

CASC 2021 LEGISLATIVE UPDATE FOR VIRGINIA LAW ENFORCEMENT



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 2021 General Assembly Regular Session that has the greatest impact on law enforcement and public safety.
- ✦ Consult the *2021 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

- Incl. Protective Orders

✦ New Crimes and Offenses

- Incl. Firearms

✦ Repealed Crimes



- Incl. Marijuana

✦ New Defenses

✦ New Regulations & Requirements, Including:

- U-Visas & T-Visas
- FOIA
- Sealing Convictions

✦ Law Enforcement Protections



Note: Effective Date of Legislation

- ✦ All legislation from the Special Session, unless otherwise noted in this presentation, is effective on July 1, 2021.



INVESTIGATIONS



Ch.34: Execution of Search Warrants

- ✚ Emergency enactment took place on March 1, 2021.
- ✚ Changes primarily focused on search warrants for “abodes.”
- ✚ This presentation will not cover those changes.
- ✚ CASC previously provided extensive training materials on the changes to Search Warrant law in this statute.
 - If you are unfamiliar with these changes or need access to these materials, please contact Elliott Casey at CASC.
 - ejcasey@wm.edu

Ch. 189: Missing Person With Autism Alert

- ✦ Renames the “Virginia Missing Child with Autism Alert” program to the “Virginia Missing Person with Autism Alert” program.
- ✦ Expands the program to apply to any missing person with autism, regardless of age.
- ✦ A "missing person with autism" is any person:
 - i. whose whereabouts are unknown,
 - ii. who has been diagnosed with autism spectrum disorder as defined by the Code of Virginia, and
 - iii. whose disappearance poses a credible threat to the safety and health of the person.



Ch. 338: Signing a Traffic Summons

- ✦ Changes §§ 46.2-936 and 46.2-940, the rules regarding Traffic Summonses.
- ✦ REPEALS rule that “Any person refusing to give such written promise to appear ... shall be taken immediately by the arresting officer before a magistrate.”
- ✦ New rule: If any person refuses to give a written promise to appear, the arresting officer shall give such person notice of the time and place of the hearing, note such person's refusal to give his written promise to appear on the summons, and forthwith release him from custody.
 - Note: Does NOT change similar rule in §19.2-74, which applies to all offenses other than offenses under 46.2



Ch. 537: Ban on Facial Recognition Technology

- ✧ Bill provides that no local law-enforcement agency or campus police department shall “purchase or deploy” facial recognition technology, defined in the bill, unless such purchase or deployment is expressly authorized by statute.
- ✧ Bill prohibits a local law-enforcement agency or campus police department at a public institution of higher education currently using facial recognition technology from continuing to use such technology without such authorization after July 1, 2021.



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.



DANGEROUS DOGS



Ch. 464: Dangerous Dogs

- ✦ Restructures the procedure for adjudication of a dog as a dangerous dog. Now requires:
 - i. Written notice by an animal control officer to the owner of the dog that he has applied for a summons, and a prohibition on disposal of the dog by the owner for 30 days;
 - ii. The issuance of a summons with an option (for officer), rather than a requirement, that the officer confine the dog, prohibition on the disposal of the dog other than by euthanasia, and an authorization for the court to compel the implanting of electronic identification;
 - iii. Holding a hearing within 30 days, unless good cause is shown;
 - iv. The authority of the court if deferring further proceedings without adjudicating to compel the implanting of electronic identification; &
 - v. Limit of 30 days for any appeal of a dangerous dog adjudication.



Dangerous Dogs – Con'd

- ✦ Bill authorizes an officer to obtain a summons for a hearing to determine whether a dog that has been surrendered is a dangerous dog
- ✦ Bill provides that any dangerous dog not reclaimed from the animal control officer within 10 days of notice shall be considered abandoned.



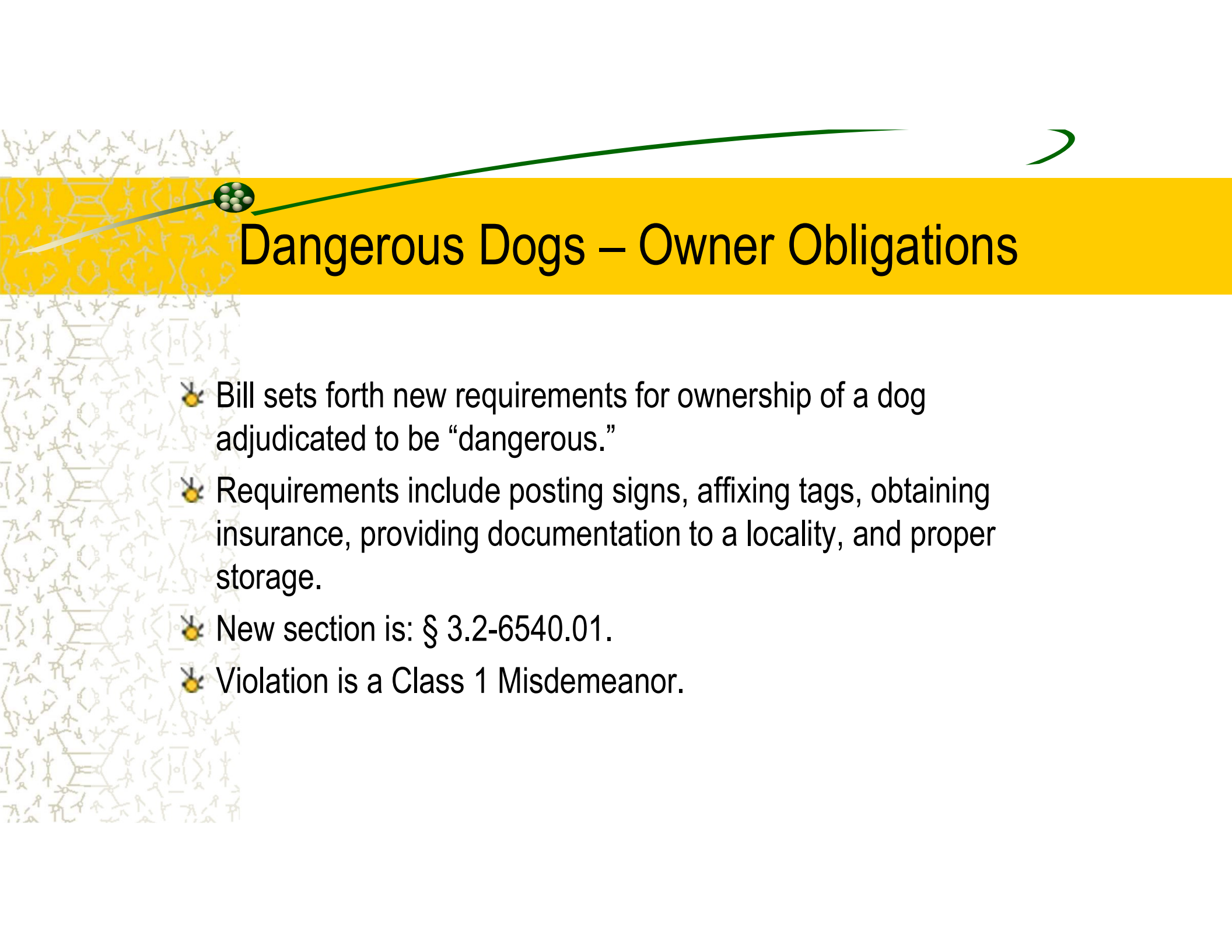
Dangerous Dogs - Standard

- ✶ “The court shall determine that the animal is a dangerous dog if the evidence shows that it:
 - i. “killed a companion animal that is a dog or cat or inflicted serious injury on a companion animal that is a dog or cat, including a serious impairment of health or bodily function that requires significant medical attention, a serious disfigurement, any injury that has a reasonable potential to cause death, or any injury other than a sprain or strain, OR
 - ii. “directly caused serious injury to a person, including laceration, broken bone, or substantial puncture of skin by teeth.”



Dangerous Dogs - Limitation

- ✦ Bill sets new restriction: “No law-enforcement officer or animal control officer shall apply for a summons pursuant to subsection B if, upon investigation, the officer finds:
 - i. In the case of an injury to a companion animal that is a dog or cat, that no serious injury has occurred as a result of the attack or bite, that both animals are owned by the same person, or that the incident originated on the property of the attacking or biting dog's owner.
 - In determining whether serious injury to a companion animal that is a dog or cat has occurred, the officer may consult with a licensed veterinarian.
 - ii. In the case of an injury to a person, that the injury caused by the dog upon the person consists solely of a single nip or bite resulting only in a scratch, abrasion, or other minor injury.



Dangerous Dogs – Owner Obligations

- ✦ Bill sets forth new requirements for ownership of a dog adjudicated to be “dangerous.”
- ✦ Requirements include posting signs, affixing tags, obtaining insurance, providing documentation to a locality, and proper storage.
- ✦ New section is: § 3.2-6540.01.
- ✦ Violation is a Class 1 Misdemeanor.



Dangerous Dogs - Transfer

- ✦ Bill imposes new requirements for the transfer of dangerous dogs.
- ✦ Bill requires a releasing agency that is transferring or releasing for adoption a dangerous dog in the Commonwealth to notify the receiving party of the legal requirements for keeping a dangerous dog.
- ✦ If the agency is transferring the dog outside the Commonwealth, it is required to notify the appropriate animal control officer of the dog's adjudication as dangerous.
- ✦ An owner who is bringing a dog found to be dangerous in another state to reside in the Commonwealth shall notify the local animal control officer.
- ✦ Any owner who disposes of a dangerous dog by gift, sale, transfer, trade, or surrender shall notify the receiver in writing of the dog's adjudication as dangerous, with a violation penalized as a Class 3 misdemeanor.



PROTECTIVE ORDERS

New Type of adult protective order available



Ch. 207: Emergency order for Adult Protection against acts of violence, threats, financial exploitation.

- ✦ Creates a new protective order for an adult who has been, within a reasonable period of time, subjected to an act of violence, force, or threat or been subjected to financial exploitation,
- ✦ Any person who violates a condition imposed is guilty of a Class 1 misdemeanor.



“Financial Exploitation”

- ✦ "Financial exploitation" means the illegal, unauthorized, improper, or fraudulent use of the funds, property, benefits, resources, or other assets of an adult for another's profit, benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives the adult of his rightful use of or access to such funds, property, benefits, resources, or other assets.
- ✦ "Financial exploitation" includes (i) an intentional breach of a fiduciary obligation to an adult to his detriment or an intentional failure to use the financial resources of an adult in a manner that results in neglect of such adult; (ii) the acquisition, possession, or control of an adult's financial resources or property through the use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for goods or services against his will for another's profit, benefit, or advantage if the adult did not agree, or was tricked, misled, or defrauded into agreeing, to pay for such goods or services.



