

**REPORT OF  
THE VIRGINIA COMMISSION ON YOUTH ON**

# **The Study of Serious Juvenile Offenders**

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



## **HOUSE DOCUMENT NO. 81**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1994**



# COMMONWEALTH of VIRGINIA

## Commission on Youth

Senator R. Edward Houck, *Chairman*  
Delegate Jerrauld C. Jones, *Vice Chairman*

January 18, 1994

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TO: The Honorable George F. Allen, Governor of Virginia  
  
and  
  
Members of the Virginia General Assembly

The 1993 General Assembly, through House Joint Resolution 431, requested the Virginia Commission on Youth to "conduct a comprehensive study of serious juvenile offenders."

Enclosed for your review and consideration is the report which has been prepared in response to this request. The Commission received assistance from all affected agencies and gratefully acknowledges their input in this report.

Respectfully submitted,

Handwritten signature of R. Edward Houck.

R. Edward Houck  
Chairman

Handwritten signature of Jerrauld C. Jones.

Jerrauld C. Jones  
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## **I. Authority for Study**

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§9-292 of the *Code of Virginia* establishes the Commission on Youth and directs it to "... study and provide recommendations addressing the needs of and services to the Commonwealth's youth and their families." §9-294 provides that the Commission has the powers and duties "to undertake studies and gather information and data in order to accomplish its purposes...and to formulate and present its recommendations to the Governor and General Assembly."

The 1992 Session of the General Assembly enacted House Joint Resolution 36 directing the Commission on Youth to conduct a study of serious juvenile offenders (Appendix A). The Serious Juvenile Offender study was to provide: (1) a profile of serious juvenile offenders by offense and record, (2) an analysis of sentencing practices, (3) an examination of available dispositional programs and options, (4) a review of court processing issues, and (5) an evaluation of the degree to which the current statutes adequately address the problem of the serious juvenile offender. The Commission on Youth convened a task force of individuals appointed to assist with the study. House Document 33—*The Serious Juvenile Offender Study Interim Report to the Governor and the General Assembly of Virginia*—was published in January 1993. The study was continued by the 1993 Session as House Joint Resolution 431, with a final report to be issued for the 1994 session.

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## **II. Members Appointed to Serve**

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The two-year Serious Juvenile Offender Study has been carried out by a 13-member task force (Appendix B). The membership of the Serious Juvenile Offender Task Force includes four members from the Commission on Youth's Juvenile Justice Subcommittee: Delegate Jerrauld C. Jones, Chairman (Norfolk), Delegate R. Creigh Deeds (Bath County), Ms. Elizabeth N. Miner (Culpeper County) and Mr. Robert E. Shepherd, Jr. (Richmond). In addition, the Task Force has nine appointed members: Senator Mark L. Earley (Chesapeake), Delegate Mary T. Christian (Hampton), Chief Judge Audrey J. Franks (Richmond Juvenile and Domestic Relations District Court), Chief Judge Steven W. Rideout (Alexandria Juvenile and Domestic Relations District Court), Judge G.O. Clemens (Salem Circuit Court), Judge John C. Morrison (Norfolk Circuit Court), Paul B. Ebert (Prince William County Commonwealth's Attorney), Howard E. Gwynn (City of Newport News Commonwealth's Attorney), and Charles S. Sharp (City of Fredericksburg Commonwealth's Attorney).

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## **III. Executive Summary**

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The Serious Juvenile Offender Task Force met 12 times during the course of the two-year study to review data, discuss policy concerns, and recommend a

comprehensive legislative package to deal with serious juvenile offenders. The following is a summary of the key project activities, study findings and recommendations for the Commission on Youth's two-year study of serious juvenile offenders.

### **DATA COLLECTION AND ANALYSES**

The Serious Juvenile Offender Task Force concentrated on widespread data collection and analysis to form the basis for addressing the issues enumerated within the study mandate. Much of the data that was analyzed had to be collected either through the development and dissemination of surveys or through analysis of existing data bases. Surveys were used to gather national and statewide information. In addition, comprehensive searches of existing Virginia Department of Youth and Family Services' learning center files and Department of Corrections' Presentence Investigation Reports were conducted. These analyses provided the Task Force members with an understanding of:

- the characteristics of the juvenile offender population in both the juvenile and adult systems,
- the nature of juvenile arrests and sentencing practices in juvenile and adult court districts throughout the state,
- the views and opinions of the judges and attorneys working with serious juvenile offenders in both the juvenile and adult court systems, and
- the way Virginia compares to other states in its handling of serious juvenile offenders, with respect to policy and client impact.

