Chapter 121

PEACE AND GOOD ORDER

[HISTORY: Adopted by the Town Council of the Town of Grottoes 7-8-1996. Amendments noted where applicable.]

GENERAL REFERENCES

Alcoholic beverages — See Ch. 44.
Curfew — See Ch. 78.
Nuisances — See Ch. 117.
Weapons — See Ch. 163.

§ 121-1. Petit larceny.

Any person who commits larceny from the person of another of money or other thing of value of less than $5 or commits simple larceny not from the person of another of goods and chattels of the value of less than $200, except as provided in Subdivision (iii) of § 18.2-95 of the Code of Virginia, shall be deemed guilty of petit larceny, which shall be punishable as a Class 1 misdemeanor as provided in § 1-7, General penalty, of Ch. 1, General Provisions. (§ 18.2-96 of the Code of Virginia)

§ 121-2. Willful concealment.

Whoever, without authority, with the intention of converting goods or merchandise to his or her own or another's use without having paid the full purchase price thereof or of defrauding the owner of the value of the goods or merchandise, willfully conceals or takes possession of the goods or merchandise of any store or other mercantile establishment or alters the price tag or other price marking on such goods or merchandise or transfers the goods from one container to another or counsels, assists, aids or abets another in the performance of any of the above acts, when the value of the goods or merchandise involved in the offense is less than $200, shall be guilty of petit larceny and, when the value of the goods or merchandise involved in the offense is $200 or more, shall be guilty of grand larceny. The willful concealment of goods or merchandise of any store or other mercantile establishment, while still on the premises thereof, shall be prima facie evidence of an intent to convert and defraud the owner thereof out of the value of the goods or merchandise. (§ 18.2-103 of the Code of Virginia)

§ 121-3. Exemption from civil liability.

A merchant, agent or employee of the merchant who causes the arrest or detention of any person pursuant to the provisions of § 18.2-95 of the Code of Virginia or §§ 121-1 and 121-2 of this chapter shall not be held civilly liable for unlawful detention, if such detention does not exceed one hour, slander, malicious prosecution, false imprisonment, false arrest or assault and battery of the person so arrested or detained, whether such arrest or detention takes place on the premises of the merchant or after close pursuit from

such premises by such merchant, his agent or employee, provided that, in causing the arrest or detention of such person, the merchant, agent or employee of the merchant had at the time of such arrest or detention probable cause to believe that the person had shoplifted or committed willful concealment of goods or merchandise. The activation of an electronic article surveillance device as a result of a person exiting the premises or an area within the premises of a merchant where an electronic article surveillance device is located shall constitute probable cause for the detention of such person by such merchant, his agent or employee, provided that such person is detained only in a reasonable manner and only for such time as is necessary for an inquiry into the circumstances surrounding the activation of the device, and provided that clear and visible notice is posted at each exit and location within the premises where such a device is located indicating the presence of an anti-shoplifting or inventory control device. For purposes of this section, "electronic article surveillance device" means an electronic device designed and operated for the purpose of detecting the removal from the premises or a protected area within such premises of specially marked or tagged merchandise. (§ 18.2-105 of the Code of Virginia[1])

§ 121-4. Vandalism.

If any person unlawfully destroys, defaces, damages or removes without the intent to steal any property, real or personal, not his own or breaks down, destroys, defaces, damages or removes without the intent to steal any monument erected for the purpose of marking the site of any engagement fought during the war between the states or for the purpose of designating the boundaries of any city, Town, tract of land or any tree marked for that purpose, he or she shall be guilty of a Class 1 misdemeanor as provided in § 1-7, General penalty, of Ch. 1, General Provisions, if the value of or damage to the property or monument is less than $1,000 or a Class 6 felony if the value of or damage to the property or monument is $1,000 or more. The amount of loss caused by the destruction, defacing, damage or removal of such property or monument may be established by proof of the fair market cost of repair or fair market replacement value. (§ 18.2-137 of the Code of Virginia)

§ 121-5. Trespassing generally.

If any person without authority of law goes upon or remains upon the lands, buildings or premises of another or any portion or area thereof after having been forbidden to do so, either orally or in writing, by the owner, lessee, custodian or other person lawfully in charge thereof or after having been forbidden to do so by a sign or signs posted by such persons or by the holder any easement or other right-of-way authorized by the instrument creating such interest to post such signs on such lands, structures, premises or portion or area thereof at a place or places where it or they may be reasonably seen, or if any person, whether he or she is the owner, tenant or otherwise entitled to the use of such land, building or premises, goes upon, or remains upon such land, building or premises after having been prohibited from doing so by a court of competent jurisdiction by an order issued pursuant to §§ 16.1-253, 16.1-253.1, 16.1-278.2 through 16.1-278.6, 16.1-278.8,

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1. **Editor's Note: Section 18.2-105 was repealed by Acts 2004, c. 462. See now § 8.01-226.9 of the Code of Virginia.**

16.1-278.14, 16.1-278.15 or 16.1-279.1 of the Code of Virginia, or an ex parte order issued pursuant to § 20-103 of the Code of Virginia, and after having been served with such order, he or she shall be guilty of a Class 1 misdemeanor. This section shall not be construed to affect in any way the provisions of §§ 18.2-132 through 18.2-136. (§ 18.2-119 of the Code of Virginia)

§ 121-6. Trespassing on posted property.