What the Court May Order

✶ The order may include:

- i. prohibition on acts of violence, force, or threat or criminal offenses that may result in injury to person or property;
- ii. prohibition on such other contacts by the alleged perpetrator with the adult or the adult's family or household members as the court deems necessary for the health and safety of such persons; or
- iii. such other conditions as the court deems necessary to prevent
 - a) acts of violence, force, or threat;
 - b) criminal offenses that may result in injury to persons or property;
 - c) communication or other contact of any kind by the alleged perpetrator; or
 - d) financial exploitation by the alleged perpetrator.



NEW CRIMES AND OFFENSES

Ch.83: Communicating threats of death or bodily injury to a person with intent to intimidate

- ✦ Adds Class 5 felony to § 18.2-60: To communicate a threat in writing (including an electronically transmitted communication producing a visual or electronic message) to another to kill or to do serious bodily injury to any other person and makes such threat with the intent to
 - i. intimidate a civilian population at large;
 - ii. influence the conduct or activities of a government, including the government of the United States, a state, or a locality, through intimidation; or
 - iii. compel the emergency evacuation, or avoidance, of any place of assembly, any building or other structure, or any means of mass transportation
- If offender is under 18, = Class 1 misdemeanor.



Ch. 188: Prostitution & Solicitation Divided Into Two Offenses

- ✦ Offering to commit or committing specific sexual acts for money (or its equivalent) remains in § 18.2-346.
- ✦ NEW Section: § 18.2-346.01: “Any person who offers money or its equivalent to another for the purpose of engaging in sexual acts enumerated in § 18.2-346 and thereafter does any substantial act in furtherance thereof is guilty of solicitation of prostitution, which is punishable as a Class 1 misdemeanor.”
 - Any person who solicits prostitution from a minor 16 years of age or older is guilty of a Class 6 felony
 - Any person who solicits prostitution from a minor younger than 16 years of age is guilty of a Class 5 felony.



Ch. 462: Traffic Regulation & Bicycles

- ✦ Adds requirement 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.
- ✦ *See later slide regarding the repeal of the “Two Abreast” prohibition*




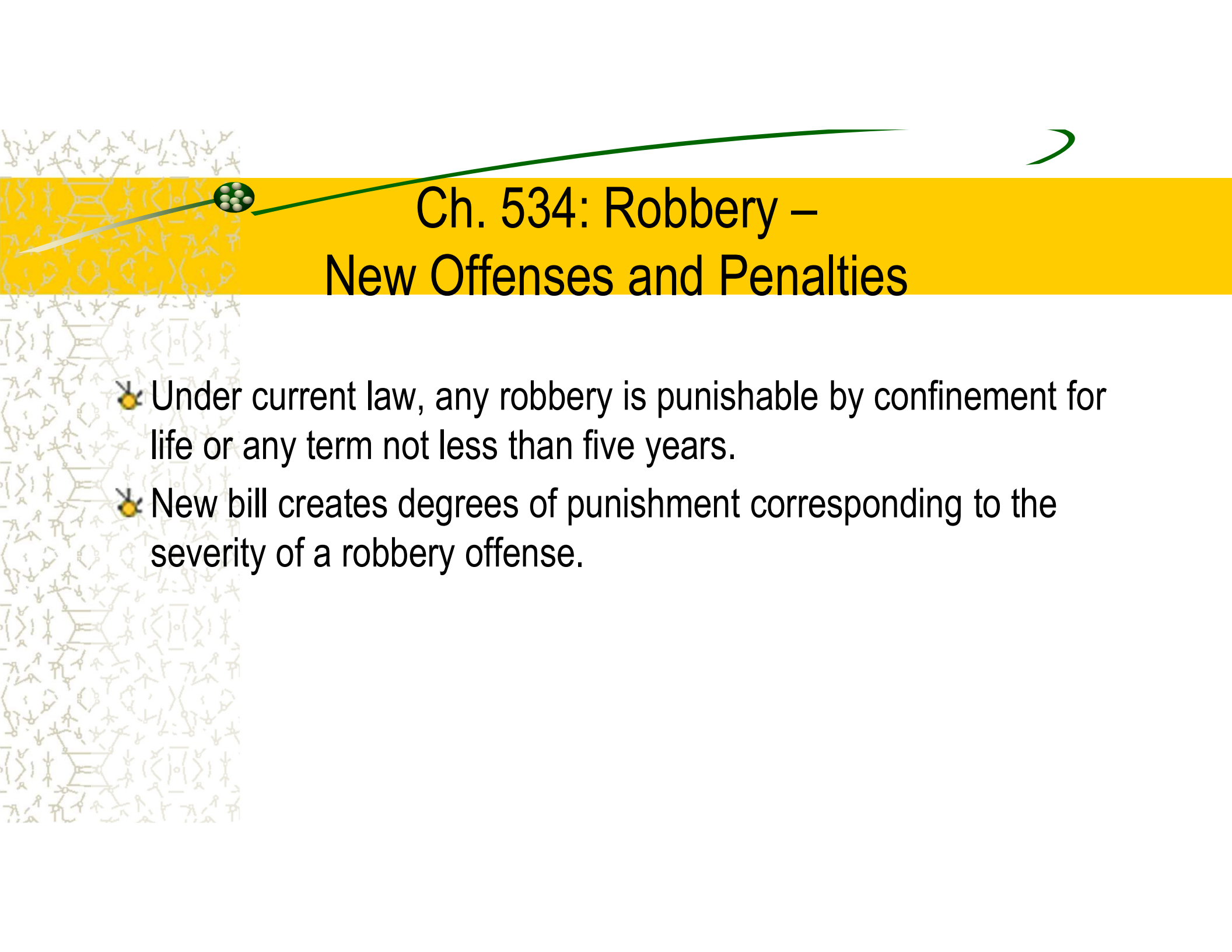
Ch. 465: Sexually Transmitted Infection

- ✦ Amends § 18.2-67.4:1, eliminating old language, which covered anyone who, “knowing he is infected with HIV, syphilis, or hepatitis B, has sexual intercourse, cunnilingus, fellatio, anilingus or anal intercourse with the intent to transmit the infection to another person.”
- ✦ New language: “Any person who is diagnosed with a sexually transmitted infection and engages in sexual behavior that poses a substantial risk of transmission to another person with the intent to transmit the infection to that person and transmits such infection to that person is guilty of a Class 6 felony.”



Ch. 465: Repeals Offense of Transmission of Sexually Transmitted Infection

- ✦ Bill also repeals offense for “Any person who, knowing he is infected with HIV, syphilis, or hepatitis B, has sexual intercourse, cunnilingus, fellatio, anilingus or anal intercourse with another person without having previously disclosed the existence of his infection to the other person.”



Ch. 534: Robbery – New Offenses and Penalties

- ✦ Under current law, any robbery is punishable by confinement for life or any term not less than five years.
- ✦ New bill creates degrees of punishment corresponding to the severity of a robbery offense.



Robbery: New Penalty Structure

- ✦ Any person who commits a robbery and causes serious bodily injury to or the death of another person is guilty of a Class 2 felony.
 - "Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
- ✦ Any person who commits robbery by using or displaying a firearm in a threatening manner is guilty of a Class 3 felony.
 - "Firearm" means any handgun, shotgun, or rifle that will or is designed to or may readily be converted to expel single or multiple projectiles by action of an explosion of a combustible material.



Robbery: New Penalty Structure (con'd)

- ✦ Any person who commits robbery by using physical force not resulting in serious bodily injury, or by using or displaying a deadly weapon other than a firearm in a threatening manner, is guilty of a Class 5 felony.
- ✦ Any person who commits robbery by using threat or intimidation or by any other means not involving a deadly weapon is guilty of a Class 6 felony.



Juvenile Robbery

- ✦ Under current law, the juvenile court shall conduct such preliminary hearing for all robberies.
- ✦ New Law: if a juvenile is charged with robbery, then a juvenile court shall conduct a preliminary hearing, for purposes of certifying the charge to the grand jury whenever a juvenile 16 years of age or older is charged with a robbery charge that is punishable as a Class 2 or Class 3 felony.



FIREARM OFFENSES & REGULATIONS



Ch. 432: Muzzleloading rifles and shotguns

- ✦ Removes the requirement in Title 29.1 (Wildlife, Inland Fisheries, and Boating) that the propellant be loaded along with the projectile or projectiles in the definitions of muzzle loading rifle and muzzle loading shotgun.



Ch. 439: School Board-Imposed “Gun-Free” Zones

- ✦ Permits any school board to deem any non-school zone building or property that it owns or leases where employees of such school board are regularly present for the purpose of performing their official duties as a gun-free zone and prohibit any individual from knowingly possessing, purchasing, transferring, carrying, storing, or transporting firearms, ammunition, or components or combination thereof while such individual is upon such property,



Exceptions to School Board's “Gun-Free” Zone

- i. Any law-enforcement officer;
- ii. Any retired law-enforcement officer qualified to carry firearms pursuant to subsection C of § 18.2-308.016;
- iii. Any individual who possesses an unloaded firearm that is in a closed container in or upon a motor vehicle or an unloaded shotgun or rifle in a firearms rack in or upon a motor vehicle; or
- iv. Any individual who has a valid concealed handgun permit and possesses a concealed handgun while in a motor vehicle in a parking lot, traffic circle, or other means of vehicular ingress to or egress from the school board property.

Ch. 459: Unlawful Possession of a Firearm at Polling Places

- ✦ Prohibits any person from knowingly possessing a firearm within 40 feet of any building, or part thereof, used as a polling place, including one hour before and one hour after its use as a polling place.
- ✦ The bill further provides that no person shall knowingly possess a firearm within 40 feet of a meeting place for the local electoral board while the electoral board meets to ascertain the results of an election, or any place used as the setting for a recount.
- ✦ Violation is a Class 1 misdemeanor.



Exceptions from Prohibition on Firearms at Polling Place

- i. A qualified law-enforcement officer or retired law-enforcement officer who is qualified to carry a concealed handgun;
- ii. Any person occupying his own private property that falls within 40 feet of the polling place; or
- iii. A licensed armed security officer whose employment or performance of his duties occurs within 40 feet of the polling place.



Ch. 527/548: Carrying Firearm in Commonwealth Building

- ✦ Makes it a Class 1 misdemeanor for a person to carry any firearm or explosive material within:
 - i. The Capitol of Virginia;
 - ii. Capitol Square and the surrounding area;
 - iii. Any building owned or leased by the Commonwealth or any agency thereof; or
 - iv. Any office where employees of the Commonwealth or agency thereof are regularly present for the purpose of performing their official duties.



Exceptions RE: Capitol - While Acting in Official Duties:

- Any law-enforcement officer,
- Any authorized security personnel,
- Any active military personnel,
- Any fire marshal when such fire marshal has been granted police powers,
- Any member of a cadet corps while such member is participating in an official ceremonial event for the Commonwealth.



