# MODEL LEGISLATION FOR STUDENT DRUG-TESTING PROGRAMS

# STATE BILL AND INSERTION LANGUAGE

Presented by:
THE NATIONAL STUDENT DRUG-TESTING COMMITTEE
www.studentdrugtesting.org

The model state legislation contained in this package is presented as the first edition of a working document by the National Student Drug-Testing Committee to assist with the development of supportive state statutes. Further, the models contained herein are being offered as a guide for the development of programs meeting acceptable and well-established standards and are by no means intended to limit such provisions and guidelines as may be deemed appropriate for any state.

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The National Student Drug-Testing Committee's mission is to **help America's school children reject the use of drugs and alcohol.** The committee, a volunteer organization consisting of drug prevention leaders and concerned parents, believes that non-punitive student drug testing programs are the most effective and economical means to reduce student drug use.

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# SECTION ONE

# BILL STATEMENT

## STATEMENT IN SUPPORT OF MODEL LEGISLATION

Many schools have already found great value in using random drug and alcohol testing as part of their anti-drug programs. The goal of testing is to prevent drug and alcohol use. Students who know they may be detected are less likely to use drugs or alcohol. State and federal governments have a strong interest in deterring student drug and alcohol use. It is our hope, that by providing these model laws, state governments will enact legislation to protect all children.

### The law

The courts clearly support testing when there is a reasonable suspicion that a student is under the influence at school. Courts also support random testing of student athletes and students who participate in athletics or extracurricular activities or who drive or park on school grounds because these are privileges for which schools determine the rules of participation.*(1)* ***The bills contained in this packet provide for reasonable suspicion and random drug testing in accordance with court rulings. In future, as schools bring additional cases to courts, categories of students subject to testing may expand.***

### The need for testing

When drugs invade a school, threatening the safety of students and disturbing the learning environment, a school's interest in eliminating drugs from the environment outweighs any privacy interests of students. The school years are a critical passage in a young person's life. While in school, children face the challenges of learning in academic, social, physical, and emotional realms.

When drugs infect a school, the learning process is crippled. Children are the casualties. The physical and psychological effects of drug and alcohol use can cause lifelong and profound losses. Substance use decreases a child's chances of graduation and academic success. It creates danger in classrooms and during athletic and extracurricular activities as well as increasing the risk of accidents when students drive to and from school.

Surveys of youth drug use continue to demonstrate that student drug and alcohol use is at a dangerous level. One such survey, from the National Center on Addiction and Substance Abuse (CASA) at Columbia University, reports that for the last six years, school children have listed drugs as the most important problem they face.*(2)* Adults should be attentive to this concern.

According to a Parents' Resource Institute for Drug Education (PRIDE) survey, 39% of 12th graders smoked marijuana, 7.9% used cocaine, 11.3% used hallucinogens, and 62.4% drank alcohol. PRIDE obtains data from more than 8,500 school systems and 7.5 million students in 49 states. The surveys are designated by the U.S. Congress as a measure of illicit drug use by youth.*(3)*

A survey of middle- and high-school students, teachers, principals, and parents was conducted for the National Center on Addiction and Substance Abuse (CASA) at Columbia University. The CASA study revealed that high school students see more drug deals at school than in their neighborhoods.

The study also reports the following:

76% of high school students claim that drugs are kept, used or sold on school grounds;

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29% of high school students claim that a student in their school died from a drug or alcohol-related incident in the past year;

74% of high school students claim that a student was expelled or suspended for possessing, using or selling drugs in the past year;

More high school students have witnessed drug sales at school (41%) than in their neighborhoods (25%);

Teens, parents, teachers and principals support firm steps to keep drugs out of schools, including drug testing of students;

Most teachers (57%) believe that drugs have diminished the quality of education in our nation's schools.*(4)*

Another study by CASA revealed that substance abuse adds at least $41 billion dollars to the costs of elementary and secondary education in terms of special education, teacher turnover, truancy, property damage, injury, counseling, and other costs.*(5)*

## THE CHECKS AND BALANCES IN THE TESTING PROCESS

Drug and alcohol testing is effective and accurate if properly administered and student dignity and privacy are preserved. Some parents have concerns about the testing process. In most cases they may not fully understand how testing works and that the results are accurate. When the testing process, along with the privacy and accuracy protections are explained, they understand the protections built into a good testing process and concerns are alleviated. Most parents support testing as they recognize that student drug and alcohol use is often difficult to detect from observation alone.

Drug testing in the workplace, in schools and in professional athletics is usually done by a three step process: (a) an initial immunoassay screening test; (b) if the initial test result is positive, that result will be confirmed by an alternate technology (c) confirmatory test results are then reviewed by a Medical Review Officer (MRO).

### Specimen Collection

Drug testing begins with the collection of a urine or saliva specimen. Hair may also be used for testing. There are well-established procedures for collecting specimens. Chain of custody procedures document and protect the specimen and its handling from collection to analysis. Urine and saliva testing can be done on-site or in a laboratory. Hair testing requires use of a laboratory.

### Confirmation of Tests

Immunoassay drug tests are generally confirmed by a process called gas chromatography/mass spectrometry (GC/MS). This process meets legal accuracy standards.

### Medical Review Officer (MRO)

Positive results should be reviewed by a Medical Review Officer who is a physician trained to evaluate drug-test results. It is the responsibility of the MRO to determine if there is a legitimate reason for a

confirmed positive test result by consulting with the student. Such reason may be the use of a drug prescribed for that student by a physician.

Drug-test results are required to be kept confidential and only released on a need-to-know basis. Confirmed positive drug test results may be used by the school to deny privileges and/or to initiate further evaluation of the student.

**On-site Testing**

There are a number of accurate on-site tests that can be used for an initial drug-screening test. On-site tests are simple to administer and interpret.

An on-site drug test kit is a test that is easily portable and may be administered at a location outside of a laboratory such as a school or work site. Any on-site drug test kit utilized, should meet requirements established by the Food and Drug Administration (FDA) for commercial distribution. Kits must also meet generally accepted cut-off levels such as those published in the Mandatory Guidelines for Federal Workplace Drug Testing Programs.

An on-site alcohol test is also a portable test. It must meet the federal Department of Transportation (DOT) guidelines for an initial alcohol test. See, 49 Code of Federal Regulations 40.

The use of on-site drug and alcohol testing produces documented results using simple FDA cleared or DOT approved drug and alcohol tests. On-site drug-test kits will yield immediate results and do not require sending a specimen to a laboratory unless the result is positive. On-site testing may be used when immediate results and reduced costs are a consideration.

