REPORT OF THE
JOINT SUBCOMMITTEE STUDYING

THE PLACEMENT OF JUVENILES IN ADULT JAILS

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

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Report of the
Joint Subcommittee Studying
Placement of Juveniles in Adult Jails
To
The Governor and the General Assembly of Virginia
Richmond, Virginia
January, 1984

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

INTRODUCTION

The Joint Subcommittee was established by Senate Joint Resolution No. 14, agreed to during the 1983 Session of the General Assembly.

The study was recommended by the Joint Subcommittee Studying the Placement of Handicapped Children in Residential Facilities, conducted during 1982 pursuant to Senate Joint Resolution No. 43 and chaired by Senator Thomas J. Michie, Jr.. That Joint Subcommittee was informed during the course of its study that Virginia, with an annual average of 4,000 children in adult jails between 1978 and 1982, ranks third in the nation among states in number of juveniles so detained. Courts in other states have held that children in adult jails are being denied their due process rights and their right by law to a free appropriate education.

The Joint Subcommittee was directed to focus on the constitutionality of detaining children in adult facilities, the feasibility of relocating children so detained, and the fiscal impact on state and local government of such relocation. The Joint Subcommittee is to formulate recommendations for legislative action on this issue for submission to the 1984 General Assembly.

A copy of Senate Joint Resolution No. 14 is contained in Appendix A to this report.

The membership of the Joint Subcommittee is comprised of Senators Michie and Gartlan of the Senate Committee on Rehabilitation and Social Services; Senator Emick of the Senate Finance Committee; Delegates Benedetti, Jester and Pickett of the House Committee on Health, Welfare and Institutions; Delegate Anderson of the House Committee on Finance; and Delegate Slayton of the House Appropriations Committee.

ACTIVITIES OF THE JOINT SUBCOMMITTEE

The Joint Subcommittee reviewed the scope of the issue and the procedures and policies governing the placement of juveniles in jails.

The members discussed the issue with professionals from the disciplines concerned with children who are placed in jail in Virginia. Representatives from the legal system included law enforcement personnel, juvenile court judges, and defense and prosecuting attorneys.

These included The Honorable Augustus S. Hydrick, Judge of the Henrico County Juvenile Court and President of the Virginia Council of Juvenile Court Judges; The Honorable Roy B. Willet of Roanoke City Juvenile Court and member of the Juvenile Justice and Delinquency Prevention Advisory Council; the Honorable Robert F. Ward of the Twenty-Second Judicial District; the Honorable Arlin F. Ruby of the Richmond City Juvenile Court; and the Honorable Lawrence Janow of the Twenty-Fourth Judicial District. Others consulted include James H. Turner, Sheriff of Henrico County and member of both the Executive Committee of the Virginia Sheriff's Association and the Advisory Board of the National Institute of Corrections; Patrick Bell, Assistant Commonwealth's Attorney for the Richmond City Juvenile Court; Steven W. Bricker, defense counsel in numerous juvenile cases; and Professor Robert Shepherd of T.C. Williams School of Law, who is a nationally recognized expert in the field of juvenile justice.

Medical and mental health professionals shared their opinions based on their experience with these children. The Joint Subcommittee conferred specifically with Dr. Joe W. King, Child Psychiatrist and Medical Director of the Psychiatric Institute of Richmond; and Dr. Richard Brookman, Pediatrician in Adolescent Medicine, Director of Adolescent Health Services at the Medical College of Virginia and medical consultant to the Henrico County Detention Center.

The Joint Subcommittee acknowledges the assistance throughout the study of the Department of Corrections and the Department of Criminal Justice Services. These state agencies, which administer juvenile corrections program, provided technical assistance and information as needed.

The Joint Subcommittee benefited from the thorough and informative study of the issue, completed in September 1983, by the Virginia State Crime Commission. The study included research and analysis of the current practice in Virginia of using jails for placement of juveniles. This data, including reasons for such use and problems arising therefrom, provided the basis for the Commission's recommendations for eliminating use of jails for juveniles.

The Joint Subcommittee received statements from the Virginia Congress of Parents and Teachers, the Virginia Council on Juvenile Detention and the Virginia Juvenile Officers Association. [Appendix B].

FINDINGS

The juveniles currently held in adult jails belong to three groups. They have been detained prior to disposition pursuant to § 16.1-249, transferred to circuit court for disposition as adults, or sentenced to jail pursuant to § 16.1-284.

Current State Law and Regulation

Governing Placement of Juveniles in Jails

State Statutes

Before disposition. When a child taken into immediate custody on the authority of the statute is not released by the arresting officer, he must be brought before the judge, intake officer or magistrate. The judicial officer, in considering a case, is bound by the general rule stated in § 16.1-248 regarding criteria for detention or shelter care. He shall, after "ascertainment of the necessary facts," that is, review of the allegations and the supporting facts, release the child to the custody of an appropriate person. He may authorize preadjudicatory detention only if at least one of the following applies, as shown by clear and convincing evidence:

1. No suitable person is able and willing to care for the child.

2. The child is alleged to be delinquent and his release would constitute an unreasonable danger to the community.

3. The release of the child would constitute a substantial threat of serious harm to the child.

The statute stipulates, in § 16.1-249, authorized places of confinement for children if such detention or shelter care is deemed appropriate. A child may be detained in an approved foster home, a facility operated by a licensed child welfare agency, or, if a child is alleged to be delinquent, in a detention home or group home approved by the Department of Corrections. Any other suitable place designated by the court and approved by the Department of Corrections may be used for detention. This section authorizes detention in a jail if the child is delinquent or alleged to be delinquent, he is at least fifteen years of age, he will be placed in an area entirely separate and removed from adults, and the jail is approved by the Department of Corrections for the detention of children. In addition, one of the following conditions must be met:

1. A judge or intake officer determines that placement of the child in a juvenile facility would unreasonably endanger the child or the community and the child is charged with an offense designated a Class 1, 2 or 3 felony.

2. The juvenile detention home in which the child should be placed is at least twenty-five miles from the place where custody is taken and is in another city or county. (Placement in a jail on this basis may be for no longer than seventy-two hours.)

Children may be detained in jails, subject to the conditions described above, in two additional instances. First, when a child's case is transferred to circuit court by waiver or by court-ordered transfer, the child may be transferred to a jail. Second, a judge may transfer a child to a jail, after a hearing, if he has demonstrated that he is a threat to the safety or security of other children in a juvenile facility in which he has been placed.

After disposition. The procedure described above governs custody and detention prior to case disposition. Virginia is one of only seven states that authorize jail sentences as a dispositional alternative of the juvenile court. Children may be sentenced to jail as adults pursuant to § 16.1-284. To be sentenced as an adult, a child must be at least fifteen years old, charged with an offense designated a felony if committed by an adult, and found not amenable to treatment as a juvenile. The interests of the community must also require such sentencing. The child may be sentenced to no more than twelve months in jail, and the jail must be approved by the Department of Corrections and provide separation from incarcerated adults.

State Administrative Regulations

Administrative standards for the jailing of juveniles are set by the Virginia Board of Corrections. They are found in Minimum Standards for Local Jails and Lockups , items 6.01 through 6.04. The regulations provide for separation from adults, supervision by jail personnel, use of isolation cells in certain instances, and approval of facilities by the Department of Corrections. [Appendix C]. No guidelines exist, outside of those enumerated in the statute, to assist officials in determining which juveniles should appropriately be placed in jails.

Practices in Virginia

The following statistics regarding juvenile crime in Virginia and resultant use of jails were reported by the Department of Criminal Justice Services, by the Department of Corrections, and by the Virginia State Crime Commission in its report on "The Use of Jails for Juveniles in Virginia" (September, 1983).

The number of juveniles arrested in Virginia has been decreasing since 1977, both for violent and for less serious crimes. Total juvenile arrests are down from 41,000 in 1977 to 35,700 in 1982. Since 1975, only 30% to 35% of juvenile arrests were for offenses considered serious and violent. These include murder, manslaughter, forcible rape, aggravated assault, burglary, robbery, larceny and vehicle theft. Less serious felonies and all misdemeanors account for 60% to 65% of juvenile arrests in the past eight years.

In fiscal 1982, 3756 juveniles were reported held in jails in Virginia before and after disposition of their cases. In 1980, The National Juvenile Justice Assessment Center ranked Virginia sixth nationally in the number of juveniles jailed and tenth in the number jailed per 100,000 juvenile population. These figures are only minimally offset by the differences nationally in minimum age for original circuit court jurisdiction; the minimum age is eighteen in forty states, as in Virginia. Based on preliminary figures gathered by the Department of Corrections during the Joint Subcommittee's study, the projected number of juveniles jailed in FY 83-84 will total about 1500, due to changes in jailing policy and practices as well as more accurate data collection and analysis. About three-fourths of these are awaiting trial or serving sentences imposed by the juvenile court; the remaining 25% have been transferred to circuit court or are serving sentences imposed by the circuit court.

Only about 16% of those held in jails are charged with or adjudicated as having committed offenses against persons. About 47% held in jails are charged with or found to have committed property crimes, usually larceny or burglary. In fiscal 1982, ten juveniles charged with status

offenses were reported held in jails.

Of the ninety-six jails in Virginia, sixty-one are approved for the placement of juveniles. The jail facilities and the programs they offer vary widely. Because they are designed for adults, they do not generally provide juvenile treatment programs. Sixty percent have no structured recreational programs and seventy-eight percent have no educational services. Fifty percent have no classification program. These programming deficiencies apply to all inmates; however, juveniles may suffer more because of their required separation from adults, which deprives them of the educational and recreational programs which do exist. Often juveniles are confined in isolation in order to provide the required separation from adult offenders. Jail personnel receive limited training devoted to the juvenile offender.