Three areas of analyses were completed during the first year of the study and were presented in-depth in the interim report (House Document 33). These analyses included:

1. examination of the arrest and sentencing practices by court district for convicted juvenile felons,
2. development of a statistical profile of the serious juvenile offenders in learning centers versus those transferred/convicted in Circuit Court, and
3. development of a statistical model which identified the factors having an effect on whether a juvenile was committed for a transfer-eligible offense to a learning center versus transferred/convicted in adult court.

In addition, three analyses started during the first year were completed and presented to the Task Force during the second year of the study. These analyses, which will be presented in detail later in the report, included:

1. administration and analysis of a comprehensive survey to all of Virginia's Commonwealth's Attorneys, Circuit Court Judges, Juvenile and Domestic Relations District Court Judges, and state-supported Public Defenders (76% response rate),
2. administration and analysis of a national survey of each of the other 49 states and the District of Columbia concerning the number of juveniles transferred and convicted as adult offenders (100% response rate), and

3. a comprehensive examination of the transfer statutes from the other 49 states and the District of Columbia to gather comparative information on the criteria contained in the various transfer statutes, as well as definitions of serious juvenile offenders.

In addition to data analyses, the Task Force used a variety of means to seek Virginia citizens' input on the issue of serious juvenile offenders. During the first year, the Task Force held three public hearings in different parts of the state. In November 1993, a fourth public hearing was held and draft legislative recommendations were disseminated to Virginia officials. Written comments were received from judges, law enforcement officials, and Commonwealth's Attorneys from across the state. In both years of the study, the chairman of the Task Force presented to the Juvenile Court Judges' Association and the Commonwealth's Attorneys' Services and Training Council.

### **DATA FINDINGS**

The two years of data analysis yielded the following findings.

- Circuit Court convictions of juveniles for transfer-eligible offenses increased 31% from 1988-1990, compared to a 7% increase in transfer eligible arrests.
- There are tremendous jurisdictional variations in per capita arrests for transfer eligible offenses, learning center commitments for transfer-eligible offense and transfer/convictions for transfer-eligible offenses, suggesting a form of "justice by geography."
- Juveniles committed to learning centers and juveniles transferred/convicted in Circuit Court are predominately minority males at least two years behind their age-appropriate grade level; however, transferred juveniles had twice as many prior property offenses as those retained by the juvenile justice system.
- From 1988-1990, the majority of juveniles (63%) convicted in Circuit Court were sentenced to prison; however, 22% received no incarceration. Subsequently, the percentage of juveniles receiving no incarceration during calendar year 1992 increased to 25% (104 out of 412).
- Juveniles that were convicted in Circuit Court and released from 1988-1990 served an average of twice as long as youth committed to and released from learning centers for transfer-eligible offenses.
- The number of prior property offenses, closely followed by the age of the juvenile, was the greatest predictor of the decision to transfer in a statistical model of 13 factors.
- While there was no unanimity of opinion regarding corrective action, the public believes that the current system of dealing with serious juvenile offenders is not effective. The public hearings yielded the following suggested changes: lowering the age for transfer, extending jurisdiction of the juvenile court, establishing a juvenile parole board and automatic prosecutorial waiver for certain crimes.

- The Virginia survey analysis showed that:
  1. an overwhelming majority of the Circuit and juvenile court Judges and Commonwealth's Attorneys responding to the survey (86%) felt offense and prior record were the most important factors in the decision to transfer;
  2. respondents felt the current transfer statute needed clarification and changes; however, few felt that any of the current criteria should be excluded as factors for consideration;
  3. a large majority of respondents (84%) felt Juvenile and Domestic Relations District Court Judges should be able to set determinate sentences for juveniles committed to learning centers for transfer eligible offenses and be able to set longer sentences under the Serious Offender Statute; and
  4. respondents (54%) felt post-dispositional options at the Juvenile and Domestic Relations District Court level are not adequate to deal effectively with serious juvenile offenders.
- The analysis of other state transfer statutes showed:
  1. Virginia is one of only nine states with a minimum age of transfer eligibility which is at least 15 years,
  2. seventeen states have no age criteria for at least some offenses,
  3. twenty-two states have an age criteria between 10-14 years and three states do not have a transfer statute, and
  4. other state transfer statutes incorporate at least 13 categories of criteria, including offense and offender characteristics, for the court and/or prosecutors to consider when deciding whether to transfer cases.
- Virginia ranked 8th out of 44 states and the District of Columbia in terms of the per capita number of juveniles transfer/convicted in adult court from 1988-1990 and first among states with a minimum age criteria of at least 15 years.