**Evaluation and treatment**

If a student's drug or alcohol use is detected, the student should be evaluated and provided access to education or treatment as needed. The student should not be permitted to participate in athletics or other extracurricular activities or to drive or park on school property until the student is drug and alcohol free and otherwise able to participate safely. This should be the only consequence of a random test. Benefits to the child will be education, assistance with personal problems and perhaps lives saved. Schools are encouraged to create student counseling and/or student assistance programs.* Random test results are not provided to law enforcement.

**Student random testing works**

Random testing gives schools a strong weapon to get drugs and alcohol out of schools. School testing programs are a proven and low cost method to use in the fight for our children's future. Schools implementing testing experience a substantial reduction in drug and alcohol use.

**Indiana study**

A recent study of Indiana high schools by Joseph R. McKinney, J.D., Ed.D, Chair of the Department of Educational Leadership at Ball State University, demonstrates the effectiveness of student random drug testing.*(6)* The study asked the question: " Does the implementation of a random drug testing program result in a reduction of drug and alcohol use among high school students?" The study examined the effectiveness of a mandatory, random, suspicionless drug testing policy before and after suspension of testing programs

due to court rulings. The Indiana Court of Appeals had ruled that student random drug testing was unconstitutional under the Indiana Constitution in August 2000. As a result, all Indiana schools halted their random drug testing programs in 2000. When the Indiana Supreme Court reversed the lower court in 2002, high schools in Indiana reinstated their programs. Linke v. Northwestern Sch. Corp., 734 N.E. 2d 252 (Ind. Ct. App. 2000) reversed by Linke v. Northwestern School Corp., 763 N.E.2d 972 (IN 2002).

The study identified ninety-four high schools with random drug testing programs. Of these schools, 83 high school principals responded to the survey. The principals were asked to contrast substance abuse activity during the 1999-2000 school year when drug testing policies were in effect with the 2000-2001 school year when schools were not permitted to use random drug testing. The results of the study are summarized below:

89% of the principals believe that the drug-testing program undermines the effects of peer pressure by providing a legitimate reason to refuse to use illegal drugs and alcohol.

85% of the high school principals reported an increase in either drug usage or alcohol usage among their students after the drug testing program was stopped, compared to the 1999-00 school year (when they had a drug testing plan implemented).

80% reported an increase in illicit drug usage during the 2000-01 school year when testing was halted as compared to the previous year.

59% reported an increase in alcohol usage during the 2000-01 school year when testing was halted as compared to the previous year.

83% reported their answers concerning the increase in drug and alcohol usage was based on information received directly from students. 79% said their answers were based on information from teachers and staff. 59% said information came from law enforcement. 23% said information came from formal surveys of students at the school.

78% of the principals reported that there was an increase (compared to the 1999-00 year) in the number of students who came forward and told them that drug and alcohol usage was on the rise since the drug-testing program was stopped.

The principals reported that 352 students were either suspended or expelled for drug or alcohol related incidents during the 1999-2000 school year but that during the 2000-2001 year (at the time they returned the survey, May 2001) without the drug-testing program, there were 518 drug or alcohol related suspensions/expulsions.

55% of the principals reported that coaches indicated to them that they had received information that student athletes were involved in more incidents of drinking during the 2000-01 year without the drug-testing program. 57% reported the same regarding the use of drugs by student athletes. 97% of the drug testing programs included student athletes.

After reviewing the collected statistics, the author of the McKinney Study concluded that:

"[r]andom drug testing policies appear to provide a strong tool for schools to use in the battle to reduce alcohol and drug usage among teens." [McKinney Study, at (4).]

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**Oregon study**

A study by researchers at the Oregon Health and Science University shows that student athletes subject to random drug testing at an Oregon high school were almost four times less likely to use drugs than student athletes at a demographically similar school who were not tested.*(7)* The student responses to the study were anonymous.

The study compared Wahtonka High School, where all student athletes were subject to random testing, with Warrenton High School, a similar school where athletes were not tested. Of the athletes subject to the random testing at Wahtonka, 5.3 % said they were using illicit drugs by the end of the school year, compared to 19.4 % of the athletes at Warrenton. The athletes who were tested were also three times less likely to use performance-enhancing drugs such as steroids.

The authors of the study concluded that "[a] policy of random drug testing surveillance appears to have significantly reduced recent drug use among adolescent athletes."

**Drug testing is cost effective**

According to a study funded by the U. S. Department of Education (DoED), drug testing is cost effective with the average cost per student of $19 per year. The cost per test (lab fee) ranged from $10 to $148.50. The mean cost was $42 and the median was $21. The authors of the DoED study reported "all of the school officials surveyed strongly supported their entire [student drug testing] programs and all were convinced that their [student drug testing] programs benefitted their entire school communities, including the students."*(8)*

Only a small percentage of students need to be tested in order to make it effective. Drug testing, by deterring drug use in the school, also saves hidden costs, such as staff time, medical costs due to staff being assaulted by students, damage to school property due to vandalism, and insurance costs.

Any concern schools may have about being able to pay for testing has been resolved by passage of the federal Leave No Child Behind Act of 2001 (H.R.1). Title IV of the Act permits schools to use federal education funds for student drug testing. Student drug testing is a specific program initiative listed in this landmark law. See sections 4002 and 4115 of H.R.1.

Many schools may be able to purchase drug and alcohol tests through state purchasing contracts. For example, in New Jersey there is a state contract (#86602) available to schools. Under that contract, a school may purchase test cups used to conduct initial tests for 3 or more drugs at a cost of $8.55 to $9.31 per cup depending upon the drugs to be included in the test. Alcohol tests cost approximately $1.80 per test and adulteration test strips cost about 80 cents per strip. Confirmation on initial positive results cost $15 per drug to be confirmed positive.

If a school were to test 100 students, the cost under the New Jersey contact would be $855 to $931. If 5% of tests results were positive, confirmatory costs would cost 5 x $15.00 or $75. There may be additional minor costs for the adulteration tests at 80 cents each and mailing, etc. 100 alcohol tests will cost about $180. A school can test 100 students for drugs and alcohol for a little over $1,200

If young people can be prevented from using drugs through the age of 18, the chance of their using drugs as adults is very small. Common sense dictates that preventing young people from experimenting with drugs in the first place is preferable to later - and more costly - treatment, rehabilitation and possible incarceration.

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**Student confidentiality is protected under federal and state law**

Student confidentiality is protected by two important federal laws. The first is the Family Educational Rights and Privacy Act (FERPA) which prohibits student records from being released, including drug and alcohol testing results, without the consent of the parents or if the student is 18, without the student's consent (20 U.S.C. 1232g). In addition, student treatment records are protected by the federal Confidentiality of Alcohol and Drug Abuse Patient Records regulations that carry federal criminal penalties for improperly releasing information (42 CFR Part 2. Section 2.1(f).