Any person who goes on the lands, waters, ponds, boats or blinds of another, which have been posted in accordance with the provisions of § 18.2-134.1 of the Code of Virginia, to hunt, fish or trap except with the written consent of or in the presence of the owner or his agent shall be guilty of a Class 1 misdemeanor. (§ 18.2-134 of the Code of Virginia)

§ 121-7. Trespassing in cemetery at night.

If any person, without the consent of the owner, proprietor or custodian, goes or enters in the nighttime upon the premises, property, driveways or walks of any cemetery, either public or private, for any purpose other than to visit the burial lot or grave of some member of his or her family, he or she shall be guilty of a Class 4 misdemeanor. (§ 18.2-125 of the Code of Virginia)

§ 121-8. Trespassing on church or school property.

A. It shall be unlawful for any person, without the consent of some person authorized to give such consent, to go or enter upon, in the nighttime, the premises or property of any church or upon any school property for any purpose other than to attend a meeting or service held or conducted in such church or school property.

B. It shall be unlawful for any person, whether or not a student, to enter upon or remain upon any school property in violation of any direction to vacate the property by a person authorized to give such direction or any posted notice which contains such information, posted at a place where it reasonably may be seen. Each time such person enters upon or remains on the posted premises, or after such direction that person refuses to vacate school property, shall constitute a separate offense.

C. Any person violating the provisions of Subsection A shall be guilty of a Class 3 misdemeanor and Subsection B shall be guilty of a Class 1 misdemeanor. (§ 18.2-128 of the Code of Virginia)

§ 121-9. Driving while intoxicated; persons under twenty-one driving after consuming alcohol.

A. It shall be unlawful for any person to drive or operate any motor vehicle, engine or train while such person has a blood alcohol concentration of 0.08% or more by weight by volume or 0.08 grams or more per 210 liters of breath, as indicated by a chemical test administered as provided in Title 18.2, Chapter 7, Article 2 of the Code of Virginia, while such person is under the influence of alcohol, while such person is under the influence of any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature, or any combination of such drugs, to a

degree which impairs his or her ability to drive or operate any motor vehicle, engine or train safely or while such person is under the combined influence of alcohol and any drug or drugs to a degree which impairs his or her ability to drive or operate any motor vehicle, engine or train safely. For the purposes of this section, the term "motor vehicle" includes mopeds, while operated on the public highways of this commonwealth. (§ 18.2-266 of the Code of Virginia)

B. Persons under twenty-one driving after consuming alcohol.

(1) It shall be unlawful for any person under the age of 21 to operate any motor vehicle after illegally consuming alcohol. Any such person with a blood alcohol concentration of 0.02% or more by weight by volume or 0.02 grams or more per 210 liters of breath but less than 0.08 by weight by volume or less than 0.08 grams per 210 liters of breath, as indicated by a chemical test administered as provided in Title 18.2, Chapter 7, Article 2 of the Code of Virginia, shall be in violation of this subsection.

(2) A violation of this subsection shall be punishable by forfeiture of such person's license to operate a motor vehicle for a period of six months from the date of conviction and by a fine of not more than $500. The penalties and license forfeiture provisions set forth in §§ 16.1-278.9 of the Code of Virginia, § 121-13 and 121-14 of this chapter shall not apply to a violation of this section. Any person convicted of a violation of this section shall be eligible to attend an Alcohol Safety Action Program under the provisions of § 18.2-271.1 of the Code of Virginia and shall be eligible for a restricted license during the term of license suspension.

(3) Notwithstanding §§ 16.1-278.8 and 16.1-278.9 of the Code of Virginia, upon adjudicating a juvenile delinquent based upon a violation of this subsection, the Juvenile and Domestic Relations District Court shall order disposition as provided in Subsection B(2). (§ 18.2-266.1 of the Code of Virginia)

§ 121-10. Breath analysis to determine blood alcohol content.

A. Any person who is suspected of a violation of § 121-9A shall be entitled, if such equipment is available, to have his or her breath analyzed to determine the probable alcoholic content of his or her blood. Such person shall also be entitled, upon request, to observe the process of analysis and to see the blood alcohol reading on the equipment used to perform the breath test. Such breath may be analyzed by any police officer of the commonwealth or of any county, city or town or by any member of a Sheriff's Department in the normal discharge of his or her duties.

