

**REPORT OF THE  
JOINT SUBCOMMITTEE STUDYING**

# **Home Education**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



## **Senate Document No. 14**

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**Report of the  
Joint Subcommittee Studying**

**Home Education  
To  
The Governor and the General Assembly of Virginia  
Richmond, Virginia  
December 21, 1983**

To: Honorable Charles S. Robb, Governor of Virginia  
and  
The General Assembly of Virginia

Home instruction is a controversial issue which has been intensely debated in Virginia since 1979, but yet remains unresolved. The controversy sets the alleged right of parents to remove their children from the public schools, for varied reasons to teach them in their home, against the constitutional responsibility of the General Assembly to require compulsory school attendance and to provide a high quality education to every child.

The issue of home instruction is not unique to Virginia. It has generated concern nationally and in many instances the problems which ensued from the controversy have resulted in litigation. This, too, has been the case in Virginia. In 1979, three Virginia court cases, i.e., Commonwealth of Virginia v. Theo and Daniel Giesy, A 08203-A and A 08202-1, Robert Grigg, et al. v. Commonwealth of Virginia, 224 VRR 312 (1982), and Commonwealth of Virginia v. James O'Toole, prompted the Senate Education and Health and the House Education Committees to appoint a Joint Subcommittee to study the need for legislation to amend the compulsory school attendance laws. In 1980, House Joint Resolution No. 94 established a Joint Subcommittee of the Senate Education and Health and the House Education Committees to study the need for revising the compulsory school attendance laws. Because the resolution did not include a reporting date, the study was continued in 1981, when several pieces of legislation to address the problem were introduced in the General Assembly, but none were passed. There were three bills in the 1982 Session. Again, none were passed.

In 1983 the legislature passed Senate Joint Resolution No. 59, which established a Joint Subcommittee of the Senate Education and Health Committee and the House Education Committee to study home education. Members of the Joint Subcommittee were: Senators Adelard L. Brault of Fairfax and John H. Chichester of Fredericksburg; Delegates J. W. O'Brien, Jr., of Virginia Beach, James H. Dillard, II, of Fairfax and William P. Robinson, Jr., of Norfolk. The Joint Subcommittee also agreed to permit Delegate V. Thomas Forehand, Jr., of Chesapeake, a member of the House Education Committee, to sit with the Joint Subcommittee. Delegate Forehand attended all of the meetings of the Joint Subcommittee and participated in all of the discussions. Appended to this report is the text of Senate Joint Resolution No. 59.

**The Compulsory School Attendance Law in Virginia**

The Constitution of Virginia, Article VIII, § 3, requires the General Assembly to provide for the "compulsory elementary and secondary education of every eligible child of appropriate age, such eligibility and age to be determined by law."

Sections 22.1-254 to 22.1-269 of the Code comprise the Virginia Compulsory School Attendance Law. These sections set out the mandatory age for school attendance, immunization requirements, exemptions from school attendance, duties of the attendance officer and the division superintendent, and provisions for enforcement and penalties for noncompliance. Sections 16.1-227 and 16.1-228 of the Code set forth the Juvenile and Domestic Relations District Court Law which embodies the statute under which a child may be determined as a "child in need of service." These sections of the Code are appended to this report.

It is the responsibility of the Board of Education to administer the compulsory school attendance statutes, prescribe the qualifications for teachers and tutors, and determine which

children may be exempt from the school attendance requirements.

Local school boards have the authority to appoint one or more attendance officers to enforce the compulsory school attendance laws. Every teacher is required by law to keep an accurate daily record of pupil attendance. Each public school principal, within ten days after the opening of school, must submit to the division superintendent a report which includes the name, age, grade and parent's or guardian's name and address of every pupil enrolled in school, and the name of each child subject to the school attendance laws together with the name and address of his parent or guardian. The division superintendent must then compile a list of the names of all children not enrolled in any school who are not exempt from school attendance. The list is used by the attendance officer to investigate all cases of nonenrollment. If no valid reason for nonenrollment is found, the attendance officer must notify the parent, guardian, or other person having control of the child to require the attendance of the child at school within three days from the date of notice. When parents or guardians fail to comply with the law within the specified time of the notice, the attendance officer is required to make complaint in the name of the Commonwealth before the juvenile and domestic relations district court. The child may also be proceeded against as a child in need of services pursuant to Chapter 11 (§ 16.1-266 et seq.) of the Code.

### The Issues

The concept of home instruction is not new. Historically, the right and obligation of parents to educate their children and direct their moral development was firmly established in Anglo-American common law as the right and duty to feed, clothe and otherwise tend to the basic needs of offspring.<sup>1</sup> The Massachusetts Bay Colony passed what might be considered the first compulsory education law in the United States in 1642. This law transformed a moral obligation into a legal one by requiring parents to educate or provide for the education of their children. The failure of parents to perform their moral obligation to educate their children was viewed as a threat to the welfare of the Commonwealth. In 1647, communities of certain sizes in the colony were required to provide teachers to instruct children. These laws established two prerogatives of the state: (1) the right to lay down minimal standards for the education of children, and (2) the right to compel the establishment of two minimal educational provisions - teachers and schools. Nevertheless, the duty to educate one's child remained firmly placed with the parents or master.<sup>2</sup> It was not until after the Civil War that states began to mandate some form of compulsory school attendance.<sup>3</sup> Today, all states have some form of compulsory school attendance law. Most states also distinguish between public schools, nonpublic schools, and instruction other than at school, thereby allowing, expressed or implied, the option of home instruction.

#### A. Parents' Interest

It is estimated that from 10,000 to 50,000 children in the nation are being taught at home. Many parents today, disillusioned by what they perceive to be the eroding quality of public school education, have chosen to remove their children from public school to educate them at home. Some reasons given are:

- Parents are most aware and best qualified to integrate learning materials with their family's own philosophy and values.
- Schools have become an unsafe environment for their children, e.g., drugs, crime, vandalism.
- Traditional schooling is not necessarily equivalent to "education."
- Traditional schooling is not right for every child.
- Overriding religious concerns.

It is said that these parents have elected to reassert their parental prerogative, that being to direct the education and moral development of their children. However, in many instances, a parent who decides to educate his child at home may do so at considerable effort and expense.

He may also be subjected to possible criminal charges for violation of the state's compulsory school attendance law.