**Student Attitudes**

The American Civil Liberties Union (ACLU) has criticized student drug testing because it claims that giving drug tests to students who participate in athletics and other extracurricular activities will make the activities less attractive to students. It is further claimed by the ACLU that by having less participation in these activities, students will choose to participate in drug related behavior. While it is true that these activities help students to lead a positive life, there is no evidence that there is a drop off in participation because of drug testing. The ACLU could not present any such evidence to the U. S. Supreme Court. In fact, students report that drug testing gives them a reason to say "no" to drugs and still be "cool" with the other students. In a recent Seventeen Magazine poll, 54 percent of the young people said they would take a drug test "no problem."*(9)* A USA/TODAY poll showed that 70% of adults support testing of students in athletics and extracurricular activities.*(10)*

We want students to make choices such as "do I smoke a joint or do I keep my driving privileges or do I stay on the football team?" Our experience is that students choose sports and extracurricular activities over drugs.

Some critics say that athletics and other extracurricular activities are a requirement to get into college and students should not be forced to choose between these activities and their beliefs about their privacy. School-based athletics and other extracurricular activities are not needed to get into college. There are many activities outside of school such as community athletics, plays, competitions such as chess clubs, or service work that may be used on a college resume.

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References

(1.) Vernonia School District 47J v. Acton, 515 U.S. 646, 115 S.Ct. 2386, 132 L. Ed.2d 564 (1995); Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls, 536 U.S. 822, 122 S.Ct. 2559, 153 L. Ed.2d 735 (2002); Joye v. Hunterdon Central Regional High School, 176 N.J. 568, 826 A.2d 624 (NJ 2003); Linke v. Northwestern School Corp., 763 N.E.2d 972, 162 Ed. Law Rep. 525 (Ind. 2002); Trinidad School Dist. No. 1 v. Lopez By and Through Lopez, 963 P.2d 1095, 129 Ed. Law Rep. 812 (Colo. 1998); York v. Wahkiakum School Dist. No. 200, 110 Wash. App. 383, 40 P.3d 1198, 161 Ed. Law Rep. 1023 (Div. 2 2002); See also Evans, David G., Drug Testing Law, Technology, and Practice, (West Group, Rochester, NY) Chapter 8

(2.) "Collective Statistics Concerning Drug Use", Drug Enforcement Administration, Demand Reduction Section, Compiled February 2001citing the CASA National Survey of American Altitudes on Substance Abuse VI: Teens, February 28, 2001. The CASA survey is available from CASA at

(3.) 144 Congressional Record S345-02,S362 and see 144 Congressional Record H11044-03, H11228, see www.pridesurveys.com

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(4.) 1997 CASA National Survey of Teens, Their Parents, Teachers and Principals, Joseph A. Califano and Alyse Booth, The National Center on Addiction and Substance Abuse at Columbia University, September 1997. CASA did a study in 1998 the 1998 CASA National Survey of Teens, Teachers and Principals with similar results. They are available from CASA at www.casacolumbia.org

(5.) Malignant Neglect: Substance Abuse and America's Schools. The National Center on Addiction and Substance Abuse at Columbia University, September 5, 2001, available from CASA at www.casacolumbia.org

(6.) "The Effectiveness and Legality of Random Drug Testing Policies", Joseph R. McKinney, J.D., Ed.D. Chair and Professor Department of Educational Leadership, Ball State University adjunct Professor of Law, Indiana University-Bloomington School of Law, available at www.studentdrugtesting.org

(7.) Lynn Goldberg, Diane Elliot, David P. MacKinnon, Esther Moe, Kerry S. Kuehl, Liva Nohre & Chondra M. Lockwood, *"Drug Testing Athletes to Prevent Substance Abuse: Background and Pilot Study Results of the SATURN (Student Athlete Testing Using Random Notification) Study"*, Journal of Adolescent Health, at 16- 17 (Jan. 2003)

(8.) United States Department of Education, Office of Elementary and Secondary Education Safe and Drug-Free Schools Program. Report of a Preliminary Study: Elements of a Successful School-Based Student Drug Testing Program, July 22, 2002, Prepared By: The Institute for Behavior and Health, Inc., 6191 Executive Blvd. Rockville, Maryland 20852, U.S. Dept. of Education Order No. ED-01-PO-3886 Authors: Robert L. DuPont, M.D., Teresa G. Campbell, Ph.D., and Jacqueline J. Mazza. Available at www.studentdrugtesting.org

(9.) "Drug Testing: Coming to a School Near You?" Seventeen Magazine, September, 2002, pages 158, 160

(10.) "High Court OK Vouchers, Drug Testing for Students" USA TODAY, June 28-30, 2002 front page

*Student Assistance Programs, which may be internal or external to the school, are designed to offer services that help students deal with barriers to learning. In the case where there may be alcohol or other drug use, services may include coordinating between schools, parents and community resources through referrals and shared case management as needed.

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# SECTION TWO

# MODEL STATE STATUTE

## MODEL STATE STUDENT DRUG TESTING LAW

### SECTION 1. Legislative Findings

The Legislature of the State of _____hereby finds and declares:

Many school districts within the State have a problem with students who use drugs and alcohol. Preventing drug and alcohol use by students and treating students who use drugs and alcohol is among the highest priorities of the People of the State of _____.

Student participation in a drug or alcohol testing program will create an atmosphere that deters the use of drugs and alcohol by students as well as informing parents of their child's substance involvement, allowing for early intervention.

The Legislature requires that any drug or alcohol testing policy adopted by a district be adopted pursuant to rules and regulations promulgated by the State Department of Education and/or State Department of Health, in consultation with the Department of Health.

### SECTION 2. Drug and Alcohol Testing of All Students in Athletics and other Extracurricular Activities or Who Drive or Park Vehicles on School Grounds

The Legislature has determined that preventing substance use by students is a compelling educational and community interest. Substance use is a serious threat to student health and safety and is a disruptive influence in the school. There is a risk of immediate physical harm particularly with respect to student athletes and students driving on school property. This Act is designed to create a safe, drug and alcohol free environment for students and its purpose is to protect students by seeking to prevent them from harming themselves and others as a result of the consumption of harmful substances.

Participation in athletics or other extracurricular activities and driving or parking on school grounds are privileges, not rights; therefore schools have a right to require drug and alcohol testing of all students who wish to participate in these activities. If parents do not consent to testing, the student will not be able to participate in these activities.