B. The Department of General Services, Division of Consolidated Laboratory Services, shall determine the proper method and equipment to be used in analyzing breath samples taken pursuant to this section and shall advise the respective Police and Sheriff's Departments of the same.

C. Any person who has been stopped by a police officer of the commonwealth or of any county, city or town or by any member of a Sheriff's department and is

suspected by such officer to be guilty of a violation of § 121-9A shall have the right to refuse to permit his or her breath to be so analyzed, and his or her failure to permit such analysis shall not be evidence in any prosecution under § 121-9A; provided, however, that nothing in this section shall be construed as limiting in any manner the provisions of § 18.2-268.

D. Whenever the breath sample so taken and analyzed indicates that there is alcohol present in the blood of the person from whom the breath was taken, the officer may charge such person for the violation of § 121-9A, or a similar ordinance of a county, city or town wherein the arrest is made. Any person so charged shall then be subject to the provisions of § 121-11, or of a similar ordinance of a county, city or town.

E. The results of such breath analysis shall not be admitted into evidence in any prosecution under § 121-9A, the purpose of this section being to permit a preliminary analysis of the alcoholic content of the blood of a person suspected of having violated the provisions of § 121-9A.

F. Police officers or members of any Sheriff's Department shall, upon stopping any person suspected of having violated the provisions of § 121-9A, advise such person of his or her rights under the provisions of this section. (§ 18.2-267 of the Code of Virginia)

§ 121-11. Chemical test to determine blood alcohol or drug content.

A. As used in this section, "license" means any driver's license, temporary driver's license or instruction permit authorizing the operation of a motor vehicle upon the highways.

B. Any person, whether licensed by Virginia or not, who operates a motor vehicle upon a public highway in this commonwealth shall be deemed thereby, as a condition of such operation, to have consented to have samples of his or her blood or breath or both blood and breath taken for a chemical test determine the alcoholic or drug or both alcoholic and drug content of his or her blood, if such person is arrested for violation of § 121-9A or of a similar ordinance of any county, city or town within two hours of the alleged offense.

C. Any person so arrested for a violation of § 121-9A or both, or of a similar ordinance of any county, city or town shall elect to have either the blood or breath sample taken, but not both. If either the blood test or the breath test is not available, then the available test shall be taken. However, it shall not be a matter of defense if the blood test or the breath test is not available. In addition, if the accused elects a breath test, he or she shall be entitled, upon request, to observe the process of analysis and to see the blood alcohol reading on the equipment used to perform the breath test. If, such equipment automatically produces a written printout of the breath test result, this written printout or a copy thereof shall be given to the accused in each case.

D. A person after being arrested for driving under the influence of any drug or

combination of drugs or the combined influence of alcohol and any drug or drugs may be required to submit to tests to determine the alcoholic or drug or both alcoholic and drug content of his or her blood. If a person after being arrested for a violation of § 121-9A chooses to submit to a breath test in accordance with Subsection C of this section, that person may also be required to submit to tests to determine the drug content of his or her blood if the law enforcement officer has reasonable cause to believe the person was driving under the influence of any drug or combination of drugs or the combined influence of alcohol and drugs.

E. If a person after being arrested for a violation of § 121-9A or of a similar ordinance of any county, city or town and after having been advised by the arresting officer that a person who operates a motor vehicle upon a public highway in this commonwealth shall be deemed thereby, as a condition of such operation, to have consented to have samples of his or her blood or breath taken for chemical tests to determine the alcoholic or drug or both alcoholic and drug content of his or her blood and that the unreasonable refusal to do so constitutes grounds for the revocation of the privilege of operating a motor vehicle upon the highways of this commonwealth then refuses to permit the taking of a sample of his or her blood or breath or both blood and breath for such tests, the arresting officer shall take the person arrested before a committing magistrate. If he or she again so refuses after having been further advised by such magistrate of the law requiring blood or breath or both blood and breath tests to be taken and the penalty for refusal and so declares again his or her refusal, in writing, upon a form provided by the Division of Consolidated Laboratory Services (hereinafter referred to as "Division"), or refuses or fails to so declare, in writing, and such fact is certified as prescribed in Subsection P, then no blood or breath samples shall be taken even though he may thereafter request the same.

