Injury Compensation Fund (the Fund) has been

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extended because of newly discovered evidence, the Virginia Workers' Compensation Commission, which administers the Fund, may consider expenses and loss of earnings that the claimant accrued after the date of the newly discovered evidence as stipulated in written notification from the attorney for the Commonwealth. Currently, consideration could be given only to expenses that accrued after the date the Commission received notification from the attorney for the Commonwealth that the crime was being investigated for newly discovered evidence. The bill applies to claims filed with the Fund on or after July 1, 2014.

### **HB 668 Spousal support factors; factors contributing to dissolution, including any ground for divorce.**

*Chief patron:* Peace

An Act to amend and reenact § 20-107.1

*Summary as passed:*

Provides that a court shall consider the circumstances and factors that contributed to the dissolution of the marriage, specifically including any ground for divorce, in determining the nature, amount, and duration of a spousal support award.

### **HB 681 Trafficking in persons; civil action.**

*Chief patron:* Leftwich

An Act to amend the Code of Virginia by adding a section numbered 8.01-42.4

*Summary as passed:*

Creates a civil cause of action against individuals who engage in (i) abduction of any person for the purpose of prostitution, any child under 16 years of age for concubinage, or any minor for the purpose of manufacturing child pornography; (ii) solicitation of prostitution from a minor; or (iii) commercial sex trafficking, or who aid in the conduct thereof. See also SB133 (Edwards).

### **HB 703 Legal age for marriage; emancipation petitions for minors intending to marry, etc.**

*Chief patron:* McClellan

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An Act to amend and reenact §§ 16.1-331, 16.1-333, 20-45.1, 20-48, 20-89.1, and 20-90; add 16.1-333.1; and repeal § 20-49.

### *Summary as passed:*

Provides that both parties to a marriage must be 18 years of age or older or emancipated at the time of solemnization by removing exceptions that allow marriage at a minimum age of 16 with the consent of the parent or guardian or younger than 16 in the case of pregnancy and with the consent of the parent or guardian and provides that marriages entered into in violation of this law are voidable. The bill also allows a minor to petition the juvenile and domestic relations district court for emancipation based on such minor's desire to enter into a marriage. The bill provides that, to allow emancipation based on such minor's desire to enter into a marriage, the court must make certain written findings, including that it is the minor's own will to enter into the marriage, that the individuals to be married are mature enough to make a decision to marry, that the marriage will not endanger the safety of the minor, and that it is in the best interests of the minor to be emancipated. This bill is identical to SB 415.

## **HB 711 Protective orders in cases of family abuse; possession of premises.**

### *Chief patron:* Watts

An Act to amend and reenact §§ 55-225.5 and 55-248.18:1.

### *Summary as passed:*

Provides that in a protective order in the case of family abuse, a person, who is not a tenant or authorized occupant in the dwelling unit and who has obtained a protective order from a court of competent jurisdiction granting such person possession of the premises to the exclusion of one or more co-tenants or authorized occupants, may provide a copy of such order to the landlord and submit a rental application to become a tenant in such dwelling unit within 10 days of the entry of such order. If such person's rental application meets the landlord's tenant selection criteria, such person may become a tenant in such dwelling unit under a written rental agreement. If such person submits a rental application and does not meet the landlord's tenant selection criteria, such person shall vacate the dwelling unit no later than 30 days of the date the landlord gives such person written notice that his rental application has been rejected. If such person does not provide a copy of the protective order to the landlord and submit a rental application to the landlord within 10 days as required by this section, such person shall vacate the dwelling unit no later than 30 days of the date of the entry of such order. Such person shall be liable to the landlord for failure to vacate the dwelling unit as required in this section. The bill provides that any tenant obligated on a rental agreement shall pay the rent and otherwise comply with any and all requirements of the rental agreement, and any applicable laws and regulations. The landlord



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may pursue all of its remedies under the rental agreement and applicable laws and regulations, including filing an unlawful detainer action to obtain a money judgment and to evict any persons residing in such dwelling unit. The bill contains a technical amendment.

### **HB 886 Stalking; second offense, Class 6 felony.**

*Chief patron:* Albo

An Act to amend and reenact § 18.2-60.3.

*Summary as passed:*

Provides that a second offense of stalking committed within five years of a prior stalking conviction is punishable as a Class 6 felony. Under current law, a second offense of stalking only qualifies for the Class 6 penalty if the person convicted had also been convicted of certain offenses involving assaults or bodily woundings or of violating a protective order.

### **HB 1015 Higher educational institutions; memorandum of understanding with local law-enforcement agencies.**

*Chief patron:* Massie

An Act to amend and reenact §§ 9.1-102, 9.1-1301, and 23-9.2:16.

