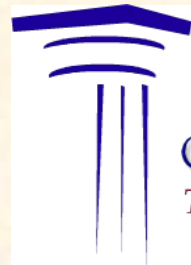


# CASC 2022 LEGISLATIVE UPDATE FOR VIRGINIA LAW ENFORCEMENT



COMMONWEALTH'S ATTORNEYS' SERVICES COUNCIL  
*Training Virginia's Prosecutors for the 21st Century*

This document is provided for Law Enforcement by the Virginia Commonwealth's Attorneys' Services Council pursuant to Va. Code § 2.2-3705.7(29) for the training of state prosecutors and law-enforcement personnel,





# Materials

- ✦ This PowerPoint attempts to identify the legislation from the 2022 General Assembly Regular Session that has the greatest impact on law enforcement and public safety.
- ✦ Consult the *2022 Legislative Update Master List* outline for full listing of bills of interest.
  - This presentation will NOT cover every bill.





# Materials

- ✱ You must rely *only* upon the final language of the bill after passage.
- ✱ Slides summarize each bill, but you should read the actual law before acting.
- ✱ You can find the bill on the LIS website at:  
<http://lis.virginia.gov/lis.htm>.





# Topics for this Presentation

- ✦ Criminal Investigations

- ✦ Criminal Procedure

- ✦ New Crimes and Offenses

- ✦ Amended Offenses

- ✦ Repealed Offenses

- ✦ Marijuana

- ✦ New Regulations & Requirements

- ✦ ECO and TDO Detention

- ✦ FOIA and Law Enforcement Records


- ✦ Law Enforcement Procedural Guarantees





Note:

## Effective Date of Legislation

-  All legislation from the Special Session, unless otherwise noted in this presentation, is effective on July 1, 2022.





# INVESTIGATIONS



# Service of Process by C/W Investigator

- ✦ Ch. 248 / 684: § 8.01-293 amended to provide that all investigators employed by an attorney for the Commonwealth or by the Indigent Defense Commission while engaged in the performance of their official duties when serving witness subpoenas shall not be considered a party or otherwise interested in the subject matter in controversy and, thus, are authorized to serve process to such witnesses.



# Ch. 737: Facial Recognition Technology

- ✦ Amends §§ 15.2-1723.2 and 23.1-815.1 and adds § 52-4.5
- ✦ Authorizes local law-enforcement agencies, campus police departments, and the Department of State Police (the Department) to use facial recognition technology for certain authorized uses as defined in the bill.
- ✦ The bill requires that the appropriate facial recognition technology be determined by the Division of Purchases and Supply and that such facial recognition technology be evaluated by the National Institute of Standards and Technology and have an accuracy score of at least 98 percent true positives across all demographic groups.





# What is “Facial Recognition Technology”?

- ✚ "Facial recognition technology" means an electronic system for enrolling, capturing, extracting, comparing, and matching an individual's geometric facial data to identify individuals in photos, videos, or real time.
- ✚ "Facial recognition technology" does not include the use of an automated or semi-automated process to redact a recording in order to protect the privacy of a subject depicted in the recording prior to release or disclosure of the recording outside of the law-enforcement agency if the process does not generate or result in the retention of any biometric data or surveillance information.





## Ch. 737 Con'd

- ✦ The bill directs the Department to develop a model policy regarding the investigative uses of facial recognition technology, including training requirements and protocols for handling requests for assistance in the use of facial recognition technology made to the Department by local law-enforcement agencies and campus police departments, to be posted publicly no later than January 1, 2023, and requires local law-enforcement agencies or campus police departments that use facial recognition technology to either adopt the Department's model policy or develop an individual policy that meets or exceeds the standards set by the Department's model policy.





## Ch. 737 Con'd

- ✦ The bill directs local law-enforcement agencies, campus police departments, and the Department to collect and maintain certain data related to the use of facial recognition technology and to publish an annual report to provide information to the public regarding the agency's use of facial recognition technology.





## Ch. 737 Con'd

- ✦ The bill clarifies that any match made through facial recognition technology shall not be used in an affidavit to establish probable cause for the purposes of a search or arrest warrant.
- ✦ Additionally, any facial recognition technology operator employed by a local law-enforcement agency, campus police department, or the Department who violates the agency's or department's policy for the use of facial recognition technology or conducts a search for any reason other than those authorized by the bill is guilty of a Class 3 misdemeanor for a first offense, and is guilty of a Class 1 misdemeanor for a second or subsequent offense.
- ✦ The provisions of this act shall expire on July 1, 2026.





## Ch. 394 / 395: Critically Missing Adult

- ✦ Expands the definition of "critically missing adult" in §§ 15.2-1718.2 and 52-34.10 to include any missing adult, including an adult who has a developmental disability, intellectual disability, or mental illness, 18 years of age or older for the purpose of receipt of critically missing adult reports by a police or sheriff's department and the Virginia Critically Missing Adult Alert Program administered by the Department of State Police and removes from the Program the eligibility requirement that the adult is believed to have been abducted.





# "Marcus" Alert:

## Special Session: Va. Code § 9.1-193

✿ July 1: Department of Behavioral Health and Developmental Services (DBHDS) shall have a plan for a "Marcus Alert" system.

✿ "A specialized response by law enforcement designed to meet the goals set forth in this article to ensure that individuals experiencing a mental health, substance abuse, or developmental disability-related behavioral health crisis receive a specialized response when diversion to the comprehensive crisis system is not feasible."





2022: Ch. 613 / 619:

## Change in Participation Requirements

- ✦ Extends the date by which localities shall establish voluntary databases to be made available to the 911 alert system and the Marcus alert system to provide relevant mental health information and emergency contact information for appropriate response to an emergency or crisis from July 1, 2021, to July 1, 2023,
- ✦ Provides an exemption to the requirement that localities establish protocols for local law-enforcement agencies to enter into memorandums of agreement with mobile crisis response providers regarding requests for law-enforcement back-up during mobile crisis or community care team response and minimum standards, best practices, and a system for the review and approval of protocols for law-enforcement participation in the Marcus alert system for localities with a population that is less than or equal to 40,000, so that localities with a population that is less than or equal to 40,000 may but are not required to establish such protocols.