The average length of stay in jail is twenty-seven days, but each year about 10% of those in jail are held for less than six hours and 20% for less than twenty-four hours.

In 1982, 168 juveniles were reported held in jails not approved to house juveniles.

Issues Influencing the Practice of Jailing Juveniles

The Joint Subcommittee considered various issues relevant to the practice of placing juveniles in jails both before and after disposition. A review of these issues follows.

Federal Statutory Law

The Juvenile Justice and Delinquency Prevention Act, passed by Congress in 1974, provides funds to the states "to improve the quality of juvenile justice in the United States and to overhaul the federal approach to the problems of juvenile delinquency and children in trouble."

The Act requires that status offenders and juveniles alleged or found to be delinquent may not be detained or confined in any institution in which they have regular contact with adults incarcerated because they have been charged with or convicted of a crime. The act was amended in 1980 to require that no juvenile may be detained or confined in an adult jail or lockup after December 8, 1985. States must comply with the mandates of the act to receive available funds.

Virginia has received $1.4 million each year between federal fiscal years 1976 and 1981 pursuant to the Act. For each of fiscal years 1982 and 1983, Virginia received $939,000. Of these funds, 93% to 95% goes to localities and state agencies in direct grants; about 5% is retained for administrative expenses by the Department of Criminal Justice Services, which administers the funds.

Other pertinent congressional action, Senate Bill No. 522, the "Juvenile Incarceration Protection Act," introduced in Congress on February, 1983, amends the U.S. Civil Rights Act. The bill states the congressional finding that the holding of juveniles in adult jails and lockups constitutes punishment, violates the due process right to fundamental fairness, and unnecessarily endangers the personal safety of juveniles. The bill prohibits such detention of juveniles after December 8, 1985, except that regulations may provide for the special needs of areas of "very low population density" and for extraordinary cases of juveniles accused of serious crimes where no acceptable alternative exists. The bill creates a specific cause of action for damages and equitable relief for persons aggrieved by a violation of the Act.

Developments in Case Law

The constitutionality of detention of juveniles has been addressed in numerous recent federal court decisions. Constitutionality of predispositional and postdispositional detention has been challenged and found lacking on several bases.

Juveniles have been found to have a right to treatment while in a residential facility. Virginia's juvenile justice system is based, as are those of other states, on the principle of parens patriae and rehabilitation. Section 16.1-227 of the Virginia Juvenile Code states that "[t]his 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." Case law has supported this right to treatment with several constitutional arguments. These include findings that because the purpose of the incarceration of juveniles is rehabilitation, such must be provided, or the "sentence" does not bear a reasonable relation to the purpose for which the juvenile was committed.[1] It has been held that because juveniles are denied certain due process protection given adults in criminal cases, then confinement must not be punitive; if punishment is given, then due process must be fully afforded.[2]

The Eighth Amendment's prohibition against cruel and unusual punishment has been invoked, specifically with regard to predispositional detention.[3] Incarceration in jail has been held cruel and unusual by devastating children emotionally and leading to adult criminal behavior.[4] Cruel and unusual treatment has included cramped quarters, poor lighting, poor air circulation, broken locks, lack of recreational activity [5], isolation in a bare room without reading materials or other recreation [6], and lack of reasonable protection while incarcerated. [7]

Incarceration of juveniles has been held in some instances to violate equal protection provisions of the Constitution. Juveniles similarly situated with adults have not been accorded the same privileges and protections as adults. [8] Conversely, courts have found that similar treatment of preadjudication and postadjudication detainees is a violation because the two groups are not similarly situated and may not be "punished" similarly. [9]

The actions cited above have generally been facility-specific. However, the case of D.B. v. Tewksbury [10], decided in August, 1982, in federal District Court for the State of Oregon, bans preadjudicatory jailing of juveniles statewide. (Oregon law does not authorize sentencing of juveniles to adult institutions, as does Virginia law.) The Court found a violation of Fourteenth Amendment rights to due process when a child, because the juvenile system is to provide what the Court called "special solicitude," not punishment, is not afforded all the procedural safeguards provided adults, but the child is then "punished" as an adult. A choice is necessary between the juvenile justice system's special approach and the criminal justice system with all its procedural safeguards.

Poor conditions cited in the Oregon jails, used to house status offenders and nonoffenders as well as alleged delinquents between the ages of twelve and eighteen years, were found to constitute punishment. These conditions included lack of an intake screening process; lack of written criteria to govern the decision to jail; lack of procedures for handicapped youth; untrained workers; showers visible to both sexes; limited medical provisions; lack of education, counseling and recreational opportunities; use of isolation without guidelines; verbal assaults and frequent contact with other inmates. Many of these conditions found in Oregon jails are commonly found in Virginia's jails, according to the 1981 monitoring report of the Virginia Department of Criminal Justice Services, based on visits of sixty-two local jails. The court said in Tewksbury that even if

> the jails in which these children are lodged are modern, 'enlightened' kinds of jails–ones which provide different methods of discipline, care, and treatment appropriate for individual children according to age, personality, and mental and physical condition.....[and] these jails are adequately staffed and provide reasonable measures of comfort, privacy, medical care, food, and recreation.....to lodge a child in an adult jail pending adjudication of criminal charges against that child is a violation of that child's due process rights under the Fourteenth Amendment to the United States Constitution.

In the Tewksbury case, legal fees charged to local administrative and corrections officials totaled $300,000.

While no class action suits with such statewide effect have yet been brought in Virginia, precedent now exists for such expensive litigation. Already, plaintiffs in individual actions seeking monetary damages for injuries incurred while in jail and injunctive relief have prevailed in Virginia or in cases which may affect Virginia. In 1982, in Boe v. County of Chesterfield [11], damages of $36,500 were awarded to the sexually assaulted juvenile plaintiff; attorney's fees and costs totaling approximately $35,000 were also assessed. In Doe v. Swinson [12], the federal district court for the Eastern District of Virginia assessed a jury verdict of $50,000 in damages for a physical assault on a juvenile in jail; attorney's fees in that case were paid by the county and judges. In Allen v. Burke [13], the Fourth Circuit held that a magistrate immune from damages for

improper jailing may nevertheless be liable for attorney's fees. In Smith v. Wade [14], the Supreme Court held that punitive damages as well as compensatory damages may be assessed under 42 U.S.C. § 1983.

Physical and Psychological Consequences of Jail Placement

Physical and sexual assaults resulting in litigation are cited above. The Crime Commission documented eight sexual assaults against juveniles in the past three years. It is believed that others are unreported. Such abuse is commonly recognized among those who work in jails; the stronger inmates commonly exploit the weaker ones. This is the case for both juveniles and adults, but juveniles are more often the weak and submissive inmates.

Conditions of confinement in jails are widely believed to result in the very high rate of suicides among juveniles in adult jails. The Crime Commission in 1983 cited a Community Research Center study which found that juveniles are almost eight times likelier to commit suicide in jails than in juvenile detention centers and four times more likely to do so than those in the general population, even with sight and sound separation. These figures are particularly significant in that the rate of jail suicide is calculated based on stays of two to seven days in jails while for the general population, the rate is calculated for 365 days. Isolation, used frequently to effect separation, was cited in that study as a major reason for this high suicide rate. Isolation can compound the preexisting fear, confusion and hopelessness and the effects of lack of activity and punitive physical conditions existing in many if not most jails, making suicide more likely. The Crime Commission found that more than half of Virginia's jails use isolation to separate juveniles from adults. At least five suicides or suicide attempts have been reported in Virginia jails since 1980, according to the Crime Commission.

The exposure of youths to these conditions was discussed by the Joint Subcommittee with medical and mental health professionals. The Joint Subcommittee conferred specifically with Dr. Joe W. King, Child Psychiatrist and Medical Director of the Psychiatric Institute of Richmond; and Dr. Richard Brookman, Pediatrician in Adolescent Medicine, Director of Adolescent Health Services at the Medical College of Virginia and Medical Consultant to the Henrico County Detention Center. These experts were generally in agreement that jail placement for youths other than the few most violent and least amenable to treatment should be avoided.

Dr. King explained that the nature of adolescents may complicate the problem of placing adolescents in adult jail facilities. Adolescents speak predominantly through behavior, while adults develop verbal skills and the ability to think through their feelings and express their feelings in words. The adolescent who is in trouble with the law is usually in the period of transition from expressing himself through behavior to the development of verbal skills to express feelings. and he is therefore presenting himself through a mixture of these two methods. Under a given set of stresses, an adolescent may resort to earlier forms of behavior and act out his feelings rather than rely on verbal skills. Adolescents who usually conform can seriously misbehave as an expression of serious mental disturbances such as depression or conduct disorders. These adolescents are amenable to treatment and should not be placed in jails where these problems are not treated and may be exacerbated.

The adolescents who may go to jail generally fall into three categories, according to Dr. King. They include the "one-timer," or the adolescent who generally does well and then gets into serious legal difficulty, generally as a result of an unplanned incident. The second category includes the youth who is lagging developmentally and acts out feelings through behavior. The third category is that of the truly antisocial youth who has decided that he does not like society or its rules; he premeditates his acts, and his crimes are generally against others or at the expense of others. The youth who are in the first and second categories are vulnerable; they can be treated and develop beyond these stages, but if inadequately treated can develop serious chronic delinquent behavior.