### **LEGISLATIVE RECOMMENDATIONS**

The second year of the Serious Juvenile Offender Study focused predominately on necessary changes to the current *Code of Virginia* transfer and serious offender statutes and on the adequacy of post-dispositional alternatives for serious juvenile offenders. The cumulative findings from the two years of data analyses, the American Bar Association Standards, and model language from other states were used as the basis for developing recommendations for statutory change. The Task Force recommended that numerous changes be made to the transfer statute (§16.1-269), the Serious Offender Statute (§16.1-285.1), the victim notification statute (§66-25.2), the dispositions for delinquent children statute (§16.1-278.8), the places of confinement statute (§16.1-249) and related statutes. The Virginia Commission on Youth approved all of the Task Force's recommended changes, in addition to four patron changes, and will sponsor legislation which incorporates the following legislative provisions during the 1994 Session of the General Assembly (Appendix C). There was one dissenting opinion from a Commission on Youth member. A copy of this opinion is included as Appendix D.

## **I. Transfer Statute**

The proposed transfer statute, §16.1-269, will be different from the original transfer statute in a number of ways:

- a. The current §16.1-269 has been repealed and replaced with six sub-sections (§16.1-269.1-269.6) to allow for clearer delineation of the statute and to conform with new legislative drafting procedures;
- b. The age for transfer has been lowered from 15 to 14 years;
- c. Criteria for the court to consider when deciding whether to transfer a juvenile is expanded from requiring only consideration of prior record, treatment history and "amenability to treatment" to include:
  - consideration of criteria which incorporates the degree of violence in the current offense
    - (a) the seriousness and number of alleged offense(s), including:
      - (i) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner,
      - (ii) whether the alleged offense was against persons or property, with greater weight being given to offenses against persons, especially if death or injury resulted,
      - (iii) whether the maximum punishment for such an offense is greater than twenty years confinement if committed by an adult,
      - (iv) whether the alleged offense involved the use of a firearm or other dangerous weapon by brandishing, displaying, threatening with or otherwise employing such weapon, and
      - (v) the nature of the juvenile's participation in the alleged offense;
  - consideration of criteria which details the number and nature of prior offenses
    - (a) the record and previous history of the juvenile in this or any other jurisdiction, including:
      - (i) the number and nature of previous contacts with juvenile or adult courts,
      - (ii) the number and nature of prior periods of probation,
      - (iii) the number and nature of prior commitments to learning centers,
  - consideration of criteria which details previous treatment intervention
    - (iv) the number and nature of previous residential and community-based treatments,
    - (v) whether previous adjudications and commitments were for delinquent acts that involved the infliction of serious bodily injury, and
    - (vi) whether the alleged offense is part of a repetitive pattern of similar adjudicated offenses;
  - criteria which compares the dispositional alternatives available in the juvenile and adult system to deal effectively with the offender
    - (a) whether the juvenile can be retained in the juvenile justice system long enough for effective treatment and rehabilitation;
    - (b) the appropriateness of the services and dispositional alternatives available to both the criminal justice and juvenile justice systems for dealing with the juvenile's problems and what services and dispositional alternatives are, in fact, available;
    - (c) whether the juvenile has previously absconded from the legal custody of the juvenile correctional entity in this or any other state;
  - criteria which describes the juvenile's personal characteristics
    - (a) the juvenile's age;
    - (b) the extent, if any, of the juvenile's degree of mental retardation and/or mental illness;
    - (c) the juvenile's school record and education;

- (d) the juvenile's mental and emotional maturity; and,
- (e) the juvenile's physical condition and maturity.