Additional Exceptions RE: Commonwealth Owned/Leased Buildings

- ✦ Retired law-enforcement officials visiting a gun range owned or leased by the Commonwealth
- ✦ Any of the following while acting in the conduct of official duties:
 - A bail bondsman,
 - An employee of the Department of Corrections or a state juvenile correctional facility,
 - An employee of the Department of Conservation and Recreation,
 - Or an employee of the Department of Wildlife Resources.



Additional Exceptions RE: Commonwealth Owned/Leased Buildings (cont'd)

- Any individual carrying a weapon into a courthouse who is exempt under § 18.2-283.1
- Any property owned or operated by a public institution of higher education;
- Any state park; or
- Any magistrate acting in the conduct of the magistrate's official duties.



Notice Required

- ✦ Notice must be posted at the public entrance of each location.
- ✦ No person shall be convicted of this offense if notice is not posted at public entrance, unless such person had actual notice of the prohibitions.

Ch. 555: Purchase, possession, or transportation after DV Conviction

- ✦ Prohibits a person who has been convicted of assault and battery of a family or household member from purchasing, possessing, or transporting a firearm.
- ✦ The prohibition expires three years after the date of conviction, at which point the person's firearms rights shall be restored, unless he receives another disqualifying conviction or is subject to a protective order.
- ✦ Violation is a Class 1 misdemeanor.



Offenses that Qualify as Convictions.

- ✖ Only covers offenses that occurred on or after July 1, 2021.
- ✖ Includes “substantially similar” offenses from other jurisdictions.
- ✖ Under this section, “family or household member” means
 - i. the person's spouse, whether or not he resides in the same home with the person;
 - ii. the person's former spouse, whether or not he resides in the same home with the person; or
 - iii. any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time.



REPEALED CRIMES AND OFFENSES



● Ch. 192: Repeal of Enhanced Punishment for Repeated Larceny

- ✦ Repeals the enhanced penalties for a second or subsequent misdemeanor larceny conviction.
 - Under current law, when a person is convicted of a second larceny offense, he shall be confined in jail not less than 30 days nor more than 12 months, and for a third, or any subsequent offense, he shall be guilty of a Class 6 felony.

Ch. 132 & Ch. 381: Repeal of Juvenile/Provisional/Learners Permit Drivers Using Cellphones

- ✦ REPEALS law that the holder of a provisional driver's license or learner's permit "shall not operate a motor vehicle ... while using any cellular telephone or any other wireless telecommunications device, *regardless* of whether such device is or is not hand-held."
- ✦ NOTE: Under § 46.2-818.2, all drivers, including those with a provisional driver's license, are prohibited from *holding* a personal communications device while operating a vehicle.



Ch. 154: Reinstatement of suspended driving privileges

- ✦ DMV shall reinstate a person's privilege to drive a motor vehicle that was suspended prior to July 1, 2019, solely due to failure to pay fines and costs.
 - Nothing in this act requires the Commissioner of the Department of Motor Vehicles to reinstate a person's privilege to drive if such privilege has been otherwise lawfully suspended or revoked, or if such person is otherwise ineligible for a driver's license.



Ch. 344: Death Penalty Repeal

- ✦ Death Penalty is Repealed
- ✦ "Capital Murder" is now "Aggravated Murder"
- ✦ Punishment is now life.
 - Offender shall not be eligible for parole, any good conduct allowance or any earned sentence credits, or conditional release.



Ch. 462: Repeal of “Two Abreast” Prohibition

- ✦ Repeals 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.



Note: No other change to § 46.2-905

- ✦ § 46.2-905 still requires that “Any person operating a bicycle, electric personal assistive mobility device, electric power-assisted bicycle, motorized skateboard or scooter, or moped on a roadway at less than the normal speed of traffic at the time and place under conditions then existing shall ride as close as safely practicable to the right curb or edge of the roadway, except under certain enumerated circumstances.



Ch. 463: Repeal of Habitual Offender

- ✦ Repeals the remaining provisions of the Habitual Offender Act.
- ✦ Bill also requires that the DMV reinstate a person's privilege to drive a motor vehicle that was suspended or revoked solely on the Habitual Offender Act.
- ✦ Bill also authorizes VASAP to continue to administer intervention for individuals who were ordered to attend an intervention interview on or before June 30, 2021.



MARIJUANA



Ch. 227: Pharmaceutical Processors & Cannabis Products

- ✦ Permits pharmaceutical processors to produce and distribute cannabis products other than cannabis oil and for that purpose defines the terms "botanical cannabis," "cannabis product," and "usable cannabis."
- ✦ The bill provides that if a practitioner determines it is consistent with the standard of care to dispense botanical cannabis to a minor, the written certification shall specifically authorize such dispensing.



Ch. 550/551: Legalization of Marijuana

- ✦ Eliminates criminal penalties for simple possession of up to one ounce of marijuana by persons 21 years of age or older.
- ✦ Modifies several other criminal penalties related to marijuana.
- ✦ Imposes limits on dissemination of criminal history record information related to certain marijuana offenses.
- ✦ Moves regulation and criminal offenses to Title 4.1



Effective Dates Vary

- ✦ The bill has staggered effective dates, and numerous provisions of the bill are subject to reenactment by the 2022 Session of the General Assembly.
- ✦ Sales Begin January 1, 2024.
- ✦ Manufacture and Distribution by licensees begins July 1, 2023
- ✦ If the 2022 General Assembly does not re-enact the regulative scheme and the repeal of 18.2-248.1, those do not take effect.
- ✦ The repeal of 18.2-250.1 and some new crimes will take effect regardless on July 1, 2021.



Regulation of Marijuana

- ✦ The bill creates the Virginia Cannabis Control Authority (VCCA), the Cannabis Oversight Commission, the Cannabis Public Health Advisory Council, the Cannabis Equity Reinvestment Board and Fund, and the Virginia Cannabis Equity Business Loan Program and Fund
- ✦ Establishes a regulatory and licensing structure for the cultivation, manufacture, wholesale, and retail sale of retail marijuana and retail marijuana products, to be administered by the Authority.



Statutes Repealed

- ✖ All of 18.2-248.1
- ✖ All of 18.2-250.1
- ✖ 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



Va. Code § 18.2-248.1

- ✦ Current Virginia Code section regarding Sale/Gift/Distribution/PWID Marijuana
- ✦ New law repeals § 18.2-248.1, effective January 1, 2024
- ✦ § 18.2-248.1 is still in effect and will continue to be in effect until 2024.
 - “Home Cultivation” and “Adult Sharing” are explicit exceptions (see slides that follow).



Simple Possession (under 1 ounce): Legal After July 1, 2021

- ✦ §4.1-1100(A)
- ✦ 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 to be determined by regulation promulgated by the Board.)
- ✦ Any person who possesses on his person or in any public place marijuana or marijuana products in excess of the amounts set forth in subsection A is subject to a civil penalty of no more than \$25.
- ✦ Unlawful possession of more than 1 pound is 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.



What is a “Public Place?”

- ✦ § 4.1-600.
- ✦ “Public place” means any place, building, or conveyance to which the public has, or is permitted to have, access, including restaurants, soda fountains, hotel dining areas, lobbies and corridors of hotels, and any park, place of public resort or amusement, highway, street, lane, or sidewalk adjoining any highway, street, or lane.”
- ✦ Effective July 1, 2021.
- ✦ Definition is identical to § 4.1-100, which defines “public place” for the “Drinking in Public” offense under § 4.1-308



“Home Cultivation”: Legal After July 1, 2021

✿ §4.1-1101(A)

- ✿ A person 21 years of age or older may cultivate up to four marijuana plants for personal use at their place of residence
 - At no point shall a household contain more than four marijuana plants.
 - A person may only cultivate marijuana plants pursuant to this section at such person's main place of residence.
- ✿ Statute has regulations about storage and labeling



Rules for Storage of “Home Cultivated” Plants

- ✦ § 4.1-1101: 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.



Unlawful Home Cultivation: Offenses Effective July 1, 2021

1. For possession of more than four marijuana plants but no more than 10 marijuana plants,
 - i. Civil penalty of \$250 for a first offense,
 - ii. Class 3 misdemeanor for a second offense, and
 - iii. 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 and a fine of not more than \$250,000, or both.



Unlawful Cultivation/Manufacturing § 4.1-1102

✶ Class 6 felony under § 4.1-1102:

✶ “Except as previously stated, no person shall cultivate or manufacture marijuana or marijuana products in the Commonwealth without being licensed under this subtitle to cultivate or manufacture such marijuana or marijuana products.”



Unlawful Cultivation/Manufacturing § 4.1-1102 – Effective Date

- ✦ § 4.1-1102 does not take effect until January 1, 2024
- ✦ Until that date, 18.2-248.1(C) continues to provide that “Any person who manufactures marijuana, or possesses marijuana with the intent to manufacture such substance, *not for his own use* is guilty of a felony punishable by imprisonment of not less than five nor more than 30 years and a fine not to exceed \$10,000.”
 - Home Cultivation and Adult Sharing are permitted as exceptions to 18.2-248.1 as of July 1, 2021.



Manufacturing Resin

✂ § 4.1-1118

✂ No person shall separate plant resin by butane extraction or another method that utilizes a substance with a flashpoint below 100 degrees Fahrenheit in any public place, motor vehicle, or within the curtilage of any residential structure.

✂ Class 1 misdemeanor.

✂ This section takes effect January 1, 2024



Unlawful Distribution

- ✦ §4.1-1103: Illegally sell, give, distribute marijuana
 - Class 2 misdemeanor for 1st offense
 - Class 1 misdemeanor for 2nd or subsequent offense
- ✦ §4.1-1104: Illegally sell, give or distribute to underage or someone intoxicated: Class 1 misdemeanor



Unlawful Importation

✖ § 4.1-1111

✖ No marijuana or marijuana products shall be imported, shipped, transported, or brought into the Commonwealth.

✖ Class 1 misdemeanor.

✖ This section takes effect January 1, 204



Exception for “Adult Sharing:” Legal After July 1, 2021

✿ § 4.1-1101.1

✿ No civil or criminal penalty may be imposed for “adult sharing” of an amount of marijuana that does not exceed 1 ounce or of an equivalent amount of marijuana products.

✿ “Adult sharing” means transferring marijuana between persons who are 21 years of age or older without remuneration.



"Adult sharing"

does not include instances in which:

- i. Marijuana is given away contemporaneously with another reciprocal transaction between the same parties;
- ii. A gift of marijuana is offered or advertised in conjunction with an offer for the sale of goods or services; or
- iii. A gift of marijuana is contingent upon a separate reciprocal transaction for goods or services.



Marijuana Consumption in Public: §4.1-1108 – Effective July 1, 2021

§4.1-1108: “No person shall consume marijuana or a marijuana product or offer marijuana or a marijuana product to another, whether accepted or not, at or in any public place.”

- ✶ 1st offense is a civil penalty of up to \$25
- ✶ 2nd offense is civil penalty of \$25 civil & substance abuse program
- ✶ 3rd or subsequent is Class 4 misdemeanor (up to \$250 fine)

See earlier slide for definition of “public place,” which is NOT the same definition of “public” from §18.2-388, the “public intoxication” code section.