The doctors noted that a parallel can be drawn between hospitals and jails; many hospitals have adolescent units where youths of similar age are placed together so that they may receive treatment tailored to their special needs. Adolescents are placed in adult jail facilities only on an occasional basis; therefore, it is not feasible to have experts in the care of juveniles or services needed by adolescents in a particular facility on a regular full-time basis. A juvenile detention center has staff trained to work with juveniles and capable of reacting appropriately to

nonverbal communication. It also is more likely to have the appropriate health care for adolescents so that any developmental problems the adolescents may be experiencing can be recognized and treated.

In conclusion, studies shared with the Joint Subcommittee have shown that juveniles confined in custodially oriented correctional facilities are found to have attitudes associated with increased levels of delinquent self-identification. The experience does not benefit the youth in any meaningful way and is likely to encourage future delinquent or criminal behavior.[15] Justifications for incarceration such as deterrence, incapacitation and retribution are suggested, but it has been noted that these are not authorized by the philosophy of the juvenile justice system, which is established to benefit and meet the needs of juveniles.

Cost Factors

The loss of federal funds and the potential cost of litigation have been described. More direct costs for detaining juveniles in facilities other than jails were calculated in 1982 by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in its "Jail Removal Cost Study." That office approximated the annual cost for the nation of holding children in jails to be $69 million. The cost of provision of adequate sight and sound separation from adults raised the annual cost to $102 million. It was then estimated that 88% of children in jails are incarcerated for property and minor offenses and only 12% for serious offenses indicating a need for secure detention. Therefore, of the 88% of nonviolent juveniles who could be in a nonsecure setting, half could be placed in home detention. The 12% needing secure detention could be placed in existing juvenile detention facilities either by removing status offenders and nonoffenders from those facilities or by providing transportation to more distant available facilities. Given these assumptions, the total annual operating cost for detaining juveniles in facilities other than jails was 15% higher than the cost of jailing children without separation but 20% lower than the cost of such jailing with adequate separation from adults.

The study, however, recognized other cost factors, especially the cost of recidivism, which is higher for children detained in jails than for those in any other type of juvenile care. The rationale that these are "tougher" children was found faulty, as 89% are in jails for minor offenses and 44% have no known prior court contacts. The negative influence of the setting is cited as a probable cause of this high recidivism rate. Figuring cost of recidivism rates into the cost of detention, OJJDP concluded that complete removal from jails was the most cost-effective course, costing less than current jailing practices and saving even more over the cost of jailing children with complete separation.

Mr. James Brown, Director of the Community Research Center at the University of Illinois, cited for the Joint Subcommittee the experience of a state which was not participating in the Juvenile Justice Act. This state, in approaching the issue of its youth in jails, studied twelve of its county jails. Architectural and other analyses showed that it would cost, on a statewide basis, about $15 million dollars to bring the level of standards, services and conditions in those jails to an appropriate level. Because of this expense, they looked at other options, specifically complete removal, to determine what it would cost in that area. This year, the state passed legislation which would prohibit jailing. It was necessary only to construct one small juvenile detention center in one area of the state that was uncovered and to provide a number of contracted services, including a Youth Attendant Program in which contracted staff in rural areas in off-duty hours supplements the regular probation staff.

Other States

Attention is being given to this issue elsewhere in the nation. Six states during the past year have passed legislation prohibiting the use of jails. Professional groups officially opposing the use of jails for juveniles include the National Sherriffs' Association; the Commission on Accreditation of Corrections of the American Correctional Association; the National Council of Juvenile and Family Court Judges; and the National Coalition for Jail Reform, which includes national organizations representing local government, local law enforcement agencies, judges, corrections officials and attorneys. Other interest groups have taken this same position, including the Boys Clubs and Girls Clubs of America and the Virginia Congress of Parents and Teachers.

CONCLUSIONS AND RECOMMENDATIONS

The Joint Subcommittee, in response to the aforementioned findings, and after considering numerous options for addressing the issue of placing juveniles in jails, recommends the following comprehensive plan for the removal of juveniles from jails. The plan is based on the removal of all juveniles from jails by December, 1985, and the establishment by that date of an alternative to use of jails for sentencing by the juvenile court. This provision responded to the concerns of several of the judges participating in the study.

While agreeing that jail is an inappropriate preadjudicatory placement for juveniles, the judges expressed a need for a facility for short-term determinate sentencing of juveniles whose offenses are not serious enough to justify transfer to circuit court, yet who need more punitive treatment than is provided by existing juvenile programs. The juveniles most often included in this category were those who, because they have committed numerous misdemeanors rather than felonies, cannot be transferred to circuit court, yet who have not responded to juvenile programs provided by the Department of Corrections. The judges seek options in such cases for protection of the public while attempting to effectively deal with the juvenile. They agreed that a facility meeting these needs would be an acceptable alternative to jails for sentencing.

The most readily available alternative was determined to be local secure juvenile detention homes. They are located throughout the state and are already equipped to provide educational, recreational and therapeutic services to youth by staff trained to work with juveniles. The facilities are local for short-term incarceration in the community, in contrast to the learning centers' long-term regional program. With this alternative, judges would retain their authority and discretion and be provided a secure alternative to jail.

The Joint Subcommittee then suggested a companion measure of implementation of more objective detention criteria. Such criteria would provide objective indices for determining the likelihood of behavior necessitating detention. This measure would facilitate the use of detention homes, now used only prior to disposition, for postdispositional placements.

More objective detention criteria would also address a documented overuse of secure detention predispositionally, both in jails and in detention homes. Data show that pretrial detention as currently practiced is expensive and unnecessary. The Crime Commission found, in its review of state juvenile corrections records, that almost 12,000 children are held each year, on the average, in secure custody awaiting trial. However, only one in five of these children will be sentenced to a secure placement upon disposition. The majority of those in secure detention, about 40%, are charged with property offenses, most often breaking and entering, burglary and petty larceny. The next highest number are held for offenses which include fugitive escape, violation of parole and probation, and minor offenses. The more serious offenses of murder, rape and manslaughter account for a very small number of charges. Nearly 10% of those held in secure facilities in fiscal 1981 and 1982 were held for status offenses. In addition, the percentage of juveniles detained varied from 6% in some jurisdictions to 23% in others.

It appears from this data that a substantial number of youths placed in secure detention pending trial are charged with crimes which, taken alone, do not indicate that community interests require detention, nor do the nonsecure final dispositions in 80% of these cases indicate that there was a need for secure pretrial detention.

A study entitled "Prohibiting Secure Juvenile Detention: Assessing the Effectiveness of National Standards Detention Criteria," conducted in 1980 by the Community Research Forum, concluded that proportionately fewer children are detained in jurisdictions meeting objective detention criteria modeled after those developed by the National Advisory Committee on Juvenile Justice and Delinquency Prevention. The criteria can be implemented with equal success in both urban and rural areas without these areas experiencing a higher rate of failures to appear or a higher rate of rearrests between time of initial arrest and final disposition. States and localities which have implemented objective detention criteria have confirmed these findings, including Pennsylvania, which experienced a 38% drop in secure detention rates, Michigan's upper peninsula, and Louisiana.

Further, a recent New York federal court decision ruled unconstitutional that state's juvenile detention statute, holding that it denies due process in that a judge can act "arbitrarily and

capriciously" in predicting the likelihood of future criminal conduct, thus imposing impermissible punishment.[16]

The detention criteria developed by the Joint Subcommittee generally include provisions for risk of violence and protection of the jurisdiction of the court. The provisions are modeled on provisions recommended by national standards, including those of the American Bar Association and Institute for Judicial Administration, and on guidelines adopted in other states. The criteria include objective indices for determining the likelihood of behavior necessitating detention. It is suggested that criteria for secure detention and for shelter care be separated; currently, the two are treated together. The criteria for shelter care should generally include provisions for the child who poses no risk but is in need of protection. The presumption should remain that a child in custody be released by the court after consideration of the case as required by § 16.1-247. However, this proposal, in § 16.1-248.1, suggests five circumstances under which secure detention may be ordered.(Appendix D) Detention is not required if any of these five conditions is met, but is unauthorized unless one of the five is met. If secure detention is unnecessary, then a child may, but need not, be placed in shelter care if he is eligible for detention or if one of the other five criteria in the proposal is met.

At the Joint Subcommittee's request, the Departments of Correction and of Criminal Justice Services conducted a preliminary feasibility study to determine the impact on the detention home system of placement of youth after disposition and simultaneous implementation of more objective detention criteria.

The Departments' analysis included an assessment of the number of juveniles in jails currently and the reasons for their placements, based on figures for July and August, 1983, the first months after implementation of new record-keeping procedures, which have improved the accuracy of the data.

The Department assessed the current detention home population on the basis of reason for detention. The results indicate that about a 25% reduction in secure detention could be anticipated with implementation of more objective detention criteria as described earlier in this report.

The Departments concluded that children currently jailed could be accommodated in existing detention facilities on predispositional and postdispositional bases. This conclusion is corroborated by the Crime Commission in its 1983 study, which reported that the average utilization of secure juvenile detention facilities in 1982 was only 80%, which translates into 82 available spaces statewide on an average day. Another 50 spaces in less secure juvenile facilities are available daily. About 100 additional nonsecure spaces were available each day in 1982.