The case law, very carefully reviewed by the Joint Subcommittee, on compulsory school attendance substantiates "privacy," a right to be let alone, ( Olmstead v. United States , 277 U.S. 438, 478 (1927)) and related interests evidenced by an expansion of the doctrine to include more areas of individual and family existence, such as parental "liberty interest" in education ( Meyer v. Nebraska , 262 U.S. 390 (1922) and Pierce v. Society of Sisters , 268 U.S. 510 (1925)). Much of the case law directly dealing with home instruction has been generated at the state level. The U.S. Supreme Court, though never having heard a case on the issue of home education, has dealt with parental rights in education. These cases have involved whether a parent has a right to send his child to public or nonpublic schools, but not whether the parent has the right not to send his child to school at all. Most of these cases have been argued on the grounds of the violation of a parent's civil rights. Meyer and Pierce established the principle that the state's right to regulate education was not absolute: "A state cannot require attendance at a public school without allowing for, at the minimum, a private school alternative. Neither can the state regulate private schools so extensively as to effectively eliminate the alternatives offered by private schools" <sup>4</sup>, ( Farrington v. Tokushige 273 U.S. 284 (1927)). The Court drew yet another constitutional boundary on the state in Wisconsin v. Yoder , 406 U.S. 205 (1972). In Yoder , the Court was faced with the problem of balancing the state's interest to require school attendance against the parents' right to follow their religious beliefs. The Court held that "the state's interest in education is not totally free from a balancing process when it impinges on fundamental rights." The decision in Yoder is narrow in scope. Parental interest must be religious in nature rather than philosophical or personal; the religious interest must be long standing and sincerely held; continued secular education must pose a real, rather than perceived, threat to the religious issues involved; and the disruption to the child's education should not seriously impair the child's future nor should it threaten the public in any significant way.

It is argued by some that the applicability of Yoder to other religious groups is questionable, and that it would be difficult for parents who elect to teach their children at home on religious grounds to satisfy the narrow criteria for a successful first amendment challenge established in Yoder .<sup>5</sup> However, parents in two Ohio cases have successfully employed the Yoder defense, State v. Whisner , 47 Ohio St.2d 181, 351 N.E.2d 750 (1976) and State ex rel. Nagle v. Olin , 64 Ohio St.2d 341, 415 N.E.2d 279 (1980).

## B. State's Interests

Education is a vital function in our society. The compelling state interest in education has been and is the welfare of the state, not the individual.<sup>6</sup> Consequently, the state's interest in and authority to compel education often run counter to parents' right to direct their children's education. The U.S. Supreme Court, in cases it has heard involving this conflict, has rendered decisions which balance these conflicting interests. While the state is justified in compelling the education of its populace in order to protect the heritage from the consequences of an ignorant and incompetent citizenry, ( Fogg v. Board of Education , 76 N.H. 296, 299, 82 A. 173, 173-174 (1912)), it may not impinge upon fundamental rights of the people.

However, compulsory school attendance laws have generally been upheld by the courts. It is acknowledged that "absent a compelling state interest, the fundamental liberty of a parent to choose how his child will be educated is superior to the state's interest and right to compel attendance and regulate education."<sup>7</sup> The conventional judicial view is that parents do have a right to a voice in the education of their children, but this right does not rise to a sufficiently protected level to overshadow the state's interest in regulating or even prohibiting home instruction. This position has been consistently adopted in earlier as well as in more recent home instruction decisions, ( Parr v. State , 117 Ohio St. 23, 157 N.E. 555 (1927)). Also, both Pierce and Yoder reiterate the state's right to regulate and compel education of its citizens.<sup>8</sup>

More recently, the federal courts have rejected the contention that parents had an independent, nonreligious and fundamental right to educate their children, ( Scoma v. Chicago Board of Education , 391 F.Supp. 452 (N.D. Ill. 1974) and Hanson v. Cushman , 490 F.Supp. 109 (W.D. Mich. 1980.)). The court in Scoma stated that the "plaintiffs (parents) were asserting new and wide-ranging fundamental constitutional rights that included the right and duty to educate their children adequately, but as they see fit; to rear their children in accordance with their

determination of what best serves the family's interest and welfare; to be protected in their family privacy and personal decision-making from government intrusion; to distribute and receive information; and to teach and ensure their children's freedom of thought and inquiry."

Other cases in this area include the constitutionality of no-exception compulsory school attendance law and whether home instruction qualifies as a private school.

Parents who have advanced the argument of the right to educate a child at home under "no-exception" statutes have been unsuccessful, Hanson v. Cushman and Scoma v. Chicago Board of Education . Also, courts have split on the issue of whether home instruction qualifies as a private school. One group has defined "private school" narrowly, in State v. Counort , 69 Washington 361, 124 P. 910 (1912), holding that the Washington compulsory attendance statute "meant more than home instruction. It means the same character of school as the public school, a regular, organized and existing institution, making a business of instructing children of school age in the required studies and for the full time required by the laws of this state... The parent who teaches his child at home, whatever be the reason for desiring to do so, does not maintain such a school."

The broad interpretation of private school includes the decision State v. Peterman , 32 Ind. App. 665, 70 N.E. 550 (1904). Here, "the court emphasized the educational rather than the social aspect of school, stating that 'a school, in its ordinary meaning, is a place where instruction is imparted to the young. If a parent employs and brings into his residence a teacher for the purpose of instructing his child or children and such instruction is given as the law contemplates, the meaning and spirit of the law have been fully complied with... We do not think the number of persons, whether one or many, make a place where instruction is imparted any less or more a school.' "

In instances where home instruction has qualified as a private school, courts have required such instruction to be equal to that offered in public schools, Stephens v. Bongart , 15 N.J. Misc. 80, 189 A. 131 (Essex County Ct. 1937) and Knox v. O'Brien , 7 N.J. Super. 608, 72 A2d 389 (Cape May County Ct. 1950). In 1967, however, the court rejected that reasoning, State v. Massa , 95 N.J. Super. 382, 231 A.2d 252 (Morris County Ct. 1967), ruling that the New Jersey law required academic equivalence only and that home instruction was permissible.

### C. Child's Interest

Awareness of the child's needs are not always present in discussions relating to educational policy. It was not until Brown v. Board of Education , 347 U.S. 483 (1954), that the Court applied the doctrine of equal protection to education. In a dissent in part in Yoder , it was stated that "children have constitutionally protectible interests in their education." These rights are found in the U.S. Constitution. Such rights extend to "educational ( Pierce ) and curricular choice ( Meyer ); protection by the state (In re Gault , 387 U.S. 1 (1967)); the right to know, to be informed, even to a knowledge of procreation ( Carey v. Population Services, Inc. , 431 U.S. 678 (1977)); alien children ( Hosier v. Evans , 314 F.Supp. 316 (D.V.I. 1970)); right of the handicapped to education ( PARC v. Commonwealth , 334 F.Supp. 1257 (D.Pa. 1971)); and the right of students to be masters of their own destiny ( Yoder )."<sup>9</sup>

### Education Requirements of Other States

A review of the compulsory school attendance laws of other states indicated that traditionally states enforce minimum standards for public education through compulsory school attendance laws, which provide for punitive action for noncomplying parents and children, but not for those who offer private instruction. Although these laws vary, they contain many of the following features:

- All states have some kind of compulsory law requiring school attendance or education of children.
- States that require education of the child rather than attendance include Connecticut, Delaware, Idaho, New Jersey, South Dakota and Vermont. Most states require school attendance, although many of these provide exceptions for home instruction.