Each school district of this State may also establish a voluntary drug and alcohol testing program for students whereby any student with the written consent of a parent or legal guardian may be tested for drugs and alcohol.

At the beginning of each school year, parents of students participating in athletics, extracurricular activities, or those students driving or parking on school property shall be notified of their right to consent to have their child participate in testing programs. The notification process will be consistent with existing state law. The district shall prescribe the manner of testing and all expenses associated with the testing shall be borne by the district.

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**SECTION 3. Definitions**

For the purposes of this Act, the terms and phrases defined in this section have the following meanings:

**"Adult"** refers to a person who is 18 years of age or above or emancipated.

**"Alcohol testing"** means an alcohol test administered for the purpose of determining the presence or absence of alcohol in a person's breath or bodily fluids.

**"At school"** means any school building, office, or property, parking lots, owned or operated by the school, or any other site at which a student is engaging in any school activity.

**"Chain of custody"** means the process of tracking specimen collection and handling from initial collection to final analysis and report.

**"Confirmation test"** means a second drug or alcohol test, on the same specimen, used to identify the presence of a specific drug or metabolite or alcohol in a specimen following an initial positive screen.

**"Cut off level"** means the level that the presence of a drug or alcohol that can be detected by an initial and/or confirmation test.

**"Drug"** means cannabinoids; cocaine; phencyclidine (PCP); hallucinogens; amphetamines; methaqualone; opiates; barbiturates; benzodiazepines; synthetic narcotics; designer drugs; controlled dangerous substances and controlled substance analogs or volatile substances that produce the psychological or physiological effects of a controlled dangerous substance through deliberate inhalation, injection or in any other manner introduced into the body, or a metabolite of any of these substances.

**"Drug test"** means a chemical test administered for the purpose of determining the presence or absence of a drug or metabolites of a drug in a person's bodily fluids.

**"Extracurricular activity"** means any school or school related activity, including athletics, which is not required as part of a student's mandated basic educational curriculum.

**"Impaired"** means being under the influence of a substance to the extent that the student's motor senses (i.e. sight, speech, hearing, balance, reaction, reflexes), or judgment either are or may be reasonably presumed to be affected.

**"Initial drug test"** means an immunoassay procedure or an equivalent, cleared by the federal Food and Drug Administration for commercial marketing, to identify negative and presumptive positive specimens.

**"Legal drug"** means a drug prescribed for use by a duly licensed physician, dentist, or other medical practitioner licensed to issue prescriptions or a drug that is authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment of human diseases, ailments, or injuries.

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**"Medical Review Officer"** means a physician knowledgeable in a) drug test technology and how such tests should be administered and interpreted, and b) in the effects of drugs on the human body and how drugs are detected by drug tests.

**"On-site test"** is an alcohol or drug test that is easily portable and can be administered in a location outside a laboratory. An on-site alcohol test shall meet the federal Department of Transportation guidelines for an initial alcohol test. An on-site drug test shall meet the requirements of the Food and Drug Administration (FDA) for commercial distribution and the generally accepted cutoff levels such as those in the Mandatory Guidelines for Federal Workplace Drug Testing Programs.

**"Parent"** includes a person standing in parental relation, the custodial parent, a legal guardian.

"**Possess"** means to have either in or on a student's person, personal effects, clothes, motor vehicle, and areas entrusted to the control of the student such as desks, files and lockers.

**"Positive test result"** means a finding of the presence of drugs, or the metabolites of drugs in the sample tested at or above the threshold detection levels set by the commissioner under subdivision one of section nine hundred fifty-one of this article.

**"Prescription medication"** means a drug prescribed for use by a duly licensed physician, dentist, or other medical practitioner licensed to issue prescriptions or a drug that is authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment of human diseases, ailments, or injuries.

**"Random selection or random test"** means a mechanism for selecting students for drug or alcohol tests that a) results in an equal probability that any student from a group of students subject to the selection mechanism will be selected, and b) does not give the school discretion to waive the selection of any student selected under the mechanism.

**"Reasonable suspicion"** means a reasonable belief that a student is using or has used drugs or alcohol in violation of the school's policy. The belief shall be drawn from specific objective and articulated facts and reasonable inferences drawn from those facts in light of experience, and may be based upon, among other things:

(a) Observable phenomena, such as direct observation of drug or alcohol use or the physical symptoms or manifestations of being under the influence of a drug or alcohol or physical signs and symptoms consistent with such use.

(b) Abnormal conduct or erratic behavior while at school or at school activities.

(c) A report of drug or alcohol use provided by reliable and credible sources;

(d) Evidence that a student has tampered with a drug or alcohol test;

(e) Information that a student has caused, or contributed to a disciplinary incident as defined by the school's policy;

(f) Evidence that a student is involved in the use, possession, sale, solicitation or transfer of drugs or alcohol while at school or at a school activity;

(g) Adequately documented pattern of unsatisfactory school performance or a change in a student's prior pattern of school performance (absenteeism, tardiness or deterioration in school performance;

(h) A serious or potentially serious accident that may have been caused by human error, or violations of established safety, security, or other operating procedures.

(i) Fighting (to mean physical contact) and assaults, or aggressive or violent behavior or behavior that could cause injury to the student or those around the student.

**"Specimen"** means tissue, blood, breath, urine, saliva or other product of the human body capable of revealing the presence of drugs or their metabolites or alcohol.

**"Student"** is any individual enrolled at and eligible to attend school for educational purposes.

## SECTION 4. Testing Provisions

### Random Selection Testing

Random selection testing shall include all students participating in athletics and other extracurricular activities and driving or parking on school grounds

### Reasonable suspicion testing

School authorities may cause any student in a public school located within the State, to be drug and/or alcohol tested on a reasonable suspicion basis in order to ascertain whether such student is using any drug or alcohol as defined in this Act.

If suspected contraband is involved and the school staff is not satisfied with the explanation, the contraband will be confiscated and a receipt will be issued. The contraband will be turned over to the law enforcement authorities. If the student claims the contraband is a prescription medicine, the student's parents and the school medical director will be immediately consulted.

The school staff must advise the most senior school staff member on the premises of his or her action.

The school staff shall document all observations in a detailed written report. The report shall include the observations, the date, time, witnesses, and conclusions. The documentation of the student's conduct shall be prepared and signed by the school staff within 24 hours of the observed behavior or before the results of the tests are released, whichever is earlier.

When reasonable suspicion is based upon a student appearing to be "under the influence", the school staff shall immediately notify the parent(s) and arrange for an immediate drug and/or alcohol test of the student. If available, a parent or guardian may be present for the test, but it is not a requirement and testing shall proceed.