d. the term "amenability to treatment" has been replaced with the American Bar Association's standard of a determination that the juvenile is not "a proper person to remain within the jurisdiction of the juvenile court;"

e. the burden of proof that the court must find is by "a preponderance of the evidence" that the juvenile should be transferred; currently there is no standard of proof addressed in the statute; it reads, "...the court finds...;"

f. when the alleged delinquent act constitutes an offense for which the prescribed punishment is death or imprisonment for life if committed by an adult, the court may certify the juvenile without making the finding that the juvenile is not a proper person to remain within the jurisdiction of the juvenile court;

g. when the Commonwealth's Attorney is instructed to seek an indictment, the transferred juvenile must be removed from a juvenile detention facility; currently, the Code is silent on physical placement of the juvenile during the transfer process;

h. additional misdemeanor charges originating out of the transferred felony will also be forwarded to Circuit Court;

i. conviction of a juvenile after transfer terminates the juvenile court's jurisdiction over that juvenile with respect to any future acts; and,

j. the Circuit Court shall within 30 days examine all papers, reports and orders from the juvenile and conduct a hearing to take further evidence on the issue of transfer.

## **II. Serious Offender Statute**

The Task Force is recommending significant changes to the Serious Offender Statute §16.1-285.1. Eighty-four percent of the survey respondents felt that Juvenile and Domestic Relations District Court judges should be allowed to impose longer determinate sentences under the Serious Offender Statute. In addition, many respondents felt that there were not sufficient dispositional alternatives at the juvenile court level to deal effectively with serious juvenile offenders. The Task Force is proposing the following changes to §16.1-285.1 to address these concerns:

- change the offense criteria for eligibility for sentencing under this statute to include a juvenile who is on parole or was committed to state care for an offense which would be a felony if committed by an adult within the preceding 12 months; currently the statute allows for the juvenile to have been "a resident or inpatient of a group home or other treatment facility;"
- change the offense criteria for eligibility for sentencing under this statute to include a juvenile who has been found guilty of a felony offense which is punishable by a term of confinement of greater than 20 years if committed by an adult instead of the current offenses of murder, rape, armed robbery or use of a firearm in the commission of a felony;



- allow for a maximum determinate sentence from a 12 month commitment to 7 year commitment or commitment to age 21 years, whichever shall come first;
- change the provisions of the statute to mandate that a juvenile sentenced under this statute be placed in the appropriate Department of Youth and Family Services learning center and not "other residential programs" as is currently allowed;
- change the criteria that the court can consider when determining whether a juvenile is eligible for sentencing under this statute;
- require a release hearing in the juvenile court with a progress report when (i) the Department of Youth and Family Services can show good cause for early release and (ii) on the 2nd anniversary of the date of commitment and each annual anniversary date of commitment thereafter;
- include criteria the juvenile court may consider when determining whether to release a juvenile at a release hearing; and
- include victim notification when a juvenile sentenced under §16.1-285.1 is being released.

### **III. *Victim Notification Statute***

Proposed changes in §66-25.2 provide statutory provisions for victims to be notified when juveniles committed under the provisions of the Serious Offender Statute are to be released. The language in this statute mirrors the provisions for victim notification when adult felons are to be released by the Department of Corrections.

### **IV. *Dispositions for Delinquent Children Statute***

Proposed changes in §16.1-278 narrow the criteria for eligibility for a learning center commitment to a juvenile older than ten years of age who commits a current offense which (i) would be a felony if committed by an adult, or (ii) would be a Class 1 misdemeanor if committed by an adult and the juvenile has previously been found to be delinquent based on an offense which would be either a felony or Class 1 misdemeanor if committed by an adult. The current criteria are only that the juvenile be older than ten years and commit a delinquent act.

### **V. *Places of Confinement Statute***

Proposed changes to §16.1-249 clarify the physical placement of juveniles during the transfer process and mandate that juveniles must be sight and sound separate from adult inmates in local jails until the Circuit Court issues an order directing the Commonwealth to seek an indictment; at this time the juvenile need no longer be entirely separate and removed from adults.

### **VI. *Related Statutes***

The following legislative recommendations clarify subsequent areas of the *Code of Virginia* that are affected by the Task Force recommendations concerning serious juvenile offenders:

- a. the definition of "delinquent child" in §16.1-228 has been changed to take into account the termination of the juvenile court's jurisdiction under the provisions of the transfer statute;

