

# 2010 General Assembly Session-Courts and Law Enforcement

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## 2010-2012 Budget

- Eliminates funding for 19 current judicial vacancies and erases dollars for future vacancies; however, preserves drug courts.
- Closes a minimum-security field unit and a larger prison over the next two years; defers to the Department of Corrections to determine which facilities to shutter.
- Eliminates funding for proposed public defenders in Chesterfield, Henrico and Prince William counties.
- Restores \$47 million in cuts to sheriffs and jails in 2011 and limits their reductions to 2.6 percent, instead of the 15 percent that was proposed.
- Provides more than \$32 million in funding for local police officers.
- Provides \$1.2 million for the state's two Internet Crimes Against Children task forces.
- Increases court filing fees depending on how much a lawsuit seeks in damages. The increase will raise \$19 million over two years.

## Legislation

### Civil Remedies and Procedures

**HB21---Space flight liability and immunity; sunset.** Repeals the July 1, 2013, expiration date on the act establishing space flight liability and immunity. This bill is identical to SB 189.

**HB105---Security for appeal; modification.** Provides that a court may impose additional requirements to security posted for an appeal in addition to altering the amount of the security. Any changes may be made to such security by a court for good cause shown. The bill also clarifies that motions for and objections to any modification of security may be made either to the appellate court or the court whose decision is being appealed until such time as the appellate court acts. The bill also provides that individual judges of the Supreme Court, instead of a panel, may make determinations on issues regarding security for appeal. Currently, only individual judges of the Court of Appeals are permitted to make such determinations. As introduced, this bill was a recommendation of the Boyd-Graves Conference.

**HB203---Writ of actual innocence; available after parole or pardon.** Provides that the statutory guidelines employed by the General Assembly for determining compensation of

persons who have been wrongfully incarcerated also apply to a person granted a writ of actual innocence based on nonbiological evidence and a person who has been granted an absolute pardon for the commission of a crime that he did not commit.

**HB376---Service by publication.** Validates orders of publication processed by a clerk prior to July 1, 2010, for service in certain actions.

**HB458---Attorney-issued summons; protective orders.** Eliminates the prohibition on attorney-issued summonses in cases involving the issuance of protective orders. This bill is identical to SB 721.

**HB559---Compensation for wrongful incarceration for a felony conviction.** Clarifies that individuals granted an absolute pardon by the Governor may be considered under the wrongful incarceration compensation statute. The bill also provides that the amount of compensation provided under the statute be adjusted for inflation. In addition, the bill specifies that any person awarded compensation who is subsequently incarcerated upon the revocation of parole or probation resulting from the commission of an act that constitutes a crime shall, during the period of such incarceration, forfeit any payments under an annuity purchased. Any forfeited amounts under the annuity shall become the property of the Commonwealth and shall be deposited into the general fund of the state treasury.

**HB1065---Electronic filing of cases in circuit courts.** Establishes electronic filing of cases in circuit courts by providing for acceptance of electronic images as original documents for filing and recording, and for the attachment of electronic seals or stamps for original signatures and notarizations in civil cases. The circuit court clerk may require each person whom the clerk authorizes to file documents electronically to enter into an agreement specifying the electronic filing procedures to be followed for transmitting signed or notarized documents. However, the bill does not allow for electronic filing in certain classes of cases where particular forms are specified by statute (e.g., creation and execution of wills, codicils, testamentary trusts, premarital agreements, and negotiable instruments). This bill is identical to SB 220.

**HB1106---Disclosure of insurance policy limits; wrongful death action.** Allows the personal representative of the estate of a decedent who died as a result of a motor vehicle accident, or his attorney, to request the disclosure of the liability limits of an insurance policy prior to filing a civil action for wrongful death resulting from a motor vehicle accident. The party requesting this information shall provide the insurer with (i) the date of the accident, (ii) the name and last known address of the alleged tortfeasor, (iii) a copy of the accident report, if any, (iv) the claim number, if available, and (v) the decedent's death certificate; the certificate of qualification of the personal representative of the decedent's estate; the names and relationship of the statutory beneficiaries of the decedent; medical bills, if any; and a description of the source, amount, and payment history of the claimed income loss for each beneficiary. The bill also provides that

disclosure of a policy's limits shall not constitute an admission that the alleged injury is subject to the policy.