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If the parents are not available, the student must be cared for until they can be contacted to pick up the student. The student must be advised that local authorities will be notified if the student who seems to be "under the influence" tries to leave the school site.

**Parental request random testing**

A school district may provide a drug or alcohol testing program under which a student, at the request of the student's parents, is eligible for random selection testing for the presence of drugs or alcohol in the student's body.

**Other types of testing**

Other types of testing may be implemented as appropriate. The foregoing types of testing are to be considered only as minimum requirements for any student testing program**.**

**Test results**

Upon notification of a confirmed positive test result, the school shall inform the student and the student's parents of such positive test result and inform them in writing of the consequences of such a result and the options available to them. The student must also be advised what drug (including alcohol) was discovered.

Test reports shall include the specimen number assigned by the submitting local education agency, the testing laboratory accession number and results of the drug or alcohol tests. Copies of all analytical results shall be available from the laboratory when requested by the local education agency or the parents of the student.

Within 72 hours, each student is entitled to a re-test of the original specimen at his or her cost by an independent facility.

Within 10 working days after receiving notice of a confirmed positive test result, the student may submit information to the School explaining the test results, and why the results do not constitute a violation of the School's policy.

All specimens testing negative on the initial screening test or negative on the confirmatory test shall be reported as negative.

If a student is tested and the results of the test are negative, all records of the test, request for a test, or indication a student has been tested, shall be expunged from all records, including school records.

Notwithstanding any other provision of law, any positive drug test results shall not be reported to law enforcement authorities or court officials.

**Reliability and fairness safeguards**

A. All specimen collection and testing for drugs or alcohol under this Act shall be performed in accordance with the following procedures:

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(1) The collection of specimens shall be performed under reasonable and sanitary conditions. Individual dignity shall be preserved to the extent practicable;

(2) Specimens shall be collected in a manner reasonably calculated to prevent substitution of specimens and interference with the collection or testing of specimens;

(3) Specimen collection shall be documented by chain of custody procedures, to include labeling of specimen containers to reasonably preclude the likelihood of erroneous identification of test results and other chain of custody protections.

(4) Specimen storage and transportation shall be performed in a reasonable manner to preclude specimen contamination or adulteration;

(5) Specimen testing for drugs or alcohol shall conform to scientifically accepted analytical methods and procedures;

(6) The school may establish an on-site drug or alcohol testing program for the initial drug or alcohol test. The school may utilize school employees to collect and administer on-site drug or alcohol tests as initial tests or may contract with test service providers.

B. Any drug or alcohol testing conducted or requested by a school under this policy shall occur immediately before, during or immediately after the regular school day.

C. Any testing for drugs or alcohol under this policy may only be for the presence of illegal drugs, legal drugs used illegally or alcohol in the specimen.

D. A confirmation test shall use a method of equal or greater reliability than that used on the initial drug or alcohol test. If an initial drug or alcohol test is negative, there shall be no requirement for a confirmation test. All confirmed positive drug or alcohol test results shall be reviewed by a Medical Review Officer before being sent to the school.

E. Tests shall be conducted by properly trained persons in circumstances that ensure the integrity, validity, and accuracy of the test results but are minimally intrusive and provide maximum privacy to the tested student. Specimens confirmed as positive shall be retained for possible retesting or reanalysis as per established laboratory policy.

**Costs**

The local education agency shall pay the cost of any testing required under the provisions of this Act.

**Notice of testing**

The drug or alcohol testing policy of school authorities shall, at a minimum, set forth the following information:

(a) the students subject to testing under the policy;

(b) the circumstances under which drug or alcohol testing may be requested or required;

(c) provision for a student to explain to the Medical Review Officer that he or she is taking a drug or alcohol under prescription by a duly licensed physician;

(d) the right of a student to refuse to undergo drug or alcohol testing and the consequences of refusal;

(e) any disciplinary or other adverse action that may be taken based on a confirmatory test, including, but not limited to, denying the student the privilege of participating in athletics, extracurricular activities or driving or parking on school property;

(f) the right of a student to explain a positive test result on a confirmatory test or request and pay for a confirmatory retest;

(g) any appeal procedures available;

(h) the procedures for collecting and testing specimens;

(i) the standards for ensuring the confidentiality of test results;

As a minimum, school authorities shall provide written notice of its drug or alcohol testing policy to all eligible students and their parents upon adoption of the policy and at the beginning of each school year. Students shall be advised in writing at the time of their enrollment that they are subject to testing.

Each school or school district shall distribute a drug/alcohol testing consent/authorization form at the beginning of each school year to any student who desires to participate in athletics or other extracurricular activities or be granted permission to drive or park a vehicle on school property. Such form shall be signed by both parent and student, acknowledging acceptance and understanding of the drug testing program. If the student is over 18 years of age, only the student shall be required to sign the form.

**Right to a confirmation test**

A student may request a confirmatory retest on the original specimen at the student 's own expense after notice of a confirmed-positive test result. Within 72 hours after notice of the confirmatory test result, the student shall notify the school authorities in writing of the intention to obtain a confirmatory retest. School authorities shall immediately notify the original testing laboratory that the student has requested a confirmatory retest or transfer of the specimen to another laboratory licensed to conduct the confirmatory retest. The confirmatory retest shall use the same drug or alcohol detection levels as used in the original confirmatory test. If the confirmatory retest does not confirm the original positive test result, no adverse action based on the original confirmatory test shall be taken against the student.

**Medical information**

School authorities shall not dismiss, discipline, discriminate against, or request or require rehabilitation of a student on the basis of medical history information revealed to the school authorities pursuant to this Act.

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**Privacy, confidentiality and privilege safeguards**

A laboratory or MRO shall only disclose to the school authorities test result data regarding the presence or absence of drug or alcohol or their metabolites in a specimen tested. Positive test results from a student drug or alcohol testing program shall not be used as evidence in a criminal action against the school authorities or student tested.

A student shall be given access to information in the student 's personal file relating to positive test result reports and other information acquired in the drug or alcohol testing process, and conclusions drawn from and actions taken based on the reports and other acquired information.

Except as required herein, information resulting from a drug or alcohol test conducted pursuant to this section shall be kept confidential and shall not be used for law enforcement purposes - but may be utilized only for disciplinary, statistical or research purposes.

Any record or information compiled from such examination which identifies an individual student as a user of dangerous drugs or alcohol shall be maintained separate and apart from such student's other educational records and in appropriate confidence and shall be destroyed upon such student's graduation or final severance from the secondary educational school system in this state.

Test result reports and other information acquired in the drug testing process shall be deemed to be private and confidential information and shall not be disclosed by school authorities or laboratories to another public and non-public school or to a third-party individual, governmental agency, or private organization without the written consent of the student and parent or guardian of the student.