Consuming Marijuana in a Moving Vehicle on a Public Highway

- ✦ §4.1-1107: Consuming Marijuana while driving is a Class 4 misdemeanor (up to \$250 fine), effective July 1, 2021
- ✦ Presumption of consumption if:
 - i. An open container is located within the passenger area of the mv,
 - ii. Marijuana or marijuana products in the open container have been at least partially removed , &
 - iii. The appearance, conduct, speech, or other physical characteristic of such person, excluding odor, is consistent with the consumption of marijuana/ marijuana products.



Possession by People Under 21, Children

✦ These provisions are not effective until July 1, 2024:

- §4.1-1104: Sale of marijuana to a person under 21, or a person who is intoxicated: Class 1 misdemeanor.
- §4.1-1104: Sale of marijuana paraphernalia to a person under 21: Class 1 misdemeanor.
- §4.1-1105, §4.1-1105.1, : Underage Purchase, Possession of Marijuana: Civil penalty up to \$25

✦ Effective July 1, 2021:

- § 4.1-1109: Marijuana on school grounds: Class 2 misdemeanor



Drug Houses: New Laws Effective January 1, 2024

- ✱ § 4.1-1113 includes the "Common Nuisance" provisions from the ABC Code.
- ✱ Violations are a Class 1 Misdemeanor
 - § 4.1-1300 also has civil injunction procedures
- ✱ § 4.1-1114 provides that maintaining a fortified drug house for the purpose of illegally manufacturing or distributing marijuana is a Class 5 felony.



Asset Forfeiture:

Laws that will take effect January 1, 2024

- ✖ § 4.1-1301: Contraband, tools, weapons, and vehicles used for unlawful manufacture.
- ✖ § 4.1-1304: Contraband forfeiture procedure.
- ✖ § 19.2-386.22 will continue to be the section to forfeit cash and other assets, as well as vehicles used in unlawful sale/gift/distribution.



How to Charge "Civil Offenses"

- ✦ § 4.1-1121: Effective July 1, 2021

- ✦ "Any violation under this subtitle that is subject to a civil penalty is a civil offense and shall be charged by summons.

- ✦ "A summons for a violation under this subtitle that is subject to a civil penalty may be executed by a law-enforcement officer when such violation is observed by such officer. "



Limits on Enforcement

§ 4.1-1302: Effective July 1, 2021

- ✦ No law-enforcement officer may lawfully stop, search, or seize any person, place, or thing and no search warrant may be issued solely on the basis of the odor of marijuana and no evidence discovered or obtained pursuant to a violation of this subsection, including evidence discovered or obtained with the person's consent, shall be admissible in any trial, hearing, or other proceeding.
 - Restriction does not apply in any airport or if the violation occurs in a commercial motor vehicle.



NEW DEFENSES TO CRIMES



Ch. 29: Overdose Reporting Immunity

- ✦ Previous law prohibited arrest or prosecution only to an individual who seeks or obtains emergency medical attention for himself or another individual or who is experiencing an overdose when another individual seeks or obtains emergency medical attention for him.
- ✦ New statute extends protection to someone who, good faith, renders emergency care or assistance, including (CPR) or naloxone/opioid antagonist, to an individual experiencing an overdose while another individual seeks or obtains emergency medical attention in accordance with law.

✦ Immunity From These Offenses :

- ✦ Unlawful purchase, possession, or consumption of alcohol §4.1-305,
- ✦ Drug possession § 18.2-250,
- ✦ Public Intoxication § 18.2-388,
- ✦ Possession of controlled paraphernalia § 54.1-3466



Ch. 550/551: Overdose Immunity and Marijuana Possession

- ✶ Adds the following to offenses covered by the Immunity section:
 - “unlawful purchase, possession, or consumption of marijuana pursuant to § 4.1-1105.1”



Ch. 334: Affirmative Defense to Prosecution for Sex Trafficking Victims

- ✦ Provides an affirmative defense to prosecution for prostitution and keeping, residing in, or frequenting a bawdy place if, at the time of the offense leading to such charge, such person was a victim of sex trafficking, as defined in the bill, and
 - i. was coerced to engage in the offense through the use of force or intimidation or
 - ii. such offense was committed at the direction of another person other than the individual with whom the person engaged in the acts of prostitution or unlawful sexual intercourse for such money or its equivalent.

Ch. 523/540: Consideration of Mental Condition and Intellectual and Developmental Disabilities.

- ✦ Changes law to make defense evidence of the defendant's mental condition at the time of the alleged offense, including expert testimony, admissible to show the defendant did not have the intent required for the offense charged.
- ✦ Defendant may introduce evidence (at the time of the offense) of:
 - i. A mental illness
 - ii. A developmental disability or intellectual disability, or
 - iii. An autism spectrum disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.



“Mental Illness”

- ✎ "Mental illness" means a disorder of thought, mood, perception, or orientation that significantly impairs judgment or capacity to recognize reality.



"Developmental Disability"

- ✎ "Developmental disability" means a severe, chronic disability of an individual that:
 - i. is attributable to a mental or physical impairment, or a combination of mental and physical impairments, other than a sole diagnosis of mental illness;
 - ii. is manifested before the individual reaches 22 years of age;
 - iii. is likely to continue indefinitely;
 - iv. results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and
 - v. reflects the individual's need for a combination and sequence of special interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

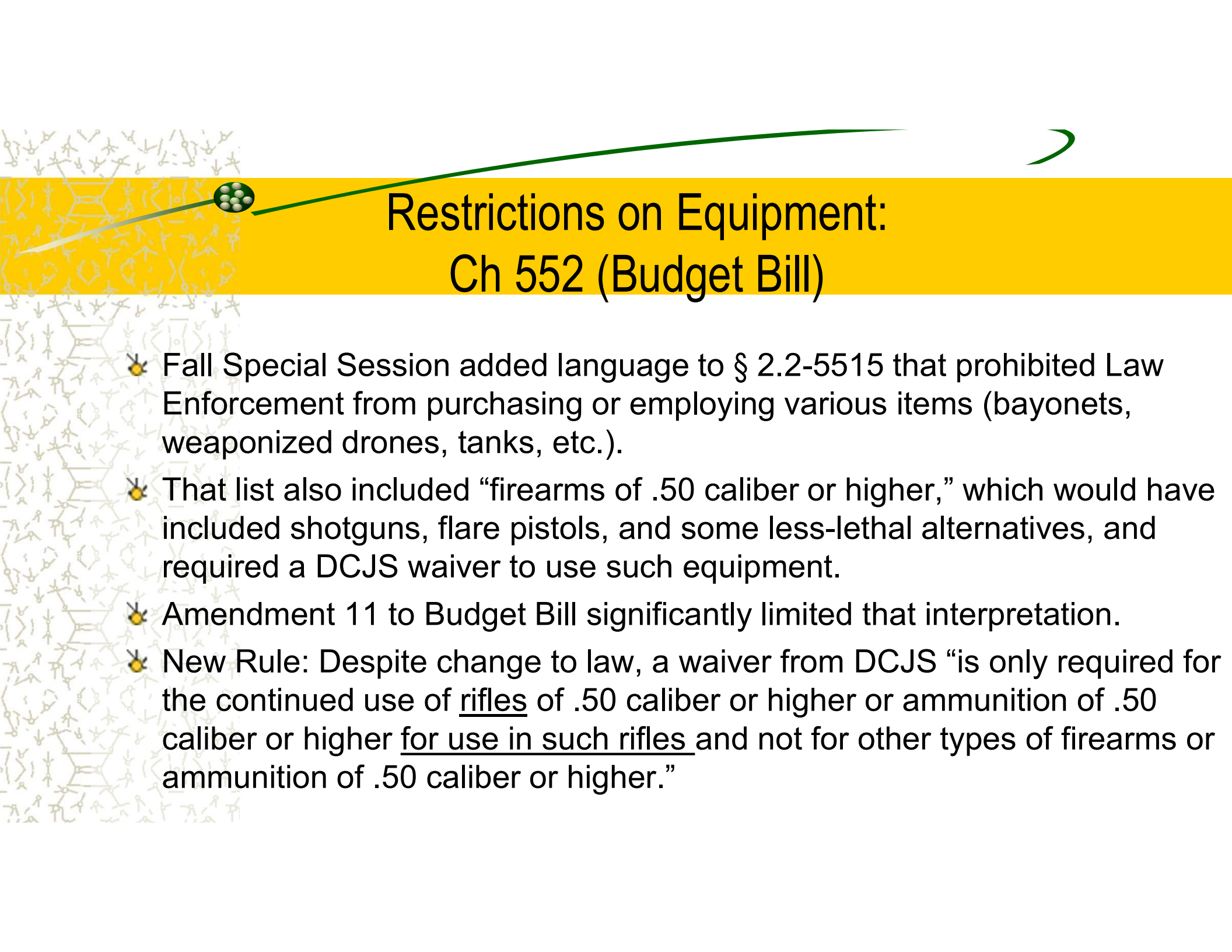


"Intellectual Disability"

- ✦ "Intellectual disability" means a disability, originating before the age of 18 years, characterized concurrently by
 - i. significant subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean; and
 - ii. significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.



NEW REGULATIONS & REQUIREMENTS



Restrictions on Equipment: Ch 552 (Budget Bill)

- ✦ Fall 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 Budget Bill significantly limited that interpretation.
- ✦ New Rule: Despite change to law, a waiver from DCJS “is only required for the continued use of rifles of .50 caliber or higher or ammunition of .50 caliber or higher for use in such rifles and not for other types of firearms or ammunition of .50 caliber or higher.”



Impact of Budget Amendment

- ✦ The budget bill, including amendment #11, became effective on April 7, 2021.
- ✦ Per DCJS: Amendment #11 clarifies that the 2020 Special Session legislation that regulated law-enforcement acquisition and use of firearms and ammunition of .50 caliber or higher only applies to rifles.
- ✦ As a result, law-enforcement agencies in Virginia only need to submit waivers for rifles of .50 caliber or higher and ammunition for use in rifles of .50 caliber or higher; other firearms, including shotguns, do not require a waiver.
- ✦ Waivers requested for shotguns and shotgun ammunition already submitted are no longer necessary and will not need to be acted upon by the Criminal Justice Services Board.



U-VISAS AND T-VISAS

New Process Required

Ch. 468: U-Visa and T-Visa Certifications

- ✦ Establishes a process for a state or local law-enforcement agency, an attorney for the Commonwealth, the Attorney General, or any other agency or department employing law-enforcement officers to complete a certification form or declaration that is required by federal immigration law certifying that a person is a victim of qualifying criminal activity for a U-Visa or a T-Visa.