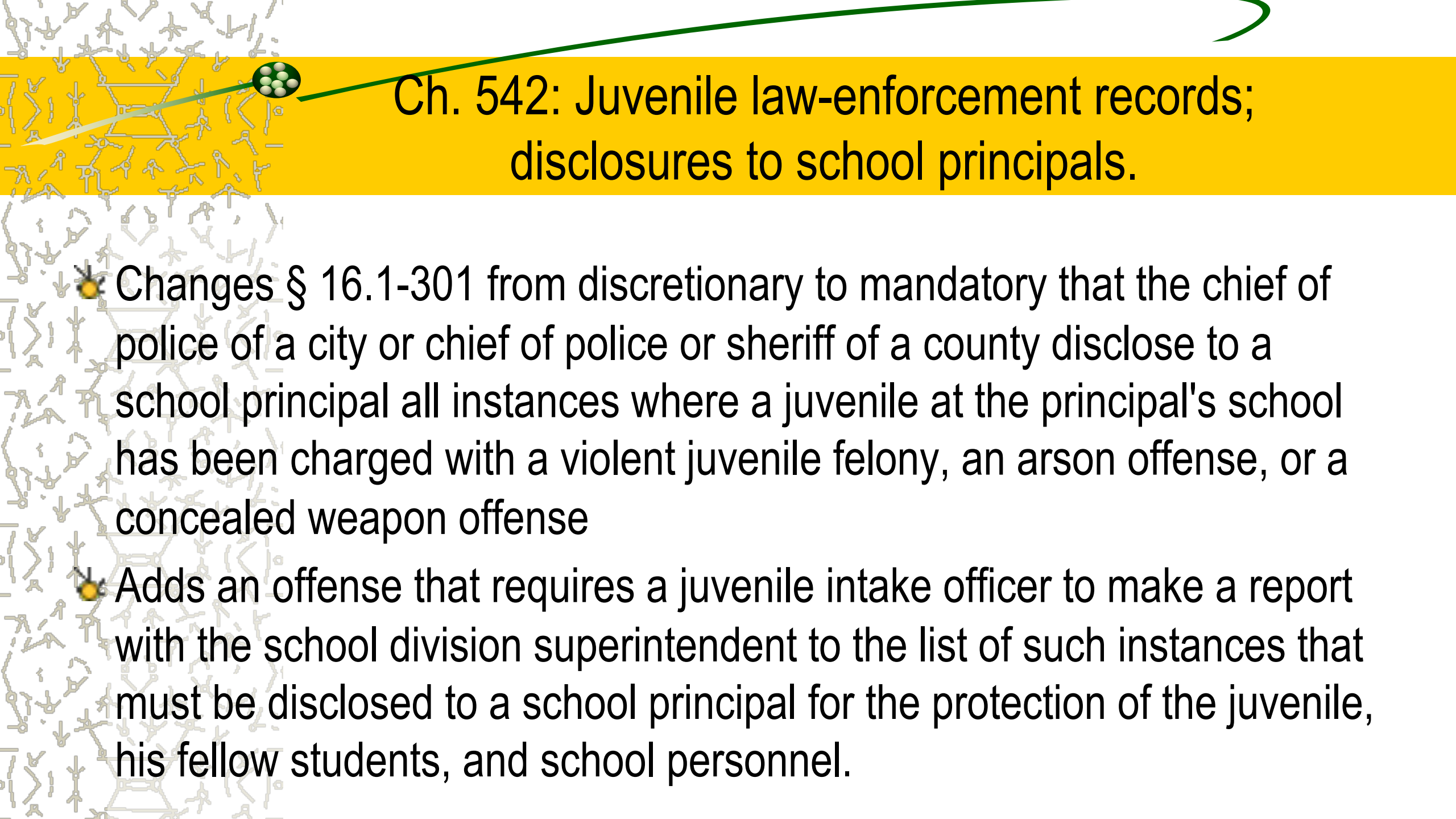




## Ch. 403: Search Warrants

- ✦ Bill clarifies that, under § 19.2-56, if the owner of the place to be searched is not present, a copy of the search warrant and affidavit shall be given to at least one adult occupant of the place to be searched.
- ✦ Previously, the law stated “any” occupant, which could mean “all” occupants.





## Ch. 542: Juvenile law-enforcement records; disclosures to school principals.

- ✱ Changes § 16.1-301 from discretionary to mandatory that the chief of police of a city or chief of police or sheriff of a county disclose to a school principal all instances where a juvenile at the principal's school has been charged with a violent juvenile felony, an arson offense, or a concealed weapon offense
- ✱ Adds an offense that requires a juvenile intake officer to make a report with the school division superintendent to the list of such instances that must be disclosed to a school principal for the protection of the juvenile, his fellow students, and school personnel.



## Ch. 793/794

# School Principals & Incident Reports

- ✦ Amends § 8.01-47, 22.1-279.3:1, and 22.1-279.3:3 to require that school principals report to law enforcement certain enumerated acts that may constitute a misdemeanor offense and report to the parents of any minor student who is the specific object of such act that the incident has been reported to law enforcement.
  - Under current law, principals are required to make such reports only for such acts that may constitute a felony offense.
- ✦ The bill provides, as an exception to the requirement to report any written threats against school personnel while on a school bus, on school property, or at a school-sponsored activity, that a principal is not required but may report to the local law-enforcement agency any such incident committed by a student who has an individualized education plan.





## Ch. 743: APS Investigations & Financial Records

- ✦ Amends § 63.2-1606 and adds § 6.2-103.1 to require financial institutions to cooperate in any investigation of alleged adult abuse, neglect, or exploitation conducted by a local department of social services and to make any financial records or information relevant to such investigation available to the local department of social services upon request.
- ✦ Financial institutions may also voluntarily report information relevant to an adult protective services investigation to the local department of social services or to a court-appointed guardian ad litem for the adult under investigation.
- ✦ The bill provides that, absent gross negligence or willful misconduct, a financial institution is immune from civil or criminal liability for providing such information to a local department of social services or a court-appointed guardian ad litem.





# **CRIMINAL PROCEDURE**





## Ch. 326: Offenses During Close Pursuit

§ 19.2-77 amended to provide that if a law-enforcement officer makes an arrest without a warrant when in close pursuit and such arrest is made beyond the boundary of the county or city from which the arrestee fled, then the law-enforcement officer shall procure a warrant from the magistrate serving the county or city wherein the arrest was made, charging the accused with the offense committed in the county or city from which he fled and any offense committed during the close pursuit in the county or city where such offense was committed.

- Under existing law, such officer would not be able to obtain a warrant from the magistrate serving the county or city wherein the arrest was made for a criminal act committed during the close pursuit beyond the boundary of the county or city from which the arrestee fled.





# Hope Card Program

- ✦ Ch. 374 requires the Office of the Executive Secretary of the Supreme Court of Virginia to develop and all district courts and circuit courts to implement the Hope Card Program (the Program) for the issuance of a Hope Card to any person who has been issued a permanent protective order by any district court or circuit court.
- ✦ Bill provides that a Hope Card issued pursuant to the Program shall be a durable, plastic, wallet-sized card containing, to the extent possible, essential information about the protective order, such as the identifying information and characteristics of the person subject to the protective order, the issuance and expiration date of the protective order, the terms of the protective order, and the names of any other persons protected by the protective order.