- Almost every state provides for jail sentences and fines for parents who fail to comply with the state's compulsory attendance law.
- Without exception, compulsory requirements can be fulfilled by attendance at a nonpublic school that is properly approved or accredited. A number of states require the teachers to be certified, or require approval of the curriculum and similar matters.
- Some states have recently "deregulated" private schools, and have restricted the authority of the state board of education to regulate them. These include Alabama, Arizona, Louisiana, North Carolina, and Tennessee. Washington restricts state board authority but contains a number of important statutory requirements, such as a teacher certification requirement.
- Laws in about half the states permit home instruction by a parent whether the parent has a teaching certificate or not.
- In some states, courts or attorneys general have ruled that if the home meets the standards for private schools (generally where a parent is a certified teacher), home instruction is allowed even if state law does not expressly so provide.<sup>10</sup>

Additional information provided by other states included a description of cooperative ventures between schools and parents. For example, in Barnstable, Massachusetts, children who are taught at home by their parents are allowed to use the schools, their staffs and equipment as part of their learning resources.

In some school districts, such children attend school for half a day or one day each week or more to take part in specific courses or activities, e.g., use the library, take a special class, or use a lab or shop, and participate in activities such as music, drama and sports.

### **Findings of the Joint Subcommittee**

Throughout the course of the study, the Joint Subcommittee was deluged with phone calls, letters and petitions. To solicit the views of the public, two public hearings were held. The first was held to obtain the views of the public as to whether home education should be permitted in the Commonwealth of Virginia and, if so, by what standards should they be approved. The second was held to allow the public to respond to a proposal submitted by the Superintendent of Public Instruction, but not approved by the Board of Education, two other proposals submitted by the Rutherford Institute and Dr. James O'Toole, and legislative alternatives drafted for the Joint Subcommittee by its staff.

#### **A. The First Public Hearing**

The public hearing was attended by more than 200 persons, and approximately fifty persons addressed the Joint Subcommittee. The overwhelming consensus of those persons who testified was that Virginia should permit home education. There were, however, differences in opinion as to how such programs should be approved and administered. A schism was noted among those who addressed the Joint Subcommittee concerning the criteria by which persons would be qualified to teach their children at home.

Among the individuals who testified, four recognized experts in the field of public education, child development and early childhood education, and home education addressed the Joint Subcommittee concerning the history of the home education movement, public and private education, and the results of research and studies on educational testing and measurements and traditional and nontraditional education. They also related their experiences gained from participating in litigation around the nation on the issue of home education, first amendment rights, and in operating religious schools which offer home instruction. All emphasized the need to clarify the meaning of the term "school." It was noted that in several court cases, the lack of a definition of "school" in most states' statutes has been a considerable obstacle in determining whether home instruction qualified as a school. They also noted that compulsory school attendance laws throughout the nation do not mandate education, only attendance.



The following are concerns and suggestions most frequently mentioned by those who testified.

- Home education should be permitted in Virginia with the proper safeguards to protect the state's interest in an educated citizenry.
- A problem still remains in the procedure for qualifying as a tutor.
- Parents should not have to be approved by the state to teach their children at home.
- The home school should be allowed to qualify as a private school.
- The home school should be allowed to qualify as a bona fide exemption.
- Periodic examination of home schoolers is a reasonable means to determine the quality of the instructional program.
- The home school should not have to submit to any state regulation, e.g. curriculum, textbooks, length of school day, testing, qualification of parents.
- Parents who wish to teach their children at home should be able to pass a standardized test to qualify to teach them at home.
- Children who are home schooled miss an important aspect of education – interaction with their peers.
- The state should endorse the concept that parents are primarily responsible for educating their children, and that the school's role is one of assistance to the parents in this mission.
- Virginia needs a home schooling certificate which would permit parents to educate their children at home while explicitly excluding them from teaching the children of other parents or teaching in the public school system and never as a means of condemnation or intimidation.
- The Commonwealth should establish a single office responsible for formulating and administering the procedures necessary to undertake home schooling. Having a single office would eliminate any potential miscommunication between government officials, minimize confusion and uncertainty for the citizens and provide uniformity throughout Virginia.
- Each school division should be encouraged to permit home schoolers to use school facilities.
- It is not the intent of the compulsory school attendance laws of this state to deny to parents the right to have for their children an education in reasonable harmony with their own deepest concerns and principles, including the right, if they wish, to teach their own children at home.
- Parents should notify local school officials that they are home schooling. Such notice should not be a request for permission but merely a notification of their existence.
- The child belongs to the parent and not to the state.
- Home schooling is a religious freedom issue.
- State authority to regulate home education could eventually lead to abuses resulting in total control over home education. However, if regulation becomes unavoidable, regulations passed to protect the state's interest must remain minimal.
- Many parents choose to educate their children at home because they are disenchanted by the deterioration of public education evidenced, in part, by the lack of discipline, disrespect for authority, academic failure, crime, drugs and alcohol, sexual freedom, smoking, secular humanism and lack of morality.

- Often when home schoolers are returned to the public school, they are forced to repeat parts of the curriculum, such as reading, though their test scores indicate that they have mastered the requisite skills.
- There is no printed copy of the qualifications prescribed by the Board of Education for tutors and it appears impossible for anyone to comply with the law.
- A law which would permit home education would appear to be contrary to the aims expressed in the report of the National Commission on Excellence in Education which has been given widespread support throughout the Commonwealth. It is difficult to conceive of overall excellence being a product of such limited exposure to knowledge as in the home school situation.
- There should be a variety of options for a parent to qualify as a tutor.

#### B. The Second Public Hearing

At this public hearing, the public was given the opportunity to respond to the various proposals submitted to the joint subcommittee. The hearing was well attended and nearly sixty persons spoke. Most of the speakers suggested that a statement of policy be included in any legislative proposal to indicate that it is the position of the Commonwealth that home education is an acceptable alternative to compulsory school attendance. The inclusion of a statement to this effect, many stated, would ease the concern of parents who elect to home teach that division superintendents could not arbitrarily disapprove home instruction programs. It was stressed that the qualifications which persons must meet to home school under the Superintendent's proposal were stringent and that the effect of the qualifications would be to deny parents the opportunity to home school because very few, if any, persons could satisfy the requirements. Also expressed was the concern that this proposal's requirement that all nonpublic or private schools register with the Department of Education held the potential of the future regulation of nonpublic schools.

The issue of testing received considerable attention and discussion on this issue was marked by dissension. There was considerable objection on the part of some parents to requiring any testing of students. Others assumed a modified position, suggesting to the Joint Subcommittee that any testing requirement allow parents the option of obtaining a private, independent assessment or evaluation of his child's work, and that some provisions be included to address problems that may arise when a student fails the tests.

#### **Recommendations**

After reviewing the various proposals and discussing the data and testimony it received, the Joint Subcommittee concluded that home education should be permitted in Virginia. It determined that amending the current compulsory school attendance statute (§ 22.1-254 et seq.) was the proper means of providing statutory authority for such programs, and that a merger of the features detailed in the proposals was the most appropriate solution to the issues in dispute.

The Joint Subcommittee determined that legislation to provide for home education programs should include the following features:

1. A statement of policy
2. Notice of intent to home school
3. Qualifications for those persons electing to home school
4. Part-time classroom instruction
5. A provision for testing

#### **RATIONALE**

## Statement of Policy

The inclusion of a statement of the policy of the Commonwealth relative to home education programs would provide notice to school officials, law-enforcement officers and the judiciary that home education is an acceptable alternative to the compulsory school attendance law provided persons electing to home school satisfy the requirements set forth in statute.