The Departments stated that some additional conditions and needs should be met prior to such use of detention homes, according to a poll of detention home superintendents undertaken as part of this assessment. A transportation network would be needed to make available currently unused detention space to distant localities with high jail populations and no detention home space. A mechanism to expedite disposition is needed to minimize length of predispositional detention placements. Physical and programmatic changes are also needed. At least one new staff member should be added in each of the seventeen homes, and staff should receive training in dealing with sentenced juveniles and the more difficult youth remaining as a result of the proposed detention criteria. Physical needs include replacing plate glass with plexiglass, ceramic toilets with stainless steel fixtures, and hollow doors with solid steel doors equipped with stronger locks. It was pointed out that these physical needs should be met in the near future regardless of whether homes are used for sentencing. The newer homes may be physically ready now for these placements, without renovation needed.

The Departments recommended a maximum thirty-day sentence to the detention home. In this way, programming is more efficient because predispositional and postdispositional placements can be made in the same facility. They pointed out that, currently, the average length of stay in jail by juveniles is twenty-seven days.

This sentencing option would provide a short-term community-based secure alternative to jails. Youth needing longer-term more intensive treatment would still be committed to the Department of Corrections for placement in a learning center. Those who have committed

crimes serious enough that these options are found ineffective would be transferred to circuit court for treatment as adults.

The Departments shared preliminary estimates of the cost of the detention home alternative. The changes outlined above, in five to ten (one or two per region) of the seventeen existing detention homes, may cost about $500,000 in the first year of the upcoming biennium for use by 1985. These estimates include capital improvements which the Department and the individual home administrators consider necessary even if the sentencing proposal is not implemented. Adding and training staff to an optimal level will cost an additional $200,000 per year in operating costs if children are sentenced to the homes. The Departments anticipate that $250,000 or more from Juvenile Justice and Delinquency Prevention Funds can be committed in FY 1984 to the cost of this jail removal initiative.

An assessment of the fiscal impact of the proposal must include consideration of the freeing of spaces in local jails, although change may not be seen in the block grant amount until the second biennium, as the grant amount is based on utilization for the previous biennium. With regard to federal Juvenile Justice and Delinquency Prevention funds, Virginia currently receives $1 million per year and will lose $1 million to $1.5 million by 1985 if removal is not substantially implemented by then. Another cost issue is potential expense of litigation and damage assessment, already seen in other states, if jailing is continued.

The cost assessment outlined above is based on figures provided by the Department of Corrections through its new jail monitoring system, instituted in July, 1983. The system has improved the accuracy of the Department's assessment of the juvenile jail population. The Joint Subcommittee recommends that the Department continue to evaluate the potential costs in the next year as figures on number, location and basis of such placements are better represented. This information will provide more accurate data for estimating the financial assistance which the State must make available to the localities in order to provide the local alternatives, whether secure or nonsecure, to jails for juveniles and to provide the transportation which will be needed in more remote areas of the state to utilize available facilities.

There was concern expressed that should the jail sentencing option be unavailable, more youth would be transferred to circuit court, to receive harsher treatment as adults. Other states have investigated this issue. Pennsylvania found that its total jail removal effort did not result in an increased number of transfers. A 1983 report of the Chicago Law Enforcement Study Group entitled "Needed: Serious Solutions for Serious Juvenile Crime" concluded that there is no evidence that transferred youth are convicted more often, sentenced to longer terms or that society benefits in any way. The Joint Subcommittee noted that the literature is in conflict on whether juveniles receive harsher disposition of their cases in circuit court. Some sources say that first-time young offenders receive lighter sentences in adult courts than they would in the juvenile system and that the additional procedural safeguards result in many more youth being acquitted than would be released by juvenile courts.

The recommended jail removal plan is included in proposed legislation in Appendix D to this report.

In addition to issues discussed above, several other possible deficiencies were recognized in the procedures which result in placement of juveniles in secure detention and, therefore, in jails.

The U.S. Court of Appeals for the Eighth Circuit in R.W.T. v. Dalton in 1983 held that juveniles suspected of having committed status offenses or delinquent acts are entitled to a probable cause hearing prior to deprivation of liberty by preadjudicatory detention. In addition, the Joint Subcommittee was apprised of possible due process violations in the lack of a procedure for representation by counsel prior to continued preadjudicatory detention. The Joint Subcommittee, therefore, suggests that provision be made for appointment of counsel for a child whose continued detention is recommended after a detention hearing and who was not represented by counsel at the time of the detention hearing. Counsel may then request a detention review hearing to reevaluate the decision to continue detention at the initial hearing. By following this procedure, any child detained has an opportunity for a hearing with legal representation, yet counsel is not appointed prior to the detention hearing in cases in which a child will be released immediately after the hearing or does not desire representation at that stage of the proceedings. The Joint Subcommittee also recommends that all cases be reevaluated

in a review hearing after seven days of detention, unless already reviewed by request of counsel.

The Joint Subcommittee also learned that, in the majority of court service districts, intake/probation staff conduct the intake process on an on-call basis during hours when the court is not open. Few districts provide manned, on-duty coverage around the clock. Manned response while on-call in the majority of districts is handled inconsistantly. Magistrates are consequently responsible for handling cases in many circumstances,and must act on the basis of different standards or criteria than juvenile court personnel. This may result in conflicts in interpretation of responsibilities between magistrates and juvenile court personnel and in inconsistencies in placement decisions. House Bill 74 (1983) deleted language in § 16.1-256 indicating that a magistrate could be authorized by juvenile court personnel to issue a warrant for a child, but such language remains in § 16.1-255.

The Joint Subcommittee suggests, therefore, that the law be changed to make explicit the requirement that a judge or intake officer be available at all times for personal action in the issuance of detention orders. This codifies the current understanding, as expressed in an Attorney General's opinion and in Standards for Court Service Units, that telephone authorization by intake staff for the issuance of detention orders by magistrates is insufficient.

These provisions have been included in proposed legislation in Appendix D to this report.

Respectfully submitted,
Thomas J. Michie, Jr., Chairman
Frank M. Slayton, Vice-Chairman
Claude W. Anderson
Joseph B. Benedetti
Dudley J. Emick, Jr.*
Joseph V. Gartlan, Jr.
Royston Jester, III
Owen B. Pickett

*(Senator Emick's letter of dissent is attached.)

Footnotes

[1] *Morgan v. Sproat* , 432 F.Supp. 1130 (S.D. Miss. 1977).
[2] Id; *Martin v. Strasburg* (No's. 81-2175, 81-2193 2d Cir. Sept. 20, 1982).
[3] *Cox v. Turley* , 506 F2d 1347 (6th Cir. 1974).
[4] *Swansey v. Elrod* , 386 F.Supp. 1138 (N.D. Ill. 1975).
[5] *Baker v. Hamilton* , 345 F.Supp. 345 (W.D. Ky. 1972).
[6] *Lollis v. New York Department of Social Services* , 322 F.Supp. 473 (S.D. N.Y. 1970).
[7] *Woodhous v. Virginia* , 487 F2d 889 (4th Cir. 973); *Penn v. Oliver* , 351 F.Supp. 1292 (E.D. Va. 1972).
[8] *Osorio v. Rios* , 429 F.Supp. 570 (D. P.R. 1976).
[9] *Jones v. Wittenberg* , 323 F.Supp. 93 (N.D. Ohio 1971).
[10] 545 F.Supp. 896 (D. Or. 1982).
[11] Civil Action, 81-0474- (F.D. Va. May 19, 1982)
[12] 45 U.S.L. Wk., 2304 (E.D. Va. 1976)
[13] 690 F. 2d 376 (4th Cir. 1982)
[14] 51 U.S.L. Wk., 4407 (U.S. April 20, 1983)
[15] Thomas, C. W., J. Hyman and L. T. Winfree (1983) "The Impact of Confinement on Juveniles." Youth & Society 14 (March): 301-319. Shanok, S. S., et al (1983) "A Comparison of Delinquent and Nondelinquent Adolescent Psychiatric Inpatients." Am. J. Psychiatry 140 (May): 582-585.
[16] *Martin v. Strasburg* , 689 F.2d 365 (2d Cir. 1982).

COMMONWEALTH OF VIRGINIA

DUDLEY J. EMICK, JR.
22ND SENATORIAL DISTRICT
ALLEGHANY BATH, BOTETOURT AND
CRAIG COUNTIES, WESTERN PART OF
ROANOKE COUNTY; CITIES OF CLIFTON
FORGE, COVINGTON AND SALEM.
P. O. BOX 158
FINCASTLE, VIRGINIA 24090

SENATE

COMMITTEE ASSIGNMENTS.
COURTS OF JUSTICE
FINANCE
REHABILITATION AND SOCIAL
SERVICES
TRANSPORTATION
RULES

February 3, 1984

Ms. Susan Ward, Staff Attorney
Division of Legislative Services
910 Capitol St.
Richmond, VA 23208

Dear Susan:

I do not favor the Bill as drafted and decline to play by someone else's rules. First, juveniles should not be incarcerated in adult facilities except in unusual circumstances. I feel that judges are better able to judge those circumstances than legislators passing broad, easily misunderstood guidelines. Second, it is incumbent upon the legislature to provide money to secure juvenile facilities for every locality before we pass laws requiring all juveniles, under all circumstances, to be incarcerated in non-jail facilities. Third, the juvenile revision itself since its enactment in the late 1970's has made little or no change in the way juveniles are treated in this state except in changing the nomenclature of the offenses. It has also caused the General Assembly to change the method by which juveniles are incarcerated every year since the original enactment.

Sincerely,

D. J. Emick

Dudley J. Emick, Jr.

DJE:hb

SENATE JOINT RESOLUTION NO. 14

Requesting the Senate Committees on Rehabilitation and Social Services and Finance and the House Committees on Health, Welfare and Institutions, Finance and Appropriations to establish a joint subcommittee to study the practice of detaining children in adult jails.