- b. the jurisdiction of the Juvenile and Domestic Relations District Court in §16.1-241 has been changed as a result of the termination of the juvenile court for future delinquent offenses under the provisions of the transfer statute;
- c. changes the age from 15 years to 14 years for the voluntary waiver of juvenile court jurisdiction by juveniles in §16.1-270;
- d. precludes the Juvenile and Domestic Relations District Court from taking jurisdiction of a juvenile for any subsequent offenses once the juvenile has been tried and convicted in Circuit Court as an adult in §16.1-271;
- e. changes the age from 15 years to 14 years for physical and mental examinations for juveniles certified to Circuit Court in §16.1-275;
- f. changes the age from 15 years to 14 years for placement of juveniles certified by the Circuit Court in maximum security adult units for the criminally insane in §16.1-280;
- g. changes the age from 15 years to 14 years to allow for fingerprints and photographs of juveniles charged with felony acts in §16.1-299;
- h. changes the age from 15 years to 14 years for exclusion from the expungement and confidentiality provisions of §16.1-306;
- i. changes the age from 15 years to 14 years for penalties associated with possession or transportation of firearms or concealed weapons under the provisions of §18.2-308.2;
- j. changes the legislative reference in §19.2-240 and §19.2-311 to take into account the six new sections of the transfer statute citation; and
- k. clarifies in §53.1-20 that the Director of the Department of Corrections cannot make commitments to local secure detention homes as defined in §16.1-228.

#### **IV. Study Goals and Objectives**

The Serious Juvenile Offender Task Force developed a research agenda to guide the study effort (Appendix E.). As Exhibit 1 illustrates, part of this research agenda consisted of a series of goals and objectives for each of the mandated areas of the original study resolution. These overall study objectives were used to determine:

- which juveniles are being transferred to Circuit Court and which are being retained by the Juvenile and Domestic Relations District Courts;
- which juveniles should be transferred to Circuit Court and which should be retained by the Juvenile and Domestic Relations District Court;
- whether the *Code of Virginia* gives sufficient guidance to deal effectively and appropriately with serious juvenile offenders;
- which key factors, both legal and extra-legal, influence the decision to transfer and sentence a juvenile offender in the Circuit Court; and
- whether there are adequate and effective dispositional options in the juvenile court system to deal with serious juvenile offenders.

**Exhibit 1**

**Serious Juvenile Offender Study Goals/Objectives**

**Legislative Mandate**

**Goals/Objectives**

- |  |  |
|--|--|
| <p>1. Profile the serious, violent juvenile offender by offense and previous record.</p> | <p>1. Identify who should be transferred and retained according to current <i>Code of Virginia</i> provisions.</p> <p>2. Identify who is being transferred to Circuit Court and who is being retained in juvenile court.</p>   |
| <p>2. Analyze sentencing practices.</p>  | <p>1. Identify whether or not sentences in the adult system are more effective in terms of: length of time served, restrictiveness of sentence, and recidivism.</p>  |
| <p>3. Examine dispositional programs.</p>  | <p>1. Identify dispositional options that are available in the juvenile justice system.</p> <p>2. Identify the dispositional options that are available to deal with the class of juvenile eligible for both the adult and the juvenile systems.</p> <p>3. Identify the costs associated with the dispositional options.</p>                                       |
| <p>4. Examine court processing issues.</p>   | <p>1. Identify the effect(s) of crowded court dockets on the speedy trial aspects of the <i>Code of Virginia</i>.</p> <p>2. Determine whether serious juvenile offenders are the responsibility of the juvenile justice system or the adult system once they have been recommended for transfer from J&amp;DR Court, but have not been tried in Circuit Court.</p> |
| <p>5. Examine adequacy of <i>Code of Virginia</i> statutes.</p>                          | <p>1. Determine the extent to which the <i>Code of Virginia</i> gives enough guidance to prosecutors and judges on the transfer of juveniles to ensure fair and effective treatment of serious juvenile offenders.</p>   |

Source: Virginia Commission on Youth Graphic

Throughout the two-year study, the Task Force undertook a number of activities to respond to the study objectives. These activities included:

- review of numerous data analyses;
- a tour of the Youthful Offender Program at St. Brides Correctional Facility;
- informational presentations on current services for juveniles from the Departments of Youth and Family Services and Corrections;
- presentations on alternative dispositional programs for serious juvenile offenders by the Department of Criminal Justice Services (Serious or Habitual Offender Comprehensive Action Program (SHOCAP)), the Virginia Marine Institute, and the Alabama C.I.T.Y. Program;
- public hearings in Richmond, Virginia Beach, Fredericksburg and Blacksburg;
- presentations to the National Coalition of State Juvenile Justice and Delinquency Prevention Advisory Boards, the Commonwealth's Attorneys' Spring Institute, the Juvenile and Domestic Relations District Court Judges' Annual Conference, the Mid-Atlantic Association of Women in Law Enforcement, the Senate Finance Sub-Committees on Public Safety and General Government; and
- dissemination of the study recommendations and draft legislation.