**HB1147---Civil damages for computer trespass.** Expands the availability to institute a suit for civil damages resulting from computer trespass to include computer trespass by installing or causing to be installed, or collecting information through, computer software that records all or a majority of the keystrokes made on the computer of another.

**HB1193---Actions or suits involving fiduciaries; style of the case; amendment of pleading.** Provides that in any action or suit required to be prosecuted or defended by or in the name of a fiduciary, the style of the case in regard to the fiduciary must be substantially in the following form: "(Name of fiduciary), (type of fiduciary relationship), (Name of the subject of the fiduciary relationship)." Pleadings that are not in the proper form shall be amended on the motion of any party or on the court's own motion, and such amendment relates back to the date of the original pleading. The provisions of the bill apply to any action or suit pending as of the effective date of the bill.

**HB1306---Jurors to provide photo identification.** Provides that at the time of assembly for the purpose of juror selection, the clerk of court shall ensure that the identity of each member of the jury venire is verified as provided in this section. Prior to being selected from the jury venire, a potential juror shall verify his identity by presenting to the clerk of court upon request any of the following forms of identification: his Commonwealth of Virginia voter registration card; his social security card; his valid Virginia driver's license or any other identification card issued by a government agency of the Commonwealth, one of its political subdivisions, or the United States; or any valid employee identification card containing a photograph of the juror and issued by an employer of the juror in the ordinary course of the employer's business. If the juror is unable to present one of these forms of identification, he shall sign a statement affirming, under penalty of perjury, that he is the named juror.

**SB154---Increasing various costs, fees, penalties, etc.** Increases the amounts of various costs, potential attorney fee awards, potential damages, jurisdictional amounts, and other dollar-based provisions in the Virginia Code to account for the effect of inflation.

**SB191---Privileged communications of certain committees and entities.** Provides that the exchange of privileged, health care-related information between committees, boards, groups, commissions, or other entities that function primarily to review, evaluate, or make recommendations regarding health care shall not constitute a waiver of privilege.

**SB382---Jury panel; disclosure to counsel.** Changes from 48 hours to three full business days the time period when a copy of the jury panel shall be made available to all counsel of record in the case.

**SB384---Attorney-client privilege; work product protection; limitations on waivers.**

Provides that when the disclosure of a communication or information covered by attorney-client privilege or work product protection made in a proceeding or to any public body operates as a waiver of the privilege or protection, such waiver only extends to undisclosed communications or information if (i) the waiver was intentional, and (ii) the disclosed and undisclosed communications or information concern the same subject matter and ought in fairness be considered together. Inadvertent disclosures do not operate as a waiver if reasonable steps were taken to prevent disclosure and to rectify the error. The bill also provides that an agreement between parties as to the effect of a disclosure is only binding upon the parties to the agreement unless it has been incorporated into a court order. The bill does not limit any otherwise applicable waiver of attorney-client privilege or work product protection by an inmate who files an action challenging his conviction or sentence.

**SB427---Disclosure of insurance policy limits; wrongful death action.** Allows the personal representative of the estate of a decedent who died as a result of a motor vehicle accident, or his attorney, to request the disclosure of the liability limits of an insurance policy prior to filing a civil action for wrongful death resulting from a motor vehicle accident. The party requesting this information shall provide the insurer with (i) the date of the accident, (ii) the name and last known address of the alleged tortfeasor, (iii) a copy of the accident report, if any, (iv) the claim number, if available, and (v) the decedent's death certificate; the certificate of qualification of the personal representative of the decedent's estate; the names and relationship of the statutory beneficiaries of the decedent; medical bills, if any; and a description of the source, amount, and payment history of the claimed income loss for each beneficiary. The bill also provides that disclosure of a policy's limits shall not constitute an admission that the alleged injury is subject to the policy.

**SB445---Notice of lien on financial institutions.** Provides that any judgment creditor serving a notice of lien on a financial institution shall, within five business days of such service, mail to the judgment debtor at his last known address a copy of the notice of lien along with a notice of exemptions and claim for exemption form. The judgment creditor or attorney for the judgment creditor shall file a certification with the court affirming that he has mailed the judgment debtor these notices. In the event that the judgment creditor fails to comply, he shall be liable to the judgment debtor for no more than \$100 in damages, unless he proves by a preponderance of the evidence that the failure was not willful.

