

22104205D

HOUSE BILL NO. 612

Offered January 12, 2022

Prefiled January 11, 2022

A *BILL to amend and reenact §§ 16.1-278.9, 18.2-250, 18.2-251, 18.2-257, 18.2-477.2, 19.2-188.1, 19.2-392.02, and 53.1-203 of the Code of Virginia, relating to possession of controlled substances; penalties.*

Patron—Hudson

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-278.9, 18.2-250, 18.2-251, 18.2-257, 18.2-477.2, 19.2-188.1, 19.2-392.02, and 53.1-203 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-278.9. Delinquent children; loss of driving privileges for alcohol, firearm, and drug offenses; truancy.

A. If a court has found facts which would justify a finding that a child at least 13 years of age at the time of the offense is delinquent and such finding involves (i) a violation of § 18.2-266 or of a similar ordinance of any county, city, or town; (ii) a refusal to take a breath test in violation of § 18.2-268.2; (iii) a felony violation of Chapter 11 (§ 4.1-1100 et seq.) of Title 4.1 or § 18.2-248; ~~or 18.2-248.1, or~~ 18.2-250; (iv) a misdemeanor violation of Chapter 11 (§ 4.1-1100 et seq.) of Title 4.1 or § 18.2-248, 18.2-248.1, or 18.2-250; (v) the unlawful purchase, possession, or consumption of alcohol in violation of § 4.1-305 or the unlawful drinking or possession of alcoholic beverages in or on public school grounds in violation of § 4.1-309; (vi) public intoxication in violation of § 18.2-388 or a similar ordinance of a county, city, or town; (vii) the unlawful use or possession of a handgun or possession of a "streetsweeper" as defined below; or (viii) a violation of § 18.2-83, the court shall order, in addition to any other penalty that it may impose as provided by law for the offense, that the child be denied a driver's license. In addition to any other penalty authorized by this section, if the offense involves a violation designated under clause (i) and the child was transporting a person 17 years of age or younger, the court shall impose the additional fine and order community service as provided in § 18.2-270. If the offense involves a violation designated under clause (i), (ii), (iii), or (viii), the denial of a driver's license shall be for a period of one year or until the juvenile reaches the age of 17, whichever is longer, for a first such offense or for a period of one year or until the juvenile reaches the age of 18, whichever is longer, for a second or subsequent such offense. If the offense involves a violation designated under clause (iv), (v), or (vi) the denial of driving privileges shall be for a period of six months unless the offense is committed by a child under the age of 16 years and three months, in which case the child's ability to apply for a driver's license shall be delayed for a period of six months following the date he reaches the age of 16 and three months. If the offense involves a first violation designated under clause (v) or (vi), the court shall impose the license sanction and may enter a judgment of guilt or, without entering a judgment of guilt, may defer disposition of the delinquency charge until such time as the court disposes of the case pursuant to subsection F. If the offense involves a violation designated under clause (iii) or (iv), the court shall impose the license sanction and shall dispose of the delinquency charge pursuant to the provisions of this chapter or § 18.2-251. If the offense involves a violation designated under clause (vii), the denial of driving privileges shall be for a period of not less than 30 days, except when the offense involves possession of a concealed handgun or a striker 12, commonly called a "streetsweeper," or any semi-automatic folding stock shotgun of like kind with a spring tension drum magazine capable of holding 12 shotgun shells, in which case the denial of driving privileges shall be for a period of two years unless the offense is committed by a child under the age of 16 years and three months, in which event the child's ability to apply for a driver's license shall be delayed for a period of two years following the date he reaches the age of 16 and three months.

A1. If a court finds that a child at least 13 years of age has failed to comply with school attendance and meeting requirements as provided in § 22.1-258, the court shall order the denial of the child's driving privileges for a period of not less than 30 days. If such failure to comply involves a child under the age of 16 years and three months, the child's ability to apply for a driver's license shall be delayed for a period of not less than 30 days following the date he reaches the age of 16 and three months.

If the court finds a second or subsequent such offense, it may order the denial of a driver's license for a period of one year or until the juvenile reaches the age of 18, whichever is longer, or delay the child's ability to apply for a driver's license for a period of one year following the date he reaches the age of 16 and three months, as may be appropriate.

INTRODUCED

HB612

59 A2. If a court finds that a child at least 13 years of age has refused to take a blood test in violation
60 of § 18.2-268.2, the court shall order that the child be denied a driver's license for a period of one year
61 or until the juvenile reaches the age of 17, whichever is longer, for a first such offense or for a period
62 of one year or until the juvenile reaches the age of 18, whichever is longer, for a second or subsequent
63 such offense.