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## **V. Methodology**

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Several research techniques were used by the Serious Juvenile Offender Task Force to address the issues contained in the study mandate. A brief discussion of these techniques follows.

### **QUANTITATIVE ANALYSIS**

Three types of quantitative analysis were completed during the first year of the study and used as a basis for decision making and proposed *Code of Virginia* revisions. First, a comparative analysis of transferable arrests per capita and transfers/convictions per capita by court districts was conducted to determine the extent to which the use of the transfer option varies across jurisdictions relative to the arrests of transfer-eligible juveniles. Data for this analysis was based on the State Police Uniform Crime Reports, the Department of Youth and Family Services' Client Profile Data Base, and the Department of Corrections' Presentence Investigation (PSI) Reports.

The second analysis produced a descriptive profile which compared the transfer-eligible learning center population to juveniles transferred and convicted in Circuit Court from 1988 to 1990. This analysis used the Presentence Investigation Reports and the Client Profile data base to provide information on the demographics, prior offense history, current offense profiles and sentences for both groups.

The third quantitative analysis was a multi-variate logistic regression analysis. This statewide analysis examined the factors that appear to be influencing the decision to retain juveniles in the juvenile system and commit them to learning centers versus

those factors which influence the decision to transfer and convict juveniles in Circuit Court for the same types of offenses. This analysis used information collected by a manual review of a sample of 363 learning center files, as well as information contained in the Client Profile and Presentence Investigation Reports data bases.

Detailed presentations on each of these quantitative analyses can be found in Chapter III of *The Serious Juvenile Offender Study Interim Report* (House Document 33).

### **TRANSFER STATUTE ANALYSIS**

Study staff reviewed the *Code of Virginia* transfer statute to determine the current criteria for transfer. In addition, transfer statutes from the other 49 states and the District of Columbia were reviewed to determine the various types of criteria employed when transferring juveniles for adult prosecution. This analysis examined such criteria as age eligibility, offense eligibility, legislative waiver and other demographic and offense criteria within each state's statute. A complete analysis of this review follows in Section VI.

### **ADMINISTRATION OF SURVEYS**

Two sets of surveys were administered during the course of the two-year study (Appendix F). First, survey instruments were developed and sent to the agencies responsible for the juvenile and adult correctional systems in the other 49 states and the District of Columbia. These surveys were administered to solicit information on:

- the number of juveniles retained by their juvenile system eligible for transfer to adult court;
- the number of juveniles transferred/convicted in the adult court and sentenced to incarceration in adult correctional facilities and programs;
- the demographics of the retained and transferred juvenile populations; and
- the dispositional options available in their juvenile courts to deal with serious juvenile offenders.

There was a 100% response rate from the states. The information collected from these surveys was used to examine how Virginia compared to other states in terms of its per capita number of transfers/convictions and relative reliance on the transfer option.

The second set of surveys was administered to Virginia officials involved in the transfer process. All the state's Commonwealth's Attorneys, Circuit Court Judges and Juvenile and Domestic Relations District Court Judges and state-supported Public Defenders were surveyed in Spring 1993. The surveys solicited their opinions on:

- the adequacy of the current *Code of Virginia* transfer statute;
- suggested changes to the current transfer statute;
- factors that influence the transfer decision; and

- the availability and effectiveness of dispositional and treatment options in the juvenile court system.

The overall survey response rate was 75%. Responses to the survey questions were used to assist the Task Force in identifying necessary *Code of Virginia* modifications and necessary changes to post-dispositional alternatives. A presentation of the results of both surveys efforts will follow in Section VII.

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## **VI. Transfer Statute Analysis**

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Transfer statutes were obtained in 1993 from the Office of the Attorney General in each of the other 49 states and the Office of the Corporation Counsel for the District of Columbia to identify the criteria which other states consider when transferring juveniles to adult court for prosecution. Each office was asked to send the most current version of its transfer statute. Three states responded that they did not have transfer statutes and these were not included in the analysis. The age for criminal prosecution as an adult in New York state is 16 years for any type of offense. New Mexico had a recently revised juvenile code to try all juvenile cases in the juvenile court, but gives the juvenile court the authority to impose adult sanctions and sentences. In addition, Nebraska gives the prosecutor discretion on whether to file charges in juvenile or adult court instead of seeking transfer through the courts. However, the prosecutors in Nebraska do have statutorily-delineated criteria that they must consider when filing their cases.