## Ch. 508: Disposition when defendant found incompetent; involuntary admission of the defendant.

- ✦ Amends §§ 19.2-169.1 and 19.2-169.2 to provide that in cases where the defendant has been charged with a misdemeanor larceny-related offense or a misdemeanor offense for trespassing, destruction of property, intoxication in public, disorderly conduct, or failure to appear and is found to be incompetent following a competency evaluation, the competency report may recommend that the court direct the community services board or behavioral health authority to
  - i. conduct an evaluation to determine whether the defendant meets the criteria for temporary detention and
  - ii. upon determining that the defendant does meet the criteria for temporary detention, file a petition for issuance of an order for temporary detention of the defendant.





## Ch. 508 con'd

✦ Similarly, the bill provides that, in cases in which a defendant has been charged with one of the listed misdemeanors, is found to be incompetent, and the competency report recommends that the defendant be temporarily detained, the court may dismiss the charges without prejudice and, in lieu of ordering that the defendant receive treatment to restore his competency, order the community services board or behavioral health authority to conduct an evaluation of the defendant and if the board or authority determines that the defendant meets the criteria for temporary detention, file a petition for issuance of an order for temporary detention.





## Ch. 508 con'd

- ✦ The bill provides that the court shall not dismiss such charges and enter such order if the attorney for the Commonwealth is involved in the prosecution of the case and does not concur in the motion.
- ✦ Under existing law, the court is required to order that the defendant receive treatment to restore his competency.
- ✦ The bill also clarifies the process following the completion of the competency evaluation of a defendant.
- ✦ The bill has an expiration date of July 1, 2023.





DANGEROUS DOGS





## Ch. 614 - Vicious dogs.

- ✦ Amends §§ 3.2-6540.1 and 3.2-6569 to require that a law-enforcement officer or animal control officer apply to a magistrate for a summons for a vicious dog if such officer is located in either the jurisdiction where the vicious dog resides or in the jurisdiction where the vicious dog committed one of the acts set forth in the definition of a vicious dog.
- ✦ Existing law requires such action only if the law-enforcement officer or animal control officer is located in the jurisdiction where the vicious dog resides.
- ✦ The bill also requires any evidentiary hearing or appeal to be held not less than 30 days from the date of the summons or appeal, unless good cause is found by the court.





# **NEW AND AMENDED CRIMES AND OFFENSES**





# Ch. 594: Sexual Abuse of Animals: New offense, § 18.2-361.01

- Provides that any person who knowingly
  - i. engages in sexual contact with an animal;
  - ii. causes another person by force, threat, or intimidation to engage in sexual contact with an animal;
  - iii. advertises, solicits, offers, sells, purchases, or possesses an animal with the intent that the animal be subject to sexual contact;
  - iv. permits sexual contact with an animal to be conducted on any premises under his ownership or control; or
  - v. produces, distributes, publishes, sells, transmits, finances, possesses, or possesses with the intent to distribute, publish, sell, or transmit an obscene item depicting a person engaged in sexual contact with an animal
- is guilty of a Class 6 felony.





## Ch. 594 Con'd

- ✱ The bill also provides that any person convicted of sexual abuse of an animal shall be prohibited from possessing, owning, or exercising control over any animal and may be ordered to attend an appropriate treatment program or obtain psychiatric or psychological counseling.



## Ch. 664 / 665 – Catalytic Converters

Amends § 18.2-146 to make it a Class 6 felony for a person to willfully break, injure, tamper with, or remove any part or parts of any vehicle, aircraft, boat, or vessel for the purpose of injuring, defacing, or destroying said vehicle, aircraft, boat, or vessel, or temporarily or permanently preventing its useful operation, or for any purpose against the will or without the consent of the owner, or to in any other manner willfully or maliciously interfere with or prevent the running or operation of such vehicle, aircraft, boat, or vessel, when such violation involves the breaking, injuring, tampering with, or removal of a catalytic converter or the parts thereof.

- The bill also provides that prosecution for such felony is a bar to a prosecution or proceeding under the Code section prohibiting the injuring, etc., of any property, monument, etc., for the same act.
- Existing law makes such violation a Class 1 misdemeanor.



## Ch. 664 / 665 Con'd

- ✦ Additionally, the bill requires that the copies of the documentation that scrap metal purchasers are required to maintain for purchases of catalytic converters or the parts thereof
  - i. establish that the person from whom they purchased the catalytic converter or the parts thereof had lawful possession of it at the time of sale or delivery and
  - ii. detail the scrap metal purchaser's diligent inquiry into whether the person selling had a legal right to do so.
- ✦ The bill also requires that such documentation be maintained for at least two years after the purchase and that copies be made available upon request to any law-enforcement officer, conservator of the peace, or special conservator of the peace in the performance of his duties who presents his credentials at the scrap metal purchaser's normal business location during normal business hours.





## Ch. 673 / 674

- ✦ Creates new offense, § 18.2-473.2, which provides that any person who intentionally covers, removes, damages, renders inoperable, or otherwise obscures a security camera, as defined in the bill, without the permission of the sheriff, jail superintendent, warden, or Director of the Department of Corrections or Department of Juvenile Justice is guilty of a Class 1 misdemeanor.
- ✦ The bill also provides that any person who intentionally covers, removes, damages, renders inoperable, or otherwise obscures a security camera with the intent of inhibiting or preventing a security camera from recording or transmitting a photograph, motion picture, or other digital image of the commission of a felony is guilty of a Class 6 felony.





## Ch. 259/642: Adult Abuse and Neglect

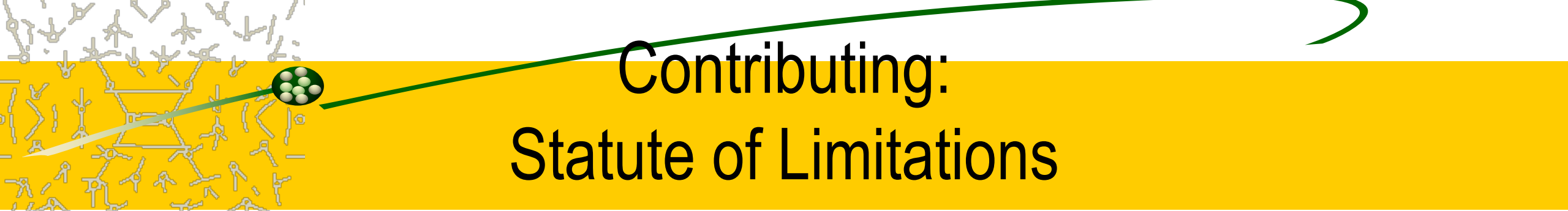
- ✦ § 18.2-178.1 changes the term "incapacitated adult" to "vulnerable adult" for the purposes of the crime of abuse and neglect of such adults
- ✦ Defines "vulnerable adult" as any person 18 years of age or older who is impaired by reason of mental illness, intellectual or developmental disability, physical illness or disability, or other causes, including age, to the extent the adult lacks sufficient understanding or capacity to make, communicate, or carry out reasonable decisions concerning his well-being or has one or more limitations that substantially impair the adult's ability to independently provide for his daily needs or safeguard his person, property, or legal interests.
- ✦ Bill also changes the term "person with mental incapacity" to the same meaning of "vulnerable adult" for the purposes of the crime of financial exploitation.