64 B. Any child who has a driver's license at the time of the offense or at the time of the court's finding
65 as provided in subsection A1 or A2 shall be ordered to surrender his driver's license, which shall be
66 held in the physical custody of the court during any period of license denial.

67 C. The court shall report any order issued under this section to the Department of Motor Vehicles,
68 which shall preserve a record thereof. The report and the record shall include a statement as to whether
69 the child was represented by or waived counsel or whether the order was issued pursuant to subsection
70 A1 or A2. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) or the provisions of Title
71 46.2, this record shall be available only to all law-enforcement officers, attorneys for the Commonwealth
72 and courts. No other record of the proceeding shall be forwarded to the Department of Motor Vehicles
73 unless the proceeding results in an adjudication of guilt pursuant to subsection F.

74 The Department of Motor Vehicles shall refuse to issue a driver's license to any child denied a
75 driver's license until such time as is stipulated in the court order or until notification by the court of
76 withdrawal of the order of denial under subsection E.

77 D. If the finding as to the child involves a violation designated under clause (i), (ii), (iii) or (vi) of
78 subsection A or a violation designated under subsection A2, the child may be referred to a certified
79 alcohol safety action program in accordance with § 18.2-271.1 upon such terms and conditions as the
80 court may set forth. If the finding as to such child involves a violation designated under clause (iii),
81 (iv), (v), (vii) or (viii) of subsection A, such child may be referred to appropriate rehabilitative or
82 educational services upon such terms and conditions as the court may set forth.

83 The court, in its discretion and upon a demonstration of hardship, may authorize the use of a
84 restricted permit to operate a motor vehicle by any child who has a driver's license at the time of the
85 offense or at the time of the court's finding as provided in subsection A1 or A2 for any of the purposes
86 set forth in subsection E of § 18.2-271.1 or for travel to and from school, except that no restricted
87 license shall be issued for travel to and from home and school when school-provided transportation is
88 available and no restricted license shall be issued if the finding as to such child involves a violation
89 designated under clause (iii) or (iv) of subsection A, or if it involves a second or subsequent violation of
90 any offense designated in subsection A, a second finding by the court of failure to comply with school
91 attendance and meeting requirements as provided in subsection A1, or a second or subsequent finding by
92 the court of a refusal to take a blood test as provided in subsection A2. The issuance of the restricted
93 permit shall be set forth within the court order, a copy of which shall be provided to the child, and shall
94 specifically enumerate the restrictions imposed and contain such information regarding the child as is
95 reasonably necessary to identify him. The child may operate a motor vehicle under the court order in
96 accordance with its terms. Any child who operates a motor vehicle in violation of any restrictions
97 imposed pursuant to this section is guilty of a violation of § 46.2-301.

98 E. Upon petition made at least 90 days after issuance of the order, the court may review and
99 withdraw any order of denial of a driver's license if for a first such offense or finding as provided in
100 subsection A1 or A2. For a second or subsequent such offense or finding, the order may not be
101 reviewed and withdrawn until one year after its issuance.

102 F. If the finding as to such child involves a first violation designated under clause (vii) of subsection
103 A, upon fulfillment of the terms and conditions prescribed by the court and after the child's driver's
104 license has been restored, the court shall or, in the event the violation resulted in the injury or death of
105 any person or if the finding involves a violation designated under clause (i), (ii), (v), or (vi) of
106 subsection A, may discharge the child and dismiss the proceedings against him. Discharge and dismissal
107 under these provisions shall be without an adjudication of guilt but a record of the proceeding shall be
108 retained for the purpose of applying this section in subsequent proceedings. Failure of the child to fulfill
109 such terms and conditions shall result in an adjudication of guilt. If the finding as to such child involves
110 a violation designated under clause (iii) or (iv) of subsection A, the charge shall not be dismissed
111 pursuant to this subsection but shall be disposed of pursuant to the provisions of this chapter or
112 § 18.2-251. If the finding as to such child involves a second violation under clause (v), (vi) or (vii) of
113 subsection A, the charge shall not be dismissed pursuant to this subsection but shall be disposed of
114 under § 16.1-278.8.