*Summary as passed:*

Permits each public institution of higher education or nonprofit private institution of higher education to request the cooperation of the primary law enforcement agency of the locality in which the institution is located to establish a written memorandum of understanding with such law-enforcement agency to address the prevention of and response to criminal sexual assault and requires such law-enforcement agency to cooperate in establishing such memorandum of understanding.

### **HB 1016 Sexual assault response teams; participants in annual meeting, FOIA exclusion for records.**

*Chief patron:* Massie

An Act to amend and reenact §§ 2.2-3705.7 and 15.2-1627.4.

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*Summary as passed:*

Adds the Title IX coordinator; representatives from the office of student affairs, human resources, and counseling services; and a representative of campus security, of any institution of higher education in the jurisdiction, to the list of persons invited to participate in the annual meeting of a sexual assault response team. The bill also excludes the records of meetings of a sexual assault response team in which individual cases are discussed from mandatory disclosure under the Virginia Freedom of Information Act, but allows findings to be disclosed as part of statistical or aggregate data that does not identify individuals.

### **HB 1056 Family abuse protective orders; extension of order.**

*Chief patron:* Bell, Robert B.

An Act to amend and reenact § 16.1-279.1.

*Summary as passed:*

Corrects a reference to a member of the respondent's family or household to be consistent with the defined term "family or household member," relating to petitioners in proceedings for extensions of protective orders in cases of family abuse.

### **HB 1102 Trauma-informed sexual assault investigation; DCJS to establish.**

*Chief patron:* Filler-Corn

An Act to amend and reenact § 9.1-102.

*Summary as passed:*

Requires the Department of Criminal Justice Services, in consultation with the State Council of Higher Education for Virginia and the Virginia Association of Campus Law Enforcement Administrators, to develop multidisciplinary curricula on trauma-informed sexual assault investigation.

### **HB 1126 DCJS; training standards and model policies for law-enforcement personnel, powers and duties.**

*Chief patron:* Miller

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An Act to amend and reenact §§ 9.1-102 and 15.2-1627.4.

*Summary as passed:*

Reorganizes the Department of Criminal Justice Services' powers and duties for establishing training standards and publishing model policies for law-enforcement personnel by combining each discrete subject into one list. The bill also requires the Department to periodically update such model policies.

### **HB 1213 Minors; certain education records as evidence.**

*Chief patron:* Albo

An Act to amend the Code of Virginia by adding a section numbered 16.1-274.2.

*Summary as passed:*

Provides that in any proceeding where a juvenile is alleged to have committed a delinquent act that would be a misdemeanor if committed by an adult on school property, property solely being used for a school-related or school-sponsored activity, or a school bus, the juvenile may introduce into evidence as relevant to whether he acted intentionally or willfully any document created prior to the commission of the delinquent act that relates to certain educational plans or behavioral assessments. The bill provides that such documents shall be admitted as evidence of the facts stated therein, provided that the minor gives notice of his intent to introduce such evidence and copies of such evidence to the attorney for the Commonwealth at least 10 days before trial. The bill allows such reports or documents to be placed under seal by the court. This bill incorporates HB 1200.

### **HB 1321 Higher educational institutions, private; memoranda of understanding, sexual assaults.**

*Chief patron:* Massie

An Act to amend and reenact § 23-234.

*Summary as passed:*

Clarifies that nonprofit private institutions of higher education that have security departments instead of campus police forces are required to enter into a memorandum of understanding with a law-enforcement agency that requires such agency to notify the local attorney for the

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Commonwealth within 48 hours of beginning any investigation involving felony criminal sexual assault occurring on campus property or other property related to the institution.

### **HB 1334 Assault and battery; persons charged with first offense against family or household member, penalty.**

*Chief patron:* Cline

An Act to amend and reenact §18.2-57.3

*Summary as passed:*

Requires a court to order that a person placed on first offender status for assault and battery against a family or household member (i) be placed with a local community-based probation services agency and complete all education and treatment programs required by the agency or (ii) complete any education or treatment program that the court determines is best suited to the needs of the person. Under current law, the court may order that the person complete such education or treatment programs, but is not required to do so.

### **SB 49 Protective orders; prohibits person who is subject to order from possessing firearms, penalties.**

*Chief patron:* Howell

An Act to amend and reenact §§ 18.2-308.09, 18.2-308.1:4, and 18.2-308.2:3.

*Summary as passed:*

Provides that it is a Class 6 felony for a person who is subject to a permanent protective order (i.e., a protective order with a maximum duration of two years) for family abuse to possess a firearm while the order is in effect. The bill also provides that such person may continue to possess and transport a firearm for 24 hours after being served with the order for the purposes of selling or transferring the firearm to another person. Under current law, it is a Class 1 misdemeanor for a person subject to a protective order to purchase or transport a firearm. This bill is identical to HB 1391 (Murphy).