## **Crimes and Offenses**

**HB1---Unsolicited commercial electronic mail (spam); penalty.** Narrows the scope of the existing spam statute to cover only those emails that constitute unsolicited

commercial electronic mail (spam). Commercial electronic mail is defined in the bill as electronic mail, the primary purpose of which is the advertisement or promotion of a commercial product or service. Spam is defined as a subset of commercial mail that is unsolicited. The definition of spam excludes emails that are transmitted by a sender to a person with whom the sender has an existing business or personal relationship.

Any person who (i) falsifies or forges the transmission or routing information of spam or (ii) knowingly sells, gives, or distributes software designed to facilitate the transmission of spam is guilty of a Class 1 misdemeanor. The penalty for sending spam rises to a Class 6 felony if the person sends a certain volume of spam in a given time period or generates a certain amount of revenue from a spam transmission.

This bill corrects a constitutional infirmity identified in the ruling of the Virginia Supreme Court in *Jaynes v. Commonwealth*, 276 Va. 443 (2008). In its opinion the Supreme Court held that Virginia Code § 18.2-152.3:1 (anti-spam statute) is unconstitutionally overbroad on its face because it prohibits the anonymous transmission of all unsolicited bulk emails, including those containing political, religious, or other speech protected by the First Amendment of the Constitution.

**HB8---Renewal of concealed handgun permits.** Allows a person who previously has been issued a Virginia concealed handgun permit to submit an application to renew the permit via the United States mail. This bill is identical to SB 3.

**HB166---Capital murder; fire marshals, deputy and assistant fire marshals; penalty.** Adds fire marshals and deputy and assistant fire marshals with law-enforcement powers to the capital murder statute so that the death sentence can be imposed for their murder when such killing is for the purpose of interfering with the performance of their official duties.

**HB210---Extortion; definition of injury to property.** Provides that for the purposes of the extortion statute "injury to property" includes the sale, distribution or release of personal identifying information listed in the identity theft statute, unless it is done with the intent to obtain money, property or a pecuniary benefit to which a person reasonably believes he is lawfully entitled.

**HB227---Sex offenses prohibiting entry onto school property.** Provides that a sex offender who has received a court order allowing entry on school or child day center property must also obtain permission of the school board or of the owner of the private school or child day center for entry within all or part of the scope of the lifted ban and must do so in compliance with the terms and conditions of both the school or center and the court order. The bill also provides that the petition must be filed in circuit court; current law allows an adult who is prohibited from entering upon school or child day center property because he was convicted of a sexually violent offense to petition either

the juvenile and domestic relations district or circuit court of the locality for permission to enter the property.

**HB505---Concealed handguns; restaurants; penalty.** Allows a person with a concealed handgun permit to carry a concealed handgun onto the premises of a restaurant or club and prohibits such person from consuming alcoholic beverages while on the premises. A person who consumes alcohol in violation of the provisions of the bill is guilty of a Class 2 misdemeanor. This bill is identical to SB 334.

**HB637---Concealed handgun permit; fees.** Waives the concealed handgun permit fee (maximum \$50) for certain designated boarding team members and boarding officers of the United States Coast Guard.

**HB682---Gang-free zones; penalties.** Expands current "gang-free school zones" to the broader "gang-free zones" and includes any publicly owned or operated community center or recreational center. Engaging in criminal street gang activity in a gang-free zone is a Class 5 or 6 felony and may include a two-year mandatory minimum sentence, depending upon other aggravators.

**HB688---Using transportation district trains without a valid ticket.** Rewrites the code section that punishes unlawfully riding on a transportation district train. The bill punishes failure or refusal to pay the posted fare, or failure to properly validate a train ticket, as a \$100 civil penalty. The bill punishes use of a validated ticket outside of the zone of the ticketed ride as a \$100 civil penalty. The bill punishes use of a fraudulent or counterfeit ticket as a Class 2 misdemeanor. The bill limits the amount of recoverable costs to the same amount as the maximum fine.

