

**VIRGINIA DEPARTMENT OF CORRECTIONS
AND VIRGINIA DEPARTMENT OF
CRIMINAL JUSTICE SERVICES**

**A RESPONSE
TO HOUSE JOINT
RESOLUTION NO. 16**

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



House Document No. 18

**COMMONWEALTH OF VIRGINIA
RICHMOND
1985**

A RESPONSE
TO
HOUSE JOINT RESOLUTION 16

CONTENTS

	<u>Page</u>
I Introduction	1
II Methodology	4
III Data Analysis	6
a.) Statewide Intake Survey Assessment	6
b.) Regional Intake Survey Assessment	10
c.) J-8 Analysis	17
d.) Conclusions	21
IV Impacts	23
a.) Local/Regional Impact	23
b.) Institutional Impact	24
V Recommendations	32
VI Program Funding Needs	72
VII Appendix	73
a.) House Joint Resolution 16	73
b.) Juveniles Judges' Legislative Recommendation	75

A RESPONSE
TO
HOUSE JOINT RESOLUTION 16

I. INTRODUCTION

In 1984, the Virginia General Assembly considered a variety of legislative approaches concerning the removal of juveniles from jail. To comprehensively address the issues involved, House Joint Resolution 16 was passed which required that the Department of Corrections and other appropriate agencies perform certain assessments and prepare a report related to the elimination of "inappropriate use of adult jails for juveniles." This report is in response to that requirement.

In order to study the issues and prepare this report and its recommendations, the Virginia Departments of Corrections and Criminal Justice Services formed a special HJR 16 Study Committee. Representation on this Committee included Department of Corrections staff who work in the various areas that would be affected by any changes, local Juvenile Court staff, local Detention staff and an analyst from the Department of Criminal Justice Services. The Committee met in joint planning sessions with representatives from the Virginia Council of Juvenile and Domestic Relations Court Judges to prepare the legislative recommendations. It should be remembered that the number of juveniles being held in jails at the present represents a small portion of those involved in the Juvenile Justice System and that any recommendations for their removal must be sensitive to the entire system. In FY 1984 the number of juveniles held in jail (according to analysis of eleven months, July 1, 1983 - May 31, 1984, of DC J-8 data from the Juveniles in Jail form) on a given day and their average length of stay by major category was:

	<u>Average Daily Population (no. of youth)</u>	<u>Average Length of Stay (no. of days)</u>
1. Pre-Trial/ Juvenile Court	6.9	8.2
2. Serving Sentence/ Juvenile Court	32.2	39.5
3. Pre-Trial and Serving Sentence (1&2 Combined)	39.1	23.4
4. Certified as Adult	28.9	64.7

Throughout this planning process careful consideration was given to the following issues:

- o Any alternative measures proposed should be developed without "widening the net" and increasing the number of juveniles in the service system.
- o Any changes proposed should require minimum increases in a local facility's capacity and need for security space.
- o Attention should be given to needs and priorities of localities.
- o Any changes proposed should require effective and flexible use of available resources and need limited new funding.
- o A priority consideration at all times must be the safety of the Commonwealth, the client population and correctional staff.

The issue of the use of jails for juveniles have received steady attention by the Department of Corrections for the past ten years. During this period a great deal of progress has occurred. In particular, local detention facilities have become much more sophisticated programmatically and are capable of handling more serious juveniles who previously were placed in jails. Many older detention facilities have been renovated to more secure standards and new or planned facilities reflect this emphasis. These changes have been made in response to an increasingly older detention population and the development of gang related activities in the larger facilities. These population changes have resulted in several violent detention escapes and assaults by juveniles in jail and detention facilities.

The increased emphasis on security in detention facilities is preparing the system to handle this changing population; however, it remains essential that preparations to remove juveniles from jail and place them in local detention facilities, according to the criteria outlined in the accompanying recommendations, include the removal of all juveniles identified as "children in need of services," or CHINS. The one exception remains out-of-state children detained pursuant to provisions of the Interstate Compact. The non-violent CHINS will remain the subjects of potential abuse as long as they continue to be placed in detention. The impacts and program funding needs in this report are based on their removal. The removal of CHINS from detention as a means of providing needed security bedspace becomes a cost-effective and practical method for the Commonwealth to meet Federal requirements (the Juvenile Justice and Delinquency Prevention Act stipulates that all recipients of their funding make substantial progress towards removal by December 1985 and,

with limited exceptions, full removal by December, 1987) and at the same time continue to meet its obligation to provide for the public's safety.

The Recommendations and Program Funding Needs that follow in this report represent the mutual agreement of the HJR 16 Study Committee and the Virginia Council of Juvenile and Domestic Relation's Court Judges. In cases where agreement could not be reached the Judges' recommendations are listed separately in the Appendix.

HJR 16 RESPONSE

I. METHODOLOGIES

The methods employed in the development of this response have included:

- o Data Collection
- o Data Analysis
- o Needs Assessment
- o Legislative/Proposal Development
- o Budget Analysis

Initially, in order to develop an adequate foundation for making impact and funding needs assessments as well as legislative recommendations, a major data collection effort was undertaken. This was necessary in order to properly understand the current level of juveniles in jail in the Commonwealth and to assess any trends on a statewide, regional or local basis.

The first effort in this area involved the collection of information on all juveniles who entered secure facilities of the Juvenile Court System throughout the State during a one month period of time. From this "Intake Survey," demographic and historical data was collected along with information on the juvenile's status and the events which resulted in his or her referral. The Department of Criminal Justice Services obtained the technical assistance for this study through the Community Research Center at the University of Illinois to code and enter this data into a computer for analysis of the kinds of juveniles being referred to the courts, the kinds of offenses for which they were referred and the types of secure placements being made. Other sophisticated cross tabulations were also made. All of this data was studied by locality, regionally and statewide.

To determine the specific number of juveniles in jail for FY 1984 each Department of Corrections Regional Office was asked to take the DC J-8 Juveniles in Jail or "J-8" form used by local jails to record their daily populations and to prepare a report for the Department analyzing these numbers by the following categories:

- o Predispositional as a juvenile
- o Serving sentence as a juvenile
- o Treated as an adult-serving sentence or certified

At the time of this analysis they were also asked to adjust the J-8 figures to accurately reflect the actual number of juveniles rather than the number of admissions. The J-8 data covered the period July 1, 1983 to May 31, 1984 (11 months) and was adjusted to a full year by dividing by 11 and multiplying by 12. Average Length of Stay and Average Daily Population were computed for each Locality, Region and Statewide.

Once the Intake Survey and J-8 Analysis were both complete, representatives from the Department of Corrections and the Department of Criminal Justice Services who were serving on the HJR 16 Study Committee met with representatives of the Virginia Council of Juvenile and Domestic Relations Court Judges to facilitate the joint development of a legislative package that would meet the Commonwealth's need to comply with the provisions of the Juvenile Justice and Delinquency Prevention Act while at the same time effecting a planned and systematic change to the Juvenile Justice System.

After preparing an analysis of the new data (including other Department studies such as the Residential Care/Commitment Study) and a tentative draft of legislative recommendations, the Regional Offices of the Department of Corrections were charged with exploring implementation and determining impact on existing programs. The Regional Impact Studies were, in turn, analyzed by the HJR 16 Study Committee.

Using as a guide the issues identified in the Introduction of this report, the Statewide Plan was developed from these Regional Impacts.

HJR 16 RESPONSE

III. DATA ANALYSIS

The Intake Survey was conducted between May 1, 1984 and May 31, 1984. Although this "sample" cannot to be considered perfectly typical of a full year's activity, it does provide a fair indication of regional trends and a framework upon which to begin to assess both program and budget needs.

Also extremely useful was the J-8 Analysis which covered juveniles in jail over an eleven (11) month period (July 1, 1983 to May 31, 1984) and was adjusted for FY 1984.

a.) Statewide Intake Survey Assessments

Placement Setting

In May of 1984, data on all juveniles admitted to secure custody were collected from all jurisdictions for the entire 30-day period. A total of 655 placements were made in either jails, lockups or separate juvenile detention facilities during this time. Of those 655 juveniles placed in secure settings, 628 (95.9%) were placed in separate juvenile facilities (detention), 17 (2.6%) were placed in jails and 10 (1.5%) were placed in lockups.

These figures are somewhat lower than average figures for a typical 30-day period according to other data sources (including the J-8 Analysis discussed later in this section), a fact which may or may not be a result of the survey itself, i.e., placement practices may have been influenced by the knowledge that extensive data collection was ongoing at the time. In the opinion of the consultants who analyzed the data, however, this should not significantly affect the analysis since the percentages derived for the various tabulations should remain fairly constant regardless of the actual number of cases per month or per year.

Demographic data indicated that, of 654 cases (note: in some instances, complete information was not always available on each survey response and thus some statistical observations are based on less than 655 cases) 565 (86.4%) detained juveniles were from the detaining locality; 53 (8.1%) were from elsewhere within the State; and, 36 (5.5%) were from out of State.

Runaways

A total of 65 juveniles, or approximately 10% of the total placements, were charged as runaways as their primary offense. More juveniles were charged for this single offense than any other; breaking and entering was second at 64. In 47 of these cases or 72.3%, the detaining locality was the juveniles' residence.

This tends to not support the contention that there exist a sizable number of runaways who must be detained awaiting pick-up or transportation. The average length of detention for runaways detained by their home locality was 45.6 hours or just slightly less than those from out-of-state.

Of the 36 juveniles detained from out of State, only 13 (36%) were charged with runaway; and, only 5 (9.4%) of the 53 juveniles from elsewhere in the state were similarly charged. This means that in most cases juveniles placed in secure custody in localities other than their residence were charged with something other than runaway (71 of 89 cases).

Status Offenses

Juveniles detained on status offense charges totaled 96 or 14.7% of all secure placements statewide. If you include the 10 juveniles detained for probation violation of a previous status charge (recorded as felonies or misdemeanors despite no new actual offense) the total detained as status offenders or in consequence of a status offense increases to 106 or 16% of the total placements.

The 96 status offender juveniles remained in detention an average of 62.9 hours, or over two and one-half days. This was despite the fact that secure custody was not preferred by placement authorities in over 50% of all cases for which this information is available (44 of 87 cases). Also, 60 cases (62.5%) had no prior offense record and were not awaiting court appearance. Additionally, there were 60 first time status offenders who (as a group) were detained for a total of 3,774 hours or 157.3 days in some form of secure custody. Further study of the hours status offenders stayed in detention revealed some interesting distinctions: those preferred to secure custody remained an average of 80.3 hours; those preferred to foster or shelter care remained an average of 42 hours; those preferred to parental supervision remained an average of 56.6 hours. With the exception of the preferred to secure custody category, these appear long amounts of time to detain juveniles who are not considered security risks and who should be able to be handled by less restrictive means.

Probation Violations

While runaway was the highest single, definable offense (65 cases), there were 82 (12.5%) cases detained as probation violation for previous delinquency charge; primarily because of non-compliance with a court order, of a technical nature, and not criminal behavior.

If you combine the 106 cases involving status offenses with the 82 "technical" probation violations you see that 188 or 27% of the total placements resulted from noncriminal behavior. In other words, better than one-fourth of the secure detention, jail or lockup placements during the survey period were utilized to detain juveniles on the basis of non-criminal behavior.