## Ch. 397 / 654: Misuse of Power of Attorney

- ✦ New Code Section § 18.2-178.2 makes it a Class 1 misdemeanor for an agent under a power of attorney to knowingly or intentionally engage in financial exploitation of an incapacitated adult who is the principal of that agent.
- ✦ One issue: New law relies on definition of “incapacitated adult” that previous bill, Ch. 259/642, eliminated effective July 1.
- ✦ Bill also provides that the agent's authority terminates upon such conviction.





# Contributing: Statute of Limitations

- ✦ Ch. 110: § 19.2-8 amended RE: prosecution of the misdemeanor offense of causing or encouraging acts rendering children delinquent where the alleged adult offender has consensual sexual intercourse with a minor who is 15 years of age or older at the time of the offense
- ✦ After July 1: Prosecution “shall be commenced no later than five years after the victim reaches majority provided that the alleged adult offender was more than three years older than the victim at the time of the offense.
- ✦ Under existing law, the prosecution of such offense shall be commenced within one year after commission of the offense.





## Ch. 276: Stalking Venue

- ✦ § 18.2-60.3 amended to allow a person to be prosecuted for a stalking charge in the jurisdiction where the person resided at the time of such stalking.
- ✦ The bill also provides that evidence of any conduct that occurred outside the Commonwealth may be admissible, if relevant, in any prosecution for stalking.
- ✦ Currently, such evidence is admissible as long as the prosecution is based upon conduct occurring within the Commonwealth.





## Ch. 645: Definition of Intimate Parts

- ✦ Includes in the definition of "intimate parts" in § 18.2-67.10 for the purposes of criminal sexual assault, the chest of a child under the age of 15.

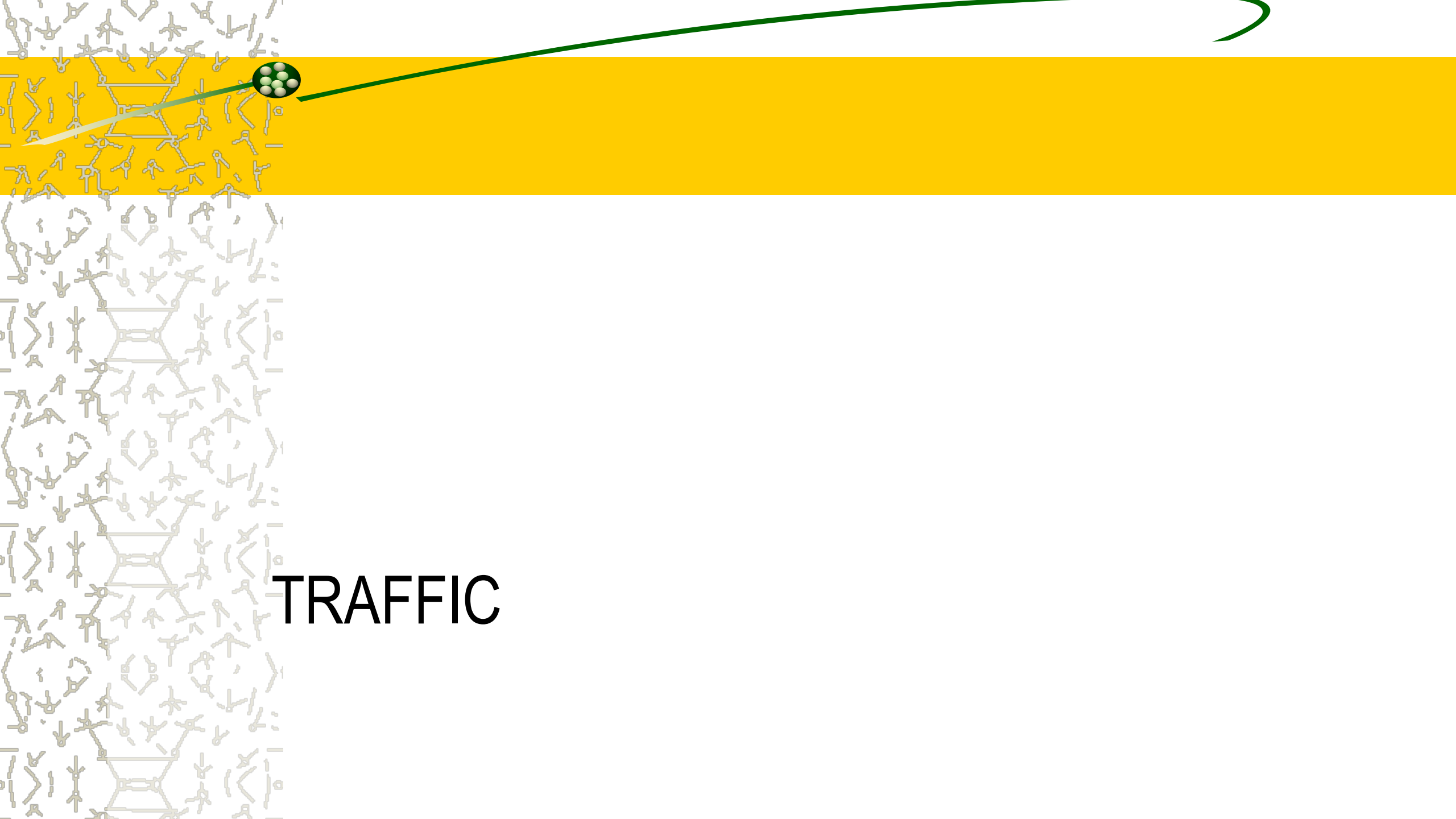




## Ch. 651: Hunting with Dogs

- ✦ Adds new code section, § 29.1-516.2, that requires that any dog engaged in lawful hunting wear a substantial collar with a tag attached that identifies the name of the owner or custodian of the dog and a current phone number.





TRAFFIC





## Ch. 31: Front and rear bumper height limits

- ✦ § 46.2-1063: Amended to state:

- ✦ “No passenger car or pickup or panel truck shall be operated on a public highway if the suspension, frame, or chassis has been modified by any means so as to cause the height of the front bumper to be four or more inches greater than the height of the rear bumper.

- ✦ Change took effect immediately





## Ch. 51 / 52: Farm Use Tags

- ✦ Amends §§ 46.2-665, 46.2-666, 46.2-670, 46.2-672, and 46.2-673 and adds § 46.2-684.2
- ✦ Change will require an owner or lessee of a vehicle claiming a farm use exemption from the registration, licensing, and decal requirements for a motor vehicle, trailer, or semitrailer to obtain a nontransferable permanent farm use placard from the Department of Motor Vehicles and to display the farm use placard on the vehicle at all times.
- ✦ Law requires the applicant to provide specified information about the vehicle and its usage, pay a \$15 fee, and certify that the vehicle is insured.
- ✦ Provisions of the bill requiring the owner or lessee of a farm vehicle to obtain and display a farm use placard have a delayed effective date of July 1, 2023.