F. Only a physician, registered professional nurse, graduate laboratory technician or a technician or nurse designated by order of a circuit court acting upon the recommendation of a licensed physician, using soap and water, polyvinylpyrrolidone iodine or benzalkonium chloride to cleanse the part of the body from which the blood is taken and using instruments sterilized by the accepted steam sterilizer or some other sterilizer which will not affect the accuracy of the test or using chemically clean sterile disposable syringes, shall withdraw blood for the purpose of determining the alcoholic or drug or both alcoholic and drug content thereof. It shall be unlawful for any person to reuse single-use-only needles or syringes. Any such person convicted of reusing single-use-only needles or syringes shall be guilty of a Class 3 misdemeanor. No civil liability shall attach to any person authorized to withdraw blood as provided herein as a result of the act of withdrawing blood from any person submitting thereto, provided that the blood was withdrawn according to recognized medical procedures. The foregoing shall not relieve any such person from liability for negligence in withdrawing of any blood sample.

G. Adequate portions of the blood samples so withdrawn shall be placed in vials provided by the Division, which vials shall be sealed and labeled by the person taking the sample or at his or her direction, showing on each the name of the

accused, the name of the person taking the blood sample and the date and time the blood sample was taken. The vials shall be divided between two containers provided by the Division, which containers shall be sealed so as not to allow tampering with the vial. The arresting or accompanying officer shall take possession of the two containers holding the vials as soon as the vials are placed in such containers and sealed and shall transport or mail one of the containers forthwith to the Division. The officer taking possession of the other container (hereinafter referred to as the "second container") shall, immediately after taking possession of the second container, give to the accused a form provided by the Division which shall set forth the procedure to obtain an independent analysis of the blood in the second container and a list of those laboratories approved by the Division and their addresses. Such form shall contain a space for the accused or his or her counsel to direct the officer possessing such second container to forward that container to such approved laboratory for analysis, if desired. The officer having the second container, after delivery of such form (unless at the time directed by the accused, in writing, on the form to forward the second container to an approved laboratory of the accused's choice, in which event the officer shall do so), shall deliver the second container to the chief police officer or his or her duly authorized representative of the county, city or town in which the case will be heard. The chief police officer or his or her representative, upon receiving the same, shall keep it in his or her possession for a period of 72 hours, during which time the accused or his or her counsel may, in writing, on the form provided hereinabove, direct the chief police officer having possession of the second container to mail it to the laboratory of the accused's choice chosen from the approved list. As used in this section, the term "chief police officer" means the Sheriff in any county not having a Chief of Police, the Chief of Police of any county having a Chief of Police, the Chief of Police of the city or the Sergeant or Chief of Police of the town in which the charge will be heard.

H. The testing of the contents of the second container shall be made in the same manner as hereafter set forth concerning the procedure to be followed by the Division, and all procedures established herein for transmittal, testing and admission of the result in the trial of the case shall be the same as for the sample sent to the Division, provided that an analysis of the second blood sample to determine the presence of a drug or drugs shall not be performed unless an analysis of the first blood sample by the Division has indicated the presence of such drug or drugs.

I. A fee as set forth in Chapter A171, Fees, shall be allowed the approved laboratory for making the analysis to determine the alcoholic content of the second blood sample, which fee shall be paid out of the appropriation for criminal charges. A fee not to exceed the amount established on a schedule of fees to be published by the Division for the required procedure or procedures shall be allowed the approved laboratory for making an analysis of the second blood sample to determine the presence of a drug or drugs, which fee shall be paid out of the appropriation for criminal charges. If the person whose blood sample was withdrawn is subsequently convicted for violation of § 18.2-266 or of a similar ordinance of any county, city or

town, the fee paid by the commonwealth to the laboratory for testing the blood sample shall be taxed as part of the costs of the criminal case and shall be paid into the general find of the state treasury.

J. If the chief police officer having possession of the second container is not directed as herein provided to mail it within 72 hours after receiving the container, then the officer shall destroy such container.

K. Upon receipt of the blood sample forwarded to the Division for analysis, the Division shall cause it to be examined for alcoholic or drug or both alcoholic and drug content, and the Director of the Division or his or her designated representative shall execute a certificate which shall indicate the name of the accused, the date, time and by whom the blood sample was received and examined, a statement that the seal on the vial had not been broken or otherwise tampered with, a statement that the container was one provided by the Division and a statement of the alcoholic or drug or both alcoholic and drug content of the sample. The certificate shall accompany the vial from which the blood sample examined was taken and shall be returned to the clerk of the court in which the charge will be heard. The blood sample shall be destroyed after completion of the analysis by the Division. A similar certificate shall accompany the vial forwarded by the independent laboratory which analyzes the second blood sample on behalf of the accused and shall be returned to the clerk of the court in which the charge will be heard. The blood sample shall be destroyed after completion of the analysis by the independent laboratory. On motion of the accused, such certificate shall be admissible in evidence when attested by the pathologist or by the supervisor of the laboratory approved by the Division.