U-Visa and T-Visas

- ✦ U-Visas and T-Visas are forms of temporary immigration relief that the U.S. Customs & Immigration Service administers.
- ✦ DHS determines who is and is not eligible for relief.
- ✦ “U non-immigrant status” (the “U-Visa”) is for victims of a variety of crimes, including domestic violence, sexual assault, human trafficking, involuntary servitude, and other serious offenses.
- ✦ “T non-immigrant status” (the “T-Visa”) is for human trafficking victims.
- ✦ If you are not familiar with these programs, the Department of Homeland Security has a website with resources for law enforcement :
- ✦ <https://www.dhs.gov/publication/u-visa-law-enforcement-certification-resource-guide>
- ✦ You may also google “USCIS Blue Campaign” for more materials



Requirements of New Law: Certifying Official

- ✦ Each agency must designate a “Certifying Official”
- ✦ That official shall:
 - i. Respond to requests for completion of certification forms received by the agency, as required
 - ii. Make information regarding the agency's procedures for certification requests publicly available for victims of qualifying criminal activity and their representatives.



Certification Process

- ✦ Any person seeking completion of a certification form shall first submit a request for completion of the certification form to any certifying official for the certifying agency that detected, investigated, or prosecuted the criminal activity upon which the request is based.
- ✦ Upon receiving a request for completion of a certification form, a certifying official shall provide a response to the request within 120 days.
 - May extend the time period upon written agreement with the person or person's representative.



Shorter Time Limits If:

- i. If the person making the request for completion of the certification form is in federal immigration removal proceedings or detained, the certifying official shall complete and provide the certification form to the person no later than **twenty-one** business days after the request is received by the certifying agency;
 - ii. If the twenty-first birthdate of the applicant's children or the eighteenth birthdate of the applicant's sibling is within 120 days of the date of the request, the certifying official shall respond within **thirty** days;
 - iii. If the person's children, parents, or siblings under clause (ii) would become ineligible for benefits under 8 U.S.C. § 1184(p) and 1184(o) in less than 21 business days of receipt of the certification request, the certifying official shall complete and provide a certification form to the person within **seven** days;
- ✦ Applicant must raise and establish eligibility for expedited review.



Certification Does Not Grant Lawful Immigration Status

- ✦ Bill states: A “certifying official's completion of a certification form shall not be considered sufficient evidence that an applicant for a U or T visa has met all eligibility requirements for that visa
- ✦ “Completion of a certification form by a certifying official shall not be construed to guarantee that the victim will receive federal immigration relief.
- ✦ “It is the exclusive responsibility of federal immigration officials to determine whether a person is eligible for a U or T visa.”



Certification Does Not Confer Lawful Immigration Status

- ✦ Bill states: "Completion of a certification form by a certifying official merely verifies factual information relevant to the federal immigration benefit sought, including information relevant for federal immigration officials to determine eligibility for a U or T visa."
- ✦ Bill does not limit the manner in which official or agency may describe whether the person has cooperated or been helpful to the agency or provide any additional information the certifying official or certifying agency believes might be relevant to a federal immigration officer's adjudication of a U or T visa application.



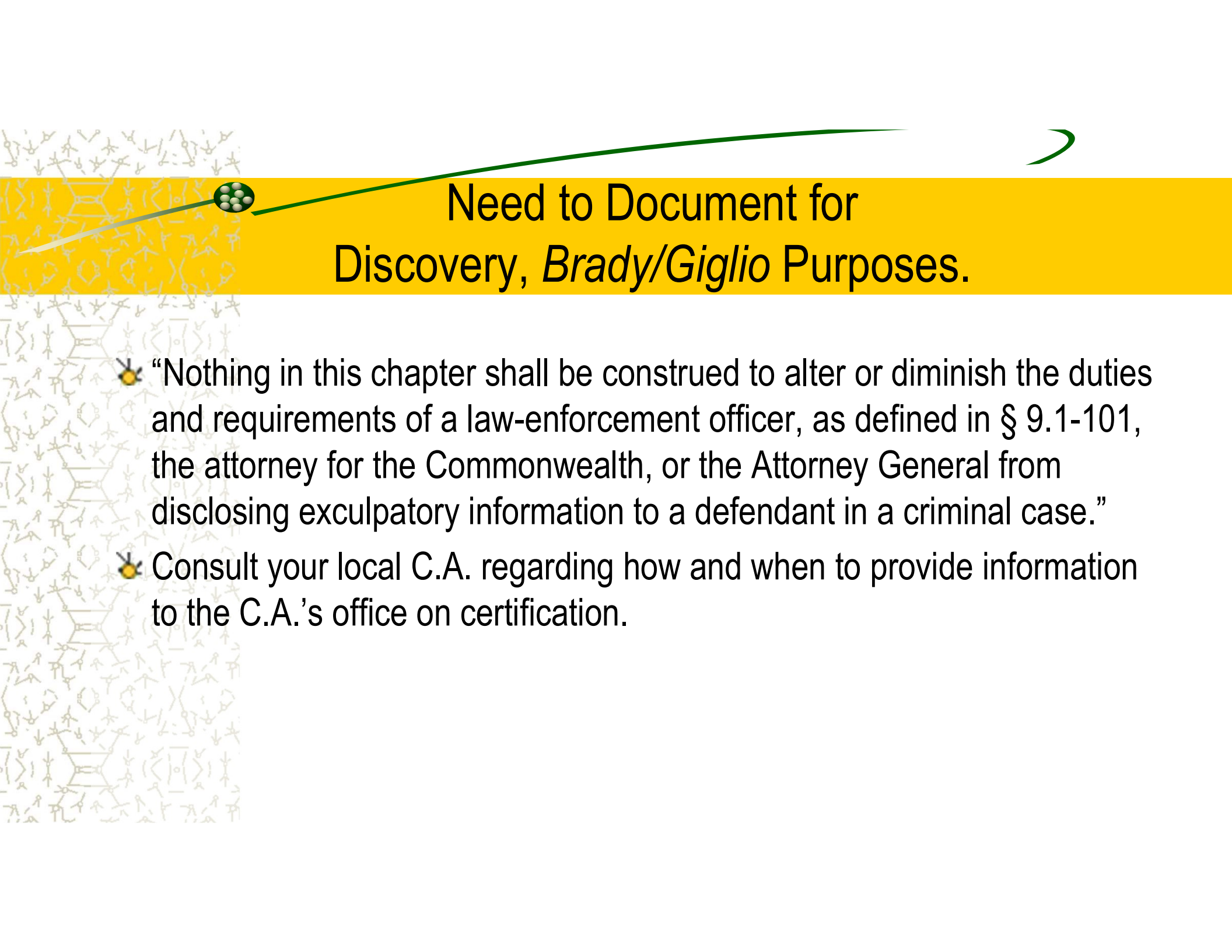
Declining to Certify

- ✦ If the certifying official cannot determine whether the applicant is a victim of qualifying criminal activity or determines that the applicant does not qualify, the certifying official shall provide a written explanation to the person or the person's representative setting forth reasons why the available evidence does not support a finding that the person is a victim of qualifying criminal activity.



Notifying DHS of Change in Circumstances

- ✶ “If, after completion of a certification form, the certifying official later determines that the person was not the victim of qualifying criminal activity or the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he is a victim, the certifying official may notify USCIS and Immigration Services in writing.”



Need to Document for Discovery, *Brady/Giglio* Purposes.

- ✦ “Nothing in this chapter shall be construed to alter or diminish the duties and requirements of a law-enforcement officer, as defined in § 9.1-101, the attorney for the Commonwealth, or the Attorney General from disclosing exculpatory information to a defendant in a criminal case.”
- ✦ Consult your local C.A. regarding how and when to provide information to the C.A.’s office on certification.



FOIA

Elimination of Protections for Criminal Incident Information



Ch. 483: FOIA

Law-Enforcement Criminal Incident Information, Criminal Investigative Files

- ✚ Adds criminal files to the types of records required to be released under FOIA
- ✚ Under current law, the release of criminal investigative files is discretionary.
- ✚ This bill moves criminal incident information and criminal investigative files to the list of records that shall be provided, but also establishes some exceptions.



FOIA: Summary

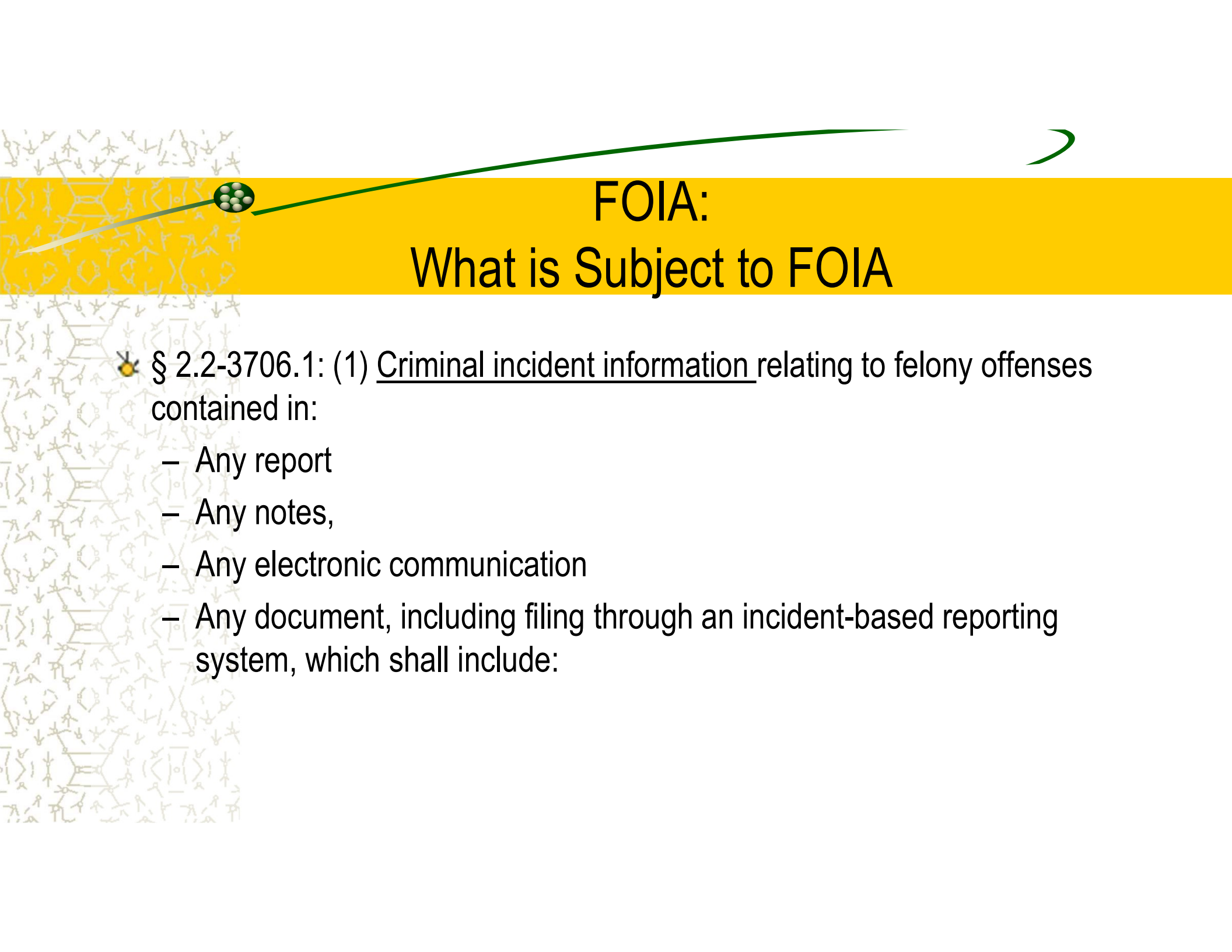
Adds criminal files to the types of records required to be released under FOIA