Delinquency Offenses

There were a total of 547 (82%) juveniles detained for delinquency offenses as follows: 235 (36%) for felony charges; 234 (35.8%) for Class I misdemeanors; and, 78 (11.9%) for other misdemeanors. The ten most frequently listed delinquency offenses include:

Breaking and Entering	64 cases
Simple Assault	56 cases
Petty Larceny	51 cases
Grand Larceny	38 cases
Burglary	20 cases
Vandalism (private property)	20 cases
Drunk and Disorderly	19 cases
Unauthorized Use of Motor Vehicle	18 cases
Shoplifting	15 cases
Disorderly Conduct	10 cases

These ten offenses account for 45% of all secure detentions. In addition, failure to appear and contempt were cited in 13 cases as the most serious offense at the time of intake.

Serious offenses against persons (rape, robbery and felonious assault) comprised only 6% (40 of 654) of the total placements; when breaking and entering and burglary totals are added, the figure becomes 18% (124 of 654). The average length of stay per child for delinquency cases was 333 hours or 13.87 days, of which only 441 (82%) were preferred to secure custody. The remaining juveniles (including 12 or 70% of those placed in jail) were preferred to some less secure alternative even though placed in secure custody. Given a choice, nearly 18% of the delinquents would not have been placed in secure detention if the intake officer perceived that there was an alternative available. Clearly, as Code changes are considered, the impact of removal of juveniles from jail must be handled with the recognition that some juveniles now being placed in secure custody could be placed elsewhere and any efforts should encourage development of community resources.

Placement At Release

In any attempt to understand the need for secure custody it is helpful to know the placement of the juvenile following initial pre-trial custody. Of the 432 cases on which this information was available in this category, only 68 or 15.7% continued in any

form of secure custody following their initial detention stay (6 in jail, 32 in separate detention centers, and 30 in learning centers). In other words, 364 or 84.3% of the juveniles who were initially held in secure custody were subsequently placed in less secure settings.

b.) Regional Intake Survey Assessment

In any statewide planning, it is essential that the practices of the localities involved be understood so that regional differences can be observed and gaps in resources and/or consistent practices can be identified. The following tables demonstrate these regional differences. To assist in identifying the regional boundaries a map precedes the tables.

Virginia Department of Corrections

Administrative Regions

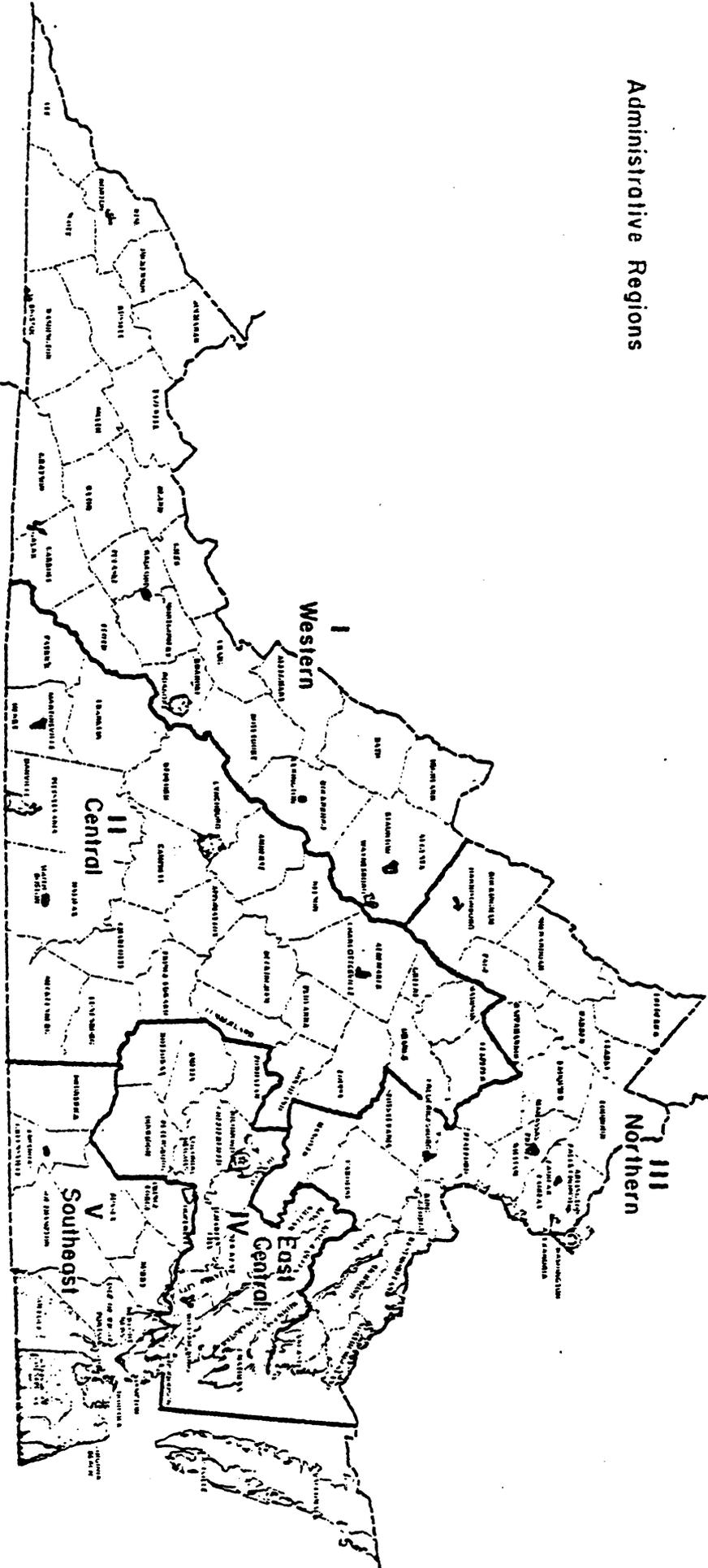


TABLE 1.

Initial Intake Placement by Region
(May 1984)*

	<u>Region 1</u> <u>Southwest</u>	<u>Region 2</u> <u>Central</u>	<u>Region 3</u> <u>Northern</u>	<u>Region 4</u> <u>East Central</u>	<u>Region 5</u> <u>Tidewater</u>	<u>Total</u>
Juvenile Detention Facility (% total secure placements)	118 (18.0)	63 (9.6)	176 (26.9)	95 (14.5)	176 (26.9)	628 (95.9)
Adult Jail (% total secure placements)	2 (0.3)	0 (0)	8 (1.2)	4 (0.6)	3 (0.5)	17 (2.6)
Lockup (% total secure placements)	1 <u>(0.2)</u>	1 <u>(0.2)</u>	2 <u>(0.3)</u>	0 <u>(0)</u>	6 <u>(0.9)</u>	10 <u>(1.5)</u>
Total Placements (% total secure placements)	121 (18.5)	64 (9.8)	186 (28.4)	99 (15.1)	185 (28.2)	655 (100.0)

*Data from Intake Survey covering May 1 to May 31, 1984 (1 month)

TABLE 2.

Committing Offense Type by Region
(May 1984)*

Region	<u>Region I Southwest</u>	<u>Region II Central</u>	<u>Region III Northern</u>	<u>Region IV East Central</u>	<u>Region V Tidewater</u>	<u>State Total</u>
Felony (% of Region) (No.)	22.5% (27)	40.6% (26)	33.3% (62)	49.5% (49)	42.8% (83)	37.3% (247)
Class 1 Misdemeanor (% Of Region) (No.)	33.3% (40)	21.9% (14)	47.3% (88)	30.3% (30)	36.1% (70)	36.5% (242)
Other Misdemeanor (% of Region) (No.)	12.5% (15)	21.9% (14)	5.9% (11)	10.1% (10)	7.7% (15)	9.8% (65)
Status (No. of Region) (No.)	30% (36)	14.1% (9)	10.8% (20)	6.1% (6)	9.8% (19)	13.6% (90)
Traffic/Other No Offense (No. of Region) (No.)	1.7% (2)	1.6% (1)	2.7% (5)	4% (4)	3.6% (7)	3% (19)
Percent of Total	<u>18.1%</u>	<u>9.7%</u>	<u>28.1%</u>	<u>14.9%</u>	<u>29.3%</u>	<u>100%</u>
Total Admitted Cases (No.)	120	64	186	99	194	663

*Data from Intake Survey covering May 1 to May 31, 1984 (1 month)

TABLE 3.

Status Offenders Detained (including runaways) by Region
(May 1984)*

	<u>Regions</u>					
	<u>Region I</u> <u>Southwest</u>	<u>Region II</u> <u>Central</u>	<u>Region III</u> <u>Northern</u>	<u>Region IV</u> <u>East Central</u>	<u>Region V</u> <u>Tidewater</u>	<u>Total</u>
Status Offenses (% total secure placements of Region)	36 (30.0)	11 (17.2)	27 (14.5)	6 (6.1)	16 (8.7)	96 (14.7)

*Data from Intake Survey covering May 1 to May 31, 1984 (1 month)

TABLE 4.

Most Frequent Offense By Region (% of total secure placement by Region)
(May 1984)*

<u>Region I Southwest</u>		<u>Region II Central</u>		<u>Region III Northern</u>		<u>Region IV East Central</u>		<u>Region V Tidewater</u>	
Break & Enter	9.9%	Break & Enter	15.6%	Viol. of Prob.-Del.	12.9%	Simple Assault	15.2%	Viol. of Prob.-Del.	16%
Simple Assault	9.1%	In-State Runaway	12.5%	Petit Larceny	8.1%	Break & Enter	15.2%	Break & Enter	11.3%
Viol. of Prob.-Del.	9.1%	Viol. Prob.-Del.	12.5%	Simple Assault	6.5%	Grand Larceny	9.1%	Petit Larceny	9.8%
Viol. of Prob.-Status	5.8%	Simple Assault	9.4%	Burglary In-State	4.8%	Petit Larceny Viol.	9.1%	Grand Larceny	6.7%
Grand Larceny	5%	Grand Larceny	4.7%	Runaway Viol.	4.8%	of Prob.-Del. In-State	8.1%	Simple assault	6.2%
Petit Larceny	5%	Petit Larceny Drunk & Disorderly	4.7%	of Prob.-Status	4.8%	Runaway	5.1%	Burglary	5.2%

*Data from Intake Survey covering May 1 to May 31, 1984 (1 month)

TABLE 5.

Top Ten Detaining Localities/% State Total
(May 1984)*

	<u>No. Cases</u>	<u>% State Total</u>	<u>Region</u>
Fairfax	85	12.8%	III
Norfolk	38	5.7%	V
Richmond City	37	5.6%	IV
Prince William	33	5.0%	III
Newport News	30	4.5%	V
Hampton	30	4.5%	V
Roanoke	30	4.5%	I
Virginia Beach	27	4.1%	V
Henrico	27	4.1%	IV
Chesterfield	22	3.3%	IV

*Data from Intake Survey covering May 1 to May 31, 1984 (1 month)

TABLE 6.

Placement at Release (Pre-Trial) by Region
(May 1984)*

<u>Release Setting</u>	<u>Region 1 Southwest</u>	<u>Region 2 Central</u>	<u>Region 3 Northern</u>	<u>Region 4 East Central</u>	<u>Region 5 Tidewater</u>	<u>Total</u>	<u>Average Length of Stay (Hours)</u>
Jail (No.)	1	0	1	2	2	6	263.2
Secure Detention (No.)	5	2	22	0	3	32	152.6
Nonsecure Residential (No.)	6	3	15	4	20	48	141.2
Learning Center	2	3	5	8	12	30	336.5
Foster Care (No.)	5	1	3	2	4	15	75.2
Conditional Release (No.)	52	33	75	37	55	252	122.0
Release with No Action (No.)	0	0	2	2	2	6	115.0
Other	<u>16</u>	<u>2</u>	<u>6</u>	<u>3</u>	<u>16</u>	<u>43</u>	<u>119.3</u>
Total (No.)	87	44	129	58	114	432	141.5

*Data from Intake survey covering May 1 to May 31, 1984 (1 month)

c.) J-8 Analysis

Also examined at the same time as the "Intake Survey" was a statewide tabulation of the DCJ-8 or "J-8" Juveniles in Jail form. This data, which records the number of admissions, was adjusted by the Department of Corrections Regional offices to provide the actual juveniles in jail figures. The data was for 11 months (July 1984-May 1984) and was projected for the entire FY 1984 to be able to compare with previous year's data. Even when viewed on an average daily population and average length of stay basis, the J-8 figures were somewhat larger than those revealed by the Intake Survey, although the regional trends indicated by the survey were fairly consistent.