Agreed to by the Senate, February 25, 1983
Agreed to by the House of Delegates, February 24, 1983

WHEREAS, the practice of holding children in adult jails has recently attracted much controversy throughout the nation; and

WHEREAS, many courts in states other than Virginia have concluded that holding juveniles in adult facilities is unconstitutional; and

WHEREAS, it is estimated that 4,000 children are annually held in the Commonwealth's local jails, placing Virginia among the top three states holding juveniles in adult facilities; and

WHEREAS, a substantial number of these children are handicapped, and, therefore entitled to special education services under state and federal law; and

WHEREAS, there has been little development of any educational programs in the local jails of Virginia; and

WHEREAS, the status of these children has not received appropriate state attention; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Senate Committees on Rehabilitation and Social Services and Finance and the House Committees on Health, Welfare and Institutions, Finance and Appropriations establish a joint subcommittee to study the practice of detaining children in adult jails with particular focus on:

1. The consitutionality of detaining children in adult facilities;
2. The feasibility and the means of relocating these children; and
3. The fiscal impact on the state and local governments of relocating these children.

The joint subcommittee shall consist of eight members, two to be appointed from the membership of the Senate Committee on Rehabilitation and Social Services and one to be appointed from the membership of the Senate Committee on Finance by the Senate Privileges and Elections Committee and three to be appointed from the membership of the House Committee on Health, Welfare and Institutions, one to be appointed from the membership of the House Committee on Finance and one to be appointed from the membership of the House Committee on Appropriations by the respective Chairmen of the Committees.

The joint subcommitee is requested to complete its work, together with drafts of any recommended legislation, in time to submit recommendations to the 1984 Session of the General Assembly.

In conducting its study and developing its recommendations, the joint subcommittee is requested to examine the experiences of other states that have dealt with this issue; to consult with and involve the Juvenile Justice and Delinquency Prevention Advisory Council; and to seek assistance and involvement of appropriate state and local agencies and officials.

The joint subcommittee is further requested to seek necessary and reasonable funding for this study from the Criminal Justice Services Board through federal funds available to the Commonwealth under the Juvenile Justice and Delinquency Prevention Act.

APPENDIX B

RESOLUTION ADOPTED BY DELEGATES TO THE 1983 NATIONAL PTA CONVENTION

REMOVING CHILDREN AND YOUTH FROM ADULT JAILS AND LOCKUPS

WHEREAS, More than one-half million children are detained in the nation's adult jails and lockups every year; and

WHEREAS, Approximately forty thousand of the children jailed are under 14 years of age; and

WHEREAS, According to the Office of Juvenile Justice and Delinquency Prevention, more than 19,000 children are jailed each year as status offenders--i.e., runaways, etc.; and

WHEREAS, Jails do not have space appropriate for housing children apart from adults, which results in their being placed in isolation that is psychologically harmful, or into situations where they are physically or sexually abused by adults; and

WHEREAS, Children in jails commit suicide at a rate that is seven times greater than that of children in secure detention; and

WHEREAS, Recidivism is higher among children in jails than among children in other types of juvenile care; now therefore be it

RESOLVED That the National PTA promote and encourage state and local PTA efforts to have children removed from jails and lockups in every city and county throughout the nation and placed in more appropriate facilities; and be it further

RESOLVED That PTAs/PTSAs get involved in or originate a local citizens advisory council to the juvenile court in their counties.

(Adopted June, 1983)

RESOLUTION

WHEREAS, the Virginia General Assembly has passed Senate Joint Resolution No. 14 which establishes a joint subcommittee to study the practice of detaining children in adult jails; and

WHEREAS, the Senate of the United States is considering legislation identified as S.522, entitled "Juvenile Incarceration Protection Act of 1983," which would prohibit all persons under eighteen years of age being detained or confined in any adult jail or lockup, with the exception of special conditions established by the United States Attorney General; and

WHEREAS, such legislation would result in the placement of juveniles in a secure detention facility who are a demonstrable threat to other children, staff and security of such facility; and

WHEREAS, the Virginia Council on Juvenile Detention advocates the just and h[illegible] treatment of all children in secure custody in the Commonwealth of Virginia; now, therefore, be it

RESOLVED by the Virginia Council on Juvenile Detention that it is opposed to legislation which requires the indiscriminate removal of all persons under the age of eighteen years from adult jails and/or lockups simply because of age; and it is in favor of legislation that would remove all children from adult jails and/or lockups who are predispositionally before the juvenile court, except for those who are a demonstrable threat to other children in secure detention; and it urges its representatives in the Virginia General Assembly to develop legislation which provides the above-mentioned safeguards; and it stands ready to assist in the formulation of legislation and/or provide technical expertise to the General Assembly in its deliberations.

(Adopted August 19, 1983)

VIRGINIA JUVENILE OFFICERS ASSOCIATION

Reply To: 501 Wenonah Ave.
Pearisburg, Va. 241:
September 12, 1983

The Honorable Thomas J. Michie, Jr.
General Assembly Building
910 Capitol Street
Richmond, Virginia 23219

Dear Senator Michie:

The Virginia Juvenile Officers Association is a professional association comprised of personnel in the fields of juvenile probation, detention, and rehabilitative services throughout the Commonwealth.

The Virginia Juvenile Officers Association strongly believes that, because of their age and experience, juveniles should be housed and treated in juvenile facilities and programs to the greatest extent possible. We support the concept that the least restrictive alternative should be used in dealing with juvenile offenders and urge the General Assembly to make available alternatives and facilities to meet the care/needs of those juveniles who appear in our juvenile courts for the well-being of the juvenile and the protection of the community.

The General Assembly, however, must allow the Juvenile Court discretion to deal with certain exceptional cases. A physically large, aggressive, 17 year old can be extremely dangerous to younger juveniles in a detention home situation. There are 15, 16, and 17 year old juvenile offenders who have not yet been "rehabilitated" by our state juvenile institutions yet are not in need of long term incarceration at an adult facility. Find enclosed examples of cases that demand the Juvenile Court's individual discretion.

If I, or any member of our legislative committee, can be of direct assistance to you, with regard to legislation pertaining to the jailing of juveniles, please do not hesitate to contact me at the above address, or call me at my office in Pearisburg, Va. (703) 921-3408.

Sincerely,

Ronald W. Belay
President

RWB/jdw

Enclosure

CASE HISTORY

This is a 17-year-old white male who resides with his mother and stepfather. He has an older brother approximately 22-years-old whose an alcoholic and had an extensive juvenile record.

The subject became involved at age 13 with the juvenile court for being incorrigible. School and family problems excalated into alcohol abuse and he was later charged with trespassing. He was placed on supervised probation and entered into the court's Sierra Camping Program. He graduated from the Sierra Program and for nine months maintained a good attitude in school and withdrew from alcohol abuse. However, subsequently while working a summer job in construction with older individuals, he returned to the abuse of alcohol and became involved in two serious burglaries.

Due to the subject's level of maturity, his substance abuse and the fact that he has not been involved in criminal activity for approximately a year, transfer to the Circuit Court is seen as inappropriate. It is felt, however, that the subject needs to see immediate, direct consequences for his criminal acts while continuing to remain in the community where he can be employed and receive alcohol abuse treatment. It is therefore believed that a combination of active weekend jail time along with community probationary supervision is appropriate.

CASE HISTORY

The subject is a 15-year-old black male living with his natural mother and a stepfather. He has an older sister who has been in juvenile court on numerous occasions and is now in the custody of the Department of Social Services.

The subject became involved with the juvenile court at age 12 for eight (8) breaking and enterings, three (3) purse snatchings and five (5) larceny charges. He was placed on supervised probation and ordered into mental health counseling. The subject has been back before the juvenile court for two (2) breaking and enterings and two (2) petit larceny charges. He spent a week in detention and was subsequently continued on probationary supervision and placed in mental health counseling.

Now the subject is before the court on one grand larceny charge, one felony breaking and entering and one petit larceny. He is currently placed in a special education program that meets his educational needs. He is beginning to respond to mental health therapy. It therefore would be inappropriate to commit him to a state learning center. He lacks appropriate social skills and emotional maturity which prohibits transfer to the Circuit Court for treatment as an adult. The subject, however, needs to now see immediate consequences for his criminal activities. A combination of weekend or a short jail sentence and probationary supervision in the community with special education and mental health therapy is appropriate.

CASE HISTORY

The subject is a 15 year old white male living in a single parent family with one older brother. The older brother in this case has an extensive criminal record and is currently in a penal institution in connection with a violent crime.

This young man's record begins at age 12 with a break and entering and larceny conviction for which he was placed on probation. Subsequently, at age 13 this young man was convicted of discharging a firearm illegally and once again placed on probation. Susequent convictions at the age of 14 for petty larceny and destruction of private property resulted in his being committed to the Department of Corrections, said commitment being suspended. Now at the age of 15 this child is before the Court for a charge of simple assault. Although the victim in this case was not injured seriously the assault did require medical attention. This assault occurred in the school setting and the defendant in this case was subsequently expelled and entered in an Alternative School Program.

The young man in this case has continually expressed a lack of concern for the consequences of his behavior and has been characterized as a behavior problem both in the home and in the school. The Counselor involved in this case felt the youth's anti-social features were not so bad that he could not be worked with in the community, however, it was further felt that a clear sanction was needed to demonstrate to this youth that he had reached the limits of anti-social behavior that would be tolerated by the Court. The recommendation in this case was for a ten (10) day jail sentence to be served on weekends while continuing on probationary supervision in the community.