- ✶ The definition of Criminal incident information has been removed from § 2.2-3706: Disclosure of law-enforcement and criminal records.
- ✶ Instead, criminal incident information and criminal investigative files now have their own code section: § 2.2-3706.1



FOIA: New Rule

- ✦ § 2.2-3706.1: Disclosure of law-enforcement records; criminal incident information and certain criminal investigative files; limitations.
 - All public bodies engaged in criminal law-enforcement activities shall provide the following records and information when requested:
 - (1) Criminal Incident Information
 - (2) Criminal Investigative Files



FOIA: What is Subject to FOIA

- ✦ § 2.2-3706.1: (1) Criminal incident information relating to felony offenses contained in:
 - Any report
 - Any notes,
 - Any electronic communication
 - Any document, including filing through an incident-based reporting system, which shall include:



FOIA: “Criminal Incident Information”

- ✦ § 2.2-3706.1: (1) Criminal Incident Information for felony offenses:
 - A general description of the criminal activity reported
 - The date and time the alleged crime was committed
 - The general location where the alleged crime was committed
 - The identity of the investigating officer or other point of contact
 - A description of any injuries suffered or property damaged or stolen; and
 - Any diagrams related to the alleged crime or the location where the alleged crime was committed*
 - EXCEPTION: Any diagrams described in subdivision 14 of §.2-3705.2 (*see next slide*).



FOIA: Exception

- ✦ § 2.2-3705.2 (14) Provides an exception for:
 - Generally, records that the disclosure of which would jeopardize the safety or security of any person; governmental facility, building, or structure
 - Any public body receiving a request for records excluded under parts of this exception shall notify the Secretary of Public Safety and Homeland Security



FOIA: Can Provide “Verbal” Response

✦ § 2.2-3706.1: (1) Criminal Incident Information:

– For **criminal incident information**:

- A verbal response as agreed to by the requester and the public body is sufficient to satisfy the requirements under subdivision (1) Criminal incident information.



Criminal investigative files: Any documents and information relating to a criminal investigation or proceeding that is not ongoing, including:

- ✂ Complaints
- ✂ Court orders
- ✂ Memoranda
- ✂ Notes
- ✂ Initial incident reports
- ✂ Filings through any incident-based reporting systems
- ✂ Diagrams
- ✂ Maps
- ✂ Photographs
- ✂ Correspondence
- ✂ Reports
- ✂ Witness statements



§ 2.2-3706.1: “Ongoing”

- ✚ “Ongoing” refers to a case in which:
 - The prosecution has not been finally adjudicated
 - The investigation continues to gather evidence for a possible future criminal case
 - And such case would be jeopardized by the premature release of evidence



Exceptions

- ✖ Would interfere with a particular ongoing criminal investigation or proceeding in a particularly identifiable manner;
- ✖ Would deprive a person of a right to a fair trial or an impartial adjudication;
- ✖ Would constitute an unwarranted invasion of personal privacy;
- ✖ Would disclose
 - The identity of a confidential source
 - The information furnished only by a confidential source;
 - Law-enforcement investigative techniques and procedures, if such disclosure could reasonable be expected to risk circumvention of the law; or
- ✖ Would endanger the life or physical safety of any individual




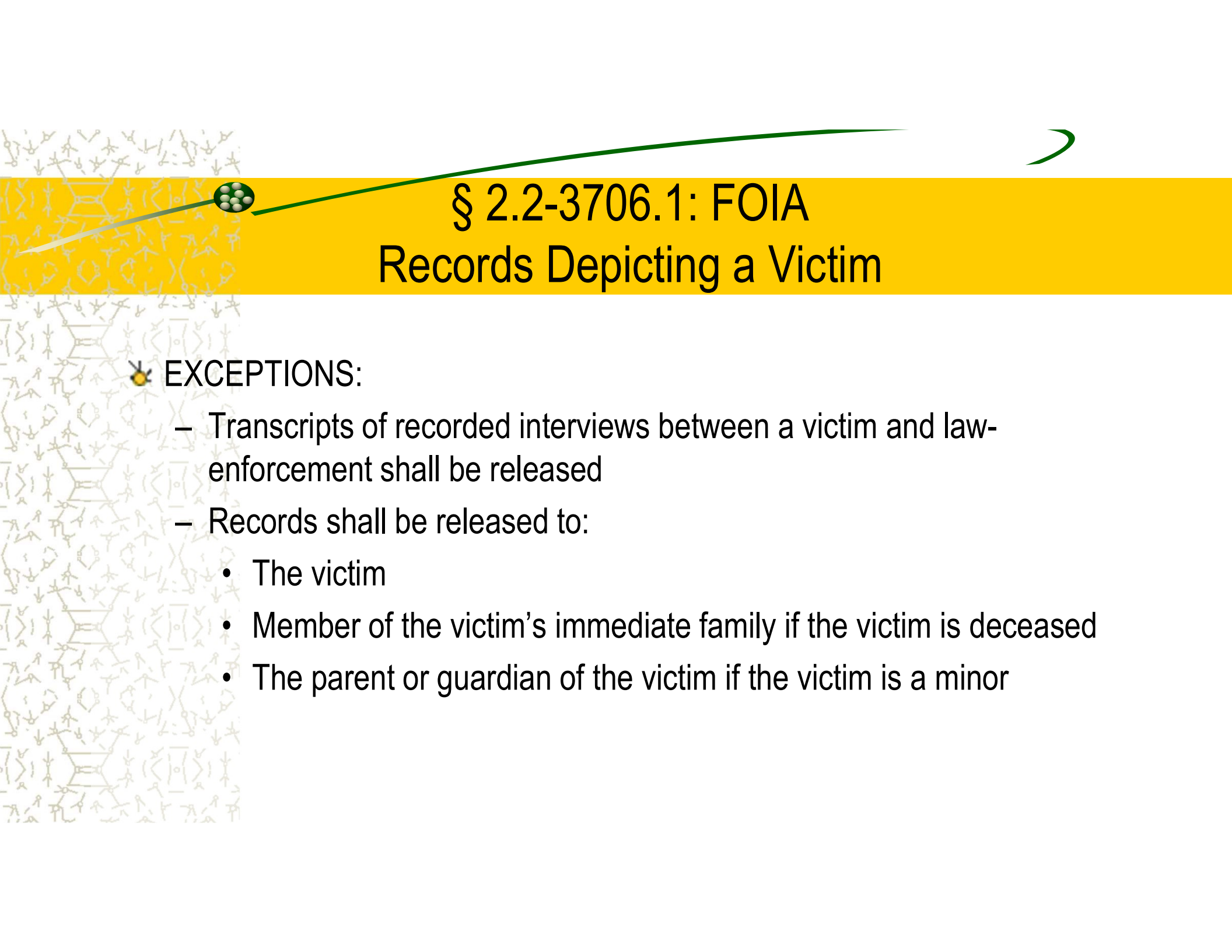
FOIA: Effect of Exception

- ✱ The exceptions identified shall not be construed to authorize the withholding of those portions of such information that are unlikely to cause any effect listed herein



§ 2.2-3706.1: FOIA for Photo/Video of Victim


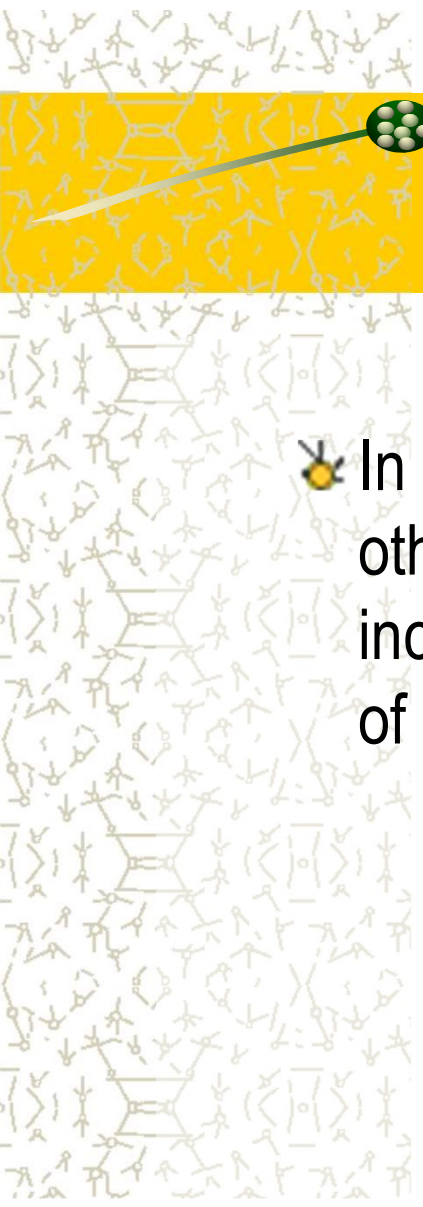
- No photographic, audio, video, or other record depicting a victim or allowing for a victim to be readily identified shall be released to anyone.*
- EXCEPTIONS:
 - Transcripts of interviews
 - Victims or immediate family members



§ 2.2-3706.1: FOIA Records Depicting a Victim

✦ EXCEPTIONS:

- Transcripts of recorded interviews between a victim and law-enforcement shall be released
- Records shall be released to:
 - The victim
 - Member of the victim's immediate family if the victim is deceased
 - The parent or guardian of the victim if the victim is a minor