For the 11 months of actual J-8 data, there were a total of 557 juveniles in jail statewide by order of a Juvenile and Domestic Relations Court. Of this total, 285 (51.2%) were being held pre-trial and 272 (48.8%) were serving sentences. The Average Daily Population was 39.1 juveniles and the Average Length of Stay was 23.4 days. Considering that these figures represent 11 months out of a year and a FY projection rather than a one month "snapshot" that the survey provided, these figures should be regarded as more representative of the current level of juveniles being held in jail. Projected for FY 1984 there were 608 juveniles jailed.

Regionally, the J-8 Analysis indicates most of the same trends that the Intake Survey revealed, with some slight deviations. The following tables indicate the regional J-8 distinctions of juveniles in jail by order of a Juvenile and Domestic Relations Court.

TABLE 7.

Juveniles in Jail by Region
(7/83-5/84)*

Region	<u>I</u> <u>Southwest</u>	<u>II</u> <u>Central</u>	<u>III</u> <u>Northern</u>	<u>IV</u> <u>East Central</u>	<u>V</u> <u>Tidewater</u>	<u>Statewide</u>
Pre-Trial	82	35	110	20	38	285 (51.2%)
Serving Sentence	36	36	72	54	74	272 (48.8%)
Total % State	118 (21.2%)	71 (12.8%)	182 (32.7%)	74 (13.3%)	112 (20%)	557 (100%)

* Data from J-8's covering July 1, 1983 to May 31, 1984 (11 months)

TABLE 8.

Juveniles in Jail: Average Daily Population by Region (no. of juveniles)
(7/83-5/84)*

REGION	I <u>Southwest</u>	II <u>Central</u>	III <u>Northern</u>	IV <u>East Central</u>	V <u>Tidewater</u>	<u>Statewide</u>
Pre-Trial	1.6	.4	1.7	1.1	2.3	6.9
Serving Sentence	5.1	3.2	6.8	11.8	5.4	32.2

*Data from J-8s covering July 1, 1983 to May 31, 1984 (11 months)

TABLE 9.

Juveniles in Jail: Average Length of Stay by Region (in days)
(7/83-5/84)*

Region	<u>I</u> <u>Southwest</u>	<u>II</u> <u>Central</u>	<u>III</u> <u>Northern</u>	<u>IV</u> <u>East Central</u>	<u>V</u> <u>Tidewater</u>	<u>Statewide</u>
Pre-Trial	6.6	3.4	5.1	18.1	19.8	8.2
Serving Sentence	47.5	29.3	31.4	72.9	24.1	39.5

* Data from J-8s covering July 1, 1983 to May 31, 1984 (11 months)

d.) Conclusions

There has been measurable progress in removing juveniles from jail over the past four years. Due to differing data bases, comparisons are imperfect but still useful. For example, according to A study of the Program Components of the Virginia Juvenile Justice System (1980), there were 4,246 juvenile admissions to jails in 1979-1980. To compare this figure with FY 1984 data, admissions need to be converted to actual juveniles jailed. The analysis of FY 1984 J-8 data indicated that the actual number of juveniles jailed represented approximately 77% of admissions reported. Analysis of FY 1982 data, which was conducted by the Virginia Council of Juvenile and Domestic Relations Court Judges, indicated that the actual number of juveniles jailed during that period was approximately 61% of admissions reported. Applying these percentages to the 4246 admissions reported in FY 1980 is considered a reasonable basis for comparison with current data. Using these factors, the actual number of juveniles jailed in FY 1980 is between 2590 and 3269. Comparing the adjusted FY 1980 totals to the FY 1984 total of 608 juveniles jailed, a reduction of between 76% and 81% in the actual number of juveniles jailed in Virginia has occurred during the past four years. It should also be noted that during FY 1984 the Juvenile Court was not authorized to jail misdemeanants and therefore the ratio of admissions to actual juveniles jailed is probably higher for that Fiscal Year. Additionally, according to a study by the Virginia Supreme Court, there was a 6.8% reduction in the number of juvenile delinquency petitions filed in FY 1984 over 1983, further contributing to the overall reduction. Many factors may be responsible for this decrease, principal among which was legislation adopted in 1983 which limited the placement of juveniles who have been found or who have been alleged to have committed misdemeanors.

The average Daily Population of juveniles in jail for the period studied in 1984 (according to the J-8s) was 39.1 juveniles and the Average Length of Stay was 23.4 days. These totals could be realistically absorbed in existing secure detention facilities (with some "hardening" which will be discussed in the Impacts section) if the juveniles identified as CHINS or status offenders (106), the less than Class I misdemeanants (78) and the delinquents for whom secure custody was not preferred (117) were placed in a less secure setting. As mentioned in the introduction, the removal of CHINS from detention is considered an essential element of any proposed placement criteria.

Overall, the conclusions of the data analysis can be summarized as follows:

- There has already been substantial reduction in the number of juveniles jailed in Virginia (FY 1980-1984).
- The present number of juveniles being jailed (FY 1984) can be contained in secure detention consistent with Legislative Recommendations in this report.
- The removal of CHINS from secure detention facilities is an essential element to the removal of juveniles from jail and can be a cost effective measure on behalf of the Commonwealth.
- The use of secure detention for juveniles removed from jail will require, in some cases, "hardening" of detention facilities to meet the increased security needs.
- Secure detention should only be used for those juveniles who, in criteria sufficiently concise to guide decision making, require secure custody.

HJR 16 RESPONSE

IV. IMPACTS

a.) Local/Regional Impact

Planning for the resources development necessary to adequately prepare the Commonwealth for the removal of juveniles from jail was the primary responsibility of the HJR 16 Study Committee. To prepare for this the Committee developed a data base (Section III) capable of; (1) providing information regarding the number and offense categories of juveniles presently being jailed; (2) comparison with historical data for purposes of measuring change; and, (3) discerning regional trends for the purpose of identifying areas of need.

After this information was developed and with the tentative legislative recommendations drafted jointly by the committee and representatives to the Virginia Council of Juvenile and Domestic Relations Court Judges the Department of Corrections Regional offices were provided this material and requested to determine the impact on existing programs and resources.

Once the regional impacts were returned to the Committee they were analyzed, costs were identified and a consistent statewide method of resource development was designed.

In summary, the major statewide impacts were identified as follows:

- o A maximum of up to twenty percent (20%) of each secure detention facility's rated capacity should be approved (according to standards to be developed by the Department of Corrections) to handle post-dispositional juveniles.
- o There will need to be a "hardening" of certain of the approved secure detention facilities in such areas as use of concrete slab bed frames, secure stainless steel toilets and sinks, solid doors and lexan light fixture shields.
- o There will need to be additional personnel (1 position per 4 beds approved) in detention facilities to handle supervision and community outreach of post-dispositional placements.
- o Certain localities in the State may need to develop Shelter Care Programs or increase a Family Oriented Group Home System.

Throughout this process consideration was given to adherence to the issues stated in the Introduction of this report (Section I)

and whenever possible costs that were either already identified or in the planning process (Example: construction of 10 new beds already scheduled at Chesterfield Juvenile Detention) were not included in the impact section as new resource demands and are not discussed here. The impacts and related cost stated here pertain, specifically to the cost of preparing for the recommended changes necessary to effect removal of juveniles from jail. This is inclusive of the need to remove, with limited exceptions, CHINS from secure detention.

Basically, the impact on the regions will be to prepare secure detention facilities to be capable of absorbing the juveniles who will be removed from jail. Based on existing utilization rates, (74% utilization rate statewide in FY 1984) it is anticipated that the statewide system will be able to do this if each of the seventeen (17) secure detention facilities has up to a maximum of 20% of their bedspace considered for this purpose. No new construction is planned.

Each existing secure detention facility was studied for "hardening needs"; some facilities with older, less secure hardware will need this upgrading while others will not. These cost were projected on a facility by facility basis. The average cost per "hardening" feature (based on current data) is as follows:

Concrete Beds	\$ 350
Stainless Steel Sink & Toilet	\$1,200
Secure Windows	\$ 300
Lexan Light Shields	\$ 20
Solid Door & Lock	\$1,600

In order to handle the increased demand for security, supervision, community outreach and transport, each secure detention facility will need 1 new positions for each four (4) beds approved. The equivalent position's (Probation Counselor) estimated cost were based on Step 3 of Grade Level 9, recognizing the need for experienced and capable staff to handle the new juvenile programs. Fringe benefits were figured at 26% per position and transportation support needs were estimated at 150 miles per day (5 days per week) and .20¢ per mile per position for each 5 approved beds.

The tables that follow this section (tables 10-15) present a Region by Region description of the community impacts/cost identified by the HJR 16 Study Committee.

b.) Institutional Impact

There will be an impact on the Youth Institutional Services component of the Division of Youth Services. This impact will be felt primarily in two areas; one being an increase in commitments and this increase being primarily serious offenders.

From a historical perspective, it should be noted that commitments to the Department of Corrections have shown a decrease during the past five years; however, crowding has been experienced in certain facilities due to the pressure for increased lengths of stay.

Also, those youth being committed during this period comprise approximately 25 per cent for crimes against persons (10 per cent of the total were the more serious offenders). For the most part, these classes of offenders require a longer length of stay and placement in a secure bed.

There is strong evidence to indicate a gradual shift in the types of youth being committed to the Department of Corrections. This began with the elimination of dependent and neglected children in the 1960's, followed by legislation which prohibited institutionalization of status offenders in 1977, and now the elimination of jailing as an option for juvenile courts. These factors have and will continue to impact ability to provide treatment services and protect society particularly at the institutional level unless resources are made available to meet this challenge.

At the present time, there are 140 secure beds in the seven Learning Centers out of a total of 675 beds in the system. These figures do not include the beds in the Reception and Diagnostic Center which are used for short term classification purposes. The Division of Youth Services at the present time is in the midst of developing a new classification system for committed youth with a targeted July 1, 1985 implementation date. This system will set minimum lengths of stay for certain offenders based on their age, committing offense, and delinquent history. For serious offenders, there will be a twelve month minimum length of stay and lesser lengths of stay for less serious offenders. The impact of this system would be an increased demand for utilization of secure beds and longer lengths of stay. It is felt that this increase could be addressed within available resources if commitments continue to decrease. If not, then additional beds or securing existing beds will be necessary.

TABLE 10.

Region I
Southwest

Secure Detention Facility (Rated Capacity)	FY '84 Utilization Rate	Approval Level Bedspace (post.-dispo.)	Hardening Features	Personnel Needs Fringe/Yr.	Personnel Cost & Cost/Yr.	Transportation Support	
Highlands/ (20)	55%	4	Windows, Beds	1	\$22,757	\$ 7,800	
New River/ (20)	32%	4	Beds, Doors, Lights	1	\$22,757	\$ 7,800	
Roanoke/ (21)	53%	4	None	1	\$22,757	\$ 7,800	
Shenandoah/ (32)	53%	4	Windows, Doors	1	\$22,757	\$ 7,800	
			Cost				Total
Region/ (93)	49%	16	\$21,880	4	\$91,028	\$31,200	\$144,108

TABLE 11.