## Ch. 736: Exempted vehicles; insurance.

- ✦ Amends § 46.2-684.1 to require motor vehicles, trailers, and semi-trailers exempted from the registration requirement to be covered by motor vehicle insurance; a general liability policy; or an umbrella or excess insurance policy.
- ✦ The bill requires the owner of any such motor vehicle, trailer, or semi-trailer to provide proof of insurance within 30 days when requested by a law-enforcement officer and provides that failure to do so is punishable as a traffic infraction by a fine of \$600 to be paid into the Uninsured Motorists Fund.





## Ch. 758: Parking in Electric Vehicle Charging Spots

- ✦ Creates new code section, § 46.2-1219.3, that prohibits a person from parking a vehicle not capable of receiving an electric charge or not in the process of charging in a space clearly marked as reserved for charging electric vehicles.
- ✦ A violation is subject to a civil penalty of no more than \$25.





# Bicycles – 2021 Changes

- ✦ In 2021, General Assembly added requirement in § 46.2-839 that, if the lane of travel is not wide enough to allow an overtaking motor vehicle to pass at least three feet to the left while in the same lane as the overtaken bicycle, electric personal assistive mobility device, electric power-assisted bicycle, moped, animal, or animal-drawn vehicle, the overtaking vehicle shall change lanes.
- ✦ In 2021, General Assembly also repealed rule (in § 46.2-905) that persons riding two abreast bicycles, electric personal assistive mobility devices, electric power-assisted bicycles, or motorized skateboards or scooters on a highway shall not impede the normal and reasonable movement of traffic, shall move into a single file formation as quickly as is practicable when being overtaken from the rear by a faster moving vehicle, and, on a laned roadway, shall ride in a single lane.





## Ch.341: Bicycles Riding Two Abreast

- ✦ In 2022, General Assembly amended § 46.2-905 again, this time to prohibit persons riding bicycles, electric personal assistive mobility devices, electric power-assisted bicycles, or motorized skateboards or scooters two abreast from impeding the normal and reasonable movement of traffic
- ✦ § 46.2-905 will also now require such persons to move into a single-file formation as quickly as is practicable when being overtaken from the rear by a faster-moving vehicle.





## Ch. 490: Exhaust systems; excessive noise.

- ✦ Amends § 46.2-1049 so that offenses related to loud exhaust systems that are not in good working order are primary offenses.
  - Reverses 2020 Special Session amendment, which had made such offenses secondary offenses.
- ✦ Amends § 46.2-1051 so that local ordinances related to such exhaust systems are exempt from the prohibition on law-enforcement officers stopping a vehicle for a violation of a local ordinance unless it is a jailable offense.





## Mopeds, Motorcycles, etc.

- ✦ 2020 Special Session also prohibited localities from enacting ordinances that allowed police to stop based on noise from a motorcycle, moped, or motorized skateboard or scooter, which is not equipped with a muffler and exhaust system
- ✦ Ch. 490 also eliminated that prohibition.
- ✦ Localities now may create their own ordinances and permit stops to regulate noise from a vehicle operated on a highway that is not equipped with a muffler and exhaust system conforming to §§ 46.2-1047 and 46.2-1049.





## Ch. 506 / 507:

# Careless Driving & Vulnerable Road Users.

- ✦ Amends §§ 46.2-392 and 46.2-816.1 so that a person is guilty of a Class 1 misdemeanor if he operates a vehicle in a careless or distracted manner and causes the death or serious bodily injury of a vulnerable road user.
- ✦ Existing law only imposes the penalty if such careless or distracted operation causes serious bodily injury to the vulnerable road user.
- ✦ The bill also allows a court to suspend the driver's license or restrict the driver's license of a person convicted of careless driving for up to six months.





# **REPEALED CRIMES AND OFFENSES**





## Ch. 27: Switchblades

§ 18.2-311: Amended to eliminate the prohibition for selling, bartering, giving, furnishing, or possessing with the intent of selling, bartering, giving, or furnishing a switchblade.

- Previously, the offense was a Class 4 Misdemeanor





# § 29.1-521: Hunting on Sundays

- ✦ Chapter 98:

- ✦ § 29.1-521 amended to permit hunting on Sundays.

- ✦ Permits hunting on Sunday on public or private land, so long as it takes place more than 200 yards from a place of worship.





MARIJUANA





## 2021: Legalization of Marijuana

- ✱ General Assembly eliminated criminal penalties for simple possession of up to one ounce of marijuana by persons 21 years of age or older.
- ✱ Modified several other criminal penalties related to marijuana.
- ✱ Imposed limits on dissemination of criminal history record information related to certain marijuana offenses.
- ✱ Moved regulation and criminal offenses to Title 4.1



# Re-Enactment” Required In 2022 for Some, But Not All, Changes

- ✱ The bill had staggered effective dates, and numerous provisions of the bill were subject to reenactment by the 2022 Session of the General Assembly.
- ✱ Sales were to begin January 1, 2024, *if* GA re-enacted bill in 2022.
- ✱ If the 2022 General Assembly *did not* re-enact the regulative scheme and the repeal of the old marijuana offenses, that repeal would not take effect.
- ✱ 2022 General Assembly did NOT re-enact the regulative scheme
- ✱ The repeal of 18.2-250.1 and some new crimes did not require re-enactment and remain in effect.





# Because Re-Enactment Did NOT Take Place, These Statutes Will Remain In Effect

- ✶ All of 18.2-248.1  
(Distribution/Possession with  
Intent/Manufacture to Distribute)
- ✶ All of 18.2-251.1 (Medical  
Marijuana)
- ✶ Marijuana Kingpin - 18.2-248(H)
- ✶ Importation of Marijuana - 18.2-  
248.01
- ✶ Distribution to a Child - 18.2-255
- ✶ Distribution in School Zone - 18.2-255.2
- ✶ Prescription Fraud re: Marijuana
- ✶ Paraphernalia - 18.2-265.1
- ✶ Poss'n of Firearm while PWID Marijuana
- ✶ Felony Obstruction re: Marijuana

Repeal of 18.2-250.1 (Marijuana Possession Offense) was  
effective July 1, 2021 and remains repealed





## Other Provisions that Survive past July 1, 2022

- ✦ Exceptions that allow Manufacturing/Distribution

- E.g. "Home Cultivation" under §4.1-1101(A)

- E.g. "Adult Sharing" under § 4.1-1101.1

- ✦ Offenses regarding Possession / Use

- E.g. Possession of more than 1 ounce under § 4.1-1100

- E.g. Use in a vehicle under § 4.1-1107

- E.g. "Use in Public" under §4.1-1108





## Possession Limits: Existing Law § 4.1-1100

- A. Except as otherwise provided in this subtitle and notwithstanding any other provision of law, a person 21 years of age or older may lawfully possess on his person or in any public place **not more than one ounce of marijuana** or an equivalent amount of marijuana product as determined by regulation promulgated by the Board.
- B. Any person who possesses on his person or in any public place marijuana or marijuana products in excess that is subject to a civil penalty of no more than \$25.