APPENDIX C

MINIMUM STANDARDS FOR LOCAL JAILS & LOCKUPS
Virginia Board of Corrections (3-24-80, amended 5-13-80)

JAILING OF JUVENILES

Note: When the requirements of the Code of Virginia, as amended, have been met concerning the proper handling and detention of juveniles and the determination to jail a juvenile has been made, then the following standards shall apply.

6.01 The juvenile shall be held entirely separate and removed from adults. The juvenile shall be so housed as to be separated by a wall or other barrier which would result in preventing visual contact and normal verbal communication with adult prisoners except in instances of casual contact under supervison. (Mandatory)[1]

6.02 The facility shall have one or more persons on duty at all times responsible for auditory and visual contact with each juvenile at least every 30 minutes. Contact should be made more often when the juveniles exhibit tendencies of harming themselves or others. (Mandatory)

6.03 The facility shall be approved by the Department of Corrections for the express purpose of holding juveniles. (Mandatory)

6.04 Isolation cells or segregation within a cellblock should be utilized only as a protective or disciplinary measure. (Essential)[2]

[1] Mandatory standards are required by Constitutional guarantees and case and statutory law.

[2] Essential standards are not mandated but are necessary for the humane, safe, effective and efficient operation of a facility.

APPENDIX D

LD1128125

SENATE BILL NO. 413

Offered January 24, 1984

A BILL to amend and reenact §§ 16.1-228, 16.1-249, 16.1-250, 16.1-255, 16.1-266, 16.1-279 and 16.1-284 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 16.1-248.1, 16.1-250.1, and 16.1-284.1, and to repeal § 16.1-248 of the Code of Virginia, relating to juvenile and domestic relations district courts; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-228, 16.1-249, 16.1-250, 16.1-255, 16.1-266, 16.1-279 and 16.1-284 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 16.1-248.1, 16.1-250.1 and 16.1-284.1 as follows:

§ 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~~ *offense which would not be criminal if committed by an adult* .

~~Provided, however~~ *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~~ *Commonwealth* , 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 ~~;~~" *or* "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.

"Secure facility" or "detention home" means a local or regional public or private residential facility which has construction fixtures designed to restrict the movement and activities of children held in lawful custody as a result of being accused of or having committed a delinquent act.

~~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.

§ 16.1-248.1. Criteria for detention or shelter care.—A. A child taken into custody whose case is considered by a judge, intake officer or magistrate pursuant to § 16.1-247 shall immediately be released, upon the ascertainment of the necessary facts, to the care, custody and control of such child's parent, guardian, custodian or other suitable person able and willing to provide supervision and care for such child, either on bail or recognizance pursuant to Chapter 9 (§ 19.2-119 et seq.) of Title 19.2 or under such conditions as may be imposed or otherwise. However, a child may be detained in a secure facility, pursuant to a detention order or warrant, only upon a finding by the judge, intake officer, or magistrate, that there is probable cause to believe that the child committed the delinquent act alleged, and that at least one of the following conditions is met:

1. The child is alleged to have committed murder, rape, robbery or an offense which would be a Class 1, 2 or 3 felony if committed by an adult; or

2. The child is alleged to have committed an offense which would be a felony or a class 1 misdemeanor if committed by an adult and the child (i) is on probation, parole, conditional release or suspended sentence from a previous delinquency proceeding, or (ii) has within the immediately preceding twelve months been found guilty of an offense which would be a felony or Class 1 misdemeanor if committed by an adult, or (iii) has by his actions demonstrated intent to abscond from the court's jurisdiction during the pendency of the instant proceeding, or (iv) has willfully failed to appear at a court hearing within the immediately preceeding twelve months; or

3. The child is a fugitive from another jurisdiction and subject to an active petition or warrant; or

4. The child has absconded from a learning center, detention home or other secure facility where he has been directed to remain by the lawful order of a court.

B. Any child not meeting the criteria for placement in a secure facility shall be released to a parent, guardian or other person willing and able to provide supervision and care under such conditions as the judge, intake officer or magistrate may impose. However, a child may be placed in shelter care if:

1. The child is eligible for placement in a secure facility; or

2. The child has failed to adhere to the directions of the court, intake officer or magistrate while on conditional release; or

3. The child's parent, guardian or other person able to provide supervision cannot be reached within a reasonable time; or

4. The child does not consent to return home; or

5. Neither the child's parent or guardian nor any other person able to provide proper supervision can arrive to assume custody within a reasonable time; or

6. The child's parent or guardian refuses to permit the child to return home and no relative or other person willing and able to provide proper supervision and care can be located within a reasonable time.

C. The criteria for continuing the child in detention or shelter care as set forth in this section shall govern the decisions of all persons involved in determining whether the continued detention or shelter care is warranted pending court disposition. Such criteria shall be supported by clear and convincing evidence in support of the decision not to release the child.

§ 16.1-249. Places of confinement for children.—A. If it is ordered that a child remain in detention or shelter care pursuant to § ~~16.1-248~~ *16.1-248.1* , such child may be detained, pending a court hearing, in the following places:

1. An approved foster home or a home otherwise authorized by law to provide such care;

2. A facility operated by a licensed child welfare agency;

3. If a child is alleged to be delinquent, in a detention home or group home approved by the Department; ~~provided, further, a child who is alleged to be in need of services may be detained in a detention home, for good cause, for a period not to exceed seventy-two hours prior to a detention hearing being held pursuant to § 16.1-250;~~

4. Any other suitable place designated by the court and approved by the Department.

B. ~~A~~ *Until June 30, 1985, a* delinquent child or a child alleged to be delinquent who is fifteen years of age or older may be detained in a jail or other facility for the detention of adults provided (i) the detention is in a room or ward entirely separate and removed from adults, (ii) adequate supervision is provided and (iii) the facility is approved by the Department for the detention of children and only if:

1. [Repealed.]

2. A judge or intake officer determines that the facilities enumerated in subsection A hereof are not suitable for the reasonable protection of the child or community, when the child is charged with rape, robbery or an offense which would be a Class 1, 2 or 3 felony if committed by an adult; or

3. The detention home in which the child should be placed is at least twenty-five miles from the place where the child is taken into custody and is located in another city or county; however, a child may be placed in such jail or other facility for the detention of adults pursuant to this subsection for no longer than seventy-two hours.

After June 30, 1985, no child shall be detained or confined in any jail or other facility for the detention of adult offenders or persons charged with crime except as provided in paragraph D, E, F or G of this section.

C. The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately when a child, who is or appears to be under the age of eighteen years, is received at the facility, and shall deliver him to the court upon request, or transfer him to a detention facility designated by the court.

D. When a case is transferred to the circuit court in accordance with the provisions of § 16.1-269 or § 16.1-270, the child if in confinement may be transferred to a jail or other facility for the detention of adults subject to the limitations of (i), (ii) and (iii) of subsection B hereof.

E. If, in the judgment of the custodian *as a result of placement* of the child *in a facility* designated in subsection A hereof, a child fifteen years of age or older has demonstrated that he or she is a threat to the security or safety of the other children detained or the staff of the home or facility, the judge shall determine whether such child should be transferred to another juvenile facility including a jail or other place of detention for adults pursuant to *the limitations of (i), (ii) and (iii) of*

F. After June 30, 1985, when detention is ordered but all suitable placements are inaccessible because of unavoidable accident or unforeseen event, then the child may be placed in a jail or other facility for adults, subject to the limitations of (i), (ii), and (iii) of subsection B hereof, for no longer than six hours.

G. After June 30, 1985, when detention is ordered, but space for placement for the child is unavailable in a detention home within 100 miles from the place where the child is taken into custody, then the child may be placed in a jail or other facility for adults, subject to the limitations of (i), (ii) and (iii) of subsection B hereof, while a suitable placement, as authorized by this section, is being arranged.

§ 16.1-250. Procedure for detention hearing.—A. When a child has been taken into immediate custody and not released as provided in § *§* 16.1-247 or § ~~16.1-248~~ *16.1-248.1* , such child shall

be brought before a judge on the next day on which the court sits within the county or city wherein the charge against the child is pending ; ~~provided, that in~~ . *In* the event the court does not sit within the county or city on the following day, such child shall be brought before a judge within a reasonable time, not to exceed seventy-two hours, after he or she has been taken into custody.

B. Notice of the detention hearing, either oral or written, stating the time, place and purpose of the hearing shall be given to the parent, guardian, legal custodian or other person standing in loco parentis if he can be found and to the child if twelve years of age or over.

C. During the detention hearing, the judge shall advise the parties of the right to counsel pursuant to § 16.1-266. The parties shall be informed of the child's right to remain silent with respect to any allegation of delinquency. They shall also be informed of the contents of the petition.

D. ~~When~~ *If* the judge finds that *there is not probable cause to believe that the child committed the delinquent act alleged, the court shall order his release. If the judge finds that there is probable cause to believe that the child committed the delinquent act alleged but that* the full-time detention of a child who is alleged to be delinquent is not required, the court shall order his release, and in so doing, *the court* may impose one or more of the following conditions singly or in combination:

1. Place the child in the custody of a parent, guardian, legal custodian or other person standing in loco parentis under their supervision, or under the supervision of an organization or individual agreeing to supervise him; or

2. Place restrictions on the child's travel, association or place of abode during the period of his release; or

3. Impose any other condition deemed reasonably necessary and consistent with the criteria for detaining children specified in § ~~16.1-248~~ *16.1-248.1* ; or

4. Release the child on bail or recognizance in accordance with the provisions of Chapter 9 (§ 19.2-119 et seq.) of Title 19.2.