It is imperative that the legislature's intent in the legislation be unequivocally clear. Information presented to the Joint Subcommittee attests to the confusion and litigation which have been a result of inconsistent interpretation and application of the current law and a lack of written regulations.

## Notice of Intent to Home School

This requires any parent who elects to home school to notify the Superintendent of Public Instruction each year of his intention to do so. The parent must also provide a description of the curriculum to be followed and evidence of having satisfied one of the criteria to qualify to teach his child at home. A copy of each of these documents is also submitted to the division superintendent.

The Code of Virginia, §§ 22.1-258 to 22.1-263 and § 22.1-281, provides that the Superintendent of Public Instruction take a triennial census of the school age population, requires classroom teachers to maintain daily attendance records, and authorizes the enforcement of the compulsory school attendance law. Presently, there is no way of knowing how many children in Virginia are educated in their homes because the current compulsory school attendance law is not interpreted or applied consistently throughout the Commonwealth. Consequently, in those school divisions where the law and the conditions under which teacher certification requirements may be waived are more narrowly construed, parents committed to home schooling, do so at any cost, and others proceed with home instruction often without the knowledge of the local school division.

Requiring any parent who elects to teach his child at home to notify the Superintendent of Public Instruction each year of his intent to do so would establish a reporting mechanism at the state level. This mechanism would allow the Department of Education to account for all school age children in the Commonwealth as required by law. Requiring notification rather than registration erases the implication of usurpation of a parent's right to decide how his child will be educated. Placing notification of intent at the state level would facilitate uniform application of the law statewide.

In addition, such parents must also tender a description of the curriculum to be followed in the coming year. This feature also provides accountability and flexibility. The Commonwealth would be able to maintain its constitutional mandate to "seek to ensure that an educational program of high quality is established and continually maintained" for all school age children. Parents would have flexibility in selecting curricula that are of the quality required by the Commonwealth, appropriate to the achievement levels and learning styles of the children, and consistent with family values and beliefs.

## Qualifications for Those Electing to Home School

To qualify to teach one's child at home, a parent must:

1. hold a baccalaureate degree in any subject from an accredited college or university; or
2. be a certified teacher pursuant to regulations of the Board of Education; or
3. have enrolled his child or children in a correspondence course approved by a nationally recognized accrediting body or by the Board of Education; or
4. provide evidence including a program of study or curriculum which indicates, in the reasonable judgment of the division superintendent, that the parent is able to provide an adequate education for the child.

Stipulating that such parents satisfy one of the aforementioned requirements to qualify to

teach his child at home provides safeguards for the Commonwealth and the children involved while providing flexibility through options for parents.

The Commonwealth of Virginia is required constitutionally to provide for a system of free public education and by statute to protect the interests of children. Incorporating home education into the statute which mandates school attendance would provide that it is an acceptable alternative to compulsory school attendance, thereby bringing it under the purview of this statute.

Because the Board of Education has been delegated the responsibility to effectuate the Commonwealth's education policy, it is both logical and appropriate to set forth the prerequisites under which home education will be permitted. However, given the tremendous conflicts and litigation which have ensued concerning home education, it is necessary that the parent's right to teach his child at home be protected by not recommending requirements so stringent as to effectively prohibit home education.

These requirements would protect the interests of both the Commonwealth and parents. They would assure the Commonwealth of an educated citizenry by qualified persons. The parent's right to teach at home is protected through the options. Those who do not hold a baccalaureate degree or are not certified teachers may qualify by enrolling the child in an approved correspondence course. Such courses which are accredited, as required in the proposed legislation, have their curricula designed, administered and evaluated by educators and/or other qualified professionals. The curricular offerings are virtually limitless in subject area and grade level. Many such courses also offer curricula which are consistent with family values and beliefs.

Parents who do not qualify to home school under the first three options may qualify to home school by providing evidence including a program of study or curriculum which indicates, in the reasonable judgment of the division superintendent, that the parent is able to provide an adequate education for the child.

It is acknowledged that there are some parents who may be very capable of teaching their children at home but cannot satisfy the first three options because either they have not completed college or enrolling their children in an approved correspondence course would be expensive given the number of children in the family and the cost of such courses. This option would give such parents an opportunity to home school by demonstrating to the division superintendent through certain evidence submitted to him that they are able to provide a quality education for their children.

#### Part-time Classroom Instruction

It is the Joint Subcommittee's belief that allowing children who are home schooled to be eligible to participate in classroom instruction part time is conducive to bridging the gap between public schools and home schools. This arrangement would enhance communication between these entities and help to heal the breach which has been a result of litigation. This provision would allow a local school division to count children who are home schooled and who participate in part-time classroom instruction in the average daily membership without proration. According to testimony received from the Department of Education, many school divisions already provide part-time classroom instruction for public and nonpublic school children, without prorated funding. Therefore, it appears to the Joint Subcommittee that allowing this option to home schooled children would be neither disruptive nor require the local school division to alter its current administrative pattern. Because it is recommended that funding not be prorated, local school divisions would not be financially encumbered due to the attendance of such children. It is important to note that parents of home schooled children are taxpayers as well, and in this sense, it does not seem inappropriate to allow this link between home and school. This arrangement would allow such children to engage in activities which are not as easily provided in the home setting, e.g. chemistry labs, orchestra. While not endorsing either concept (1) that home schooled children do not receive an opportunity to develop necessary social skills provided by school attendance, and (2) that home schooled children are often better adjusted or more adept socially because they are taught at home, it appears in the Joint Subcommittee's judgment that this option would provide for both positions.

#### Provision for Testing

Under this provision, the parent shall provide the division superintendent with evidence that the child has received a passing score on a battery of achievement tests which have been approved by the Board of Education for use in the public schools, or with an independent private evaluation which, in the reasonable judgment of the division superintendent, indicates that the child is achieving academically. Should the parent fail to comply with this requirement, home instruction shall cease and the parent must make other arrangements for the child's education as provided by law. This requirement affords protection to the Commonwealth and to the parent through the timely notice of the child's academic progress.

### Conclusions

It is the Joint Subcommittee's belief that the allowance of home education as an acceptable alternative to compulsory school attendance is in the best interest of the Commonwealth.

The Joint Subcommittee labored long and diligently to reach a solution that protects the Commonwealth's, the parents' and the child's interests.

To implement the solution, the Joint Subcommittee concluded that an amendment to the compulsory school attendance law is necessary. Legislation to that effect has been appended to this report.

The Joint Subcommittee thanks the Department of Education, local school divisions, the Rutherford Institute, parents, and all other interested persons who testified before it and assisted in the study.

Respectfully submitted,

Senator Adelard L. Brault, Chairman

Delegate J. W. O'Brien, Vice-Chairman

Senator John H. Chichester

Delegate James H. Dillard, II

Delegate V. Thomas Forehand, Jr.

Delegate William P. Robinson, Jr.