L. When any blood sample taken in accordance with the provisions of this section is forwarded for analysis to the Division, a report of the results of such analysis shall be made and filed in that office. Upon proper identification of the vial into which the blood sample was placed, the certificate as provided for in this section shall, when duly attested by the Director of the Division or his or her designated representative, be admissible in any court and/or in any criminal or civil proceeding as evidence of the facts therein stated and of the results of such analysis.

M. Upon the request of the person whose blood or breath or both blood and breath sample was taken for chemical tests to determine the alcoholic or drug or both alcoholic and drug content of his or her blood, the results of such test or tests shall be made available to him or her.

N. A fee as set forth in Chapter A171, Fees, shall be allowed the person withdrawing a blood sample in accordance with this section, which fee shall be paid out of the appropriation for criminal charges. If the person whose blood sample was withdrawn is subsequently convicted for a violation of § 121-9A or of a similar ordinance of any county, city or town or is placed under the purview of a probational, educational or rehabilitational program as set forth in § 18.2-271.1, the amount charged by the person withdrawing the sample shall be taxed as part of the costs of the criminal case and shall be paid into the general fund of the state treasury.

O. In any trial for a violation of § 121-9A or of a similar ordinance of any county, city or town, this section shall not otherwise limit the introduction of any relevant evidence bearing upon any question at issue before the court, and the court shall, regardless of the result of the blood or breath test or tests, if any, consider such other relevant evidence of the condition of the accused as shall be admissible in evidence. If the results of such a blood test indicate the presence of a drug or drugs other than alcohol, the test results shall be admissible only if other competent evidence has been presented to relate the presence of drug or drugs to the impairment of the accused's ability to drive or operate any motor vehicle, engine or train safely. The failure of an accused to permit a sample of his or her blood or breath to be taken for a chemical test to determine the alcoholic or drug content of his or her blood is not evidence and shall not be subject to comment by the commonwealth at the trial of the case, except in rebuttal, nor shall the fact that a blood or breath test had been offered the accused be evidence or the subject of comment by the commonwealth, except in rebuttal.

P. The form referred to in Subsection E shall contain a brief statement of the law requiring the taking of a blood or breath or both blood and breath samples and the penalty for refusal, declaration of refusal and lines for the signature of the person from whom the blood or breath or both blood and breath sample is sought, the date and the signature of a witness to the signing. If such person refuses or fails to execute such declaration, the committing justice, clerk or assistant clerk shall certify such fact and that the committing justice, clerk or assistant clerk advised the person arrested that such refusal or failure, if found to be unreasonable, constitutes grounds for revocation of such person's license to drive. The committing or issuing justice, clerk or assistant clerk shall forthwith issue a warrant charging the person refusing to take the test to determine the alcoholic or drug or both alcoholic and drug content of his or her blood with a violation of this section. The warrant shall be executed in the same manner as criminal warrants. Venue for the trial of the warrant shall lie in the court of the county or city in which the offense of driving under the influence of intoxicants is to be tried.

Q. The executed declaration of refusal or the certificate of the committing justice, as the case may be, shall be attached to the warrant and shall be forwarded by the committing justice, clerk or assistant clerk to the court in which the offense of driving under the influence of intoxicants shall be tried.

R. When the court receives the declaration of refusal or certificate referred to in Subsection Q together with the warrant charging the defendant with refusing to submit to having a sample of his or her blood or breath or both blood and breath taken for the determination of the alcoholic or drug or both alcoholic and drug content of his or her blood, the court shall fix a date for the trial of the warrant, at such time as the court shall designate, but subsequent to the defendant's criminal trial for driving under the influence of intoxicants. Upon request, the defendant shall be granted a trial by jury on appeal to the circuit court.

S. The declaration of refusal or certificate under Subsection Q, as the case may be, shall be prima facie evidence that the defendant refused to submit to the taking of a

sample of his or her blood or breath or both blood and breath to determine the alcoholic or drug or both alcoholic and drug content of his or her blood as provided hereinabove. However, this shall not be deemed to prohibit the defendant from introducing on his or her behalf evidence of the basis for his or her refusal to submit to the taking of a sample of his or her blood or breath or both blood and breath to determine the alcoholic or drug or both alcoholic and drug content of his or her blood. The court shall determine the reasonableness of such refusal.

T. If the court or jury finds the defendant guilty as charged in the warrant, the court shall suspend the defendant's license for a period of six months for a first offense and for one year for a second or subsequent offense or refusal within one year of the first or other such refusals. The time shall be computed as follows: the date of the first offense and the date of the second or subsequent offense. However, if the defendant pleads guilty to a violation of § 121-9A, or of a similar ordinance of a county, city or town, the court may dismiss the warrant.

U. The court shall forward the defendant's license to the Commissioner of the Department of Motor Vehicles of Virginia as in other cases of similar nature for suspension of license, unless the defendant appeals his or her conviction. In such case the court shall return the license to the defendant upon his or her appeal being perfected.