115 **§ 18.2-250. Possession of controlled substances unlawful.**

116 A. It is unlawful for any person knowingly or intentionally to possess a controlled substance unless
117 the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner
118 while acting in the course of his professional practice, or except as otherwise authorized by the Drug
119 Control Act (§ 54.1-3400 et seq.).

120 Upon the prosecution of a person for a violation of this section, ownership or occupancy of premises

or vehicle upon or in which a controlled substance was found shall not create a presumption that such person either knowingly or intentionally possessed such controlled substance.

(a) 1. Any person who violates this section *on or after July 1, 2022*, with respect to any controlled substance classified in Schedule I ~~or~~, II, *or III* of the Drug Control Act shall be guilty of a Class 5 felony, except that any person other than an inmate of a penal institution as defined in § 53.1-1 or in the custody of an employee thereof who violates this section with respect to a cannabimimetic agent is guilty of a Class 1 misdemeanor.

(b) Any person other than an inmate of a penal institution as defined in § 53.1-1 or in the custody of an employee thereof, who violates this section with respect to a controlled substance classified in Schedule III shall be guilty of a Class 4 misdemeanor.

(b1) 2. Violation of this section *on or after July 1, 2022*, with respect to a controlled substance classified in Schedule IV, V, *or VI* shall be punishable as a Class 2 4 misdemeanor.

(b2) Violation of this section with respect to a controlled substance classified in Schedule V shall be punishable as a Class 3 misdemeanor.

(c) Violation of this section with respect to a controlled substance classified in Schedule VI shall be punishable as a Class 4 misdemeanor.

B. The provisions of this section shall not apply to members of state, federal, county, city or town law-enforcement agencies, jail officers, or correctional officers, as defined in § 53.1-1, certified as handlers of dogs trained in the detection of controlled substances when possession of a controlled substance or substances is necessary in the performance of their duties.

C. *For the purposes of this section, "controlled substance" does not include mere residue of any substance that is not a usable quantity or a countable dosage unit.*

§ 18.2-251. Persons charged with first offense may be placed on probation; conditions; substance abuse screening, assessment treatment and education programs or services; drug tests; costs and fees; violations; discharge.

Whenever any person who has not previously been convicted of any criminal offense under this article a violation of § 18.2-248 or 18.2-250 or ~~under a violation of any substantially similar statute of~~ the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of such an offense dismissed as provided in this section, ~~or~~ pleads guilty to or enters a plea of not guilty to possession of a controlled substance under § 18.2-250, the court, upon such plea if the facts found by the court would justify a finding of guilt, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions. If the court defers further proceedings, at that time the court shall determine whether the clerk of court has been provided with the fingerprint identification information or fingerprints of the person, taken by a law-enforcement officer pursuant to § 19.2-390, and, if not, shall order that the fingerprints and photograph of the person be taken by a law-enforcement officer.

As a term or condition, the court shall require the accused to undergo a substance abuse assessment pursuant to § 18.2-251.01 or 19.2-299.2, as appropriate, and enter treatment and/or education program or services, if available, such as, in the opinion of the court, may be best suited to the needs of the accused based upon consideration of the substance abuse assessment. The program or services may be located in the judicial district in which the charge is brought or in any other judicial district as the court may provide. The services shall be provided by (i) a program licensed by the Department of Behavioral Health and Developmental Services, by a similar program which is made available through the Department of Corrections, (ii) a local community-based probation services agency established pursuant to § 9.1-174, or (iii) an ASAP program certified by the Commission on VASAP.

The court shall require the person entering such program under the provisions of this section to pay all or part of the costs of the program, including the costs of the screening, assessment, testing, and treatment, based upon the accused's ability to pay unless the person is determined by the court to be indigent.

As a condition of probation, the court shall require the accused (a) to successfully complete treatment or education program or services, (b) to ~~remain drug and alcohol free~~ *submit to drug and alcohol tests* during the period of probation and ~~submit to such tests during that period~~ as may be necessary and appropriate to determine if the accused is drug and alcohol free, (c) to make reasonable efforts to secure and maintain employment, and (d) to comply with a plan of at least 100 hours of community service for a felony and up to 24 hours of community service for a misdemeanor. Such testing shall be conducted by personnel of the supervising probation agency or personnel of any program or agency approved by the supervising probation agency.

Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided, *or in its discretion, proceed in any other manner provided by law*. Upon fulfillment of the terms and conditions, and upon determining that the clerk of court has been provided with the

182 fingerprint identification information or fingerprints of such person, the court shall discharge the person
183 and dismiss the proceedings against him. Discharge and dismissal under this section shall be without
184 adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent
185 proceedings.