**Medical Review Officer**

Each board of education shall provide, either directly or through contract, for a medical review officer who shall be designated to receive all student drug test results and review with the student all possible alternative medical explanations prior to results being reported to the school.

**Record keeping**

The School shall retain in the student's drug test records file information only indicating the following:

(a) The student submitted to a drug test.
(b) The date of such test.
(c) The location of such test.
(d) The identity of the person or entity performing the test.
(e) Whether the confirmation test finding was "positive" or "negative."

**Legal drugs**

Any student who is alleged to have violated a school policy shall have available as an affirmative defense, to be proven by the student through clear and convincing evidence, that his/her use of a drug was prescribed by a licensed medical practitioner who is familiar with the student's medical history and that the drug was used in accordance with school policies. The Medical Review Officer may provide an opportunity for a

student to discuss a positive test result and clarify if a prescribed medication or other legal drug was involved.

**Consequences**

A student testing positive for the presence of illegally used alcohol or drugs must be suspended from any athletic or other extracurricular activities or from driving or parking on school grounds, for a period of time to be established by school authorities. Such suspension from activities may be progressive as warranted.

The district, in conjunction with the parents of the student, shall offer an in-school counseling or student assistance program for any student whose test results are positive or shall provide referral information for the purpose of obtaining drug or other counseling as appropriate.

Schools and/or school districts shall provide a policy to cover student refusals of participation in recommended counseling or rehabilitation programs or to cover students who have failed to successfully complete a program as evidenced by withdrawal from such program before completion.

**Implementation rules**

The State Department of Education, in consultation with the Department of Health, shall adopt the rules and regulations necessary to carry out the provisions of this act. Before a drug testing program is implemented in any local education agency, the local board of education for that local education agency shall establish policies, procedures and guidelines to implement the provisions of this Act within that local education agency. The State Department of Education shall prepare a model policy, procedures and guidelines that may be adopted by local boards of education to include, but not be limited to, provisions relating to:

(a) definitions, including but not limited to definitions of alcohol, drugs, illegal use, and extracurricular activities;

(b) types of tests and testing procedures;

(c) qualifications and training of testing personnel;

(d) laboratories used to process tests;

(e) the rights of tested students and their parents;

(f) the resolution of disputes over tests, including a comparison and balancing of a second, negative test with a first, positive test; and

(g) confidentiality, use and disclosure of test results.

**SECTION 5. Staff Training**

In any school where local education agency or school policy includes a student drug testing program, there shall be required in-service training of principals and teachers on the signs and symptoms of student drug use and abuse.

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**SECTION 6. Educational Materials**

The principal, student assistance provider or school counselor shall provide referral information to all students who test positive and to their parents. Such referrals shall include information on inpatient, outpatient and community-based drug and alcohol treatment programs.

**SECTION 7. Development of Standards**

No later than _____days after passage of this Act, the State Department of Education shall, in consultation with the State Department of Health and State Office of the Attorney General, establish guidelines for random and other drug testing programs of students.

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# SECTION THREE

# SAMPLE LANGUAGE TO INSERT INTO EXISTING STATE EDUCATIONAL STATUTES

# SAMPLE LANGUAGE INSERTED INTO EXISTING STATE STATUTE
## 2003 Session, Virginia General Assembly
## Enacted in the 2003 Session

Below is the language inserted (italicized) into existing Virginia educational statute to amend the statute to include student drug testing in public schools in the state. The complete Virginia bill follows as well as the actual Code of Virginia amended to include the 2003 legislation for reference.

**VIRGINIA ACTS OF ASSEMBLY - CHAPTER**

*An Act to amend and reenact §22.1-279.3:1, §22.1-279.6 and §22.1-279.7 of the Code of Virginia, relating to drug testing in public schools.*

*In accordance with the most recent enunciation of constitutional principles by the Supreme Court of the United States of America, the Board's standards for school board policies on alcohol and drugs and search and seizure shall include guidance for procedures relating to voluntary and mandatory drug testing in schools, including, but not limited to, which groups may be tested, use of test results, confidentiality of test information, privacy considerations, consent to the testing, need to know, and release of the test results to the appropriate school authority.*

*Nothing herein shall be construed to require any school board to adopt policies requiring or encouraging any drug testing in schools. However, a school board may, in its discretion, require or encourage drug testing in accordance with the Board of Education's guidelines and model student conduct policies required by subsection A and the Board's guidelines for student searches required by* §*22.1-279.7.*

The Board of Education shall develop, in consultation with the Office of the Attorney General, guidelines for school boards for the conduct of student searches, including random locker searches, *voluntary and mandatory drug testing,* and strip searches, consistent with relevant state and federal laws and constitutional principles.

**2003 SESSION**
**ENROLLED**

**VIRGINIA ACTS OF ASSEMBLY -- CHAPTER**

*An Act to amend and reenact §22.1-279.3:1, §22.1-279.6 and §22.1-279.7 of the Code of Virginia, relating to drug testing in public schools.*

[H 209**1]**

Approved

**Be it enacted by the General Assembly of Virginia:**

**1. That §22.1-279.3:1, §22.1-279.6 and §22.1-279.7 of the Code of Virginia are amended and reenacted as follows:**

§22.1-279.3:1. Reports of certain acts to school authorities.

A. Reports shall be made to the principal or his designee on all incidents involving (i) the assault, assault and battery, sexual assault, death, shooting, stabbing, cutting, or wounding of any person on a school bus, on school property, or at a school-sponsored activity; (ii) any conduct involving alcohol, marijuana, a controlled substance, imitation controlled substance, or an anabolic steroid on a school bus, on school property, or at a school-sponsored activity, including the theft or attempted theft of student prescription medications; (iii) any threats against school personnel while on a school bus, on school property or at a school-sponsored activity; (iv) the illegal carrying of a firearm onto school property; (v) any illegal conduct involving firebombs, explosive materials or devices, or hoax explosive devices, as defined in §18.2-85, or explosive or incendiary devices, as defined in §18.2-433.1, or chemical bombs, as described in §18.2-87.1, on a school bus, on school property, or at a school-sponsored activity; or (vi) any threats or false threats to bomb, as described in §18.2-83, made against school personnel or involving school property or school buses.

B. Notwithstanding the provisions of Article 12 (§16.1-299 et seq.) of Chapter 11 of Title 16.1, local law-enforcement authorities may report, and the principal or his designee may receive such reports, on offenses, wherever committed, by students enrolled at the school if the offense would be a felony if committed by an adult or would be a violation of the Drug Control Act (§54.1-3400 et seq.) and occurred on a school bus, on school property, or at a school-sponsored activity, or would be an adult misdemeanor involving any incidents described in clauses (i) through (v) of subsection A.