**HB741---Use of profane, threatening, or indecent language over public airways or by computer or text.** Provides that any person who uses obscene, vulgar, profane, lewd, lascivious, or indecent language, or makes any suggestion or proposal of an obscene nature, or threatens any illegal or immoral act with the intent to coerce, intimidate, or harass any person when any electronically transmitted message is received or transmitted by telephone is guilty of a Class 1 misdemeanor. Current law punishes such behavior when simply using a telephone or citizens band radio.

**HB769---Consecutive license suspensions for DUI.** Provides that any suspension of driving privilege for driving while intoxicated shall run consecutively with any other court-ordered period of suspension for driving while intoxicated or for underage driving with a blood alcohol concentration of 0.02 percent or more. Currently, suspensions ordered for failure to submit to a blood or breath test run consecutively with the DUI suspension.

**HB869---Prohibition on wearing a mask; public emergency exception.** Adds to the existing exemptions in the section making it a Class 6 felony for a person over the age of

16 to wear a mask in public or on private property without the owner's written consent an exception when the Governor has declared a disaster or state of emergency in response to a public health emergency and defines the mask appropriate for the emergency. This bill is identical to SB 532.

**HB871---Concealed handgun permit applications; right to ore tenus hearing.** Clarifies that anyone who is denied a concealed handgun permit has the same right to an ore tenus hearing as a person who has previously held a concealed handgun permit. This bill is identical to SB 533.

**HB885---Possession of concealed weapons in vehicles.** Creates a new exemption to the general prohibition against carrying concealed weapons by allowing a person who may lawfully possess a firearm to carry a handgun in a private motor vehicle or vessel if the handgun is secured in a container or compartment. This bill is identical to SB 408.

**HB934---Capital murder; auxiliary law-enforcement officers; penalty.** Adds auxiliary police officers and auxiliary deputy sheriffs to the capital murder statute so that the death sentence can be imposed for their murder. This bill is identical to SB 520.

**HB941---Charitable gaming; regulations of the Charitable Gaming Board; electronic pull tabs.** Clarifies that regulations of the Charitable Gaming Board defining electronic and mechanical equipment used in the conduct of charitable gaming shall not include (i) devices operated by dropping one or more coins or tokens into a slot and pulling a handle or pushing a button or touchpoint on a touchscreen to activate one to three or more reels marked into horizontal segments by varying symbols, where the predetermined prize amount depends on how and how many of the symbols line up when the rotating reels come to rest or (ii) other similar devices that have flashing lights, illuminations, or bells, whistles, or other sounds solely intended to entice players to play.

**HB942---Department of Agriculture and Consumer Services; charitable gaming; revocation of permits.** Clarifies that the Department of Agriculture and Consumer Services may revoke, suspend, or deny a permit to conduct charitable gaming only after the proposed action by the Department has been reviewed and approved by the Charitable Gaming Board.

**HB950---Charitable gaming; regulations of the Charitable Gaming Board; prohibited acts.** Limits the number of bingo games per session to no more than 50; requires the Charitable Gaming Board to adopt regulations prescribing (i) the condition by which nonmembers of an organization may participate in the conduct of bingo so long as the nonmembers are under the direct supervision of a bona fide member of the organization during the bingo game and (ii) the minimum time interval required between the conduct of bingo games, which time shall not be less than 30 minutes; increases the number of Lucky 7 and other progressive bingo games from one to six per session and eliminates winner-take-all games. The bill also requires that the Department of

Agriculture and Consumer Services shall report to the chairs of the House Committee on General Laws and the Senate Committee on General Laws and Technology on or before December 1, 2010 concerning the Department's efforts to increase the number of Department-approved independent laboratory testers in order to expedite the Department's approval process for new charitable games.

**HB1010---Illegal gambling; definitions; free spin devices.** Amends the definition of "illegal gambling" to make it clear that the making, placing or receipt of any bet or wager of money or other thing of value shall include the purchase of a product, which purchase credits the purchaser with free points or other measurable units that may be risked by the purchaser for an opportunity to win additional points or other measurable units that are redeemable by the purchaser for money at the location where the product was purchased. The bill provides, however, that nothing in this new definition shall be construed or interpreted to prohibit the conduct of a lawful operation of any game, contest, lottery, scheme, or promotional offering which complies with certain requirements. The bill attempts to make machines commonly known as "free spin machines" illegal in Virginia.