186 Notwithstanding any other provision of this section, whenever a court places an individual on
187 probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction
188 for purposes of § 22.1-315. The provisions of this paragraph shall not be applicable to any offense for
189 which a juvenile has had his license suspended or denied pursuant to § 16.1-278.9 for the same offense.

190 **§ 18.2-257. Attempts.**

191 (a) Any person who attempts to commit any offense defined in this article or in the Drug Control
192 Act (§ 54.1-3400 et seq.) ~~which that~~ is a felony ~~shall be imprisoned for not less than one nor more than~~
193 ~~ten years; is guilty of a Class 6 felony~~, provided, however, that any person convicted of attempting to
194 commit a felony for which a lesser punishment may be imposed may be punished according to such
195 lesser penalty.

196 (b) Any person who attempts to commit any offense defined in this article or in the Drug Control
197 Act ~~which that~~ is a misdemeanor ~~shall be~~ is guilty of a Class 2 misdemeanor; provided, however, that
198 any person convicted of attempting to commit a misdemeanor for which a lesser punishment may be
199 imposed may be punished according to such lesser penalty.

200 **§ 18.2-477.2. Punishment for certain offenses committed within a secure juvenile facility or**
201 **detention home.**

202 It ~~shall be~~ is unlawful for a person committed to the Department of Juvenile Justice in any juvenile
203 correctional center or detained in a secure juvenile facility or detention home to commit any of the
204 offenses enumerated in § 53.1-203. A violation of this section ~~shall be~~ is punishable as a Class 6 felony;
205 ~~except that a violation of subdivision 6 of § 53.1-203 is a Class 5 felony provided for in § 53.1-203.~~

206 **§ 19.2-188.1. Testimony regarding identification of controlled substances.**

207 A. In any preliminary hearing on a violation of Chapter 11 (§ 4.1-1100 et seq.) of Title 4.1, Article
208 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or subdivision 6 5 of § 53.1-203, any law-enforcement
209 officer shall be permitted to testify as to the results of field tests that have been approved by the
210 Department of Forensic Science pursuant to regulations adopted in accordance with the Administrative
211 Process Act (§ 2.2-4000 et seq.), regarding whether or not any substance the identity of which is at issue
212 in such hearing is a controlled substance, imitation controlled substance, or marijuana, as defined in
213 § 18.2-247.

214 B. In any trial for a violation of § 4.1-1105.1, any law-enforcement officer shall be permitted to
215 testify as to the results of any marijuana field test approved as accurate and reliable by the Department
216 of Forensic Science pursuant to regulations adopted in accordance with the Administrative Process Act
217 (§ 2.2-4000 et seq.), regarding whether or not any plant material, the identity of which is at issue, is
218 marijuana provided the defendant has been given written notice of his right to request a full chemical
219 analysis. Such notice shall be on a form approved by the Supreme Court and shall be provided to the
220 defendant prior to trial.

221 In any case in which the person accused of a violation of § 4.1-1105.1, or the attorney of record for
222 the accused, desires a full chemical analysis of the alleged plant material, he may, by motion prior to
223 trial before the court in which the charge is pending, request such a chemical analysis. Upon such
224 motion, the court shall order that the analysis be performed by the Department of Forensic Science in
225 accordance with the provisions of § 18.2-247 and shall prescribe in its order the method of custody,
226 transfer, and return of evidence submitted for chemical analysis.

227 **§ 19.2-392.02. National criminal background checks by businesses and organizations regarding**
228 **employees or volunteers providing care to children or the elderly or disabled.**