## FOOTNOTES

- <sup>1</sup> 1 W. Blackstone Commentaries 450-52 (1st ed. 1809), in E. Alice Law Beshoner, "Home Education in America: Parental Rights Reasserted", University of Missouri at Kansas City Law Review , Vol 49, No. 2 (1981), p. 191.
- <sup>2</sup> Katz, M.S., A History of Compulsory Education Laws , Fastback 75, (Indiana: The Phi Delta Kappa Educational Foundation, 1976).
- <sup>3</sup> Tobak, James W. and Perry A. Zirkel, "Home Instruction: An Analysis of the Statutes and Case Law", University of Dayton Law Review , Vol. 8, No. 1, Fall 1982, p. 14.
- <sup>4</sup> Ibid. pp. 15-16.
- <sup>5</sup> Ibid. pp. 17-18.
- <sup>6</sup> U.M.K.C. Law Review , op. cit., p. 204.
- <sup>7</sup> University of Dayton Law Review, op. cit., p. 23.
- <sup>8</sup> Ibid. p. 204.
- <sup>9</sup> Nolte, M. Chester, "Home Instruction in Lieu of Public School Attendance" in McGhehey, M.A., ed., School Law in Changing Times , (Topeka, Kansas: National Organization on Legal Problem of Education, 1982), pp. 11-12.
- <sup>10</sup> Lines, Patricia M. "Compulsory Schooling and Nontraditional Education", Issuegram No. 12, ECS Law and Education Center, January 3, 1983.

## **APPENDICES**

- A. Proposed legislation
- B. Article VIII, Constitution of Virginia
- C. Compulsory School Attendance Law, Code of Virginia
- D. Juvenile and Domestic Relations District Court Law, Code of Virginia
- E. Senate Joint Resolution No. 59, 1983

**APPENDIX A**

SENATE BILL NO. .... HOUSE BILL NO. ....

A BILL to amend and reenact § 22.1-254 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 22.1-254.1, relating to compulsory school attendance and home instruction of children.

Be it enacted by the General Assembly of Virginia:

1. That § 22.1-254 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 22.1-254.1 as follows:

§ 22.1-254. Ages of children required to attend.—Every parent, guardian, or other person in the Commonwealth having control or charge of any child who will have reached the fifth birthday on or before October ~~thirty first~~ 31 of the 1980-1981 school year and September ~~thirtieth~~ 30 of any school year thereafter and who has not passed the seventeenth birthday shall, during the period of each year the public schools are in session and for the same number of days and hours per day as the public schools, send such child to a public school or to a private, denominational or parochial school or have such child taught by a tutor or teacher of qualifications prescribed by the Board of Education and approved by the division superintendent *or provide for home instruction of such child as described in § 22.1-254.1 .*

*Instruction in the home of a child or children by the parent, guardian or other person having control or charge of such child or children shall not be classified or defined as a private, denominational or parochial school.*

§ 22.1-254.1. Declaration of policy; requirements for home instruction of children.—A. When the requirements of this section have been satisfied, instruction of children by their parents in their home is an acceptable alternative form of education under the policy of the Commonwealth of Virginia. Any parent of any child who will have reached the fifth birthday on or before September 30 of any school year and who has not passed the seventeenth birthday may elect to provide home instruction in lieu of school attendance if he (i) holds a baccalaureate degree in any subject from an accredited institution of higher education; or (ii) is a teacher of qualifications prescribed by the Board of Education; or (iii) has enrolled the child or children in a correspondence course approved by a recognized accrediting body or by the Board of Education; or (iv) provides evidence including a program of study or curriculum, which indicates, in the reasonable judgment of the division superintendent, that the parent is able to provide an adequate education for the child.

B. Any parent who elects to provide home instruction in lieu of school attendance shall annually notify the Superintendent of Public Instruction in August of his intention to so instruct the child and provide a description of the curriculum to be followed for the coming year and evidence of having met one of the criteria for providing home instruction as required by paragraph A of this section. Copies of the notification of intent and curriculum description shall be submitted by the parent to the division superintendent. Any person electing to provide home instruction shall have the option of sending a child receiving home instruction to a public school for part-time classroom instruction. Any home-instructed child receiving part-time classroom instruction shall be counted in the average daily membership (ADM) without proration for the purposes of calculating basic aid funds.

C. The parent who elects to provide home instruction shall provide the division superintendent by August 1 following the school year in which the child has received home instruction with either (i) evidence that the child has attained a composite score above the fortieth percentile on a battery of achievement tests which have been approved by the Board of Education for use in the public schools or (ii) an evaluation or assessment which, in the reasonable judgment of the division superintendent, indicates that the child is achieving an adequate level of educational growth and progress.

*In the event that evidence of progress as required in this paragraph is not provided by the parent, home instruction shall cease and the parent shall make other arrangements for the*



*education of the child which comply with § 22.1-254 of the Code of Virginia.*

*D. For purposes of this section, “parent” means the biological parent or adoptive parent, guardian or other person having control or charge of a child.*

**APPENDIX B**

**CONSTITUTION OF VIRGINIA**

**Article VIII.**

§ 3. Compulsory education; free textbooks.—The General Assembly shall provide for the compulsory elementary and secondary education of every eligible child of appropriate age, such eligibility and age to be determined by law. It shall ensure that textbooks are provided at no cost to each child attending public school whose parent or guardian is financially unable to furnish them.

## ARTICLE 1.

*Compulsory School Attendance.*

§ 22.1-254. **Ages of children required to attend.** — Every parent, guardian, or other person in the Commonwealth having control or charge of any child who will have reached the fifth birthday on or before October thirty-first of the 1980-1981 school year and September thirtieth of any school year thereafter and who has not passed the seventeenth birthday shall, during the period of each year the public schools are in session and for the same number of days and hours per day as the public schools, send such child to a public school or to a private, denominational or parochial school or have such child taught by a tutor or teacher of qualifications prescribed by the Board of Education and approved by the division superintendent. (Code 1950, § 22-275.1; 1952, c. 279; 1959, Ex. Sess., c. 72, 1968, c. 178, 1974, c. 199, 1976, cc. 681, 713; 1978, c. 518, 1980, c. 559)

**Cross reference.** — For constitutional provision as to compulsory education, see Va. Const., art. VIII, § 3.

**Law Review.** — For discussion of school cases in federal courts and the United States Supreme Court, see 45 Va. L. Rev. 1402 (1959). For article entitled "In Aid of Public Education: An Analysis of the Education Article of the Virginia Constitution of 1971," see 5 U. Rich. L. Rev. 263 (1971).

This section is a proper exercise of the police power of the State. *Rice v. Commonwealth*, 188 Va. 224, 49 S.E.2d 342 (1948).

And it does not violate the First Amendment to the Constitution of the United States, providing that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. *Rice v. Commonwealth*, 188 Va. 224, 49 S.E.2d 342 (1948).

But section cannot be applied so as to require citizen to relinquish constitutional rights. — This section cannot be applied as a coercive means to require a citizen to forego or relinquish his constitutional rights. *Dobbins v. Commonwealth*, 198 Va. 697, 96 S.E.2d 154 (1957).

Where town closed its Negro high school and made arrangements to transport pupils to Negro county school, defendant who requested enrollment of his child at town's white high school was not guilty of a violation of the

compulsory attendance law for failure to send his child to county school, where his request for child's enrollment in town's white high school was denied on grounds of race. Under the circumstances, defendant's conviction for violation of this section was improper and denied him equal protection of the law. *Dobbins v. Commonwealth*, 198 Va. 697, 96 S.E.2d 154 (1957).