Region II
Central

Secure Detention Facility (Rated Capacity)	FY '84 Utilization Rate	Approval Level Bedspace (post-dispo.)	Hardening Features	Personnel Needs Fringe/Yr.	Personnel Cost & Cost/Yr.	Transportation Support	
W. W. Moore/ (30)	63%	4	Doors, Windows, Sinks/Toilets, Lights	1	\$22,757	\$ 7,800	
Lynchburg/ (20)	64%	4	Doors, Lights Sinks/Toilets	1	\$22,757	\$ 7,800	
			Cost				Total
Region/ (50)	64%	8	\$18,600	2	\$45,514	\$15,600	\$79,714

TABLE 12.

Region III
Northern

Secure Detention Facility (Rated Capacity)	FY '84 Utilization Rate	Approval Level Bedspace (post-dispo.)	Hardening Features	Personnel Needs Fringe/Yr.	Personnel Cost & Cost/Yr.	Transportation Support	
Northern VA/ (43)	77%	9	Doors, Windows, Sinks/ Toilets	2	\$ 45,514	\$15,600	
Rappahannock/ (21)	76%	4	Doors, Windows, Sinks/ Toilets	1	\$ 22,757	\$ 7,800	
Prince William/ (21)	76%	4	Doors	1	\$ 22,757	\$ 7,800	
Fairfax/ (33)	78%	7	None	2	\$ 45,514	\$15,600	
			Cost				Total
Region/ (118)	78%	24	\$46,700	5	\$136,542	\$46,800	\$230,042

TABLE 13.

Region IV
East Central

Secure Detention Facility (Rated Capacity)	FY '84 Utilization Rate	Approval Level Bedspace (post-dispo.)	Hardening Features	Personnel Needs Fringe/Yr.	Personnel Cost & Cost/Yr.	Transportation Support	
Chesterfield/ (22)*	77%	4	All	1	\$ 22,757	\$ 7,800	
Richmond/ (52)	85%	10	All	2.5	\$ 56,892	\$19,500	
Henrico/ (20)	52%	4	None	1	\$ 22,757	\$ 7,800	
			Cost				Total
Region/ (94)	76%	18	\$45,580	4.5	\$102,406	\$35,100	\$183,086

*10 new beds scheduled

TABLE 14.

Region V
Tidewater

Secure Detention Facility (Rated Capacity)	FY '84 Utilization Rate	Approval Level Bedspace (post-dispo.)	Hardening Features	Personnel Needs Fringe/Yr.	Personnel Cost & Cost/Yr.	Transportation Support	
Crater/ (22)	75%	4	Doors, Windows	1	\$ 22,757	\$ 7,800	
Newport News/ (21)	101%	4	Beds, Doors Windows, Lights	1	\$ 22,757	\$ 7,800	
Norfolk/ (43)	89%	8	Beds, Sinks/Toilets Windows	2	\$ 45,514	\$15,600	
Tidewater/ (52)	89%	10	Doors	2.5	\$ 56,892	\$19,500	
			Cost				Total
Region/ (138)	89%	27	\$46,680	6.5	\$147,920	\$50,700	\$245,300

TABLE 15.

Statewide Summary

Secure Detention Facility (Rated Capacity)	FY '84 Utilization Rate	Approval Level Bedspace (post-dispo.)	Hardening Features	Personnel Needs Fringe/Yr.	Personnel Cost & Cost/Yr.	Transportation Support	Total Cost
17 Secure Detention Facilities/ (493)	74%	93	\$179,440	22	\$523,410	\$179,400	\$882,250

HJR 16 RESPONSE

V. RECOMMENDATIONS

The recommendations contained in this section are the result of a mutual agreement between the HJR 16 Study Committee and representatives from the Virginia Council of Juvenile and Domestic Relations Court Judges.

In summary, the substantive changes to the Code of Virginia that are recommended in order to adequately prepare for the removal of juveniles from adult jails are as follows (proposed language identified by references in parentheses):

The criteria for detention generally should be amended to provide that a child is eligible for secure detention where there is probable cause to believe that:

1. The child has committed an act which would be a Felony or Class 1 Misdemeanor if committed by an adult or;
2. The child has absconded from a detention home, learning center or other secure facility where directed to remain by the lawful order of a judge or intake officer; or
3. The child is a fugitive from a jurisdiction outside the Commonwealth and subject to verified petition or warrant. (Section 16.1-248.1)

In rural areas where detention facility bedspaces may be limited and/or transportation is a problem, a juvenile charged with an offense that would be a Felony or Class 1 Misdemeanor if committed by an adult may be detained in a temporary lockup room or ward for juveniles (such building may contain an adult jail) for a period not to exceed six hours provided the room or ward is separate and removed from the adults. (Section 16.1-249, F.)

A 30 day sentencing option to local detention for first time offenders 16 years of age or older found to have committed an offense punishable by confinement in a State or local correctional facility as defined in Section 53.1-1 is provided to the Juvenile Court. (Section 16.1-284.1, A.)

A six month sentencing option to local detention is provided for juveniles 16 years of age or older, who have been previously adjudicated delinquent within the past twelve months and have failed to respond to past treatment efforts but whom, it is further determined are amenable to continued treatment in the community, if 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 Section 53.1-1 of the Code. This confinement would be subject to a mandatory review hearing by the Court at least once each 30 days or upon request of the Probation Officer for good cause shown. (Section 16.1-284.1, B.)

In the case of the serious juvenile offender found guilty of rape, robbery or an offense which would be a felony if committed by an adult, and who is on parole or within the immediately preceding twelve months and was a resident or inpatient of a treatment facility resulting from a court order in a previous delinquency proceeding, the Juvenile Court may sentence to the Department of Corrections for a period not less than six months nor greater than twelve months. (Section 16.1-285)

The Juvenile Court retains authority, except as expressly provided, also to sentence to detention for a period not to exceed ten days any acts of contempt as set forth in Section 18.2-456. (Section 16.1-292)

Representatives from the Juvenile Judges' Council believe an additional criteria regarding detention of CHINS for a period not to exceed 72 hours should be added. This was the one area of disagreement between the two groups. The Department of Corrections does not support this. The Judges' position is attached in the Appendix.

In addition to the substantive recommendations above:

The data reveals a need for a committee to monitor the first year implementation. Committee membership could include membership from the present HJR 16 Study Committee and the Virginia Council of Juvenile and Domestic Relations Court Judges and should report back to the General Assembly.

There will need to be open communication between Community and State administered programs; this will include enhanced review of commitments at the Reception and Diagnostic Center to guard against commitments that could be better served in a community placements so as to advise the Juvenile Court Judges during the 60 day review period provided for in the Recommendations (Section V).

1
2
3
4
5
6
7
8
9

SENATE BILL NO. HOUSE BILL NO.

A BILL to amend and reenact §§ 16.1-228, 16.1-249, 16.1-250, 16.1-255, 15.1-266, 16.1-279, 16.1-284, 16.1-285 and 16.1-292 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 16.1-248.1, 16.1-250.1, 16.1-277.1, 16.1-284.1, and 16.1-285.1, and to repeal § 16.1-248 of the Code of Virginia, relating to juvenile and domestic relations district courts.

10

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-228, 16.1-249, 16.1-250, 16.1-279, 16.1-284, 16.1-285, and 16.1-292 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, 16.1-284.1, and 16.1-285.1 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

1 child;

2 3. Abandons such child; or

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

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

10 G- "Adult" means a person eighteen years of age or
11 older.

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

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

17 F- "Child in need of services" means:

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

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

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

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

1 child offense which would not be criminal if committed by
2 an adult .

-36-

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

12 G: "The court" or the "juvenile court" or the
13 "juvenile and domestic relations court" means the juvenile
14 and domestic relations district court of each county or
15 city.

16 H: "Delinquent act" means an act designated a crime
17 under the law of this Commonwealth, or an ordinance of any
18 city, county, town or service district, or under federal
19 law, or a violation of a court order as provided for in §
20 16.1-292, except an act, which is otherwise lawful, but is
21 designated a crime only if committed by a child.

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

25 J: "Department" means the Department of Corrections
26 and "Director" means the administrative head in charge
27 thereof or such of his assistants and subordinates as are
28 designated by him to discharge the duties imposed upon him

1 under this law.

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

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

12 "Jail" or "other facility designed for the detention of
13 adults" means a local or regional correctional facility as
14 defined in § 53.1-1 of this Code, except those facilities
15 utilized on a temporary basis as a court holding cell for a
16 child incident to a court hearing.

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

20 N- "This law" or "the law" means the Juvenile and
21 Domestic Relations District Court Law embraced in this
22 chapter.

23 O- "Legal custody" means a legal status created by
24 court order which vests in a custodian the right to have
25 physical custody of the child, to determine where and with
26 whom he shall live, the right and duty to protect, train and
27 discipline him and to provide him with food, shelter,
28 education and ordinary medical care, all subject to any

1 residual parental rights and responsibilities.

-38-

2 P- "Permanent foster care placement" means the place
3 of residence in which a child resides and in which he or she
4 has been placed pursuant to the provisions of §§ 63.1-56 and
5 63.1-206.1 with the expectation and agreement between the
6 placing agency and the place of permanent foster care that
7 the child shall remain in the placement until he or she
8 reaches the age of majority unless modified by court order
9 or unless removed pursuant to § 16.1-251 or § 63.1-248.9. A
10 permanent foster care placement may be a place of residence
11 of any natural person or persons deemed appropriate to meet
12 a child's needs on a long-term basis.

13 "Secure facility" or "detention home" means a local or
14 regional public or private locked residential facility which
15 has construction fixtures designed to prevent escape and to
16 restrict the movement and activities of children held in
17 lawful custody.

18 Q- "Shelter care" means the temporary care of children
19 in physically unrestricting facilities.

20 Q1- "Spouse abuse" means any act of violence,
21 including any forceful detention, which results in physical
22 injury or places one in reasonable apprehension of serious
23 bodily injury and which is committed by a person against
24 such person's spouse, notwithstanding that such persons are
25 separated and living apart.

26 R- "State Board" means the State Board of Corrections.

27 S- "Residual parental rights and responsibilities"
28 means all rights and responsibilities remaining with the

1 parent after the transfer of legal custody or guardianship -39-
2 of the person, including but not limited to the right of
3 visitation, consent to adoption, the right to determine
4 religious affiliation and the responsibility for support.

5 § 16.1-248.1. Criteria for detention or shelter
6 care.--A. A child taken into custody whose case is
7 considered by a judge, intake officer or magistrate pursuant
8 to § 16.1-247 shall immediately be released, upon the
9 ascertainment of the necessary facts, to the care, custody
10 and control of such child's parent, guardian, custodian or
11 other suitable person able and willing to provide
12 supervision and care for such child, either on bail or
13 recognizance pursuant to Chapter 9 (§ 19.2-119 et seq.) of
14 Title 19.2 or under such conditions as may be imposed or
15 otherwise. However, a child may be detained in a secure
16 facility, pursuant to a detention order or warrant, only
17 upon a finding by the judge, intake officer, or magistrate,
18 that there is probable cause to believe that the child
19 committed the act alleged, and that at least one of the
20 following conditions is met:

21 1. The child is alleged to have committed an act which
22 would be a felony or Class 1 misdemeanor if committed by an
23 adult, and there is clear and convincing evidence that:

24 a. The release of the child constitutes an
25 unreasonable danger to the person or property of others;

26 b. The release of the child would present a clear and
27 substantial threat of serious harm to such child's life or
28 health; or

1 c. The child has threatened to abscond from the
2 court's jurisdiction during the pendency of the instant
3 proceedings or has a record of willful failure to appear at
4 a court hearing within the immediately preceding twelve
5 months.