229 A. For purposes of this section:

230 "Barrier crime" means (i) a felony violation of § 16.1-253.2; any violation of § 18.2-31, 18.2-32,
231 18.2-32.1, 18.2-32.2, 18.2-33, 18.2-35, 18.2-36, 18.2-36.1, 18.2-36.2, 18.2-41, or 18.2-42; any felony
232 violation of § 18.2-46.2, 18.2-46.3, 18.2-46.3:1, or 18.2-46.3:3; any violation of § 18.2-46.5, 18.2-46.6,
233 or 18.2-46.7; any violation of subsection A or B of § 18.2-47; any violation of § 18.2-48, 18.2-49, or
234 18.2-50.3; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-51.5, 18.2-51.6,
235 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, 18.2-55, 18.2-55.1, 18.2-56, 18.2-56.1,
236 18.2-56.2, 18.2-57, 18.2-57.01, 18.2-57.02, 18.2-57.2, 18.2-58, 18.2-58.1, 18.2-59, 18.2-60, or 18.2-60.1;
237 any felony violation of § 18.2-60.3 or 18.2-60.4; any violation of § 18.2-61, 18.2-63, 18.2-64.1,
238 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-67.5, 18.2-67.5:1,
239 18.2-67.5:2, 18.2-67.5:3, 18.2-77, 18.2-79, 18.2-80, 18.2-81, 18.2-82, 18.2-83, 18.2-84, 18.2-85, 18.2-86,
240 18.2-87, 18.2-87.1, or 18.2-88; any felony violation of § 18.2-279, 18.2-280, 18.2-281, 18.2-282,
241 18.2-282.1, 18.2-286.1, or 18.2-287.2; any violation of § 18.2-289, 18.2-290, 18.2-300, 18.2-308.4, or
242 18.2-314; any felony violation of § 18.2-346.01, 18.2-348, or 18.2-349; any violation of § 18.2-355,
243 18.2-356, 18.2-357, or 18.2-357.1; any violation of subsection B of § 18.2-361; any violation of

§ 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-370.2, 18.2-370.3, 18.2-370.4, 18.2-370.5, 18.2-370.6, 18.2-371.1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, 18.2-374.4, 18.2-379, 18.2-386.1, or 18.2-386.2; any felony violation of § 18.2-405 or 18.2-406; any violation of § 18.2-408, 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, 18.2-433.2, 18.2-472.1, 18.2-474.1, 18.2-477, 18.2-477.1, 18.2-477.2, 18.2-478, 18.2-479, 18.2-480, 18.2-481, 18.2-484, 18.2-485, 37.2-917, or 53.1-203; or any substantially similar offense under the laws of another jurisdiction; (ii) any violation of § 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, or 18.2-94 or any substantially similar offense under the laws of another jurisdiction; (iii) any felony violation of § 4.1-1101, 18.2-248, 18.2-248.01, 18.2-248.02, 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-251.2, 18.2-251.3, 18.2-255, 18.2-255.2, 18.2-258, 18.2-258.02, 18.2-258.1, or 18.2-258.2 or any substantially similar offense under the laws of another jurisdiction; (iv) any felony violation of § 18.2-250 *committed before July 1, 2022*, or any substantially similar offense under the laws of another jurisdiction; (v) any offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901, including any finding that a person is not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2 of an offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901; any substantially similar offense under the laws of another jurisdiction; or any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted; or (vi) any other felony not included in clause (i), (ii), (iii), (iv), or (v) unless five years have elapsed from the date of the conviction.

"Barrier crime information" means the following facts concerning a person who has been arrested for, or has been convicted of, a barrier crime, regardless of whether the person was a juvenile or adult at the time of the arrest or conviction: full name, race, sex, date of birth, height, weight, fingerprints, a brief description of the barrier crime or offenses for which the person has been arrested or has been convicted, the disposition of the charge, and any other information that may be useful in identifying persons arrested for or convicted of a barrier crime.

"Care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children or the elderly or disabled.

"Department" means the Department of State Police.

"Employed by" means any person who is employed by, volunteers for, seeks to be employed by, or seeks to volunteer for a qualified entity.

"Identification document" means a document made or issued by or under the authority of the United States government, a state, a political subdivision of a state, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization that, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

"Provider" means a person who (i) is employed by a qualified entity and has, seeks to have, or may have unsupervised access to a child or to an elderly or disabled person to whom the qualified entity provides care; (ii) is a volunteer of a qualified entity and has, seeks to have, or may have unsupervised access to a child to whom the qualified entity provides care; or (iii) owns, operates, or seeks to own or operate a qualified entity.

"Qualified entity" means a business or organization that provides care to children or the elderly or disabled, whether governmental, private, for profit, nonprofit, or voluntary, except organizations exempt pursuant to subdivision A 7 of § 22.1-289.030.