Statutes set out all the valid reasons of which parents can avail themselves for not sending their children to school. *Rice v. Commonwealth*, 188 Va. 224, 49 S.E.2d 342 (1948).

Religious beliefs of defendants do not exempt them from complying with the requirements of this section. *Rice v. Commonwealth*, 188 Va. 224, 49 S.E.2d 342 (1948).

And the fact that they harbored no intent to commit a crime does not constitute a defense to a prosecution for violation of this section. *Rice v. Commonwealth*, 188 Va. 224, 49 S.E.2d 342 (1948).

Where defendants instructing their own children made no effort to have their qualifications approved as required by this section, they were in no position to interpose their instructional efforts as a defense to their violation of the section. *Rice v. Commonwealth*, 188 Va. 224, 49 S.E.2d 342 (1948).

§ 22.1-255. **Nonresident children.** — Any person who has residing with him for a period of sixty days or more any child within the ages prescribed in § 22.1-254 whose parents or guardians reside in another state or the District of Columbia shall be subject to the provisions of § 22.1-254 and shall pay or cause to be paid any tuition charges for such child that may be required pursuant to § 22.1-5 or shall return such child to the home of his parents or legal guardians. (Code 1950, § 22-220; 1958, c. 628; 1968, c. 178; 1976, cc. 681, 713; 1978, c. 140; 1980, c. 559.)

**§ 22.1-256. Children exempted from article. — A.** The provisions of this article shall not apply to:

1. Children suffering from contagious or infectious diseases while suffering from such diseases;

1a. Children whose immunizations against communicable diseases have not been completed as provided in § 22.1-271;

2. Children under ten years of age who live more than two miles from a public school unless public transportation is provided within one mile of the place where such children live;

3. Children between ten and seventeen years of age who live more than two and one-half miles from a public school unless public transportation is provided within one and one-half miles of the place where such children live;

4. Children excused under § 22.1-257 of this article;

5. Any child who will not have reached his sixth birthday on or before December thirty-one of each school year whose parent or guardian notifies the appropriate school board that he does not wish the child to attend school until the following year;

6. Any child withdrawn from kindergarten as provided in § 22.1-3 until the school year following the withdrawal.

B. The distances specified in paragraphs A 2 and A 3 of this section shall be measured or determined from the entrance to the school grounds or the school bus stop nearest the entrance to the residence of such children by the nearest practical routes which are usable for walking or riding. Disease shall be established by the certificate of a reputable practicing physician in accordance with regulations adopted by the Board of Education. (Code 1950, § 22-275.3; 1959, Ex. Sess., c. 72; 1968, c. 178; 1975, c. 558; 1976, cc. 681, 713; 1978, c. 518; 1980, c. 559; 1981, c. 540.)

**§ 22.1-257. Excusing children who cannot benefit from education or whose parents conscientiously object; excusing children for reasons of health or apprehension for personal safety. — A.** A school board:

1. May, on recommendation of the principal and the division superintendent, with the written consent of the parent or guardian, excuse from attendance at school any pupil who the school board determines, in accordance with regulations of the Board of Education, cannot benefit from education at such school;

2. Shall excuse from attendance at school any pupil who, together with his parents, by reason of bona fide religious training or belief, is conscientiously opposed to attendance at school;

3. Shall, on the recommendation of the juvenile and domestic relations district court of the county or city in which the pupil resides, excuse from attendance at school for such period of time as the court deems appropriate any pupil who, together with his parents, is opposed to attendance at a school by reason of concern for such pupil's health, as verified by competent medical evidence, or by reason of such pupil's reasonable apprehension for personal safety when such concern or apprehension in that pupil's specific case is determined by the court to be justified;

4. May, on recommendation of the juvenile and domestic relations district court of the county or city in which the pupil resides, excuse from attendance at school any pupil who, in the judgment of such court, cannot benefit from education at such school.

B. The court in reaching its determination as to whether the concern or apprehension referred to in paragraph A 3 of this section is justified shall take into consideration the recommendation of the principal and division superintendent.

C. As used in paragraph A 2 of this section, the term "bona fide religious training or belief" does not include essentially political, sociological or philosophical views or a merely personal moral code. (Code 1950, §§ 22-275.4, 22-275.4:1; 1954, c. 638; 1959, Ex. Sess., c. 72; 1968, c. 178; 1970, cc. 162, 451; 1976, c. 692; 1980, c. 559.)

**Law Review.** — For survey of constitutional law in Virginia for the year 1975-1976, see 62 Va. L. Rev. 1389 (1976).

**§ 22.1-258. Appointment of attendance officers.** — Every school board shall have power to appoint one or more attendance officers who shall be charged with the enforcement of the provisions of this article. Where no attendance officer is appointed by the school board, the division superintendent shall act as attendance officer. (Code 1950, § 22-275.16; 1959, Ex. Sess., c. 72; 1980, c. 559.)

**§ 22.1-259. Teachers to keep daily attendance records.** — Every teacher in every school in the Commonwealth shall keep an accurate daily record of attendance of all children in accordance with regulations prescribed by the Board of Education. Such record shall, at all times, be open to any officer authorized to enforce the provisions of this article who may inspect or copy the same and shall be admissible in evidence in any prosecution for a violation of this article as prima facie evidence of the facts stated therein. (Code 1950, §§ 22-209, 22-275.15; 1959, Ex. Sess., c. 72; 1964, c. 119; 1968, c. 178; 1980, c. 559.)

**§ 22.1-260. Report of children enrolled and not enrolled.** — Within ten days after the opening of the school, each public school principal shall report to the division superintendent:

1. The name of each pupil enrolled in the school, the age and grade of the pupil and the name and address of the pupil's parent or guardian; and
2. To the best of the principal's information, the name of each child subject to the provisions of this article who is not enrolled in school with the name and address of the child's parent or guardian. (Code 1950, §§ 22-275.8, 22-275.9; 1959, Ex. Sess., c. 72; 1980, c. 559.)

**§ 22.1-261. Division superintendent to make list of children not enrolled; duties of attendance officer.** — The division superintendent shall check the reports submitted pursuant to § 22.1-260 with the last school census and with reports from the State Registrar of Vital Records and Health Statistics. From these reports and from any other reliable source the division superintendent shall, within five days after receiving all reports submitted pursuant to § 22.1-260, make a list of the names of children who are not enrolled in any school and who are not exempt from school attendance. It shall be the duty of the attendance officer to investigate all cases of nonenrollment and, when no valid reason is found therefor, to notify the parent, guardian or other person having control of the child to require the attendance of such child at the school within three days from the date of such notice. (Code 1950, § 22-275.10; 1959, Ex. Sess., c. 72; 1980, c. 559.)

**§ 22.1-262. Complaint to court when parent fails to comply with law.** — A list of persons so notified shall be sent by the attendance officer to the appropriate school principal. If the parent, guardian or other person having control of the child fails to comply with the law within the time specified in the notice, it shall be the duty of the attendance officer to make complaint in the name of the Commonwealth before the juvenile and domestic relations district court. In addition thereto, such child may be proceeded against as a child in need of services as provided in chapter 11 (§ 16.1-226 et seq.) of Title 16.1 of this Code. (Code 1950, § 22-275.11; 1959, Ex. Sess., c. 72; 1976, c. 98; 1980, c. 559.)