6 2. The child has absconded from a detention home,
7 learning center or other secure facility where he has been
8 directed to remain by the lawful order of a judge or intake
9 officer.

10 3. The child is a fugitive from a jurisdiction outside
11 the Commonwealth and subject to a verified petition or
12 warrant, in which case such child may be detained for a
13 period not to exceed that provided for in § 16.1-323 of this
14 chapter while arrangements are made to return the child to
15 the lawful custody of a parent, guardian or other authority
16 in another state.

17 4. The child has failed to appear in court after
18 having been duly served with a summons in any case in which
19 it is alleged that the child has committed a delinquent act,
20 or that the child is in need of services; however, a child
21 alleged to be in need of services may be detained for good
22 cause pursuant to this subsection only until the next day
23 upon which the court sits within the county or city in which
24 the charge against the child is pending, and under no
25 circumstances longer than seventy-two hours from the time he
26 or she was taken into custody.

27 B. Any child not meeting the criteria for placement in
28 a secure facility shall be released to a parent, guardian or

1 other person willing and able to provide supervision and
2 care under such conditions as the judge, intake officer or
3 magistrate may impose. However, a child may be placed in
4 shelter care if:

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

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

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

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

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

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

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

28 § 16.1-249. Places of confinement for children.--A. If

1 it is ordered that a child remain in detention or shelter
2 care pursuant to § ~~16.1-248~~ 16.1-248.1, such child may be
3 detained, pending a court hearing, in the following places:

- 4 1. An approved foster home or a home otherwise
5 authorized by law to provide such care;
- 6 2. A facility operated by a licensed child welfare
7 agency;
- 8 3. If a child is alleged to be delinquent, in a
9 detention home or group home approved by the Department;
10 provided, further, a child who is alleged to be in need of
11 services may be detained in a detention home, for good
12 cause, for a period not to exceed seventy-two hours prior to
13 a detention hearing being held pursuant to § ~~16.1-250~~;
- 14 4. Any other suitable place designated by the court and
15 approved by the Department.

16 B. A Until June 30, 1986, when detention of a child
17 is ordered pursuant to § 16.1-248.1 A of this Code, a
18 delinquent child or a child alleged to be delinquent who is
19 fifteen years of age or older may be detained in a jail or
20 other facility for the detention of adults provided (i) the
21 detention is in a room or ward entirely separate and removed
22 from adults, (ii) adequate supervision is provided and (iii)
23 the facility is approved by the Department for the detention
24 of children and only if:

- 25 1. [Repealed.]
- 26 2. A judge or intake officer determines that the
27 facilities enumerated in subsection A hereof are not
28 suitable for the reasonable protection of the child or

1 community, when the child is charged with rape, robbery or -43-
2 an offense which would be a Class 1, 2 or 3 felony if
3 committed by an adult; or

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

10 After June 30, 1986, no child shall be detained or
11 confined in any jail or other facility for the detention of
12 adult offenders or persons charged with crime except as
13 provided in paragraphs D, E, or F of this section.

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

21 D. When a case is transferred to the circuit court in
22 accordance with the provisions of § 16.1-269 or §
23 16.1-270, the child if in confinement may be transferred to
24 a jail or other facility for the detention of adults subject
25 to the limitations of (i), (ii) and (iii) of subsection B
26 hereof provided that (i) the detention is in a room or ward
27 entirely separate and removed from adults, (ii) adequate
28 supervision is provided, and (iii) the facility is approved

1 by the Board for detention of children .

2 E. If, in the judgment of the custodian as a result of
3 placement of the child in a facility designated in
4 subsection A hereof, a child fifteen years of age or older
5 has demonstrated that he or she is a threat to the security
6 or safety of the other children detained or the staff of the
7 home or facility, the judge shall determine whether such
8 child should be transferred to another juvenile facility
9 including a jail or other place of detention for adults
10 pursuant to subsection B hereof , after a hearing before the
11 court the limitations of paragraph D (i), (ii), and (iii)
12 of this section .

13 F. After June 30, 1986, if a child is charged with an
14 offense which, if committed by an adult, would be a felony
15 or Class 1 misdemeanor, and the judge or intake officer
16 determines that secure detention is needed for the safety of
17 the child or the community, such child may be detained for a
18 period no longer than six hours in a temporary lock-up room
19 or ward for juveniles while arrangements are completed to
20 transfer the child to a juvenile facility. Such room or
21 ward may be located in a building which also contains a jail
22 or other facility for the detention of adults, provided (i)
23 such room or ward is totally separate and removed from
24 adults or juveniles transferred to the circuit court
25 pursuant to § 16.1-269, (ii) constant supervision is
26 provided, and (iii) the facility is approved by the
27 Department for the detention of children. The Department
28 shall assist the localities or combinations thereof in

1 implementing this section and ensuring compliance herewith. -45-

2 § 16.1-250. Procedure for detention hearing.--A. When a
3 child has been taken into immediate custody and not released
4 as provided in § 16.1-247 or § ~~16.1-248~~ 16.1-248.1, such
5 child shall be brought before a judge on the next day on
6 which the court sits within the county or city wherein the
7 charge against the child is pending ; ~~provided, that~~ . In
8 the event the court does not sit within the county or city
9 on the following day, such child shall be brought before a
10 judge within a reasonable time, not to exceed seventy-two
11 hours, after he or she has been taken into custody.

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

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

22 D. When If the judge finds that there is not probable
23 cause to believe that the child committed the delinquent act
24 alleged, the court shall order his release. If the judge
25 finds that there is probable cause to believe that the child
26 committed the delinquent act alleged but that the full-time
27 detention of a child who is alleged to be delinquent is not
28 required, the court shall order his release, and in so

1 doing, the court may impose one or more of the following -46-
2 conditions singly or in combination:

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

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

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

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

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

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

1 F. All relevant and material evidence helpful in
2 determining probable cause under this section or the need
3 for detention may be admitted by the court even though not
4 competent in a hearing on the petition.

-47-

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

16 H. In considering probable cause under this section,
17 if the court deems it necessary to summon witnesses to
18 assist in such determination then the hearing may be
19 continued and the child remain in detention until the next
20 day upon which the court sits in the city or county, but in
21 no event longer than three consecutive days, exclusive of
22 Saturdays, Sundays, and legal holidays.

23 § 16.1-250.1. Appointment of counsel; detention review
24 hearing.--When a child is not released after a detention
25 hearing held pursuant to § 16.1-250 and, at the time of the
26 detention hearing, the child was not represented by legal
27 counsel, then the child shall be afforded the opportunity to
28 be represented by counsel prior to a detention review

1 hearing.

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

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

13 § 16.1-255. Limitation on issuance of detention orders
14 for children.--No detention order shall be issued for any
15 child except when authorized by the judge ~~7~~ or intake
16 officer ~~or clerk~~ of a juvenile court.

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

21 § 16.1-266. Appointment of counsel.--A. Prior to the
22 hearing by the court of any case involving a child who is
23 alleged to be abused or neglected or who is the subject of
24 an entrustment agreement or a petition terminating residual
25 parental rights or is otherwise before the court pursuant to
26 subsection A 4 of § 16.1-241, the court shall appoint a
27 discreet and competent attorney-at-law as guardian ad litem
28 to represent the child.

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

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

13 2. If the court determines that the child is indigent
14 within the contemplation of the law pursuant to the
15 guidelines set forth in § 19.2-159 and his or her parent,
16 guardian, legal custodian or other person standing in loco
17 parentis does not retain an attorney for the child, a
18 statement of indigence substantially in the form provided by
19 § 19.2-159 and a financial statement shall be executed by
20 such child, and the court shall appoint an attorney-at-law
21 to represent him; or

22 3. Waive the right to representation by an attorney, if
23 the court finds the child and the parent, guardian, legal
24 custodian or other person standing in loco parentis of the
25 child consent, in writing, to such waiver and that the
26 interests of the child and the parent, guardian, legal
27 custodian or other person standing in loco parentis in the
28 proceeding are not adverse. Such written waiver shall be in

1 accordance with law and shall be filed with the court
2 records of the case.

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

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

12 2. If the court determines that the parent, guardian or
13 other adult is indigent within the contemplation of the law
14 pursuant to the guidelines set forth in § 19.2-159, a
15 statement substantially in the form provided by § 19.2-159
16 and a financial statement shall be executed by such parent,
17 guardian or other adult and the court shall appoint an
18 attorney-at-law to represent him; or

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

21 D. In all other cases which in the discretion of the
22 court require counsel or a guardian ad litem to represent
23 the interests of the child or children or the parent or
24 guardian, a discreet and competent attorney-at-law may be
25 appointed by the court. However, in cases where the custody
26 of a child or children is the subject of controversy or
27 requires determination and each of the parents or other
28 persons claiming a right to custody is represented by

1 counsel, the court shall not appoint counsel or a guardian
2 ad litem to represent the interests of the child or children
3 unless the court finds, at any stage in the proceedings in a
4 specific case, that the interests of the child or children
5 are not otherwise adequately represented.

-51-

6 § 16.1-277.1. Time limitation.--A. When a child is
7 held continuously in secure detention, he shall be released
8 from confinement if there is no adjudicatory or transfer
9 hearing conducted by the court for the matters upon which he
10 was detained within twenty days from the date he was first
11 detained.

12 B. If a child is not held in secure detention or is
13 released from same after having been confined, an
14 adjudicatory or transfer hearing on the matters charged in
15 the petition or petitions issued against him shall be
16 conducted within 120 days from the date the petition or
17 petitions are filed.

18 C. When a child is held in secure detention after the
19 completion of his adjudicatory hearing or is detained when
20 the juvenile court has retained jurisdiction as a result of
21 a transfer hearing, he shall be released from such detention
22 if the disposition hearing is not completed within thirty
23 days from the date of the adjudicatory or transfer hearing.

24 D. The time limitations provided for in this section
25 may be extended by the court for a reasonable period of time
26 based upon good cause shown, provided that the basis for
27 such extension is recorded in writing and filed among the
28 papers of the proceedings.

1 § 16.1-279. Disposition.--A. If a child is found to be
2 abused or neglected, or is at risk of being abused or
3 neglected by a parent or custodian who has been adjudicated
4 as having abused or neglected another child in the care of
5 the parent or custodian, or is abandoned by his parent or
6 other custodian or who by reason of the absence or physical
7 or mental incapacity of his parents is without parental care
8 and guardianship, the juvenile court or the circuit court,
9 as the case may be, may make any of the following orders of
10 disposition to protect the welfare of the child:

11 1. Enter an order pursuant to the provisions of §
12 16.1-278.

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

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

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

25 b. A child welfare agency, private organization or
26 facility which is licensed or otherwise authorized by law to
27 receive and provide care for such child; however, no court
28 shall transfer legal custody of an abused or neglected child

1 to an agency, organization or facility out of the
2 Commonwealth without the approval of the Commissioner of
3 Social Services.

-53-

4 c. The local board of public welfare or social services
5 of the county or city in which the court has jurisdiction
6 or, at the discretion of the court, to the local board of
7 the county or city in which the child has residence if other
8 than the county or city in which the court has jurisdiction,
9 which board shall accept such child for care and custody.
10 However, such local board, if one other than in the county
11 or city in which the court has jurisdiction, shall not be
12 required to accept such child until it has been given
13 reasonable notice of the pendency of the case and an
14 opportunity to be heard. Nothing herein shall be construed
15 as prohibiting the commitment of a child to any local board
16 of public welfare or social services in the Commonwealth
17 when such local board consents to the commitment. The board
18 to which the child is committed shall have the final
19 authority to determine the appropriate placement for the
20 child. Any order authorizing removal from the home and
21 transferring legal custody of a child to a local board of
22 public welfare or social services as provided in this
23 paragraph shall be entered only upon a finding by the court
24 whether reasonable efforts have been made to prevent removal
25 and that continued placement in the home would be contrary
26 to the welfare of the child, and the order shall so state.