V. The procedure for appeal and trial shall be the same as provided by law for misdemeanors; if requested by either party, trial by jury shall be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of Title 19.2 of the Code of Virginia, and the commonwealth shall be required to prove its case beyond a reasonable doubt.

W. No person arrested for a violation of § 121-9A or a similar ordinance of any county, city or town shall be required to execute in favor of any person or corporation a waiver or release of liability in connection with the withdrawal of blood and as a condition precedent to the withdrawal of blood as provided for herein.

X. The court or the jury trying the case shall determine the innocence or the guilt of the defendant from all the evidence concerning his or her condition at the time of the alleged offense.

Y. Chemical analysis of a person's breath, to be considered valid under the provisions of this section, shall be performed by an individual possessing a valid license to conduct such tests, with a type of equipment and in accordance with the methods approved by the Division. Such breath-testing equipment shall be tested for its accuracy by the Division at least once every six months. The Division is directed to establish a training program for all individuals who are to administer the breath tests of at least 40 hours of instruction in the operation of the breath-test equipment and the administration of such tests. Upon the successful completion of the training program the Division may issue a license to the individual operator indicating that he or she has completed the course and is authorized to conduct a breath-test analysis. Any individual conducting a breath test under the provisions of this section and as authorized by the Division shall issue a certificate which will

indicate that the test was conducted in accordance with the Division's specifications, the equipment on which the breath test was conducted has been tested within the past six months and has been found to be accurate, the name of the accused, the date, the time the sample was taken from the accused, the alcoholic content of the sample and by whom the sample was examined. The certificate, as provided for in this section, when duly attested by the authorized individual conducting the breath test, shall be admissible in any court in any criminal or civil proceeding as evidence of the facts therein stated and of the results of such analysis. Any such certificate of analysis purporting to be signed by a person authorized by the Division shall be admissible in evidence without proof of seal or signature of the person whose name is signed to it. The officer making the arrest or anyone with him or her at the time of the arrest or anyone participating in the arrest of the accused, if otherwise qualified to conduct such test as provided by this section, may make the breath test or analyze the results thereof. A copy of such certificate shall be forthwith delivered to the accused.

Z. The steps herein set forth relating to the taking, handling, identification and disposition of blood or breath samples are procedural in nature and not substantive. Substantial compliance therewith shall be deemed to be sufficient. Failure to comply with any one or more of such steps or portions thereof or a variance in the results of the two blood tests shall not of itself be grounds for finding the defendant not guilty but shall go to the weight of the evidence and shall be considered as set forth above with all the evidence in the case, provided that the defendant shall have the right to introduce evidence on his or her own behalf to show noncompliance with the aforesaid procedure or any part thereof, and that as a result his or her rights were prejudiced. (§ 18.2-268 of the Code of Virginia[2])

§ 121-12. Presumptions from blood alcohol content.

In any prosecution for a violation of § 121-9A, or any similar ordinance of any county, city or town, the amount of alcohol in the blood of the accused at the time of the alleged offense as indicated by a chemical analysis of a sample of the accused's blood or breath to determine the alcoholic content of his or her blood in accordance with the provisions of § 121-11 shall give rise to the following rebuttable presumptions:

A. If there was at that time 0.05% or less by weight by volume of alcohol in the accused's blood, it shall be presumed that the accused was not under the influence of alcoholic intoxicants.

B. If there was at that time in excess of 0.05% but less than 0.10% by weight by volume of alcohol in the accused's blood, such facts shall not give rise to any presumption that the accused was or was not under the influence of alcoholic intoxicants, but such facts may be considered with other competent evidence in determining the guilt or innocence of the accused.

C. If there was at that time 0.10% or more by weight by volume of alcohol in the

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2. **Editor's Note: Section 18.2-268 was repealed by Acts 1992, c. 830. See now §§ 18.2-268.1 et seq.**

accused's blood, it shall be presumed that the accused was under the influence of alcoholic intoxicants. (§ 18.2-269 of the Code of Virginia)

§ 121-13. Penalty for driving while intoxicated.

A. Any person violating any provision of § 121-9A shall be guilty of a Class 1 misdemeanor as provided in § 1-7, General penalty, of Chapter 1, General Provisions.

B. Any person convicted of a second offense committed within less than five years after a first offense under § 121-9A shall be punishable by a fine of not less than $200 nor more than $2,500 and by confinement in jail for not less than one month nor more than one year. Forty-eight hours of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court. Any person convicted of a second offense committed within a period of five to 10 years of a first offense under § 121-9A shall be punishable by a fine of not less than $200 nor more than $2,500 and by confinement in jail for not less than one month nor more than one year. Any person convicted of a third offense or subsequent offense committed within 10 years of an offense under § 121-9A shall be punishable by a fine of not less than $500 nor more than $2,500 and by confinement in jail for not less than two months nor more than one year. Thirty days of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court if the third or subsequent offense occurs within less than five years. Ten days of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court if the third or subsequent offense occurs within a period of five to 10 years of a first offense.