WARNING:  
THE NEXT SLIDE IS  
NOT YET LAW

This Bill has passed the House and Senate  
but is awaiting the Governor's Signature





## Budget Amendment: Would Add to § 4.1-1100

- Amends § 4.1-1100 to provide that, with the exception of possession by a person in his residence or possession by a licensee in the course of his duties related to such licensee's marijuana establishment, any person who possesses on his person or in any public place
  - (i) **more than four ounces but not more than one pound** of marijuana or an equivalent amount of marijuana product as determined by regulation promulgated by the Board is guilty of a Class 3 misdemeanor and, for a second or subsequent offense, a Class 2 misdemeanor and
  - (ii) **more than one pound** of marijuana or an equivalent amount of marijuana product as determined by regulation promulgated by the Board is guilty of a felony punishable by a term of imprisonment of not less than one year nor more than 10 years and a fine of not more than \$250,000, or both.





That provision is NOT Law

- ✦ *This amendment Passed by the House and Senate, and would be effective July 1, 2022 if and when signed by the Governor.*
- ✦ *The Governor has not, as of June 8, signed this law.*
- ✦ *Please check the link in the handout to check on the status of this bill and whether it has become law.*





# Home Cultivation: Existing Law § 4.1-1101

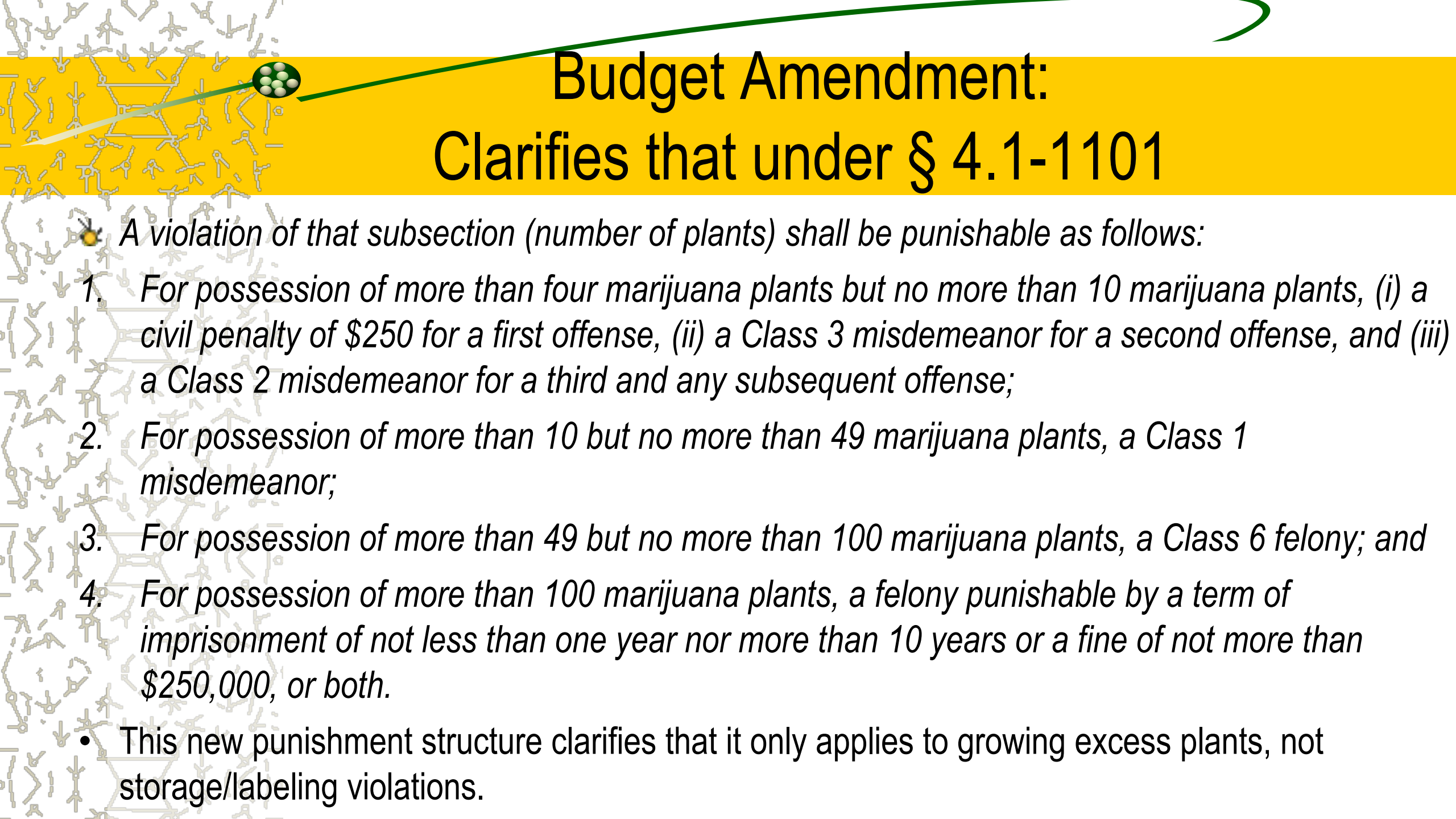
- ✦ Notwithstanding § 18.2-248.1, a person 21 years of age or older may cultivate up to four marijuana plants for personal use at their place of residence;
- ✦ However, at no point shall a household contain more than four marijuana plants.
  - For purposes of this section, a "household" means those individuals, whether related or not, who live in the same house or other place of residence.
  - A person may only cultivate marijuana plants pursuant to this section at such person's main place of residence.



WARNING:  
THE NEXT SLIDE IS  
NOT YET LAW

This Bill has passed the House and Senate  
but is awaiting the Governor's Signature





# Budget Amendment: Clarifies that under § 4.1-1101

• A violation of that subsection (number of plants) shall be punishable as follows:

1. For possession of more than four marijuana plants but no more than 10 marijuana plants, (i) a civil penalty of \$250 for a first offense, (ii) a Class 3 misdemeanor for a second offense, and (iii) a Class 2 misdemeanor for a third and any subsequent offense;
  2. For possession of more than 10 but no more than 49 marijuana plants, a Class 1 misdemeanor;
  3. For possession of more than 49 but no more than 100 marijuana plants, a Class 6 felony; and
  4. For possession of more than 100 marijuana plants, a felony punishable by a term of imprisonment of not less than one year nor more than 10 years or a fine of not more than \$250,000, or both.
- This new punishment structure clarifies that it only applies to growing excess plants, not storage/labeling violations.