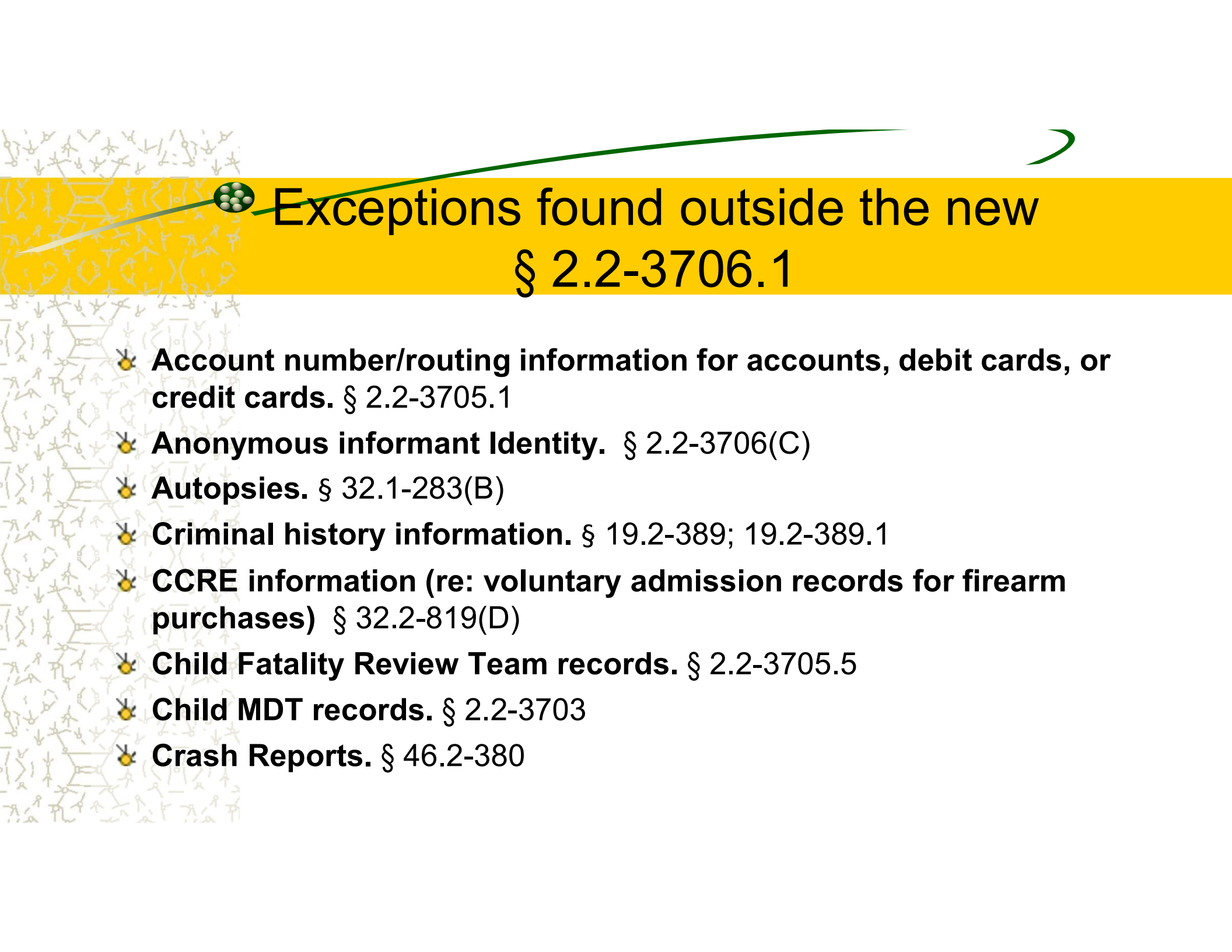


§ 2.2-3706.1: FOIA Conflicts of Law

✦ In the event of a conflict between this section and other provisions of law, the other provisions of law, including court sealing orders, that restrict disclosure of criminal investigative files shall control.

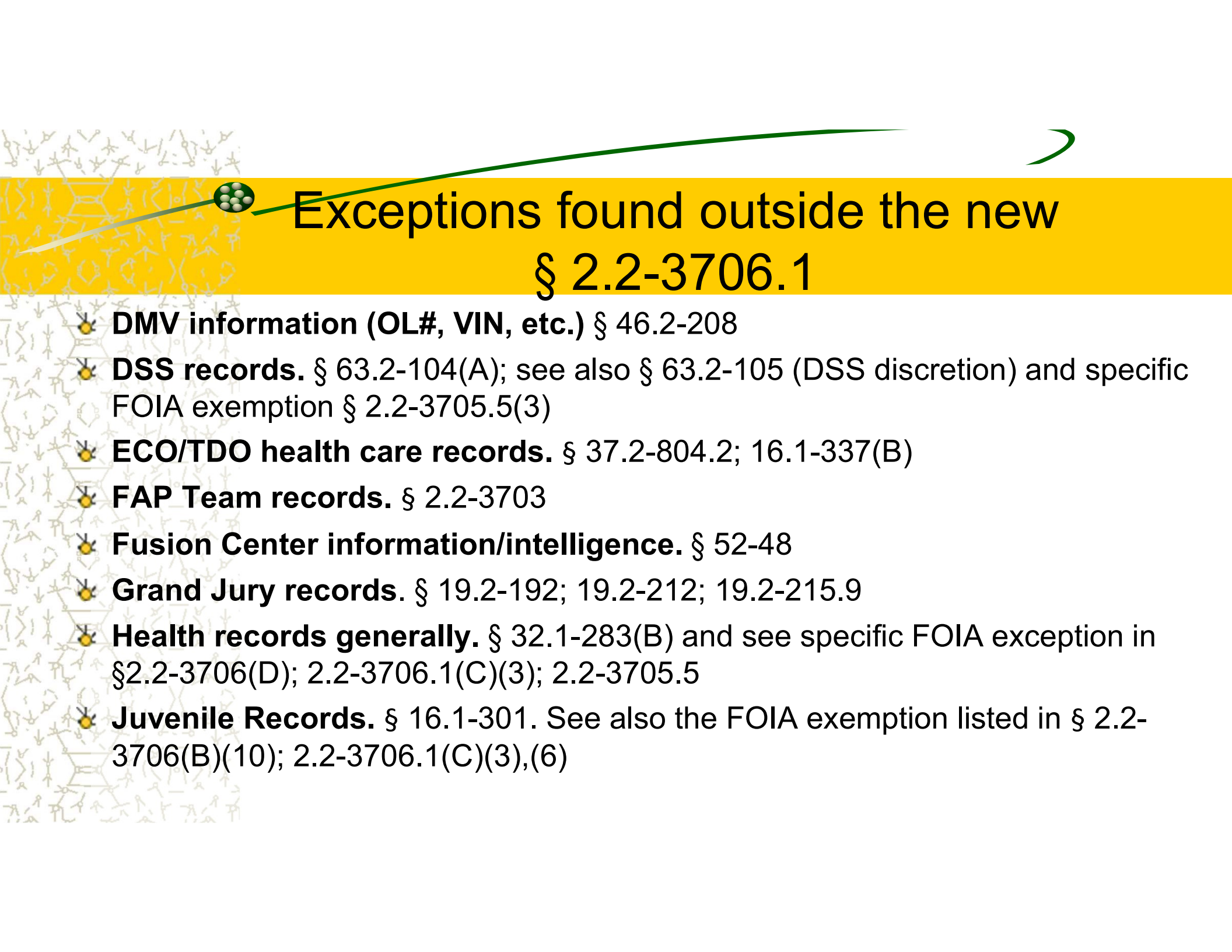


FOIA: Other Statutory Exceptions



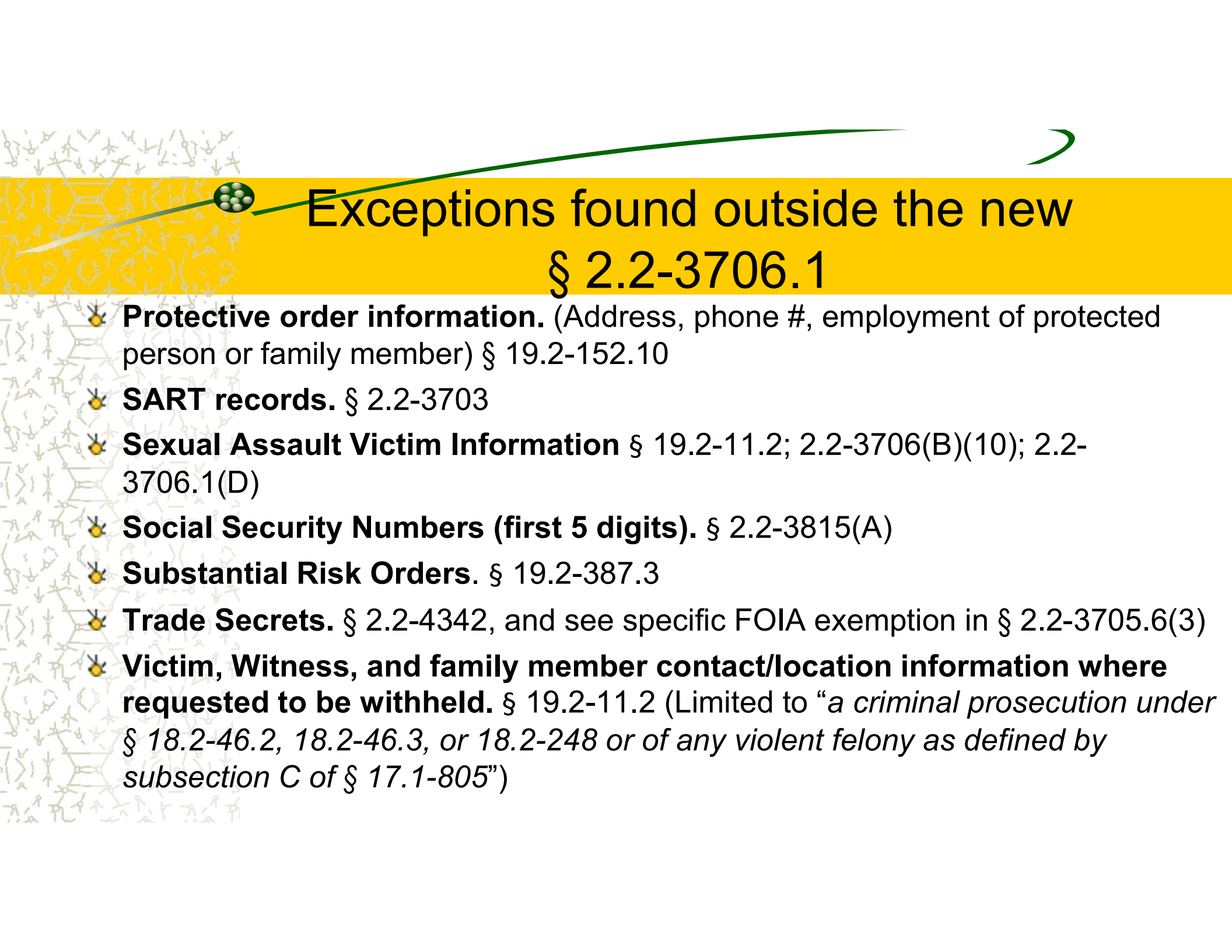
Exceptions found outside the new § 2.2-3706.1

- ✦ **Account number/routing information for accounts, debit cards, or credit cards.** § 2.2-3705.1
- ✦ **Anonymous informant Identity.** § 2.2-3706(C)
- ✦ **Autopsies.** § 32.1-283(B)
- ✦ **Criminal history information.** § 19.2-389; 19.2-389.1
- ✦ **CCRE information (re: voluntary admission records for firearm purchases)** § 32.2-819(D)
- ✦ **Child Fatality Review Team records.** § 2.2-3705.5
- ✦ **Child MDT records.** § 2.2-3703
- ✦ **Crash Reports.** § 46.2-380