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### **SB 83 Higher educational institutions; required agreements with law enforcement.**

*Chief patron:* Favola

An Act to amend and reenact § 23-234.

*Summary as passed:*

Requires all mutual aid agreements and memoranda of understanding required between public or private institutions of higher education and other law-enforcement agencies to specify the procedure for sharing information.

### **SB 158 Sexual assault investigations; collection and storage of evidence.**

*Chief patron:* Favola

AN ACT to amend and reenact § 9.1-1301.

*Summary as passed:*

Requires the Department of State Police, all police and sheriff's departments, and every campus police department to submit all physical evidence recovery kits that are in their custody on July 1, 2016, and all physical evidence recovery kits that come into their custody after July 1, 2016, to the Department of Forensic Science for analysis. Forensic evidence that does not meet the standards for retention in a state or national data bank shall be returned to the law-enforcement agency that submitted the physical evidence recovery kit, which shall store such kit whether or not the victim has reported the sexual assault to law enforcement. This bill was incorporated into SB 291 (Black).

### **SB 159 Campus police departments; retention and storage of physical evidence recovery kits.**

*Chief patron:* Favola

AN ACT to amend the Code of Virginia by adding a section numbered 23-234.2.

*Summary as passed:*

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Requires campus police departments to retain and store physical evidence recovery kits for a minimum of two years where the victim of the sexual assault elects not to report the sexual assault to law enforcement at the time of the collection of such evidence. This bill was incorporated into SB 291.

### **SB 162 Family violence fatality review teams; definition of fatal family violence incident.**

*Chief patron:* Howell

An Act to amend and reenact § 32.1-283.3.

*Summary as passed:*

Specifies that for the purpose of referring such incident to a local family violence fatality review team "fatal family violence incident" means any fatality that occurred or that is suspected of having occurred in the context of abuse between family members or intimate partners.

### **SB 248 Minors; authority to consent to physical evidence recovery kit examination.**

*Chief patron:* Black

An Act to amend and reenact § 54.1-2970.1.

*Summary as passed:*

Provides that if a parent or guardian of a minor refuses to consent to a physical evidence recovery kit examination of the minor, the minor may consent.

### **SB 291 Physical evidence; procedure for collection, etc., of recovery kits.**

*Chief patron:* Black

An Act to amend the Code of Virginia by adding in Title 19.2 a chapter numbered 1.2, consisting of sections numbered 19.2-11.5 through 19.2-11.11.

*Summary as passed:*

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Establishes a comprehensive procedure for the collection and analysis of physical evidence recovery kits for victims of sexual assault, including those who elect at the time of the exam not to report a sexual assault to a law-enforcement agency. Kits from victims who elect not to report are known as "anonymous physical evidence recovery kits" and will be stored at the Division of Consolidated Laboratory Services (the Division) for two years, although the Division, the victim, or the law-enforcement agency may elect for the kits to be retained for a longer period of time. If the victim later elects to report the sexual assault, the victim's kit will be released to law enforcement. Health care providers are required to explain these procedures and time frames to victims. Where the victim elects to report the offense to law enforcement at the time of the exam, law enforcement is required to take possession of the victim's kit forthwith upon notification from the health care provider that the kit has been collected and, with limited exceptions, to submit the kit to the Department of Forensic Science for analysis within 60 days. The bill outlines the exceptions to mandatory submission for analysis, time frames, and storage requirements for retention of analyzed samples; expungement of DNA samples obtained but not connected to a crime; and victims' notification rights. This bill incorporates SB 158 (Favola) and SB 159 (Favola) and is identical to HB 1160 (Bell).

### **SB 323 Protective order; violation, possession of firearm or deadly weapon.**

*Chief patron:* Favola

AN ACT to amend and reenact §§ 16.1-253.2 and 18.2-60.4.

*Summary as passed:*

Provides that any person who violates a protective order with which he has been served while knowingly armed with a firearm or other deadly weapon is guilty of a Class 6 felony. This bill is identical to HB 1087 (Gilbert).

### **SB 339 Stalking; penalty.**

*Chief patron:* Reeves

An Act to amend and reenact § 18.2-60.3.

*Summary as passed:*

Provides that contacting or following or attempting to contact or follow the person at whom stalking conduct is directed after being given actual notice that the person does not want to be contacted or followed is prima facie evidence that the person intended to place the other person,

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or reasonably should have known that the other person was placed, in reasonable fear of death, criminal sexual assault, or bodily injury to himself or a family or household member. This bill is a recommendation of the Virginia State Crime Commission. See also HB 752 (Bell).