That provision is NOT Law

- ✦ *This amendment Passed by the House and Senate, and would be effective July 1, 2022 if and when signed by the Governor.*
- ✦ *The Governor has not, as of June 8, signed this law.*
- ✦ *Please check the link in the handout to check on the status of this bill and whether it has become law.*





# Home Cultivation: Existing Law § 4.1-1101

- ✶ B. A person who cultivates marijuana for personal use pursuant to this section shall:
  1. Ensure that no marijuana plant is visible from a public way without the use of aircraft, binoculars, or other optical aids;
  2. Take precautions to prevent unauthorized access by persons younger than 21 years of age; and
  3. Attach to each marijuana plant a legible tag that includes the person's name, driver's license or identification number, and a notation that the marijuana plant is being grown for personal use as authorized under this section.



WARNING:  
THE NEXT SLIDE IS  
NOT YET LAW

This Bill has passed the House and Senate  
but is awaiting the Governor's Signature





## Budget Amendment: Clarifies that under § 4.1-1101

- ✦ *Any person who violates that subsection is subject to a civil penalty of no more than \$25.*
- ✦ *The penalty for any violations of this section by an adult shall be prepayable according to the procedures in § 16.1-69.40:2.*
- ✦ Previous version of this statute did not have a clear penalty for violation of the storage/labeling regulations in § 4.1-1101(B).





That provision is NOT Law

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# **NEW REGULATIONS & REQUIREMENTS**





# Sharing Assets to Promote Law Enforcement.

✦ Ch. 266: § 19.2-386.14 amended to specify that the forfeited property and assets paid to the state treasury into a special fund of the Department of Criminal Justice Services that shall be made available to federal, state, and local agencies to promote law enforcement may include expenditures to strengthen the relationships between the community and law enforcement, encourage goodwill between the community and law enforcement, or promote cooperation with law enforcement.





## Ch. 375 / 376: Rifles of .50 cal. or Higher

- ✦ Fall 2020 Special Session added language to § 2.2-5515 that prohibited Law Enforcement from purchasing or employing various items (bayonets, weaponized drones, tanks, etc.).
- ✦ That list also included “firearms of .50 caliber or higher,” which would have included shotguns, flare pistols, and some less-lethal alternatives, and required a DCJS waiver to use such equipment.
- ✦ Amendment 11 to 2021 Budget Bill significantly limited that interpretation.
- ✦ 2022 Bill changes the limitation on the acquisition or purchase of military property by a law-enforcement agency from firearms of .50 caliber or higher to rifles of .50 caliber or higher and from ammunition of .50 caliber or higher to rifle ammunition of .50 caliber or higher.





# ECO & TDO Procedure: Custody & Transportation



## Ch. 482: Emergency Custody and Temporary Detention; Transportation & Transfer of Custody.

- ✦ Amends §§ 37.2-809, 37.2-809.1, and 37.2-810 to provide that when a magistrate orders alternative transportation for an individual under a temporary detention order, the primary law-enforcement agency that executes the order may transfer custody of the person to the alternative transportation provider immediately upon execution of the order.
- ✦ Such alternative transportation provider shall maintain custody of the person from the time custody is transferred to the alternative transportation provider by the primary law-enforcement agency until such time as custody of the person is transferred to the temporary detention facility, as is appropriate.





## Ch. 482 con'd

- ✦ The bill adds employees of and persons providing services pursuant to a contract with the Department of Behavioral Health and Developmental Services to the list of individuals who may serve as alternative transportation providers.
- ✦ The bill clarifies that if no alternative transportation provider is available, the magistrate shall order a person to be kept in law-enforcement custody.





## Ch. 730: Auxiliary Police Officers & Alternative Custody and Transportation

- ✦ Allows auxiliary police officers to provide transportation for a person subject to an emergency custody or temporary detention order.
  - Amendment to § 15.2-1731, 15.2-1734, 15.2-1735, 15.2-1736, 37.2-808, and 37.2-810
- ✦ The bill also directs the Department of Criminal Justice Services to establish compulsory minimum training standards for auxiliary police officers who are called into service solely for the purpose of providing transportation for such person subject to an emergency custody order or providing transportation for a person in the temporary detention process.





# FOIA

Restoration of Some Protections for  
Criminal Incident Information





# 2021 General Assembly FOIA Changes

✚ Eliminated general FOIA protections for any criminal investigative files (Any documents and information relating to a criminal investigation or proceeding) that is not ongoing.

✚ Included:

- Any report
- Any notes,
- Any electronic communication
- Any document, including filing through an incident-based reporting system.





## 2022: Ch. 386: Some FOIA Protection Restored

✦ Amends § 2.2-3706.1 and adds § 8.01-622.2, so that:

1. criminal investigative files relating to a criminal investigation or proceeding that is not ongoing are excluded from the mandatory disclosure provisions of the Virginia Freedom of Information Act, though they may be disclosed by the custodian of such records to certain individuals except as otherwise provided in the bill, and
2. With the exception of disclosure to an attorney representing a petitioner or inspection by an attorney or a person proceeding pro se in a petition for a writ of habeas corpus or writ of actual innocence or any other federal or state post-conviction proceeding or pardon, no criminal investigative file or portion thereof shall be disclosed to any requester





# Exceptions Where FOIA Still Requires Disclosure

- a) To the victim;
- b) To the victim's immediate family members, if the victim is deceased and the immediate family member to which the records are to be disclosed is not a person of interest or a suspect in the criminal investigation; or
- c) To the victim's parent or guardian, if the victim is a minor and the parent or guardian is not a person of interest or a suspect in the criminal investigation or proceeding, unless the public body has made reasonable efforts to notify any such individual of the request for such information.