**HB1033---Human infant; independent and separate existence.** Provides that for the purposes of homicide, the fact that the umbilical cord has not been cut or that the placenta remains attached shall not be considered in determining whether a human infant has achieved an independent and separate existence. The bill has an emergency clause. This bill is identical to SB 602.

**HB1092---Carrying concealed handguns; retired law-enforcement officers.** States that a retired law-enforcement officer who receives proof of consultation and favorable review to carry a concealed handgun without a concealed handgun permit is authorized to carry a concealed handgun in the same manner as a law-enforcement officer authorized to carry a concealed handgun.

**HB1191---Issuance of concealed handgun permits; clerk of court.** Allows a circuit court judge to authorize the clerk of court to issue concealed handgun permits in instances where the application is complete, the background check does not indicate that the applicant is disqualified, and, after consulting with the local sheriff or police department, there are no other questions or issues surrounding the application. The bill further provides that the court clerk is immune from suit arising from any acts or omissions relating to the issuance of concealed handgun permits without judicial review unless the clerk was grossly negligent or engaged in willful misconduct. This bill is not to be construed to limit, withdraw, or overturn any defense or immunity already existing in statutory or common law, or to affect any cause of action accruing prior to July 1, 2010.

**HB1256---Resignation of law-enforcement officers; carrying concealed weapon.** Provides that certain law-enforcement officers who are eligible for retirement with at least 20 years of service and who resign from their position in good standing to

accept a position covered by a retirement system established under Title 51.1 of the Code of Virginia are eligible to carry a concealed handgun if the officer has received written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the agency from which the officer resigned.

**HB1382---Public disclosure of personal information; law-enforcement officers.**

Prohibits a state or local agency from publicly posting or displaying on the Internet the home address or personal telephone numbers of a law-enforcement officer if the officer has made a written demand that such information not be disclosed. The written demand must include a copy of a court order authorizing the state or locality to remove the information. The bill also clarifies that the publication of a person's primary residence address along with his name or photograph with the intent to coerce, intimidate, or harass is unlawful.

**SB41---Restricted permit; driving to church.** Adds driving to and from a place of religious worship one day per week at a specified time and place to the list of purposes for which a court may issue a restricted permit.

**SB89---Petition to restore right to possess, etc., firearm; notice to attorney for the Commonwealth.** Provides that if a person files a petition to restore his right to possess or carry a firearm, a copy of the petition shall be mailed or delivered to the attorney for the Commonwealth of the city or county in which the petition is filed. The attorney for the Commonwealth shall be made a party defendant to the proceeding and may file an objection or answer to the petition within 21 days after service.

**SB183---Malicious injury; search and rescue personnel.** Adds search and rescue personnel who are members of an organization that has a memorandum of understanding with the Virginia Department of Emergency Management to the definition of search and rescue personnel so that the enhanced penalty will apply if they are the victims of malicious or unlawful wounding. Malicious wounding is a Class 3 felony (five to 20 years); the penalty for malicious wounding of search and rescue personnel is five to 30 years, with a mandatory minimum term of imprisonment of two years. Unlawful wounding of search and rescue personnel is a Class 6 felony (one to five years), with a mandatory minimum term of imprisonment of one year.

**SB422---Drug Treatment Court Act; City of Bristol.** Establishes a drug treatment court in the City of Bristol subject to the requirements and conditions established by the state Drug Treatment Court Advisory Committee, provided the court is funded within existing state and local appropriations.

**SB501---Concealed handgun permits; disqualifying convictions.** Provides that a conviction from another state for driving while intoxicated or for drunkenness in public

within the preceding three years disqualifies an individual from obtaining a concealed handgun permit.