27 4. Transfer legal custody pursuant to subsection A 3
28 hereof and order the parent, guardian, legal custodian or

1 other person standing in loco parentis to participate in
2 such services and programs or to refrain from such conduct
3 as the court may prescribe.

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

7 B. Where a parent or other custodian seeks to be
8 relieved of the care and custody of any child pursuant to
9 subsection A 4 of § 16.1-241 or where a public or private
10 agency seeks to gain approval of an entrustment agreement
11 pursuant to § § 63.1-56 or § 63.1-204, the juvenile court or
12 the circuit court may, after compliance with § 16.1-277,
13 make any of the orders of disposition permitted in a case
14 involving an abused or neglected child. If the parent or
15 other custodian seeks to be relieved permanently of the care
16 and custody of any child or where a public or private agency
17 seeks to gain approval of a permanent entrustment agreement
18 entered into pursuant to § § 63.1-56 or § 63.1-204, the
19 juvenile court or the circuit court may, after compliance
20 with § 16.1-277, terminate the parental rights of the parent
21 or other custodian and appoint a local board of public
22 welfare or social services or a licensed child-placing
23 agency as custodian of the child with the authority to place
24 the child for adoption and consent thereto. However, no
25 order of disposition pursuant to this subsection B shall be
26 made over the objection of any party, which was not provided
27 for or requested in the entrustment agreement or in the
28 petition's prayer for relief.

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

5 1. Enter an order pursuant to the provisions of §
6 16.1-278.

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

13 2a. Order the parent, guardian, legal custodian or
14 other person standing in loco parentis of a child living
15 with such person to participate in such programs, cooperate
16 in such treatment or be subject to such conditions and
17 limitations as the court may order and as are designed for
18 the rehabilitation of the child and parent, guardian, legal
19 custodian or other person standing in loco parentis of such
20 child.

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

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

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

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

7 5. Transfer legal custody to any of the following:

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

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

18 c. The local board of public welfare or social services
19 of the county or city in which the court has jurisdiction
20 or, at the discretion of the court, to the local board of
21 the county or city in which the child has residence if other
22 than the county or city in which the court has jurisdiction,
23 which board shall accept such child for care and custody.
24 Such local board if one other than in the county or city in
25 which the court has jurisdiction, shall not be required to
26 accept such child until it has been given reasonable notice
27 of the pendency of the case and an opportunity to be heard.
28 Nothing herein shall be construed as prohibiting the

1 commitment of a child to any local board of public welfare -57-
2 or social services in the Commonwealth when such local board
3 consents to the commitment. The board to which the child is
4 committed shall have the final authority to determine the
5 appropriate placement for the child. Any order authorizing
6 removal from the home and transferring legal custody of a
7 child to a local board of public welfare or social services
8 as provided in this paragraph shall be entered only upon a
9 finding by the court whether reasonable efforts have been
10 made to prevent removal and that continued placement in the
11 home would be contrary to the welfare of the child, and the
12 order shall so state.

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

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

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

1 rehabilitation:

2 1. Enter an order pursuant to the provisions of §
3 16.1-278.

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

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

18 3a. Defer disposition for a period of time not to
19 exceed twelve months, after which time the charge may be
20 dismissed by the judge if the child be of exhibits good
21 behavior during the period which disposition is deferred.

22 3b. Without entering a judgment of guilty and with the
23 consent of the child and his attorney, defer disposition of
24 the delinquency charge for a period not to exceed twelve
25 months and place the child on probation under such
26 conditions and limitations as the court may prescribe. Upon
27 fulfillment of the terms and conditions, the court shall
28 discharge the child and dismiss the proceedings against him.

1 Discharge and dismissal under these provisions shall be -59-
2 without adjudication of guilt.

3 3c. Order the parent of a child with whom the child
4 does not reside to participate in such programs, cooperate
5 in such treatment or be subject to such conditions and
6 limitations as the court may order and as are designed for
7 the rehabilitation of the child where the court determines
8 this participation to be in the best interest of the child
9 and other parties concerned and where the court determines
10 it reasonable to expect the parent to be able to comply with
11 such order.

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

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

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

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

21 7a. Require the child to participate in a public
22 service project under such conditions as the court
23 prescribes. For purposes of this section a "public service
24 project" shall mean any governmental or quasi-governmental
25 agency project or any project of a nonprofit corporation or
26 association operated exclusively for charitable or community
27 purposes.

28 8. In case of traffic violations or traffic

1 infractions, impose only those penalties which are
2 authorized to be imposed on adults for such violations or
3 infractions. However, for those violations punishable by
4 confinement if committed by an adult, imposition of
5 confinement shall be only as authorized by this title.

6 9. Transfer legal custody to any of the following:

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

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

16 c. The local board of public welfare or social services
17 of the county or city in which the court has jurisdiction
18 or, at the discretion of the court, to the local board of
19 the county or city in which the child has residence if other
20 than the county or city in which the court has jurisdiction,
21 which board shall accept such child for care and custody.
22 Such local board, if one other than in the county or city
23 in which the court has jurisdiction, shall not be required
24 to accept such child until it has been given reasonable
25 notice of the pendency of the case and an opportunity to be
26 heard. Nothing herein shall be construed as prohibiting the
27 commitment of a child to any local board of public welfare
28 or social services in the Commonwealth when such local board

1 consents to the commitment. The board to which the child is
 2 committed shall have the final authority to determine the
 3 appropriate placement for the child. Any order authorizing
 4 removal from the home and transferring legal custody of a
 5 child to a local board of public welfare or social services
 6 as provided in this paragraph shall be entered only upon a
 7 finding by the court whether reasonable efforts have been
 8 made to prevent removal and that continued placement in the
 9 home would be contrary to the welfare of the child, and the
 10 order shall so state.

11 10. Commit the child to the Department of Corrections;
 12 however, no child ten years of age or under shall be
 13 committed to the Department.

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

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

16 13. Impose the penalty authorized by § 16.1-285.1.

17 F. In cases involving the custody, visitation or
 18 support of a child pursuant to subsection A 3 of § 16.1-241,
 19 the court may make any order of disposition to protect the
 20 welfare of the child and family as may be made by the
 21 circuit court. In any case involving the custody of a
 22 child, custody may be awarded upon petition to any party
 23 with a legitimate interest therein, including, but not
 24 limited to, grandparents and other blood relatives and
 25 family members. The term "legitimate interest" shall be
 26 broadly construed to accommodate the best interest of the
 27 child. The authority of the juvenile court to consider a
 28 petition involving the custody of a child shall not be

1 proscribed or limited where the child has previously been
2 awarded to the custody of a local board of social services.

3 F1. In cases involving a child who is charged with a
4 traffic infraction, impose only those penalties which are
5 authorized to be imposed on adults for such infractions.

6 G. In cases involving a person who is adjudged mentally
7 ill or is judicially certified as eligible for admission to
8 a treatment facility for the mentally retarded, disposition
9 shall be in accordance with the provisions of Chapters 1 (§
10 37.1-1 et seq.) and 2 (§ 37.1-63 et seq.) of Title 37.1 of
11 the Code. No child shall be committed pursuant to this
12 section or the provisions of Title 37.1 of this Code to a
13 maximum security unit within any state mental hospital where
14 adults determined to be criminally insane reside.

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

19 I. In cases involving charges of desertion, abandonment
20 or failure to provide support by any person in violation of
21 law, disposition shall be made in accordance with Chapter 5
22 (§ 20-61 et seq.) of Title 20 of the Code.

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

1 seq.) of Title 40.1 of the Code.

-63-

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

9 L. In cases involving the violation of any law,
10 regulation or ordinance for the education, protection or
11 care of children or involving offenses committed by one
12 spouse against another, the juvenile court or the circuit
13 court may impose a penalty prescribed by applicable sections
14 of the Code. However, in cases involving offenses committed
15 by one spouse against another, the court may impose
16 conditions and limitations in an effort to effect the
17 reconciliation and rehabilitation of the parties, including,
18 but not limited to, an order of protection as provided in §
19 16.1-279.1, treatment and counseling for either or both
20 spouses and payment by the defendant spouse for crisis
21 shelter care for the complaining spouse.

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

26 N. In any matter properly before the court, the court
27 may make such award of ~~attorney's~~ attorneys' fees and costs
28 on behalf of any party as the court may deem appropriate for

1 retained attorneys based on the relative financial ability -64-
2 of the parties.

3 O. Each juvenile and domestic relations district court
4 may enter judgment for money in any amount for arrears of
5 support and maintenance of any person in cases in which (1)
6 the court has previously acquired personal jurisdiction over
7 all necessary parties or a proceeding in which such
8 jurisdiction has been obtained, has been referred or
9 transferred to the court by a circuit court or another
10 juvenile and domestic relations district court, and (2)
11 payment of such money has been previously ordered by the
12 court, a circuit court, or another juvenile and domestic
13 relations district court. However, no such judgment shall
14 be entered unless a petition of a party, a probation
15 officer, a superintendent of public welfare, or on the
16 court's own motion, is duly served on the person against
17 whom judgment is sought, in accordance with the applicable
18 provisions of law relating to notice when proceedings are
19 reopened. The petition shall contain a caption stating the
20 name of the court, the title of the action, the names of all
21 parties and the address of the party against whom judgment
22 is sought, the amount of arrearage for which judgment is
23 sought, and the date and time when such judgment will be
24 sought.

25 P. The judge or clerk of the court shall certify and
26 deliver an abstract of any judgment entered pursuant to this
27 section to the clerk of the circuit court of the same
28 judicial district, and executions upon such judgment shall

1 be issued by the clerk of such circuit court.

-65-

2 Q. If the amount of the judgment does not exceed
3 \$5,000, exclusive of interest and any attorney's attorneys'
4 fees, an abstract of any such judgment entered pursuant to
5 this section may be delivered to the clerk of the general
6 district court of the same judicial district, and executions
7 upon such judgment shall be issued by the clerk of such
8 general district court.

9 R. Arrearages accumulated prior to July 1, 1976, shall
10 also be subject to the provisions of this section.

11 § 16.1-284. When child fifteen years of age or older
12 may be sentenced as adult.-- If Until June 30, 1986, if a
13 child fifteen years of age or older is charged with an
14 offense which if committed by an adult would be a felony and
15 the court after receipt of a social history compiled
16 pursuant to § 16.1-273 for this case or a prior case which
17 was adjudicated within twelve months from the adjudication
18 in this case finds that (i) such child is not, in the
19 opinion of the court, amenable to treatment or
20 rehabilitation as a juvenile through available facilities,
21 considering such factors as the nature of the present
22 offense or the nature of the child's prior delinquency
23 record, the nature of the past treatment efforts and the
24 nature of the child's response to past treatment efforts and
25 (ii) the interests of the community require that the child
26 be placed under legal restraint or discipline, then the
27 court, in such cases, may impose the penalties which are
28 authorized to be imposed on adults for such violations, not

1 to exceed twelve months in jail for a single offense or
2 multiple offenses and subject to the provisions of §
3 16.1-249 B (i), (ii) and (iii). After June 30, 1986, such
4 penalties may be imposed only in the case of an adult who
5 has committed, before attaining the age of eighteen, an
6 offense which would be a crime if committed by an adult.