C. In addition to the penalty otherwise authorized by this section or § 16.1-278.9 of the Code of Virginia, any person convicted of a violation of § 121-9A committed while transporting a person 17 years of age or younger shall be fined an additional minimum of $100 and not more than $500 and sentenced to perform 40 hours of community service in a program benefitting children or, for a subsequent offense, 80 hours of community service in such a program.

D. For the purpose of this section, a conviction or finding of guilty in the case of a juvenile under the following shall be considered a prior conviction: the provisions of § 121-9A, former § 18.1-54 (formerly § 18-75) of the Code of Virginia, the ordinance of any county, city or town in this commonwealth or the laws of any other state or of the United States substantially similar to the provisions of §§ 121-9 through 121-12 or the provisions of Subsection A of § 46.2-341.24 of the Code of Virginia or the substantially similar laws of any other state or of the United States. (§ 18.2-270 of the Code of Virginia)

§ 121-14. Forfeiture of drivers license for driving while intoxicated.

A. Except as provided in § 18.2-271.1 of the Code of Virginia the judgment of conviction if for a first offense under § 121-9A or for a similar offense under any county, city or town ordinance shall of itself operate to deprive the person so

convicted of the privilege to drive or operate any motor vehicle, engine or train in the commonwealth for a period of six months from the date of such judgment.

B. If a person is tried on a process alleging a second offense of violating § 121-9A within 10 years of a first offense for which the person was convicted under § 121-9A and is convicted thereof, such person's license to operate a motor vehicle, engine or train shall be revoked for a period of three years from the date of the judgment of conviction. Any such period of license suspension or revocation, in any case, shall run consecutively with any period of suspension for failure to permit a blood or breath sample to be taken as required by § 121-11. If any person has heretofore been convicted or found not innocent in the case of a juvenile of violating any similar act in the commonwealth or any other state and thereafter is charged with a second violation of § 121-9A and convicted of violating the provisions of § 121-9A, such conviction or finding shall, for the purpose of this section and § 121-13, be a subsequent offense and shall be punished accordingly.

C. Six months of any license suspension or revocation imposed pursuant to this section for a first offense conviction may be suspended, in whole or in part, by the court upon the entry of the person convicted into and the successful completion of a program pursuant to § 18.2-271.1 of the Code of Virginia. If a person is charged with a second offense of violating § 121-9A and is convicted thereof, the court may suspend no more than one year of such license suspension, or revocation if such conviction occurred less than five years after a previous conviction under § 121-13, nor more than two years if such conviction occurred five to 10 years after a previous conviction upon such person's entry into and successful completion of a program entered into pursuant to § 18.2-271.1 of the Code of Virginia.

D. If a person is tried on a process alleging a third or subsequent offense of violating § 121-9A and convicted thereof, such person shall not be eligible for participation in a program pursuant to § 18.2-271.1 and shall have his license revoked by the Department of Motor Vehicles as provided in § 46.1-421(b).

E. Notwithstanding any other provision of this section, the period of license revocation or suspension shall not begin to expire until the person convicted has surrendered his license to the court or to the Department of Motor Vehicles. (§ 18.2-271 of the Code of Virginia)

§ 121-15. Public intoxication; abusive language.

If any person profanely curses or swears or is intoxicated in public, whether such intoxication results from alcohol, narcotic drug or other intoxicant or drug of whatever nature, he or she shall be deemed guilty of a Class 4 misdemeanor as provided in § 1-7, General penalty, of Chapter 1, General Provisions. In any area in which there is located a court-approved detoxification center, a law enforcement officer may authorize the transportation, by police or otherwise, of public inebriates to such detoxification center in lieu of arrest; however, no person shall be involuntarily detained in such center. (§ 18.2-388 of the Code of Virginia)

§ 121-16. Drinking while operating a motor vehicle; penalty.

It shall be unlawful for any person to consume an alcoholic beverage while driving a motor vehicle upon a public highway of this commonwealth. A violation of this section is punishable as a Class 4 misdemeanor as provided in § 1-7, General penalty, of Chapter 1, General Provisions. (§ 18.2-323.1 of the Code of Virginia)

§ 121-17. Indecent exposure.