Exceptions found outside the new § 2.2-3706.1

- ✦ **DMV information (OL#, VIN, etc.)** § 46.2-208
- ✦ **DSS records.** § 63.2-104(A); see also § 63.2-105 (DSS discretion) and specific FOIA exemption § 2.2-3705.5(3)
- ✦ **ECO/TDO health care records.** § 37.2-804.2; 16.1-337(B)
- ✦ **FAP Team records.** § 2.2-3703
- ✦ **Fusion Center information/intelligence.** § 52-48
- ✦ **Grand Jury records.** § 19.2-192; 19.2-212; 19.2-215.9
- ✦ **Health records generally.** § 32.1-283(B) and see specific FOIA exception in § 2.2-3706(D); 2.2-3706.1(C)(3); 2.2-3705.5
- ✦ **Juvenile Records.** § 16.1-301. See also the FOIA exemption listed in § 2.2-3706(B)(10); 2.2-3706.1(C)(3),(6)



Exceptions found outside the new § 2.2-3706.1

- ✦ **Protective order information.** (Address, phone #, employment of protected person or family member) § 19.2-152.10
- ✦ **SART records.** § 2.2-3703
- ✦ **Sexual Assault Victim Information** § 19.2-11.2; 2.2-3706(B)(10); 2.2-3706.1(D)
- ✦ **Social Security Numbers (first 5 digits).** § 2.2-3815(A)
- ✦ **Substantial Risk Orders.** § 19.2-387.3
- ✦ **Trade Secrets.** § 2.2-4342, and see specific FOIA exemption in § 2.2-3705.6(3)
- ✦ **Victim, Witness, and family member contact/location information where requested to be withheld.** § 19.2-11.2 (Limited to “*a criminal prosecution under § 18.2-46.2, 18.2-46.3, or 18.2-248 or of any violent felony as defined by subsection C of § 17.1-805*”)

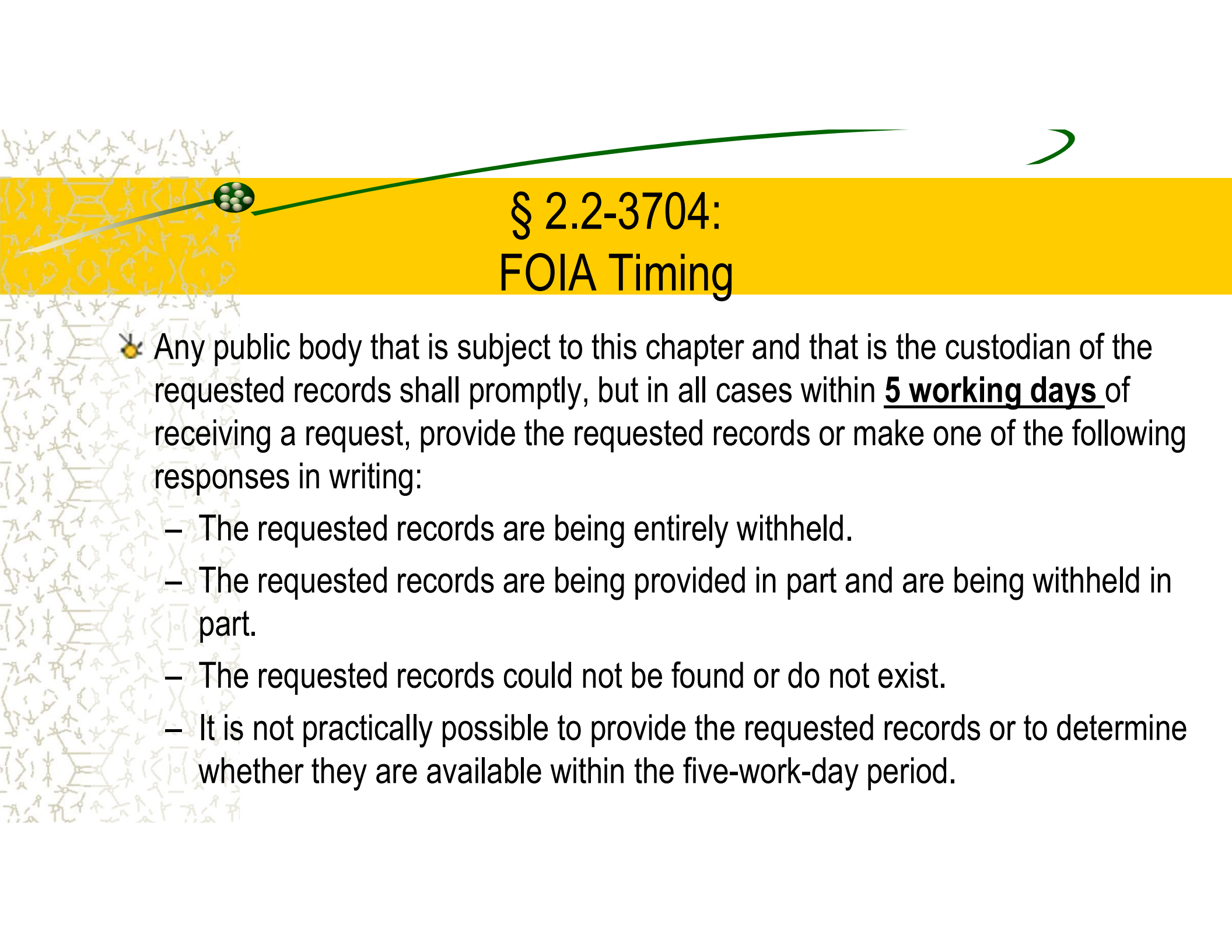


FOIA: Discretionary Release

- ✦ Paragraph B of § 2.2-3706 contains a list of specific law enforcement records for which law enforcement has the discretion to decide whether to withhold or release.
- ✦ The FOIA changes amended this paragraph to remove the general discretion to withhold “criminal investigative files.”
- ✦ The changes left intact the remainder of the list of discretionary items which can be found in a “criminal investigative file.”
- ✦ Paragraph B: *“The following records are excluded from the mandatory disclosure provisions of this chapter, but may be disclosed by the custodian, in his discretion, except where such disclosure is prohibited by law:”*
 - E.g.: B(10) reads: *“The identity of any victim, witness, or undercover officer, or investigative techniques or procedures.”*



FOIA RESPONSES: Timing and Enforcement



§ 2.2-3704: FOIA Timing

- ✦ Any public body that is subject to this chapter and that is the custodian of the requested records shall promptly, but in all cases within **5 working days** of receiving a request, provide the requested records or make one of the following responses in writing:
 - The requested records are being entirely withheld.
 - The requested records are being provided in part and are being withheld in part.
 - The requested records could not be found or do not exist.
 - It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period.



§ 2.2-3704: FOIA Timing

- ✿ If the “not practicable” is made within five working days, the public body shall have an additional seven work days or, in the case of a request for **criminal investigative files** pursuant to § 2.2-3706.1, **60 work days** in which to provide a response.



§ 2.2-3706.1: FOIA Violations

- ✶ If the court finds that a violation was willfully and knowingly made:
 - The court shall impose upon such officer, employee, or member in his individual capacity a civil penalty of not less than \$500 nor more than \$2,000.
 - A second violation shall be not less than \$2,000 nor more than \$5,000



SEALING CONVICTIONS AND OTHER COURT RECORDS



Ch. 524/542: Sealing Criminal Records

- ✦ Establishes a process for the automatic sealing of police and court records, defined in the bill, for certain convictions, deferred dispositions, and acquittals and for offenses that have been nolle prossed or otherwise dismissed.
- ✦ Most of this bill does not take effect until July 1, 2025



What Records Can Be Sealed (Starting in 2025)

- ✖ All Acquittals
- ✖ Misdemeanor convictions and all Class 5 and Class 6 felony convictions and all felonies deemed punishable as larceny.
 - But not DUI felonies.
- ✖ Misdemeanor convictions eligible after 7 years clean record.
- ✖ Felony convictions eligible after 10 years clean record & additional findings by Court



Results of Sealing of Records of Arrest and Convictions

- ✦ Upon inquiry about a sealed record, LE and Court shall reply “No record exists.” §19.2-392.5(C)
- ✦ Convicted person “may deny or not disclose” their arrest and/or conviction §19.2-392.5(D)
- ✦ Exceptions permit disclosure for jury service, child care & custody hearings, applying for certain positions (e.g., apply for LE position) §19.2-392.5(E)
- ✦ Cannot disseminate “sealed” records except by Court order or otherwise permitted in the law. §19.2-392.13



Permitted Disclosure of Sealed Records by Law Enforcement

- ✦ Does not prohibit disclosure of sealed records among law enforcement and attorneys while engaged in performance of their duties for purposes solely relating to exculpatory, mitigating and impeachment evidence or between attorneys for CW when related to the prosecution of a separate crime. §19.2-392.13.1.



Consequences for Disclosing Sealed Record

- ✦ Dissemination or disclosure of sealed convictions contrary to law §19.2-392.14:
 - Willful violation is Class 1 misdemeanor
 - Malicious & intentional violation is Class 6 felony



Ch. 544: “Identification Privilege Cards”

- ✦ Authorizes DMV to issue identification privilege cards to applicants who hold a citizenship or legal presence status that is eligible for a special identification card or a limited-duration special identification card and have reported income from Virginia sources or been claimed as a dependent on an individual tax return filed with the Commonwealth in the preceding 12 months.
- ✦ Identification privilege cards shall be treated as special identification cards unless otherwise provided in the Code of Virginia.



LAW ENFORCEMENT PROCEDURAL PROTECTIONS



Ch. 526:

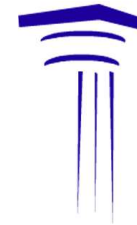
Worker's Compensation & COVID

- ✦ Establishes a presumption that COVID-19 causing the death or disability of firefighters, emergency medical services personnel, law-enforcement officers, correctional officers, and regional jail officers is an occupational disease compensable under the Workers' Compensation Act.
- ✦ Bill provides that such presumption applies to any death or disability occurring on or after July 1, 2020, caused by infection from the COVID-19 virus, provided that for any such death or disability that occurred on or after July 1, 2020, and prior to December 31, 2021, the claimant received a diagnosis of COVID-19 from a licensed physician, after either a presumptive positive test or a laboratory confirmed test for COVID-19, and presented with signs and symptoms of COVID-19 that required medical treatment.



Questions?

Elliott Casey
Staff Attorney
Commonwealth's Attorneys' Services Council
William and Mary Law School, Room 220
613 South Henry Street
P.O.Box 3549
Williamsburg, Virginia 23187
757.585.4370
ejcasey@wm.edu



COMMONWEALTH'S ATTORNEYS'
SERVICES COUNCIL

Training Virginia's Prosecutors for the 21st Century