**§ 22.1-263. Violation constitutes misdemeanor.** — Any person violating the provisions of § 22.1-254 or § 22.1-255 shall be guilty of a Class 4 misdemeanor. (Code 1950, § 22-275.5; 1959, Ex. Sess., c. 72; 1976, c. 283; 1980, c. 559.)

**Cross reference.** — As to punishment for Class 4 misdemeanors, see § 18.2-11.

§ 22.1-264. **Misdemeanor to make false statements as to age.** — Any person who makes a false statement concerning the age of a child between the ages set forth in § 22.1-254 for the purpose of evading the provisions of this article shall be guilty of a Class 4 misdemeanor. (Code 1950, § 22-275.18; 1959, Ex. Sess., c. 72; 1968, c. 178; 1976, cc. 283, 681, 713; 1980, c. 559.)

**Cross reference.** — As to punishment for Class 4 misdemeanors, see § 18.2-11.

§ 22.1-265. **Inducing children to absent themselves.** — Any person who induces or attempts to induce any child to be absent unlawfully from school or who knowingly employs or harbors, while school is in session, any child absent unlawfully shall be guilty of a Class 4 misdemeanor. (Code 1950, § 22-275.19; 1959, Ex. Sess., c. 72; 1976, c. 283; 1980, c. 559.)

**Cross reference.** — As to punishment for Class 4 misdemeanors, see § 18.2-11.

§ 22.1-266. **Law-enforcement officers and truant children.** Notwithstanding the provisions of § 16.1-246 of this Code, any law-enforcement officer as defined in § 9-108.1 of this Code or any attendance officer may pick up any child who is reported to be truant from school by a school principal or division superintendent or who the law-enforcement officer or attendance officer reasonably determines, by reason of the child's age and circumstances, is truant from school and may deliver such child to the appropriate school and personnel thereof without charging the parent or guardian of such child with a violation of any provision of law. (Code 1950, § 22-275.11:1; 1976, c. 692; 1978, c. 215; 1980, c. 559.)

**Law Review.** — For survey of constitutional law in Virginia for the year 1975-1976, see 62 Va. L. Rev. 1389 (1976).

§ 22.1-267. **Proceedings against habitually absent child.** — Any child permitted by any parent, guardian or other person having control thereof to be habitually absent from school contrary to the provisions of this article may be proceeded against as a child in need of services as provided in chapter 11 (§ 16.1-226 et seq.) of Title 16.1 of this Code. (Code 1950, § 22-275.20; 1959, Ex. Sess., c. 72; 1976, c. 98; 1980, c. 559.)

§ 22.1-268. **Duty of Commonwealth's attorneys to prosecute cases arising under article; jurisdiction of offenses.** — It shall be the duty of the attorneys for the Commonwealth of the several counties and cities to prosecute all cases arising under this article. Juvenile and domestic relations district courts shall have exclusive original jurisdiction for the trial of such cases. (Code 1950, § 22-275.21; 1959, Ex. Sess., c. 72; 1980, c. 559.)

§ 22.1-269. **Board to enforce.** — The Board of Education shall have the authority and it shall be its duty to see that the provisions of this article are properly enforced throughout the Commonwealth. (Code 1950, § 22-275.23; 1959, Ex. Sess., c. 72; 1968, c. 178; 1980, c. 559.)

## ARTICLE I.

*General Provisions.*

§ 16.1-226. Short title. — The short title of the statutes embraced in this chapter is "Juvenile and Domestic Relations District Court Law." (Code 1950, § 16.1-139; 1956, c. 555; 1972, c. 708; 1973, c. 546; 1977, c. 559.)

**Cross reference.** — As to constitutional authority to establish and regulate jurisdiction of inferior courts, see Va. Const., art. IV, § 14.

**Editor's note.** — Many of the cases cited in the notes under the various sections of this chapter were decided under corresponding provisions of former Chapter 8 of this title.

**Law Review.** — For article on the problem of the juvenile, see 18 Wash. & Lee L. Rev. 187 (1961). For comment, "Right to Counsel in Virginia Juvenile Proceedings," see 3 U. Rich. L. Rev. 316 (1969). For note, "Publicity in the Juvenile Court," see 3 U. Rich. L. Rev. 348 (1969). For note entitled, "The Dilemma of the 'Uniquely Juvenile' Offender," see 14 Wm. & Mary L. Rev. 386 (1972). For survey of Virginia law on domestic relations for the year 1976-1977, see 63 Va. L. Rev. 1418 (1977). For

article, "The Revision of Virginia's Juvenile Court Law," see 13 U. Rich. L. Rev. 847 (1979).

**Strict compliance with substantive statutes required.** — Taken as a whole, the Virginia cases compel strict compliance with the requirements of the juvenile statutes that are not merely procedural. *Hailey v. Dorsey*, 580 F.2d 112 (4th Cir. 1978), cert. denied, 440 U.S. 937, 99 S. Ct. 1282, 59 L. Ed. 2d 495 (1979).

**But failure to comply with any statute may not be jurisdictional defect.** — Virginia cases do not indicate that the failure to comply with any juvenile statute is a jurisdictional defect and establish no per se rule to that effect. *Hailey v. Dorsey*, 580 F.2d 112 (4th Cir. 1978), cert. denied, 440 U.S. 937, 99 S. Ct. 1282, 59 L. Ed. 2d 495 (1979).

§ 16.1-227. Purpose and intent. — This law shall be construed liberally and as remedial in character; and the powers hereby conferred are intended to be general to effect the beneficial purposes herein set forth. It is the intention of this law that in all proceedings the welfare of the child and the family is the paramount concern of the State and to the end that this humane purpose may be attained, the judge shall possess all necessary and incidental powers and authority, whether legal or equitable in their nature.

This law shall be interpreted and construed so as to effectuate the following purposes:

1. To divert from the juvenile justice system, to the extent possible, consistent with the protection of the public safety, those children who can be cared for or treated through alternative programs;

2. To provide judicial procedures through which the provisions of this law are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other rights are recognized and enforced;

3. To separate a child from such child's parents, guardian, legal custodian or other person standing in loco parentis only when the child's welfare is endangered or it is in the interest of public safety; and

4. To protect the community against those acts of its citizens which are harmful to others and to reduce the incidence of delinquent behavior. (Code 1950, § 16.1-140; 1956, c. 555; 1977, c. 559.)

**Law Review.** — For survey of Virginia domestic relations law for the year 1977-1978, see 64 Va. L. Rev. 1439 (1978). For comment on termination of parental rights, see 15 U. Rich. L. Rev. 213 (1980). For survey of Virginia law on criminal procedure for the year 1978-1979, see 66 Va. L. Rev. 261 (1980).

The primary function of the juvenile courts properly considered is not conviction or punishment for crime; but crime prevention and juvenile rehabilitation. *Kiracofe v. Commonwealth*, 198 Va. 833, 97 S.E.2d 14 (1957).