C. The principal or his designee shall submit a report of all incidents required or authorized to be reported pursuant to this section to the superintendent of the school division. The division superintendent shall annually report all such incidents to the Department of Education for the purpose of recording the frequency of such incidents on forms that shall be provided by the Department and shall make such information available to the public. A division superintendent who knowingly fails to comply or secure compliance with the reporting requirements of this subsection shall be subject to the sanctions authorized in §22.1-65. A principal who knowingly fails to comply or secure compliance with the reporting requirements of this section shall be subject to sanctions prescribed by the local school board, which may include, but need not be limited to, demotion or dismissal.

The principal or his designee shall also notify the parent of any student involved in an incident required by subsection A or authorized by subsection B to be reported, regardless of whether disciplinary action is taken against such student or the nature of the disciplinary action. Such notice shall relate to only the relevant student's involvement and shall not include information concerning other students.

Whenever any student commits any reportable incident as set forth in this section, such student shall be required to participate in such prevention and intervention activities as deemed appropriate by the superintendent or his designee. Prevention and intervention activities shall be identified in the local school division's drug and violence prevention plans developed pursuant to the federal Improving

America's Schools Act of 1994 (Title IV - Safe and Drug-Free Schools and Communities Act).
D. *Except as may otherwise be required by federal law, regulation, or jurisprudence,* the principal shall immediately report to the local law-enforcement agency any act enumerated in subsection A that may constitute a criminal offense.
E. A statement providing a procedure and the purpose for the requirements of this section shall be included in the policy manual of all school divisions.
The Board of Education shall promulgate regulations to implement this section, including, but not limited to, establishing reporting dates and report formats.
F. For the purposes of this section, "parent" or "parents" means any parent, guardian or other person having control or charge of a child.
G. This section shall not be construed to diminish the authority of the Board of Education or the Governor concerning decisions on whether, or the extent to which, Virginia shall participate in the federal Improving America's Schools Act of 1994, or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.
§22.1-279.6. Guidelines for school board policies; school board regulations governing student conduct.
A. The Board of Education shall establish guidelines and develop model student conduct policies to aid local school boards in the implementation of such policies. The guidelines shall include, but not be limited to, (i) criteria for the removal of a student from a class, the use of suspension, expulsion, and exclusion as disciplinary measures, the grounds for suspension and expulsion and exclusion, and the procedures to be followed in such cases, including proceedings for such suspension, expulsion, and exclusion decisions and all applicable appeals processes; (ii) standards, consistent with state, federal and case laws, for school board policies on alcohol and drugs, vandalism, trespassing, threats, search and seizure, disciplining of students with disabilities, intentional injury of others and dissemination of such policies to students, their parents, and school personnel; and (iii) standards for in-service training of school personnel in and examples of the appropriate management of student conduct and student offenses in violation of school board policies.
*In accordance with the most recent enunciation of constitutional principles by the Supreme Court of the United States of America, the Board's standards for school board policies on alcohol and drugs and search and seizure shall include guidance for procedures relating to voluntary and mandatory drug testing in schools, including, but not limited to, which groups may be tested, use of test results, confidentiality of test information, privacy considerations, consent to the testing, need to know, and release of the test results to the appropriate school authority.*
In the case of suspension and expulsion, the procedures set forth in this article shall be the minimum procedures that the school board may prescribe.
B. School boards shall adopt and revise, in accordance with the requirements of this section, regulations governing student conduct that are consistent with, but may be more stringent than, the guidelines of the Board. School boards shall include, in the regulations governing student conduct, procedures for suspension, expulsion, and exclusion decisions and shall biennially review the model student conduct code to incorporate discipline options and alternatives to preserve a safe, nondisruptive environment for effective teaching and learning.
Each school board shall include, in its standards of student conduct, prohibitions against profane or obscene language or conduct.
A school board may regulate the use or possession of beepers or other portable communications devices and laser pointers by students on school property or attending school functions or activities and establish disciplinary procedures pursuant to this article to which students violating such

regulations will be subject.
*Nothing herein shall be construed to require any school board to adopt policies requiring or encouraging any drug testing in schools. However, a school board may, in its discretion, require or encourage drug testing in accordance with the Board of Education's guidelines and model student conduct policies required by subsection A and the Board's guidelines for student searches required by §22.1-279.7.*
C. The Board of Education shall establish standards to ensure compliance with the federal Improving America's Schools Act of 1994 (Part F-Gun-Free Schools Act of 1994), *as amended*, in accordance with §22.1-277.07, to be effective on July 1, 1995.
This subsection shall not be construed to diminish the authority of the Board of Education or the Governor concerning decisions on whether, or the extent to which, Virginia shall participate in the federal Improving America's Schools Act of 1994, or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.
§22.1-279.7. Guidelines for student searches.
The Board of Education shall develop, in consultation with the Office of the Attorney General, guidelines for school boards for the conduct of student searches, including random locker searches*, voluntary and mandatory drug testing*, and strip searches, consistent with relevant state and federal laws and constitutional principles.
Effective for the 2001-2002 school year, School boards shall adopt and revise, in accordance with the requirements of this section, regulations governing student searches that are consistent with the guidelines of the Board.
**2.** That, in order to avoid the costs of printing and mailing, the Board of Education shall issue the revisions to its guidelines and model student conduct policies relating to school board policies on alcohol and drugs and search and seizure pursuant to §22.1-179.6 and its guidelines for student searches pursuant to §22.1-179.7 in electronic format only. Such revisions may be transmitted to the division superintendents and the public via any electronic media, including by posting the revisions to the Department of Education's website.

## CODE OF VIRGINIA EXCERPTS

### §22.1-279.6. Guidelines for school board policies; school board regulations governing student conduct.

A. The Board of Education shall establish guidelines and develop model student conduct policies to aid local school boards in the implementation of such policies. The guidelines shall include, but not be limited to, (i) criteria for the removal of a student from a class, the use of suspension, expulsion, and exclusion as disciplinary measures, the grounds for suspension and expulsion and exclusion, and the procedures to be followed in such cases, including proceedings for such suspension, expulsion, and exclusion decisions and all applicable appeals processes; (ii) standards, consistent with state, federal and case laws, for school board policies on alcohol and drugs, vandalism, trespassing, threats, search and seizure, disciplining of students with disabilities, intentional injury of others and dissemination of such policies to students, their parents, and school personnel; and (iii) standards for in-service training of school personnel in and examples of the appropriate management of student conduct and student offenses in violation of school board policies.