7 § 16.1-284.1. Placement in a secure local
8 facility.--A. If a child sixteen years of age or older is
9 found to have committed an offense which if committed by an
10 adult would be punishable by confinement in a state or local
11 correctional facility as defined in § 53.1-1, and the court
12 determines (i) after receipt of a social history compiled
13 pursuant to § 16.1-273 that the child has not previously
14 been found guilty of a delinquent act, (ii) that the
15 interests of the child and the community require that the
16 child be placed under legal restraint or discipline, and
17 (iii) that other placements authorized by this title will
18 not serve the best interests of the child, then the court
19 may order the child confined in a detention home or other
20 secure facility for juveniles for a period not to exceed
21 thirty calendar days from the date the order is entered,
22 inclusive of time served in a detention home or other secure
23 facility, for a single offense or multiple offenses.

24 B. If a child sixteen years of age or older is found to
25 have committed an offense which if committed by an adult
26 would be punishable by confinement in a state or local
27 correctional facility as defined in § 53.1-1, and the court
28 determines (i) after receipt of a social history compiled

1 within the immediately preceding twelve months pursuant to §
2 16.1-273 that the child has been adjudged a delinquent
3 within the immediately preceding twelve months and has
4 failed to respond to past treatment efforts, (ii) that the
5 child is amenable to continued treatment efforts in the
6 community, and (iii) the interests of the community and the
7 child require that the child be placed under legal restraint
8 or discipline, based on the nature of the present offense,
9 the nature of the child's prior delinquency record, and the
10 nature of the past treatment efforts, then the court may
11 order the child committed to the Department, but suspend
12 such commitment and order the child confined in a detention
13 home or other secure facility for juveniles for a period not
14 to exceed six months, inclusive of time served in detention
15 while awaiting disposition, for a single offense or for
16 multiple offenses. In suspending the commitment to the
17 Department as provided for in this paragraph, the court
18 shall specify conditions for the child's participation in
19 one or more community treatment programs as may be
20 appropriate for the child's rehabilitation.

21 C. During any period of confinement ordered pursuant
22 to this section, the court shall conduct a mandatory review
23 hearing at least once during each thirty days of the period
24 of confinement and at such other times upon the request of
25 the child's probation officer, for good cause shown. If it
26 appears at such hearing that the purpose of the order of
27 confinement has been achieved, the child shall be released
28 on probation for such period and under such conditions as

1 the court may specify and remain subject to the order
2 suspending commitment to the State Department of
3 Corrections. If the court determines at the first or any
4 subsequent review hearing that the child is consistently
5 failing to comply with the conditions specified by the court
6 or the policies and program requirements of the facility,
7 then the court shall order that the child either be (i)
8 released under such conditions as the court may specify
9 subject to the suspended commitment, or (ii) committed to
10 the State Department of Corrections pursuant to § 16.1-291.
11 If the court determines at the first or any subsequent
12 review hearing that the child is not actively involved in
13 any community treatment program, then the court shall order
14 that the child be released under such conditions as the
15 court may specify subject to the suspended commitment.

16 D. A child may only be ordered confined pursuant to
17 this section to a facility in compliance with standards
18 established by the Board for such placements; standards for
19 these facilities shall have regard for reasonable
20 utilization of these facilities and the requirements of §
21 16.1-310, consistent with the intent of this section.

22 E. The Department of Corrections shall assist the
23 localities or combinations thereof in implementing this
24 section consistent with the statewide plan required by §
25 16.1-310 and pursuant to standards promulgated by the State
26 Board, in order to ensure the availability and reasonable
27 access of each court to the facilities the use of which is
28 authorized by this section.

1 § 16.1-285. Duration of commitments.-- All Except as
2 provided in § 16.1-285.1, all commitments under this law
3 shall be for an indeterminate period having regard to the
4 welfare of the child and interests of the public, but no
5 child committed hereunder shall be held or detained after
6 such child ~~shall~~ has attained the age of twenty-one
7 years; ~~provided,~~ however, any child who is committed under
8 this law as an abused or neglected child or a child in need
9 of services shall have the right upon request to be released
10 from such commitment at the age of eighteen years.

11 § 16.1-285.1. Commitment of serious offenders.--A. In
12 the case of a child sixteen years of age or older who (i)
13 has been found guilty of rape, robbery or an offense which
14 would be a felony if committed by an adult, and (ii) is on
15 parole or within the immediately preceding twelve months was
16 a resident or inpatient of a group home or other treatment
17 facility pursuant to an order of a court in a previous
18 delinquency proceeding, then the court may order the child
19 committed to the Department for a period of time prescribed
20 pursuant to this section.

21 B. Prior to committing any child pursuant to this
22 section, the court shall consider the nature of the present
23 offense, the nature of the child's prior delinquency record,
24 the nature of the past treatment efforts and the child's
25 response to them. Such commitment order must be supported
26 by a determination that the interests of the child and
27 community require that the child be placed under legal
28 restraint or discipline and that the child is not amenable

1 to treatment or rehabilitation through other juvenile
2 programs or facilities.

3 C. In ordering commitment pursuant to this section,
4 the court may specify a minimum period of commitment, not
5 less than six nor more than twelve months.

6 D. Upon receipt of a child committed under the
7 provisions of this section, the Department shall evaluate
8 the child for the purpose of considering placement of the
9 child in a learning center or other residential program
10 operated pursuant to such standards as may be established by
11 the Board, for an indeterminate period, not less than the
12 time prescribed by the committing court. Such a placement
13 decision shall be made based on the welfare of the child.

14 E. Any child committed under the provisions of this
15 act shall not be released at a time earlier than that
16 specified by the court as the minimum period of commitment,
17 unless a petition for early release is approved by the
18 committing court based upon good cause shown by the
19 Department.

20 § 16.1-292. Violation of court order by any
21 person.--Any person violating an order of the juvenile court
22 entered into pursuant to § 16.1-279 may be proceeded against
23 (i) by an order requiring the person to show cause why the
24 order of the court entered into pursuant to § 16.1-279 has
25 not been complied with, or (ii) for contempt of court
26 pursuant to § 16.1-69.24, or (iii) by both. Except as
27 otherwise expressly provided herein, nothing in this chapter
28 shall deprive the court of its power to punish summarily for

HJR 16 RESPONSE

VI. PROGRAM FUNDING NEEDS

Resources identified in the Impacts Section (IV) are needed beginning on July 1, 1985, in order to insure that local programs have adequate lead time to renovate and upgrade facilities. Personnel and support cost should be available in the second quarter of FY 1986 to hire and train needed staff.

In order to implement, the Department of Corrections will need to allow time for:

- o The Department of Corrections to promulgate Standards for Post-Dispositional Detention.
- o The Department of Corrections to approve individual detention facilities for the appropriate number of post-dispositional beds.
- o The Department of Corrections to complete Design work and implement the proposed new Classification System for the Learning Centers.
- o Local detention facilities to modify programs, as needed, to handle the aggressive juvenile.
- o Local detention facilities to hire and train additional staff as identified in the impacts.

In summary, the funds needed to affect the changes that will prepare for the removal of juveniles from adult jails is as follows:

Hardening Features for Secure Detention	\$179,440
Personnel Cost & Fringe/Yr. (17 Secure Detention Facilities; 22 positions)	\$523,410
Transportation Support Cost (17 Secure Detention Facilities; 93 approved post-dispositional beds)	<u>\$179,400</u>
Total (1st Year)	\$882,250

LD4012406

HOUSE JOINT RESOLUTION NO. 16

Offered January 13, 1984

Requesting the Department of Corrections and other appropriate agencies to perform certain assessments and prepare reports related to eliminating the inappropriate use of adult jails for juveniles.

Patron--Anderson

Referred to the Committee on Militia and Police

WHEREAS, the criteria contained in § 16.1-248 of the Code of Virginia for detaining children permit a wide degree of interpretation and discretion, resulting in inconsistencies throughout the Commonwealth in matters of detention and secure custody of children; and

WHEREAS, a Crime Commission study of the use of adult jails for juveniles conducted in 1983 concluded that it is essential that more specific criteria be developed for detention and for the use of all forms of predispositional and postdispositional secure custody for juveniles in Virginia; and

WHEREAS, juveniles in adult jails in Virginia and nationwide are the victims of physical, sexual, and verbal assaults, and are more likely than those detained in juvenile facilities to commit suicide; and

WHEREAS, since 1976, Virginia has been participating in the federal Juvenile Justice and Delinquency Prevention Act and has received an average of \$1,220,000 each year pursuant to the Act; and

WHEREAS, the Act requires that by December, 1985, participating states shall have made substantial progress in removing juveniles within the jurisdiction of juvenile courts from adult jails, and that by December, 1987, those states shall no longer place these juveniles in adult jails, with only limited exceptions; and

WHEREAS, in many instances, it may be possible to stop placing children in adult jails and to implement more specific criteria for detention and the use of all forms of secure custody without major fiscal impact; now, therefore, be it

RESOLVED, by the House of Delegates, the Senate concurring, That the Department of Corrections, the Department of Criminal Justice Services, and localities plan and implement by December, 1985, the reduction of the number of juveniles in adult jails and lockups by seventy-five percent compared to Fiscal Year 1980 and achieve by December, 1987, the elimination of inappropriate jailing, in compliance with the Juvenile Justice and Delinquency Prevention Act; and, be it

RESOLVED FURTHER, That, to achieve this goal, the Department of Corrections, with the assistance of other appropriate agencies and of localities, is requested to project the impact on state-operated juvenile programs, in terms of number and characteristics of children who may be entering these programs as a result of eliminating the inappropriate use of adult jails for juveniles, and of the resulting needs; and, be it

RESOLVED FURTHER, That the Department of Corrections and the Department of Criminal Justice Services are requested to perform a case-by-case survey in selected jurisdictions of children coming before juvenile court intake by following them through the

1 dispositional hearing to obtain data to use in planning needed programs and services and in
2 developing more specific criteria for detention and secure custody decisions; and, be it

3 **RESOLVED FURTHER**, That the Department of Corrections, with the assistance of
4 other appropriate agencies and localities, is requested to perform a needs assessment for
5 each juvenile court or Department of Corrections region to document program and service
6 needs as well as financial needs at the state and local level to eliminate the inappropriate
7 use of adult jails for juveniles; and, be it

8 **RESOLVED FINALLY**, That the Department of Corrections and the Department of
9 Criminal Justice Services shall present a report of this work, containing proposed criteria,
10 documented program and financial needs, and legislative recommendations, to the 1985
11 Session of the General Assembly.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

Official Use By Clerks	
<p style="text-align: center;">Agreed to By The House of Delegates</p> <p>without amendment <input type="checkbox"/></p> <p>with amendment <input type="checkbox"/></p> <p>substitute <input type="checkbox"/></p> <p>substitute w/amdt <input type="checkbox"/></p>	<p style="text-align: center;">Agreed to By The Senate</p> <p>without amendment <input type="checkbox"/></p> <p>with amendment <input type="checkbox"/></p> <p>substitute <input type="checkbox"/></p> <p>substitute w/amdt <input type="checkbox"/></p>
Date: _____	Date: _____
Clerk of the House of Delegates	Clerk of the Senate

RESOLUTION

WHEREAS, the 1984 Session of the Virginia General Assembly adopted House Joint Resolution No. 16 requesting the Department of Corrections and other appropriate agencies to perform certain assessments and prepare reports related to eliminating the inappropriate use of adult jails for juveniles; and

WHEREAS, pursuant to Resolution of this Council adopted on May 6, 1984, a Jail-Detention Study Committee was appointed to study pre-dispositional placements of juveniles including detention criteria, procedures for detention hearings and dispositional alternatives to sentencing juveniles to jail; and,

WHEREAS, the Committee, at the invitation of the Department of Corrections, has participated in an effort with a Task Force appointed by the Department of Corrections to jointly propose criteria and provisions relating to said subjects, and has submitted its report to this Council containing such recommendations; and,

WHEREAS, this Council concurs with the recommendations contained in the said report and is of the further opinion that the report contains the minimum requirements of authority and criteria necessary to carry out the intents and purposes of the Juvenile and Domestic Relations District Court Law as set forth in Section 16.1-227 of the Code of Virginia, 1950, as amended.