Strict compliance with substantive stat-

utes required. — Taken as a whole, the Virginia cases compel strict compliance with the requirements of the juvenile statutes that are not merely procedural. *Hailey v. Dorsey*, 580 F.2d 112 (4th Cir. 1978), cert. denied, 440 U.S. 937, 99 S. Ct. 1282, 59 L. Ed. 2d 495 (1979).

But failure to comply with any statute may not be jurisdictional defect. — Virginia cases do not indicate that the failure to comply with any juvenile statute is a jurisdictional defect and establish no per se rule to that effect. *Hailey v. Dorsey*, 580 F.2d 112 (4th Cir. 1978), cert. denied, 440 U.S. 937, 99 S. Ct. 1282, 59 L. Ed. 2d 495 (1979).

§ 16.1-228. **Definitions.** — When used in this chapter, unless the context otherwise requires:

A. "*Abused or neglected child*" means any child whose parents or other person responsible for his care:

1. Creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental functions;

2. Neglects or refuses to provide care necessary for his health; provided, however, that no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child;

3. Abandons such child; or

4. Commits or allows to be committed any sexual act upon a child in violation of the law.

B. "*Adoptive home*" means the place of residence of any natural person in which a child resides as a member of the household and in which he or she has been placed for the purposes of adoption or in which he or she has been legally adopted by another member of the household.

C. "*Adult*" means a person eighteen years of age or older.

D. "*Child*," "*juvenile*" or "*minor*" means a person less than eighteen years of age.

E. "*Child welfare agency*" means a child-placing agency, child-caring institution or independent foster home as defined in § 63.1-195.

F. "*Child in need of services*" means:

1. A child who while subject to compulsory school attendance is habitually and without justification absent from school; or

2. A child who is habitually disobedient of the reasonable and lawful commands of his or her parent, guardian, legal custodian or other person standing in loco parentis; or

3. A child who remains away from or habitually deserts or abandons his or her family; or

4. A child who commits an act, which is otherwise lawful, but is designated a crime only if committed by a child.

Provided, however, to find that a child falls within any of classes 1, 2 or 3 above (i) the conduct complained of must present a clear and substantial danger to the child's life or health or (ii) the child or his or her family must be in need of treatment, rehabilitation or services not presently being received and (iii) the intervention of the court must be essential to provide the treatment, rehabilitation or services needed by the child or his or her family.

G. "*The court*" or the "*juvenile court*" or the "*juvenile and domestic relations court*" means the juvenile and domestic relations district court of each county or city.



H. "*Delinquent act*" means an act designated a crime under the law of this State, or an ordinance of any city, county, town or service district, or under federal law, except an act, which is otherwise lawful, but is designated a crime only if committed by a child.

I. "*Delinquent child*" means a child who has committed a delinquent act or an adult who has committed a delinquent act prior to his or her eighteenth birthday.

J. "*Department*" means the Department of Corrections and "*Director*" means the administrative head in charge thereof or such of his assistants and subordinates as are designated by him to discharge the duties imposed upon him under this law.

K. "*Foster care*" or "*temporary foster care*" means the provision of substitute care and supervision, for a child committed or entrusted to a local board of public welfare or child welfare agency or for whom the board or child welfare agency has accepted supervision, in a temporary living situation until the child can return to his or her family or be placed in a permanent foster care placement or in an adoptive home.

L. "*Intake officer*" means a juvenile probation officer appointed as such pursuant to the authority of this chapter.

M. "*The judge*" means the judge, or the substitute judge of the juvenile and domestic relations district court of each county or city.

N. "*This law*," "*the law*" means the Juvenile and Domestic Relations District Court Law embraced in this chapter.

O. "*Legal custody*" means a legal status created by court order which vests in a custodian the right to have physical custody of the child, to determine where and with whom he shall live, the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to any residual parental rights and responsibilities.

P. "*Permanent foster care placement*" means the place of residence in which a child resides and in which he or she has been placed pursuant to the provisions of §§ 63.1-56 and 63.1-206.1 with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he or she reaches the age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or § 63.1-248.9. A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

Q. "*Shelter care*" means the temporary care of children in physically unrestricting facilities.

R. "*State Board*" means the State Board of Corrections.

S. "*Residual parental rights and responsibilities*" means all rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship of the person, including but not limited to the right of visitation, consent to adoption, the right to determine religious affiliation and the responsibility for support. (Code 1950, § 16.1-141; 1956, c. 555; 1972, c. 708; 1973, c. 546; 1974, cc. 44, 45; 1977, c. 559; 1978, c. 605; 1979, c. 15; 1981, c. 491.)

The 1981 amendment deleted "including traffic infractions as defined under § 46.1-1 (40)" following "federal law" in subdivision H.

Law Review. — For note entitled, "The Constitutionality of Excluding Young People From Jury Service," see 29 Wash. & Lee L. Rev. 131 (1972). For comment on termination of

parental rights, see 15 U. Rich. L. Rev. 213 (1960). For survey of Virginia law on criminal procedure for the year 1978-1979, see 66 Va. L. Rev. 261 (1980). For an overview of Virginia Supreme Court Decisions on domestic relations, see 15 U. Rich. L. Rev. 321 (1981).

1983 SESSION  
ENGROSSED

SP059-1J

1 SENATE JOINT RESOLUTION NO. 59

2 Senate Amendments in [ ] - February 7, 1983

3 *Requesting the Education and Health Committee of the Senate and the Education*  
4 *Committee of the House of Delegates to study home education.*

5 \_\_\_\_\_  
6 Patrons—Chichester, Brault, Walker, and Andrews

7 \_\_\_\_\_  
8 Referred to the Committee on Rules

9 \_\_\_\_\_  
10 WHEREAS, parents are traditionally and rightfully the primary educators of their  
11 children and have a fundamental responsibility to prepare their children for the obligations  
12 of later life; and

13 WHEREAS, it is the joint responsibility of parents and the state to provide children with  
14 educational opportunities; and

15 WHEREAS, our Compulsory Attendance Law has served well the educational goals of  
16 the Commonwealth and an overwhelming majority of its families; and

17 WHEREAS, there are children who are more receptive to the educational process in the  
18 environment of their own homes; and

19 WHEREAS, it is appropriate and desirable that families who believe that home  
20 instruction is better for their children be allowed to educate them at home; and

21 WHEREAS, the Commonwealth is responsible for the delicate task of ensuring  
22 educational opportunity for children and encouraging the healthy growth of the family unit;  
23 now, therefore, be it

24 RESOLVED by the Senate, the House of Delegates concurring, That the Education and  
25 Health Committee of the Senate and the Education Committee of the House of Delegates  
26 are requested to create a joint subcommittee on home education. The joint subcommittee is  
27 requested to establish guidelines whereby parents may qualify to educate their own  
28 children in their own home.

29 The joint subcommittee shall consist of five members: two members of the Education  
30 and Health Committee of the Senate to be appointed by the Committee on Privileges and  
31 Elections of the Senate, and [ ~~two~~ three] members of the Education Committee of the  
32 House of Delegates to be appointed by the Chairman thereof.

33 The joint subcommittee shall submit its recommendations to the 1984 Session of the  
34 General Assembly.

35 The cost of this study shall not exceed \$4,000.

36

37