In accordance with the most recent enunciation of constitutional principles by the Supreme Court of

the United States of America, the Board's standards for school board policies on alcohol and drugs and search and seizure shall include guidance for procedures relating to voluntary and mandatory drug testing in schools, including, but not limited to, which groups may be tested, use of test results, confidentiality of test information, privacy considerations, consent to the testing, need to know, and release of the test results to the appropriate school authority.

In the case of suspension and expulsion, the procedures set forth in this article shall be the minimum procedures that the school board may prescribe.

B. School boards shall adopt and revise, in accordance with the requirements of this section, regulations governing student conduct that are consistent with, but may be more stringent than, the guidelines of the Board. School boards shall include, in the regulations governing student conduct, procedures for suspension, expulsion, and exclusion decisions and shall biennially review the model student conduct code to incorporate discipline options and alternatives to preserve a safe, nondisruptive environment for effective teaching and learning.

Each school board shall include, in its standards of student conduct, prohibitions against profane or obscene language or conduct.

A school board may regulate the use or possession of beepers or other portable communications devices and laser pointers by students on school property or attending school functions or activities and establish disciplinary procedures pursuant to this article to which students violating such regulations will be subject.

Nothing herein shall be construed to require any school board to adopt policies requiring or encouraging any drug testing in schools. However, a school board may, in its discretion, require or encourage drug testing in accordance with the Board of Education's guidelines and model student conduct policies required by subsection A and the Board's guidelines for student searches required by §22.1-279.7.

C. The Board of Education shall establish standards to ensure compliance with the federal Improving America's Schools Act of 1994 (Part F-Gun-Free Schools Act of 1994), as amended, in accordance with §22.1-277.07.

This subsection shall not be construed to diminish the authority of the Board of Education or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.

(Code 1950, §22-230.1, 22-230.2; 1972, c. 604; 1980, c. 559; 1993, cc. 819, 856, 889; 1995, cc. 724, 801; 1997, cc. 391, 585, 608, 830; 1998, c. 902; 1999, c. 432; 2000, c. 360, §22.1-277.02:1, 22.1-278, 22.1-278.2; 2001, cc. 688, 820; 2003, c. 899.)

§22.1-279.7. Guidelines for student searches.

The Board of Education shall develop, in consultation with the Office of the Attorney General, guidelines for school boards for the conduct of student searches, including random locker searches, voluntary and mandatory drug testing, and strip searches, consistent with relevant state and federal laws and constitutional principles.

School boards shall adopt and revise, in accordance with the requirements of this section, regulations governing student searches that are consistent with the guidelines of the Board.

(1998, c. 655; 1999, c. 650; 2000, c. 648, §22.1-277.01:2; 2001, cc. 688, 820; 2003, c. 899.)

§22.1-279.3:1. Reports of certain acts to school authorities.

A. Reports shall be made to the principal or his designee on all incidents involving (i) the assault or assault and battery, without bodily injury, of any person on a school bus, on school property, or at a school-sponsored activity; (ii) the assault and battery which results in bodily injury, sexual assault, death, shooting, stabbing, cutting, or wounding of any person on a school bus, on school property, or at a school-sponsored activity; (iii) any conduct involving alcohol, marijuana, a controlled substance, imitation controlled substance, or an anabolic steroid on a school bus, on school property, or at a school-sponsored activity, including the theft or attempted theft of student prescription medications; ( iv ) any threats against school personnel while on a school bus, on school property or at a school-sponsored activity; ( v ) the illegal carrying of a firearm onto school property; ( vi ) any illegal conduct involving firebombs, explosive materials or devices, or hoax explosive devices, as defined in §18.2-85, or explosive or incendiary devices, as defined in §18.2-433.1, or chemical bombs, as described in §18.2-87.1, on a school bus, on school property, or at a school-sponsored activity; or ( vii ) any threats or false threats to bomb, as described in §18.2-83, made against school personnel or involving school property or school buses.

B. Notwithstanding the provisions of Article 12 (§16.1-299 et seq.) of Chapter 11 of Title 16.1, local law-enforcement authorities may report, and the principal or his designee may receive such reports, on offenses, wherever committed, by students enrolled at the school if the offense would be a felony if committed by an adult or would be a violation of the Drug Control Act (§54.1-3400 et seq.) and occurred on a school bus, on school property, or at a school-sponsored activity, or would be an adult misdemeanor involving any incidents described in clauses (i) through (v) of subsection A.

C. The principal or his designee shall submit a report of all incidents required or authorized to be reported pursuant to this section to the superintendent of the school division. The division superintendent shall annually report all such incidents to the Department of Education for the purpose of recording the frequency of such incidents on forms that shall be provided by the Department and shall make such information available to the public. A division superintendent who knowingly fails to comply or secure compliance with the reporting requirements of this subsection shall be subject to the sanctions authorized in §22.1-65. A principal who knowingly fails to comply or secure compliance with the reporting requirements of this section shall be subject to sanctions prescribed by the local school board, which may include, but need not be limited to, demotion or dismissal.
The principal or his designee shall also notify the parent of any student involved in an incident required by subsection A or authorized by subsection B to be reported, regardless of whether disciplinary action is taken against such student or the nature of the disciplinary action. Such notice shall relate to only the relevant student's involvement and shall not include information concerning other students.

Whenever any student commits any reportable incident as set forth in this section, such student shall be required to participate in such prevention and intervention activities as deemed appropriate by the superintendent or his designee. Prevention and intervention activities shall be identified in the local

school division's drug and violence prevention plans developed pursuant to the federal Improving America's Schools Act of 1994 (Title IV - Safe and Drug-Free Schools and Communities Act).

D. Except as may otherwise be required by federal law, regulation, or jurisprudence, the principal shall immediately report to the local law-enforcement agency any act enumerated in clauses (ii) through (vii) of subsection A that may constitute a criminal offense and may report to the local law-enforcement agency any incident described in clause (i) of subsection A.

E. A statement providing a procedure and the purpose for the requirements of this section shall be included in the policy manual of all school divisions.

The Board of Education shall promulgate regulations to implement this section, including, but not limited to, establishing reporting dates and report formats.

F. For the purposes of this section, "parent" or "parents" means any parent, guardian or other person having control or charge of a child.

G. This section shall not be construed to diminish the authority of the Board of Education or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.

(1981, c. 189; 1990, cc. 517, 797; 1991, c. 295; 1994, cc. 265, 285; 1995, cc. 759, 773; 1996, cc. 916, 964; 1999, c. 970; 2000, cc. 79, 611, §22.1-280.1; 2001, cc. 688, 820; 2002, c. 388; 2003, cc. 899, 954.)