B. A qualified entity may request the Department of State Police to conduct a national criminal background check on any provider who is employed by such entity. No qualified entity may request a national criminal background check on a provider until such provider has:

1. Been fingerprinted; and
2. Completed and signed a statement, furnished by the entity, that includes (i) his name, address, and date of birth as it appears on a valid identification document; (ii) a disclosure of whether or not the provider has ever been convicted of or is the subject of pending charges for a criminal offense within or outside the Commonwealth, and if the provider has been convicted of a crime, a description of the crime and the particulars of the conviction; (iii) a notice to the provider that the entity may request a background check; (iv) a notice to the provider that he is entitled to obtain a copy of any background check report, to challenge the accuracy and completeness of any information contained in any such report, and to obtain a prompt determination as to the validity of such challenge before a final determination is made by the Department; and (v) a notice to the provider that prior to the completion of the background check the qualified entity may choose to deny the provider unsupervised access to children or the elderly or disabled for whom the qualified entity provides care.

C. Upon receipt of (i) a qualified entity's written request to conduct a background check on a

provider, (ii) the provider's fingerprints, and (iii) a completed, signed statement as described in subsection B, the Department shall make a determination whether the provider has been convicted of or is the subject of charges of a barrier crime. To conduct its determination regarding the provider's barrier crime information, the Department shall access the national criminal history background check system, which is maintained by the Federal Bureau of Investigation and is based on fingerprints and other methods of identification, and shall access the Central Criminal Records Exchange maintained by the Department. If the Department receives a background report lacking disposition data, the Department shall conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data. The Department shall make reasonable efforts to respond to a qualified entity's inquiry within 15 business days.

D. Any background check conducted pursuant to this section for a provider employed by a private entity shall be screened by the Department of State Police. If the provider has been convicted of or is under indictment for a barrier crime, the qualified entity shall be notified that the provider is not qualified to work or volunteer in a position that involves unsupervised access to children or the elderly or disabled.

E. Any background check conducted pursuant to this section for a provider employed by a governmental entity shall be provided to that entity.

F. In the case of a provider who desires to volunteer at a qualified entity and who is subject to a national criminal background check, the Department and the Federal Bureau of Investigation may each charge the provider the lesser of \$18 or the actual cost to the entity of the background check conducted with the fingerprints.

G. The failure to request a criminal background check pursuant to subsection B shall not be considered negligence per se in any civil action.

§ 53.1-203. Crimes by prisoners; penalties.

It shall be unlawful for a prisoner in a state, local or community correctional facility or in the custody of an employee thereof to:

1. Escape from a correctional facility or from any person in charge of such prisoner;
2. Willfully break, cut, or damage any building, furniture, fixture, or fastening of such facility or any part thereof for the purpose of escaping *therefrom*, aiding any other prisoner to escape therefrom, or rendering such facility less secure as a place of confinement;
3. Make, procure, secrete, or have in his possession any instrument, tool, or other thing for the purpose of escaping from or aiding another to escape from a correctional facility or employee thereof;
4. Make, procure, secrete, or have in his possession a knife, instrument, tool, or other thing not authorized by the superintendent or sheriff which is capable of causing death or bodily injury;
5. Procure, or sell, ~~secrete or have in his possession~~ any chemical compound ~~which~~ *that* he has not lawfully received;
6. ~~Procure, sell, secrete~~ *Secrete* or have in his possession a controlled substance classified in ~~Schedule III Schedules I through VI~~ of the Drug Control Act (§ 54.1-3400 et seq.) or marijuana;
7. Introduce into a correctional facility or have in his possession firearms or ammunition for firearms;
8. Willfully burn or destroy by use of any explosive device or substance, in whole or in part, or cause to be so burned or destroyed, any personal property, within any correctional facility;
9. Willfully tamper with, damage, destroy, or disable any fire protection or fire suppression system, equipment, or sprinklers within any correctional facility; or
10. Conspire with another prisoner or other prisoners to commit any of the foregoing acts.

For violation of any of the provisions of this section, except subdivision 6, the prisoner shall be guilty of a Class 6 felony. For a violation of subdivision 6, he shall be ~~guilty of a Class 5 felony~~ *punished in accordance with the applicable penalties prescribed in § 18.2-250, 4.1-1100, or 4.1-1105.1.* If the violation is of subdivision 1 of this section and the escapee is a felon, he shall be sentenced to a mandatory minimum term of confinement of one year, which shall be served consecutively with any other sentence. The prisoner shall, upon conviction of escape, immediately commence to serve such escape sentence, and he shall not be eligible for parole during such period. Any prisoner sentenced to life imprisonment who escapes shall not be eligible for parole. No part of the time served for escape shall be credited for the purpose of parole toward the sentence or sentences, the service of which is interrupted for service of the escape sentence, nor shall it be credited for such purpose toward any other sentence.