**SB589---Punishment and options for person convicted of nonpayment of child support.** Provides that a person convicted of DUI or any offense for which a restricted license may be issued under restrictions set forth in subsection E of § 18.2-271.1 may be issued such a license for travel to and from appointments approved by the Division of Child Support Enforcement of the Department of Social Services as a requirement of participation in a court-ordered intensive case monitoring program for child support, for which the participant maintains written proof of the appointment, including written proof of the date and time of the appointment on his person. The bill also provides that the Department of Motor Vehicles shall not renew a driver's license or terminate a license suspension imposed for nonpayment of child support until it has received from the Department of Social Services a certification that a person ordered by a juvenile and domestic relations district court into an intensive case monitoring program for child support for noncustodial parents continues successful participation in the program or has completed the program. The bill also provides for the option of home/electronic incarceration of a person convicted of nonsupport.

### **Criminal Procedure**

**HB13---Availability of presentence reports to counsel for convicted person.** Provides that counsel representing a person who has been convicted of a crime for which a presentence report was prepared by a probation officer may be provided a copy of the report, without a court order, when the convicted person is pursuing a post-conviction remedy.

**HB84---Foreign search warrants to be honored.** Provides that a Virginia corporation or other entity that provides electronic communication services or remote computing services to the general public, when properly served with a warrant and affidavit in support of the warrant, issued by a judicial officer or court of another state with jurisdiction over the matter, to produce a record or other information pertaining to a subscriber to or customer of such service or the contents of electronic communications, or both, shall produce the record or other information as if that warrant had been issued by a Virginia court. This provision applies only to records relating to certain violent or sexual criminal offenses, computer fraud and identity theft.

**HB291---Appeal of bail decision.** Specifies the court to which a bail decision, bond amount, or term of recognizance should be appealed. The proper court is determined based on where the initial determination was made and the court in which the charge is pending. The bill also streamlines the process by which an attorney for the Commonwealth makes a motion to increase bail. This bill is identical to SB 75.

**HB311---Hospitalization of inmates in local correctional facilities.** Repeals provisions dealing with determining (i) a defendant's competency to be sentenced after he has been convicted of a crime and (ii) whether an inmate who is in the custody of a local correctional facility needs to be involuntarily hospitalized for treatment of mental illness, and substantially incorporates these provisions into statutes dealing generally with determinations of a defendant's competency and the hospitalization of inmates in the custody of local correctional facilities. The bill sets forth the procedures that a court or a person having custody of an inmate must follow to determine whether treatment of mental illness is necessary. This bill is identical to SB 87.

**HB314---DNA data bank.** Makes technical changes providing that instead of blood, saliva and tissue samples, "samples of human biological evidence" shall be analyzed. The bill also provides that results of analyses are to be provided to an accused or his attorney.

**HB500---Admissibility of certificates of analysis at preliminary hearing; trial.** Provides that at any preliminary hearing, certificates of analysis and reports prepared by lab analysts, etc., shall be admissible without the testimony of the person preparing such certificate or report. The bill also provides that when such an analyst appears in court on the day of trial to testify, the certificate of analysis shall be admissible. In addition the bill requires a defendant who demands the testimony of an analyst to pay \$50 in court costs for expenses related to the analyst's appearance if the defendant is convicted.

**HB568---Notice to Commonwealth of expert testimony in sentencing phase of capital murder trial.** Provides that in any case in which a defendant charged with capital murder intends, in the event of conviction, to present testimony of an expert witness to support a claim in mitigation relating to the defendant's history, character or mental condition, he or his attorney shall give notice in writing to the attorney for the Commonwealth, at least 60 days (currently 21 days) before trial, of his intention to present such testimony.

**HB585---Information entered into VCIN.** Provides that within 72 hours following the receipt of a written statement issued by a parole officer authorizing the arrest of a person who has violated the provisions of his post-release supervision or probation, the person's name and other appropriate information required by the Department of State Police shall be entered into the information systems known as the Virginia Criminal Information Network (VCIN). The information will be deemed a warrant authorizing the arrest of the person anywhere in the Commonwealth.

**HB770---Arrest without warrant; DUI arrests.** Allows an arrest to be made for misdemeanor offenses of DUI, boating while intoxicated or violation of an order prohibiting the operation of a watercraft, whether or not the offense occurred in the officer's presence. The bill also provides that the issuance of a summons to a DUI accused at a medical facility may be done without having to detain the person and that the

issuance of the summons will be considered an arrest for purposes of DUI provisions, i.e. implied consent.