~~When the judge finds that a child who is alleged to be in need of services has been detained in a detention home prior to the detention hearing, the judge shall order his release from the detention home. The child shall not be returned to a detention home after the detention hearing; provided, however, the judge may impose singly or in combination conditions 1, 2 or 3 listed in this paragraph D.~~

E. An order releasing a child on any of the conditions specified in this section may, at any time, be amended to impose additional or different conditions of release or to return the child who is alleged to be delinquent to custody for failure to conform to the conditions previously imposed.

F. All relevant and material evidence helpful in determining the need for detention may be admitted by the court even though not competent in a hearing on the petition.

G. If the child is not released and a parent, guardian, legal custodian or other person standing in loco parentis is not notified and does not appear or does not waive appearance at the hearing, upon the request of such person, the court shall rehear the matter on the next day on which the court sits within the county or city wherein the charge against the child is pending ; ~~provided, that in~~ . In the event the court does not sit within the county or city on the following day, such hearing shall be held before a judge within a reasonable time, not to exceed seventy-two hours, after the request.

§ 16.1-250.1. Appointment of counsel; detention review hearing.—When a child is not released after a detention hearing held pursuant to § 16.1-250 and, at the time of the detention hearing, the child was not represented by legal counsel, then the child shall be afforded the opportunity to be represented by counsel, as provided in § 16.1-266, prior to a detention review hearing.

The court shall, upon request of counsel, rehear the matter as soon as is practicable but in no event later than seventy-two hours after the request for the review hearing. During the hearing, the court shall evaluate the need for continued detention of the child.

In any case in which a detention review hearing has not already been held at the request of counsel, the court shall conduct a detention review hearing within seven days of the hearing provided for in § 16.1-250 to evaluate the need for the continued detention of any child not released after the initial detention hearing.

Notice of the detention review hearing, either oral or written, stating the time, place and purpose of the hearing shall be given to the parent, guardian, legal custodian or other person standing in loco parentis if he can be found, to the child's attorney and to the child if twelve years of age or over.

§ 16.1-255. Limitation on issuance of detention orders for children.—No detention order shall be issued for any child except when authorized by the judge ; *or* intake officer ~~or clerk~~ of a juvenile court.

In matters involving the issuance of detention orders, each state or local court service unit shall ensure the capability of a prompt response by an intake officer who is either on duty or on call.

§ 16.1-266. Appointment of counsel.—A. Prior to the hearing by the court of any case involving a child who is alleged to be abused or neglected or who is the subject of an entrustment agreement or a petition terminating residual parental rights or is otherwise before the court pursuant to subsection A 4 of § 16.1-241, the court shall appoint a discreet and competent attorney-at-law as guardian ad litem to represent the child.

B. Prior to the *detention review hearing or the* adjudicatory or transfer hearing by the court of any case involving a child who is alleged to be in need of services or delinquent, such child and his or her parent, guardian, legal custodian or other person standing in loco parentis shall be informed by a judge, clerk or probation officer of the child's right to counsel and of the liability of the parent, guardian, legal custodian or other person standing in loco parentis for the costs of such legal services pursuant to § 16.1-267 and be given an opportunity to:

1. Obtain and employ counsel of the child's own choice; or

2. If the court determines that the child is indigent within the contemplation of the law and his or her parent, guardian, legal custodian or other person standing in loco parentis does not retain an attorney for the child, a statement shall be executed substantially in the form provided by § 19.2-159 by such child, and the court shall appoint an attorney-at-law to represent him; or

3. Waive the right to representation by an attorney, if the court finds the child and the parent, guardian, legal custodian or other person standing in loco parentis of the child consent, in writing, to such waiver and that the interests of the child and the parent, guardian, legal custodian or other person standing in loco parentis in the proceeding are not adverse. Such written waiver shall be in accordance with law and shall be filed with the court records of the case.

C. Prior to the hearing by the court of any case involving a parent, guardian or other adult charged with abuse or neglect of a child or a parent or guardian who could be subjected to the loss of residual parental rights and responsibilities, such parent, guardian or other adult shall be informed by a judge, clerk or probation officer of his right to counsel and be given an opportunity to:

1. Obtain and employ counsel of the parent's, guardian's or other adult's own choice; or

2. If the court determines that the parent, guardian or other adult is indigent within the contemplation of the law, a statement shall be executed substantially in the form provided by § 19.2-159 by such parent, guardian or other adult and the court shall appoint an attorney-at-law to represent him; or

3. Waive the right to representation by an attorney in accordance with the provisions of § 19.2-160.

D. In all other cases which in the discretion of the court require counsel or a guardian ad litem to represent the interests of the child or children or the parent or guardian, a discreet and competent attorney-at-law may be appointed by the court. However, in cases where the custody of a child or children is the subject of controversy or requires determination and each of the parents or other persons claiming a right to custody is represented by counsel, the court shall not appoint counsel or a guardian ad litem to represent the interests of the child or children unless the court finds, at any stage in the proceedings in a specific case, that the interests of the child or children are not otherwise adequately represented.

§ 16.1-279. Disposition.—A. If a child is found to be abused or neglected, or is at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian, or is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship, the juvenile court or the circuit court, as the case may be, may make any of the following orders of disposition to protect the welfare of the child:

1. Enter an order pursuant to the provisions of § 16.1-278.

2. Permit the child to remain with his or her parent, guardian, legal custodian or other person standing in loco parentis subject to such conditions and limitations as the court may order with respect to such child, and his or her parent, guardian, legal custodian or other person standing in loco parentis.

3. After a finding that there is no less drastic alternative, transfer legal custody subject to the provisions of § 16.1-281 to any of the following:

a. A relative or other individual who, after study, is found by the court to be qualified to receive and care for the child.

b. A child welfare agency, private organization or facility which is licensed or otherwise authorized by law to receive and provide care for such child; however, no court shall transfer legal custody of an abused or neglected child to an agency, organization or facility out of the Commonwealth without the approval of the Commissioner of Social Services.

c. The local board of public welfare or social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the child has residence if other than the county or city in which the court has jurisdiction, which board shall accept such child for care and custody. However, such local board, if one other than in the county or city in which the court has jurisdiction, shall not be required to accept such child until it has been given reasonable notice of the pendency of the case and an opportunity to be heard. Nothing herein shall be construed as prohibiting the commitment of a child to any local board of public welfare or social services in the Commonwealth when such local board consents to the commitment. The board to which the child is committed shall have the final authority to determine the appropriate placement for the child.

4. Transfer legal custody pursuant to subsection A 3 hereof and order the parent, guardian, legal custodian or other person standing in loco parentis to participate in such services and programs or to refrain from such conduct as the court may prescribe.

5. Terminate the rights of such parent, guardian, legal custodian or other person standing in loco parentis pursuant to § 16.1-283.

B. Where a parent or other custodian seeks to be relieved of the care and custody of any child pursuant to subsection A 4 of § 16.1-241 or where a public or private agency seeks to gain approval of an entrustment agreement pursuant to § 63.1-56 or § 63.1-204, the juvenile court or the circuit court may, after compliance with § 16.1-277, make any of the orders of disposition permitted in a case involving an abused or neglected child. If the parent or other custodian

seeks to be relieved permanently of the care and custody of any child or where a public or private agency seeks to gain approval of a permanent entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204, the juvenile court or the circuit court may, after compliance with § 16.1-277, terminate the parental rights of the parent or other custodian and appoint a local board of public welfare or social services or a licensed child-placing agency as custodian of the child with the authority to place the child for adoption and consent thereto. However, no order of disposition pursuant to this paragraph B shall be made over the objection of any party, which was not provided for or requested in the entrustment agreement or in the petition's prayer for relief.

C. If a child is found to be in need of services, the juvenile court or the circuit court, as the case may be, may make any of the following orders of disposition for the supervision, care and rehabilitation of the child:

1. Enter an order pursuant to the provisions of § 16.1-278.

2. Permit the child to remain with his or her parent, guardian, legal custodian or other person standing in loco parentis subject to such condition and limitations as the court may order with respect to such child and his or her parent, guardian, legal custodian or other person standing in loco parentis.

2a. Order the parent, guardian, legal custodian or other person standing in loco parentis of a child living with such person to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the child and parent, guardian, legal custodian or other person standing in loco parentis of such child.

3. Place the child on probation under such conditions and limitations as the court may prescribe.

4. In the case of any child, fourteen years of age or older, where the court finds that the school officials have made a diligent effort to meet the child's educational needs, and after study, the court further finds that the child is not able to benefit appreciably from further schooling, the court may:

a. Excuse the child from further compliance with any legal requirement of compulsory school attendance, and

b. Authorize the child, notwithstanding the provisions of any other law, to be employed in any occupation which is not legally declared hazardous for children under the age of eighteen.

5. Transfer legal custody to any of the following:

a. A relative or other individual who, after study, is found by the court to be qualified to receive and care for the child.

b. A child welfare agency, private organization or facility which is licensed or otherwise is authorized by law to receive and provide care for such child; however, no court shall transfer legal custody of a child in need of services to an agency, organization or facility out of the Commonwealth without the approval of the Commissioner of Social Services.

c. The local board of public welfare or social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the child has residence if other than the county or city in which the court has jurisdiction, which board shall accept such child for care and custody. Such local board if one other than in the county or city in which the court has jurisdiction, shall not be required to accept such child until it has been given reasonable notice of the pendency of the case and an opportunity to be heard. Nothing herein shall be construed as prohibiting the commitment of a child to any local board of public welfare or social services in the Commonwealth when such local board consents to the commitment. The board to which the child is committed shall have the final authority to determine the appropriate placement for the child.