THEREFORE, BE IT RESOLVED, that this Council hereby approves the report submitted by the Jail-Detention Study Committee, and the Secretary is hereby authorized and directed to inform the Department of Corrections or other appropriate agency that in the opinion of this Council, the report contains the minimum criteria and authority necessary to properly effectuate the purpose of reducing the incidents of delinquent behavior through appropriate rehabilitative efforts and to protect the community against acts which are harmful to others.

Unanimously adopted in Conference on September 16, 1984, at Virginia Beach Virginia.


President

REPORT OF JAIL-DETENTION STUDY COMMITTEE

OF

VIRGINIA COUNCIL OF JUVENILE AND DOMESTIC RELATIONS COURT JUDGES

Pursuant to resolution of the Virginia Council of Juvenile and Domestic Relations Court Judges, adopted on May 6, 1984, the Committee appointed thereby submits this report covering the following major subjects:

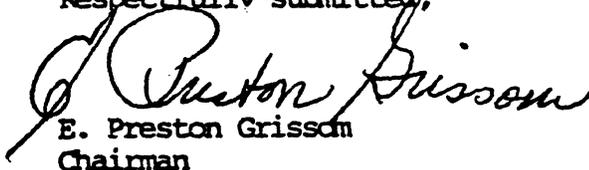
- I. Criteria for Pre-Dispositional Placements
- II. Procedures for Detention Hearing
- III. Alternatives to Jail Sentencing

It is the opinion of this Committee that the criteria and provisions recommended herein constitute the minimum requirements of authority necessary to properly effectuate the intent and purposes of the Juvenile and Domestic Relations District Court Law as set forth in Section 16.1-227 of the Code of Virginia, 1950, as amended, in the event Section 16.1-284, which presently provides authority for sentencing a juvenile as an adult subject to separation requirements, is repealed.

The Committee further reports that it has participated in a study with a special committee appointed by the Department of Corrections to fulfill the requirements of House Joint Resolution No. 16 adopted by the 1984 Session of the General Assembly of Virginia. This special committee concurs with all of the recommended criteria contained in this report with one exception relating to the 72 hour provision for the detention of status offenders."

The Department of Corrections is required to submit its report to the Governor of Virginia for approval. It is desired that the report containing recommendations proposing legislative changes include the approval of the Virginia Council of Juvenile and Domestic Relations Court Judges.

Respectfully submitted,


E. Preston Grissom
Chairman

I. CRITERIA FOR PRE-DISPOSITIONAL PLACEMENTS

A. Secure Detention

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 an offense which would be a Felony or Class I Misdemeanor if committed by an adult and at least one of the following conditions exist:

- 1.) The release of the child would constitute an unreasonable danger to the person or property of others: or
- 2.) The child has threatened to abscond from the court's jurisdiction during the pendency of the instant proceedings or has a record of willful failure to appear at a court hearing within the immediately preceding 12 months: or
- 3.) The child is a fugitive from another jurisdiction and subject to an active petition or warrant: except that in the case of a child in need of services who is a fugitive from a jurisdiction outside of this State, such child may be detained for a period not to exceed 72 hours pending arrangements for returning the child to the lawful custody of the parent, guardian or other lawful authority in the other state: 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.
- 5.) The release of such child would present a clear and substantial threat of serious harm to such child's life or health.

B. Non-Secure Detention

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.) Neither the child's parents or guardian nor any other person able to provide supervision can 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 supervision can arrive to assume custody within a reasonable time; or
- 6.) The child's parent or guardian refused to permit the child to return home and no relative or other person willing and able to provide supervision and care can be located within a reasonable time.

In these instances, such children, if not released, may be placed in an approved foster home, volunteer emergency foster care or a home otherwise authorized by law to provide such care; a facility operated by a licensed child welfare agency; a group home approved by the Department; or any other suitable place designated by the court and approved by the Department; provided, further, a child who is alleged to be in need of services but otherwise meets the criteria for secure detention may be detained in a secure detention home, for good cause shown, for a period not to exceed 72 hours prior to a detention hearing being held pursuant to Section 16.1-250.

C. Temporary Detention Pending

Arrangements for Transportation

If a child is charged with an offense, which if committed by an adult would be a Felony or Class I Misdemeanor, and the judge or intake officer determines that secure detention is needed for the safety of the child or the community pursuant to the provisions of this section, such child may be detained pre-dispositionally in a temporary lock-up room or ward for juveniles until arrangements are made to transport the child to a secure detention home, but for a period no longer than 6 hours. Such room or ward may be located in a building which also contains a jail or other facility for the detention of adults, provided, however, (i) such room or ward is totally separate and removed from adults or juveniles transferred to the circuit court, (ii) adequate supervision is provided, and (iii) the facility is approved by the Department for the detention of children. The Department of Corrections shall be responsible for arranging transportation and/or supervision in compliance with this section.

D. Placement in an Adult Facility

No child shall be detained or confined pre-dispositionally in any jail or other facility for the detention of adult offenders or persons charged with crimes except as provided in subsections 1 and 2 below:

- 1.) When a case is transferred to the circuit court in accordance with provisions of Section 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 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 such children.

- 2.) If a child 15 years of age or older is detained in a home or facility and commits an act of violence which constitutes a demonstrable danger to the staff or other children detained, a judge at a hearing may determine that the child should be transferred to another juvenile facility, jail or other place of detention for adults, subject to the limitations of subsection 1 hereof.

II. PROCEDURES FOR DETENTION HEARING

A. Probable Cause Determination

If the child is charged with the commission of an offense which would be a Felony or a Class I Misdemeanor if committed by an adult, the judge shall determine if there is probable cause to believe that the child committed the offense alleged. If the judge deems it necessary to summons witnesses to make such determination, the hearing may be continued for such purpose for a period of no longer than 72 hours, provided it is determined that the child meets the criteria for placement in a secure facility. If the judge finds that there is not probable cause to believe that the child committed the offense alleged the court shall order his release. If the judge finds that there is probable cause to believe that the child committed the offense alleged, but that the full time detention of the child is not required, the court shall order his release, and in so doing, may impose one or more of the conditions contained in the present statute.

B. Evidentiary Requirements

All relevant and material evidence helpful in determining probable cause under this section or the need for detention may be admitted by the court even though not competent in a hearing on the petition.

C. Detention Review Hearing

When a child is not released after a detention hearing held pursuant to Section 16.1-250 and, at the time of the detention hearing, the child was not represented by legal counsel, and did not waive the right to be represented by counsel, as provided in Section 16.1-266, prior to the detention hearing, the court shall rehear the matter as soon as is practicable, upon request of counsel, but in no event later than 72 hours after the request for the review hearing. During the hearing, the court shall evaluate the need for continued detention of the child.

III. ALTERNATIVES TO JAIL SENTENCING

A. Serious Repeat Offenders

1.) If a child 16 years of age or older commits an offense, which if committed by an adult would be a Felony,

2.) and the child is on parole following a commitment to the Department of Corrections, or within the immediately preceding 12 months was a resident or inpatient of a group home or other treatment facility resulting from a commitment or other order of the court in a previous delinquency proceeding,

3.) after considering such factors as the nature of the present offense, the nature of the child's prior delinquency record, the nature of the past treatment efforts and the child's response to them, and the interests of the community and the child require that the child be placed under legal restraint or discipline,

4.) the court may sentence such child for an indeterminate period of commitment to the Department of Corrections and prescribe the minimum period of time that the child remain in custody, provided, however, such minimum period shall be no greater than 12 months nor less than 6 months.

5.) The Department of Corrections, pursuant to staffing procedures prescribed by standards promulgated by the State Board, shall consider placing such child in a special residential program for serious repeat offenders for an indeterminate period but not less than the minimum term of sentence prescribed.

6.) In the event that it is determined by the Department that the child's best interest requires that the child be placed in a program other than such special program, it shall be deemed that the child was committed to the Department of Corrections pursuant to Section 16.1-279 (E) (10), but for a period not less than the minimum term of sentence prescribed.

B. Dispositional Confinement of Second Offenders

1.) If a child 16 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 Section 53.1-1,

2.) and the court determines, after receipt of a social history compiled (within the immediately preceding 12 months) pursuant to Section 16.1-273, that

a.) the child has been adjudged delinquent within the immediately preceding 12 months and has failed to respond to past treatment efforts,

- b.) and it is further determined that the child is amenable to continued treatment efforts in the community but the interests of the community and the child require that the child be placed under legal restraint or discipline,
- c.) 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,
- d.) then the court may order the child committed to the State Board of Corrections but suspend said commitment and order that the child be confined in a detention home or other secure facility for juveniles for a period not to exceed 6 months, inclusive of time served in detention while awaiting disposition for a single offense or for multiple offenses.
- e.) Such period of confinement shall be subject to a mandatory review hearing by the court at least once during each 30 days of the period of confinement and at such other times upon the request of the child's probation officer, for good cause shown. If it appears at the said hearing that the purpose of the order of confinement has been achieved, the child shall be released on probation and subject to the order suspending commitment to the State Board of Corrections,
- f.) provided, however, if the court determines at any time following the first review hearing that the child is not actively involved in any community treatment or program designed for his or her rehabilitation or is consistently failing to comply with the policies or program requirements of the facility, then the court shall either order that the child be released, subject to the suspended commitment or revoke the suspension and order the child committed to the State Board of Corrections.
- g.) A child shall be confined pursuant to this section only in a facility approved by the Board for such placements.

C. Dispositional Confinement of First Offenders

In Local Facility

- 1.) If a child 16 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 Section 53.1-1,
- 2.) and the court determines, after receipt of a social history compi (within the immediately preceding 12 months) pursuant to Section 16.1-273,

3.) that the child is amenable to treatment efforts in the community, but the interests of the community and the child requires 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,

4.) then the court may commit the child to the Department of Corrections, suspend the commitment for such period of time as prescribed, and order the child confined in a detention home or other secure facility for juveniles for a period not to exceed 30 days, inclusive of time served in detention while awaiting disposition for a single offense or for multiple offenses.

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

EXCEPTIONS TO RESPONSE TO HOUSE JOINT RESOLUTION 16

Under present law, when a child charged with a status offense is taken into custody, a detention hearing may be conducted by the court on the same day or if court is not open, the hearing must be conducted on the next day on which the court sits, but in no event longer than 72 hours. At this detention hearing the court is not authorized to order that the child be placed in a secure detention home, however, prior thereto, a child may be placed in a detention home by an intake officer, provided the prescribed criteria is present, until the detention hearing can be conducted and in no event for a period longer than 72 hours.

The purpose of this temporary holding provision is obviously to provide protection for the child who is at risk due to serious immediate circumstances. Examples of such circumstances that come to the court's attention include, among others, convincing information that the child is likely to run or be abducted from a shelter or group home placement prior to the detention hearing, or that serious immediate threats or attempts to commit suicide or serious harm to another person are present.

Under such circumstances, it is submitted that the risk of harm to the child that may result from placement in a secure setting for this very brief period of time is greatly out-weighted by the need to protect the child from harm before an opportunity is provided to appear before the court for advice and further instructions regarding services.

It is, therefore, recommended that the provision permitting the holding of a child until a detention hearing can be conducted be retained, subject to certain specific criteria relating to the protection of the child.