Every person who intentionally makes an obscene display or exposure of his person or the private parts thereof in any public place or in any place where others are present or procures another to so expose himself shall be guilty of a Class 1 misdemeanor as provided in § 1-7, General penalty, of Chapter 1, General Provisions. No person shall be deemed to be in violation of this section for breastfeeding a child in any public place or any place where others are present. (§ 18.2-387 of the Code of Virginia)

§ 121-18. Urination in public. [Amended 5-14-1990]

A. No person shall urinate in any public building or stairway or upon any street, sidewalk or alley, or in any place where such person is visible to public view.

B. Any person violating any provision of this section shall be guilty of a Class 4 misdemeanor as provided in § 1-7, General penalty, of Chapter 1, General Provisions.

§ 121-19. Disorderly conduct.

A. A person is guilty of disorderly conduct if, with the intent to cause public inconvenience, annoyance or alarm or recklessly creating a risk thereof, he:

   (1) In any street, highway, public building or while in or on a public conveyance or public place engages in conduct having a direct tendency to cause acts of violence by the person or persons at whom, individually, such conduct is directed;

   (2) Willfully or being intoxicated, whether willfully or not, and whether such intoxication results from self-administered alcohol or other drug of whatever nature, disrupts any meeting of the governing body of any political subdivision of this commonwealth or a division or agency thereof or of any school, literary society or place of religious worship, if the disruption prevents or interferes with the orderly conduct of the meeting or has a direct tendency to cause acts of violence by the person or persons at whom, individually, the disruption is directed; or

   (3) Willfully or while intoxicated, whether willfully or not, and whether such intoxication results from self-administered alcohol or other drug of whatever nature, disrupts the operation of any school or any activity conducted or sponsored by any school, if the disruption prevents or interferes with the orderly conduct of the operation or activity or has a direct tendency to cause acts of violence by the person or persons at whom, individually, the disruption

is directed.

B. However, the conduct prohibited under Subsection A(1), (2) or (3) of this section shall not be deemed to include the utterance or display of any words or to include conduct otherwise made punishable under this section.

C. The person in charge of any such building, place, conveyance, meeting, operation or activity may eject therefrom any person who violates any provision of this section, with the aid, if necessary, of any persons who may be called upon for such purpose.

D. A person violating any provision of this section shall be guilty of a Class 1 misdemeanor as provided in § 1-7, General penalty, of Chapter 1, General Provisions. (§ 18.2-415 of the Code of Virginia)

§ 121-20. Peeping or spying into occupied dwelling.

If any person enters upon the property of another and secretly or furtively peeps, spies or attempts to peep or spy into or through a window, door or other aperture of any building, structure or other enclosure of any nature occupied or intended for occupancy as a dwelling, whether or not such building, structure or enclosure is permanently situated or transportable and whether or not such occupancy is permanent or temporary, such person shall be guilty of a Class 1 misdemeanor as provided in § 1-7, General penalty, of Chapter 1, General Provisions. (§ 18.2-130 of the Code of Virginia)

§ 121-21. Giving false reports to police officers.

It shall be unlawful for any person knowingly to give a false report as to the commission of any crime to any law enforcement official with intent to mislead. Violation of the provisions of this section shall be punishable as a Class 1 misdemeanor as provided in § 1-7, General penalty, of Chapter 1, General Provisions. (§ 18.2-461 of the Code of Virginia)

§ 121-22. Hunting on Town property. [Added 8-10-1998]

It shall be unlawful for any person to hunt or trap game animals of any kind with any type weapon or trap within the cooperate limits or any property owned by the Town of Grottoes. Violation of the provisions of this section shall be punishable as a Class 1 misdemeanor as provided in § 1-7, General penalty, of Chapter 1, General Provisions.

§ 121-23. Fishing without a license. [Added 8-10-1998]

No person shall fish without having obtained a license when such a license is required. Any person who violates this section shall be guilty of Class 3 misdemeanor. The purchase of a license subsequent to an arrest or notice of summons to appear in court for fishing without a license shall not relieve the person from the penalties specified in this section.

§ 121-24. Carrying licenses. [Added 8-10-1998]

Every person who is issued a fishing license must carry the license on his person while fishing. Persons who have been issued such licenses and fail to carry them when required shall be guilty of a Class 4 misdemeanor.

§ 121-25. Displaying license upon request. [Added 8-10-1998]

Every person who is issued a fishing license and is carrying such a license when fishing shall present it immediately upon demand of any officer whose duty is to enforce the Game and Inland Fish Laws. Refusing to exhibit the license upon demand of any Town police officer or other officer shall be a Class 3 misdemeanor.

§ 121-26. Taking fish during closed season or exceeding bag limit. [Added 8-10-1998]

It shall be unlawful for any person to take or attempt to take fish during the closed season, exceed the bag or creel limit for any fish, or possess over the daily bag or creel limit for any fish while in the water of the Town of Grottoes. Any person convicted of violating any provisions of this section shall be guilty of a Class 2 misdemeanor.