6. Require the child to participate in a public service project under such conditions as the court prescribes.

D. Unless a child found to be abused, neglected or in need of services shall also be found to be delinquent and shall be older than ten years of age, he shall not be committed to the State Board of Corrections. No juvenile court or circuit court shall order the commitment of any child jointly to the State Board of Corrections and to a local board of public welfare or social services or transfer the custody of a child jointly to a court service unit of a juvenile court and to a local board of public welfare or social services pursuant to this section.

E. If a child is found to be delinquent, the juvenile court or the circuit court may make any of the following orders of disposition for his supervision, care and rehabilitation:

1. Enter an order pursuant to the provisions of § 16.1-278.

2. Permit the child to remain with his or her parent, guardian, legal custodian or other person standing in loco parentis subject to such conditions and limitations as the court may order with respect to such child and his or her parent, guardian, legal custodian or other person standing in loco parentis.

3. Order the parent, guardian, legal custodian or other person standing in loco parentis of a child living with such person to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the child and parent, guardian, legal custodian or other person standing in loco parentis of such child.

3a. Defer disposition for a period of time not to exceed twelve months, after which time the charge may be dismissed by the judge if the child be of good behavior during the period which disposition is deferred.

3b. Without entering a judgment of guilty and with the consent of the child and his attorney, defer disposition of the delinquency charge for a period not to exceed twelve months and place the child on probation under such conditions and limitations as the court may prescribe. Upon fulfillment of the terms and conditions, the court shall discharge the child and dismiss the proceedings against him. Discharge and dismissal under these provisions shall be without adjudication of guilt.

4. Place the child on probation under such conditions and limitations as the court may prescribe.

5. Impose a fine not to exceed $500 upon such child.

6. Suspend the motor vehicle and operator's license of such child.

7. Require the child to make restitution or reparation to the aggrieved party or parties for actual damages or loss caused by the offense for which the child was found to be delinquent.

7a. Require the child to participate in a public service project under such conditions as the court prescribes. For purposes of this section a "public service project" shall mean any governmental or quasi-governmental agency project or any project of a nonprofit corporation or association operated exclusively for charitable or community purposes.

8. In case of traffic violations or traffic infractions, impose only those penalties which are authorized to be imposed on adults for such violations or infractions. *However, after June 30, 1985, those violations and infractions punishable by confinement in jail shall be punishable by confinement only as authorized by this title.*

9. Transfer legal custody to any of the following:

a. A relative or other individual who, after study, is found by the court to be qualified to receive and care for the child.

b. A child welfare agency, private organization or facility which is licensed or otherwise authorized by law to receive and provide care for such child; however, no court shall transfer legal custody of a delinquent child to an agency, organization or facility outside of the Commonwealth without the approval of the Director.

c. The local board of public welfare or social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the child has residence if other than the county or city in which the court has jurisdiction, which board shall accept such child for care and custody. Such local board if one other than in the county or city in which the court has jurisdiction, shall not be required to accept such child until it has been given reasonable notice of the pendency of the case and an opportunity to be heard. Nothing herein shall be construed as prohibiting the commitment of a child to any local board of public welfare or social services in the Commonwealth when such local board consents to the commitment. The board to which the child is committed shall have the final authority to determine the appropriate placement for the child.

10. ~~Commit~~ *In the case of a child found guilty of an offense which if committed by an adult would be punishable by confinement in a state or local correctional facility as defined in § 53.1-1, commit* the child to the Department of Corrections; however, no child ten years of age or under shall be committed to the Department.

11. Impose the penalty authorized by § 16.1-284.

12. Impose the penalty authorized by § 16.1-284.1.

F. In cases involving the custody, visitation or support of a child pursuant to subsection A 3 of § 16.1-241, the court may make any order of disposition to protect the welfare of the child and family as may be made by the circuit court.

F1. In cases involving a child who is charged with a traffic infraction, impose only those penalties which are authorized to be imposed on adults for such infractions. *However, after June 30, 1985, those violations and infractions punishable by confinement in jail shall be punishable by confinement only as authorized by this title.*

G. In cases involving a person who is adjudged mentally ill or is judicially certified as eligible for admission to a treatment facility for the mentally retarded, disposition shall be in accordance with the provisions of Chapters 1 (§ 37.1-1 et seq.) and 2 (§ 37.1-63 et seq.) of Title 37.1 of the Code. No child shall be committed pursuant to this section or the provisions of Title 37.1 of this Code to a maximum security unit within any state mental hospital where adults determined to be criminally insane reside.

H. In cases involving judicial consent to the matters set out in subsections C and D of § 16.1-241, the juvenile court or the circuit court may make any appropriate order to protect the health and welfare of the child.

I. In cases involving charges of desertion, abandonment or failure to provide support by any person in violation of law, disposition shall be made in accordance with Chapter 5 (§ 20-61 et seq.) of Title 20 of the Code. The court may also award attorney's fees on behalf of any party in an appropriate case. Each juvenile and domestic relations district court may enter judgment for money in any amount for arrears of support and maintenance of any person in cases where (1) the court has previously acquired personal jurisdiction over all necessary parties or a proceeding in which such jurisdiction has been obtained has been referred or transferred to the court by a circuit court or another juvenile and domestic relations district court, and (2) payment of such money has been previously ordered by the court, a circuit court, or another juvenile and domestic relations district court. However, no such judgment shall be entered unless a petition of a party, a probation officer, a superintendent of public welfare, or on the court's own motion, is duly served on the person against whom judgment is sought, in accordance with the applicable provisions of law relating to notice when proceedings are reopened. The petition shall contain a caption stating the name of the court, the title of the action, the names of all parties and the address of the party against whom judgment is sought, the amount of arrearage for which judgment is sought, and the date and time when such judgment will be sought. The judge or clerk of the court shall certify and deliver an abstract of any judgment entered

pursuant to this section to the clerk of the circuit court of the same judicial district, and executions upon such judgment shall be issued by the clerk of such circuit court. If the amount of the judgment does not exceed $5,000, exclusive of interest and any attorney's fees, an abstract of any such judgment entered pursuant to this section may be delivered to the clerk of the general district court of the same judicial district, and executions upon such judgment shall be issued by the clerk of such general district court. Arrearages accumulated prior to July 1, 1976, shall also be subject to the provisions hereof.

J. In cases involving a child who is not able to obtain a work permit under other provisions of law, the juvenile court or the circuit court may grant a special work permit on forms furnished by the Department of Labor and Industry, subject to such restrictions and conditions as it may deem appropriate and as may be set out in Chapter 5 (§ 40.1-78 et seq.) of Title 40.1 of the Code.

K. In cases involving petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services required by law to be provided for such persons, the juvenile court or the circuit court, as the case may be, may enter an order in accordance with § 16.1-278.

L. In cases involving the violation of any law, regulation or ordinance for the education, protection or care of children or involving offenses committed by one spouse against another, the juvenile court or the circuit court may impose a penalty prescribed by applicable sections of the Code. However, in cases involving offenses committed by one spouse against another, the court may impose conditions and limitations in an effort to effect the reconciliation and rehabilitation of the parties, including, but not limited to, treatment and counseling for either or both spouses and payment by the defendant spouse for crisis shelter care for the complaining spouse.

M. In cases involving a spouse who seeks spousal support after having separated from his or her spouse, the court may enter any appropriate order to protect the welfare of the spouse seeking support.

§ 16.1-284. When child fifteen years of age or older may be sentenced as adult.— ~~If~~ *Until June 30, 1985, if* a child fifteen years of age or older is charged with an offense which if committed by an adult would be a felony and the court after receipt of a social history compiled pursuant to § 16.1-273 for this case or a prior case which was adjudicated within twelve months from the adjudication in this case finds that (i) such child is not, in the opinion of the court, amenable to treatment or rehabilitation as a juvenile through available facilities, considering such factors as the nature of the present offense or the nature of the child's prior delinquency record, the nature of the past treatment efforts and the nature of the child's response to past treatment efforts and (ii) the interests of the community require that the child be placed under legal restraint or discipline, then the court, in such cases, may impose the penalties which are authorized to be imposed on adults for such violations, not to exceed twelve months in jail for a single offense or multiple offenses and subject to the provisions of § 16.1-249 B (i), (ii) and (iii). *After June 30, 1985, such penalties may be imposed only in the case of an adult who has committed, before attaining the age of eighteen, an offense which would be a crime if committed by an adult.*

§ 16.1-284.1. Placement in a secure local facility.—A. If a child fifteen years of age or older is found to have committed an offense which if committed by an adult would be punishable by confinement in a state or local correctional facility as defined in § 53.1-1, and the court determines after receipt of a social history compiled pursuant to § 16.1-273 within the immediately preceding twelve months that the interests of the community require that the child be placed under legal restraint or discipline, based on the nature of the present offense, the nature of the child's prior delinquency record, and the nature of the past treatment efforts and the child's response to them, then the court may order the child confined in a detention home or other secure facility for juveniles for a period not to exceed thirty calendar days, inclusive of time served in detention while awaiting disposition, for a single offense or for multiple offenses.

B. A child shall be confined pursuant to this section only in a facility approved by the Board for such placements.

C. The Department of Corrections shall assist the localities or combinations thereof in implementing this section consistent with the statewide plan required by § 16.1-310 and pursuant to standards promulgated by the State Board, in order to ensure the availability and reasonable access of each court to the facilities the use of which is authorized by this section.

2. That § 16.1-248 of the Code of Virginia is repealed.