# Victims' Right to Object

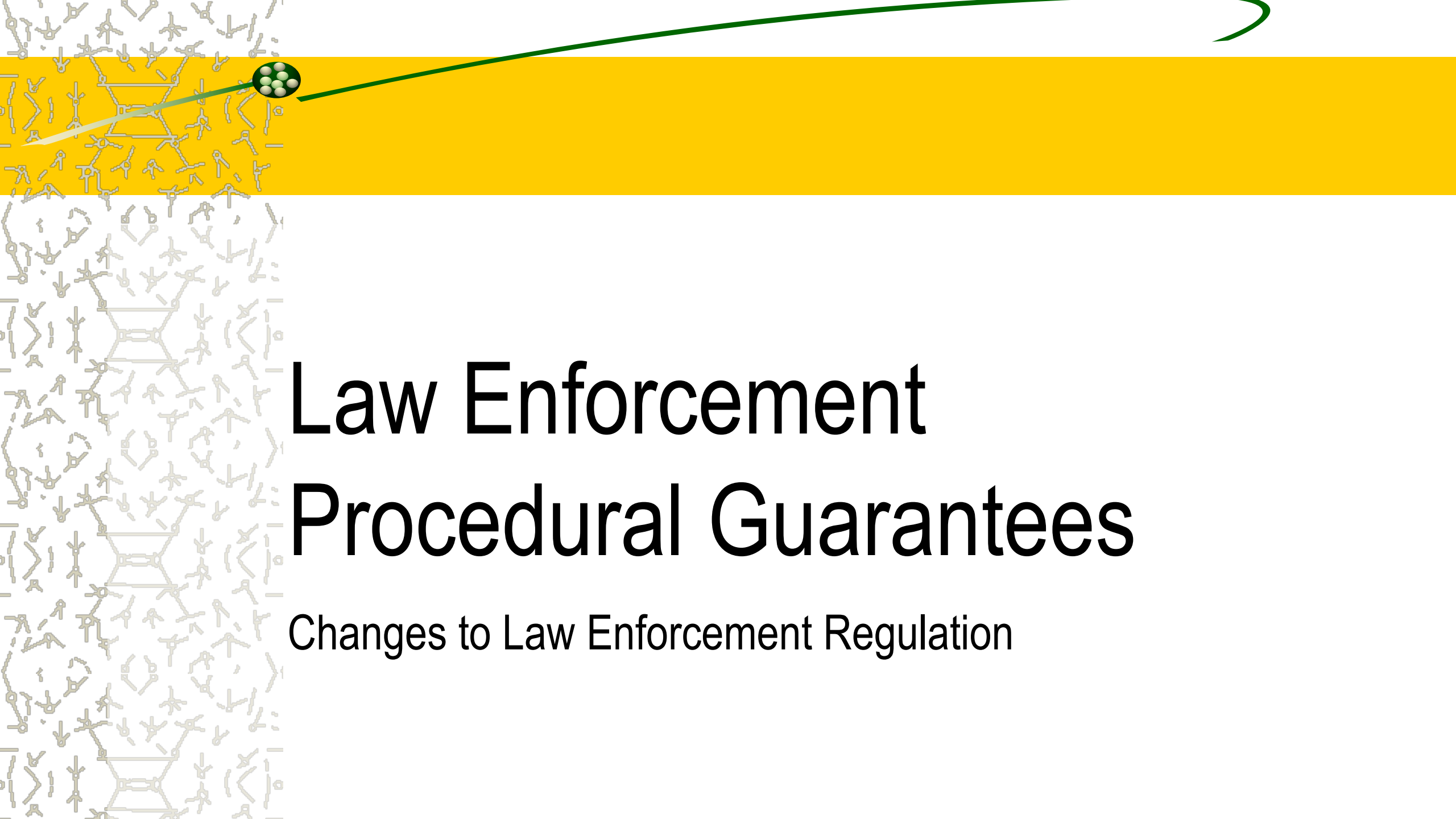
- ✦ Upon receipt of notice that a public body has received a request for criminal investigative files, such persons (listed in previous slide) shall have 14 days to file in an appropriate court for an injunction to prevent disclosure of the records and the time period within which the public body has to respond to the underlying request shall be tolled pending the notification process and any subsequent disposition by the court.
- ✦ Bill requires the court to consider certain information in making its determination and provides that a public body shall be prohibited from responding to the request until at least 14 days have passed from the time notice was received by any such individual listed in clauses (a), (b), or (c) and shall not disclose any criminal investigative files if the court awards an injunction.



# Ch. 455 / 465 – Juvenile Law Enforcement Records

- ✦ Amends § 16.1-301 to provide that a juvenile, the parent, guardian, or other custodian of the juvenile, and counsel for the juvenile may inspect a law-enforcement record concerning such juvenile if
  - i. no other law or rule of the Supreme Court of Virginia requires or allows withholding of the record;
  - ii. the parent, guardian, or other custodian requesting the record is not a suspect, offender, or person of interest in the record; and
  - iii. any identifying information of any other involved juveniles is redacted.





# Law Enforcement Procedural Guarantees

Changes to Law Enforcement Regulation





# Prohibitions on Quotas

- ✦ Ch. 208 / 209: Prohibits (i) any agency of the Commonwealth or director or chief executive of any agency or department employing law-enforcement officers, (ii) any sheriff, (iii) any police force, or (iv) the Department of State Police from establishing a formal or informal quota that requires a law-enforcement officer to make a specific number of arrests or issue a specific number of summonses within a designated period of time.
- ✦ The bill also provides that the number of arrests made or summonses issued by a law-enforcement officer shall not be used as the sole criterion for evaluating the law-enforcement officer's job performance.
- ✦ 4 new code sections: § 2.2-5516 (Virginia Agency), § 15.2-1609.11 (Sheriff), § 15.2-1710.1 (Police), and § 52-11.6 (VSP)





## Purchase of Handgun at Retirement

- ✦ Ch. 245 / 246: § 59.1-148.3 amended to remove the requirement that a sworn law-enforcement officer be employed in a full-time capacity at the time of his retirement to purchase his service handgun.
- ✦ Ch. 270: § 18.2-308.2:5 amended to provide that the purchase of a service weapon by a retired law-enforcement officer is not subject to a criminal history record information check.





## Ch. 430: Military personnel; leaves of absence.

- ✦ Amends §§ 44-93 and 44-204
- ✦ Increases, from 15 to 21 days, the number of days a member of the armed services, reserves, National Guard, Virginia Defense Force, or National Defense Executive Reserve shall be entitled to paid leave for military duties.
- ✦ The bill applies only to individuals who are employed by the Commonwealth or a political subdivision of the Commonwealth.





## Ch. 491: Former Law-enforcement Officers; Retention of Identification and Badge.

- ✦ Amendment to §§ 9.1-1000 and 52-9.1:1

- ✦ Provides that a former law-enforcement officer with at least 10 years of service who has been diagnosed with post-traumatic stress disorder or is disabled shall, upon request, be issued a photo identification and badge indicating that he honorably served, both of which will be mounted by the employing department or agency in such a manner that it will be impossible for anyone to carry it on his person.





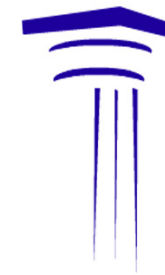
## Ch. 704 - Employment of Retired Law-Enforcement Officers

- ✦ Provides that, under § 9.1-116, the Director of the Department of Criminal Justice Services shall exempt a law-enforcement officer who has demonstrated sensitivity to cultural diversity issues, had previous experience and training as a law-enforcement officer, is currently receiving or is eligible to receive a service retirement allowance, and has a break in service of no longer than 60 calendar months between retirement and new employment as a law-enforcement officer from the mandatory attendance of all courses that are required for the successful completion of the compulsory minimum training standards established by the Criminal Justice Services Board.



# Questions?

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