**HB927---Immediate sanction probation.** Allows the establishment of up to two immediate sanction probation programs in the Commonwealth with a two-year sunset. The bill provides that as a condition of suspension of sentence pursuant to § 19.2-303, a defendant who was not convicted of a violent crime may be ordered to participate in an immediate sanction probation program. An offender arrested for a violation of the conditions of his probation would receive an expedited hearing before the court. An affidavit prepared by his probation and parole officer detailing the offense for which he was arrested may be received into evidence without the officer's testimony. The immediate sanction hearing is not authorized for new criminal offenses or absconding for more than seven days. Such an offender would serve no more than 30 days in jail for a probation offense. The Virginia Criminal Sentencing Commission will evaluate the program.

**HB946---Obtaining records from financial entities.** Provides that electronic data and electronic communications are included in the information that certain financial entities must provide pursuant to a subpoena duces tecum.

**HB979---Destruction of exhibits.** Relieves the clerk of notifying a defendant of the destruction or donation of certain exhibits used at trial: drugs, weapons, or exhibits deemed contraband. The defendant's attorney still receives notice.

**HB1113---Forfeiture of vehicles used in pandering involving a minor or abduction.** Requires that a vehicle knowingly used by the owner or another with the owner's knowledge during the commission of any felony abduction offense or pandering when the prostitute is a minor shall be seized by the arresting law-enforcement officer and forfeited to the Commonwealth.

**HB1194---Bail terms set by court on a capias to be honored by magistrate.** Provides that a magistrate who is to set the terms of bail of a person arrested and brought before him on a capias shall do so in accordance with the order of the court that issued the capias, if the court so orders. This bill is identical to SB 490.

**HB1195---Impanelment of multi-jurisdiction grand jury.** Provides that the impaneling order shall designate the jurisdiction requested on the application as the jurisdiction where the multi-jurisdiction grand jury shall be convened and shall appoint a judge of the circuit court of that jurisdiction as the presiding judge. The requirement that a judge of the circuit court of the designated jurisdiction has to be appointed does not apply if all of the judges of that circuit have recused themselves.

**HB1204---Special conservators of the peace; authorized to use the seal of the Commonwealth.** Upon a court order, grants special conservators of the peace to use the seal of the Commonwealth in a badge or other credential of office.

**HB1216---Public defenders; supplemental compensation.** Provides that supplemental compensation for public defenders provided by a locality shall go directly to the employees rather than going to the Indigent Defense Commission for distribution.

**HB1252---Electronic communication service providers; obtaining records.** Authorizes the disclosure of the records of providers of electronic communication service or remote computing service if the court orders disclosure for an investigation of a missing child, senior adult or incapacitated person. Under current law the court may order disclosure only if the records are relevant and material to an ongoing criminal investigation.

**HB1255---Bail bondsman to receive criminal history information.** Provides that if a judicial officer sets a secured bond and the person engages the services of a licensed bail bondsman, the magistrate executing recognizance for the accused shall, upon request of the bondsman, provide the bondsman with a copy of the person's Virginia criminal history record, if readily available, to be used by the bondsman only to determine appropriate reporting requirements to impose upon the accused upon his release. The bondsman may review the record on the premises only and must promptly return it to the magistrate. The bondsman will pay a \$15 fee which will be payable to the state treasury to be credited to the Literary Fund.

**SB72---Unexecuted warrants.** Allows an attorney for the Commonwealth to move the court in which the warrant or summons would be returnable for the dismissal of any unexecuted warrant or summons issued by a magistrate. Dismissal would be without prejudice. This bill is a recommendation of the Virginia Criminal Justice Conference.

**SB88---Criminal Injuries Compensation Fund.** Requires health care providers who provide services under the Criminal Injuries Compensation Fund to negotiate with the Virginia Worker's Compensation Commission, which administers the Fund, to establish agreements relating to rates for payment of claims. The rates will discharge the obligation to the provider in full except where the provider is an agency of the Commonwealth and the claimant receives a third party recovery in addition to the payment from the Fund.

**SB106---Certificates of analysis and affidavits.** Clarifies that provisions requiring notification of defendants by the Commonwealth must be followed only if the certificate or affidavit is to be used in lieu of testimony. The bill also specifies that the notice of defendant's right to object shall be provided simultaneously with the certificate or affidavit rather than attached to the certificate or affidavit. The bill provides that certain documents are considered to be certificates of analysis. The bill modifies legislation

enacted during the August 2009 Special Session in response to the United States Supreme Court decision in *Melendez-Diaz v. Massachusetts*, 557 U.S. \_\_\_\_ (June 25, 2009).

**SB153---Destruction of exhibits.** Relieves the clerk of notifying a defendant of the destruction or donation of certain exhibits used at trial: drugs, weapons, or exhibits deemed contraband. The defendant's attorney still receives notice.

**SB162---Capital case sentencing forms.** Removes from the Code of Virginia the statutory sentencing forms used in capital cases.

**SB248---Indigent defendants; right to ex parte hearing for appointment of experts in capital cases.** Provides that an indigent defendant who has been charged with a capital offense may move in circuit court for the appointment of experts to assist in the preparation of his defense. The presiding judge shall designate another judge in the judicial circuit who may hold an ex parte hearing on such a motion and may order the appointment of an expert. Prior to an ex parte proceeding, communication, or request, a particularized need for confidentiality must be demonstrated in an adversarial proceeding. A motion for an ex parte hearing shall be in writing and filed under seal and any ex parte hearing conducted shall be on the record and kept under seal as part of the record of the case. The court may unseal the record after the trial is concluded for good cause shown.

**SB385---Admissibility in evidence of non-existence of an official record.** Provides that at a hearing or trial an affidavit signed by a government official who is competent to testify, deemed to have custody of an official record, or signed by his designee, stating that after a diligent search, no record or entry of such record is found to exist among the records in his custody, is admissible as evidence that his office has no such record or entry, provided that the procedures for admission of such an affidavit as set forth in the statute governing admission of affidavits indicating non-registration of a sex offender have been followed, mutatis mutandis.

**SB387---Certificates of analysis in criminal cases.** Amends legislation enacted during the August 2009 Special Session in response to the United States Supreme Court decision in *Melendez-Diaz v. Massachusetts*, 557 U.S. \_\_\_\_ (June 25, 2009) to state that if the Commonwealth intends to have testimony by two-way video conferencing that information must be provided to the defendant in the notice that the Commonwealth is otherwise required to provide and the defendant must specifically object or he waives his right to object. The bill sets out procedures for video testimony and also clarifies that provisions requiring a 28-day notification to the defendant must be followed only if the certificate or affidavit is to be used in lieu of testimony.

**SB492---Foreign search warrants to be honored.** Provides that a Virginia corporation or other entity that provides electronic communication services or remote computing services to the general public, when properly served with a warrant and affidavit in

support of the warrant, issued by a judicial officer or court of another state with jurisdiction over the matter, to produce a record or other information pertaining to a subscriber to or customer of such service or the contents of electronic communications, or both, shall produce the record or other information as if that warrant had been issued by a Virginia court provided the record, information or communications are related to the commission of a criminal offense that is substantially similar to (i) a violent felony as defined in § 17.1-805, (ii) an act of violence as defined in § 19.2-297.1, or (iii) any offense for which registration is required pursuant to § 9.1-902.

**SB493---Records concerning electronic communication service or remote computing service.** Clarifies that any provider of electronic communication service or remote computing service, including a foreign corporation that provides electronic communication service or remote computing service, shall disclose a record or other information pertaining to a subscriber to or customer of such service, excluding the contents of electronic communications, to an investigative or law-enforcement officer pursuant to (1) a search warrant issued by a magistrate, general district court or a circuit court; (2) a court order for such disclosure issued as provided in this section; or (3) the consent of the subscriber or customer to such disclosure.

**SB494---Admissibility of records concerning electronic communication service or remote computing service.** Provides that the provider of electronic communication service or remote computing service may verify the authenticity of the written reports or records that it discloses pursuant to a search warrant, court order, etc., excluding the contents of electronic communications, by providing an affidavit from the custodian of those written reports or records or from a person to whom said custodian reports certifying that they are true and complete and that they are prepared in the regular course of business. The bill also provides that when so authenticated, the written reports and records are admissible in evidence as a business records exception to the hearsay rule.