Currently, Virginia allows for transfer if there is probable cause that a juvenile 15 years or older commits a felony offense. In addition, the court must consider whether the juvenile is competent to stand trial, amenable to treatment in the juvenile system, and prior record. Other state statutes were compared to Virginia's statute in terms of age criteria, eligible offenses, amenability to treatment and prior record considerations. In addition, statutes were analyzed for other types of additional criteria used.

There are seven different minimum age categories used by the various states. As Figure 1 on the following page illustrates, 78% (39) of the states have a lower age of eligibility for transfer of juveniles than does Virginia. Seventeen states do not have a minimum age threshold for transfer. Some of these states do employ a number of different age thresholds which vary depending on the nature of the offense; however, the age represented in the table is the youngest possible age at which a juvenile can be transferred in each state. In addition, Virginia is only one of nine states with an age threshold of 15 or more years.

The nature of the offenses for which the other states permit transfer is varied; although the majority of the states have a minimum threshold of an act that would constitute a felony if committed by an adult. Some states, such as Alaska, allow transfer

**Figure 1  
Other State Transfer Statutes: Minimum Age Criteria**

<b>No Age Criteria</b>	<b>10 Years</b>	<b>12 Years</b>	<b>13 Years</b>	<b>14 Years</b>	<b>15 Years</b>	<b>16 Years</b>	<b>No Transfer Statute</b>
Alaska	Vermont	Montana	Georgia	Alabama	Louisiana	California	Nebraska
Arizona			Illinois	Arkansas	Michigan	Hawaii	New Mexico
Delaware			Mississippi	Colorado	Oregon	Nevada	New York
District of Columbia				Connecticut	Texas		
Florida				Idaho	Virginia		
Indiana				Iowa	Washington		
Maine				Kansas			
Maryland				Kentucky			
New Hampshire				Massachusetts			
New Jersey				Minnesota			
Ohio				Missouri			
Oklahoma				North Carolina			
Rhode Island				North Dakota			
South Carolina				Pennsylvania			
South Dakota				Tennessee			
West Virginia				Utah			
Wyoming				Wisconsin			
<b>17 States</b>	<b>1 State</b>	<b>1 State</b>	<b>3 States</b>	<b>17 States</b>	<b>6 States</b>	<b>3 States</b>	<b>3 States</b>

As Attachment A indicates, in many states there are more than one age criteria, however, these ages represent the youngest possible age for which juveniles can be transferred in each state.

Sources: Commission on Youth analysis of other state transfer statutes (1993) and National Center for Juvenile Justice's *Waiver/Transfer/Certification of Juveniles to Criminal Court* (1992).

for "a delinquent act," whereas others have permissive and mandatory transfers that vary, depending on the juvenile's age and the alleged offense. For example, Georgia allows for transfer for 15 year olds for the commission of a delinquent act. Georgia also allows for transfer of 13 year olds for crimes punishable by life in prison or death if committed by an adult. Georgia further mandates transfer of juveniles 14 years and older who are charged with commission of several serious person felony offenses while confined in a youth development center. Appendix G contains the state by state detailed analysis of offenses, age and nature of waiver.

Some other states provide very specific guidance in their transfer statutes and delineate a number of criteria the court must address prior to certifying juveniles for adult trial. In addition to the age and offense criteria, eleven different types of additional criteria were found in other state statutes. These criteria included:

- whether the juvenile is amenable to treatment through juvenile justice system programs and facilities,
- whether the juvenile has a prior record,
- whether there was a victim and the physical impact of the crime on the victim,
- whether there is probable cause that the juvenile committed the alleged offense,
- whether a weapon was used during the alleged offense,
- the potential for community safety concerns and whether the juvenile requires a more secure environment than the juvenile system can afford,
- whether there were co-defendants and, if so, their ages,
- whether the offense was a person or property offense,
- considerations of the juvenile's mental capacity and any level of mental retardation,
- offender characteristics (i.e., school record, maturity, criminal sophistication), and
- other criteria related to the offense or juvenile.

Appendix H includes detailed definitions of the 11 categories of criteria and classifications of these criteria for each state.

As Table 1 on the following page illustrates, 80% of the states have criteria which address the issues of amenability to treatment, prior record and community public safety concerns. In addition, a large number of the states—59% (29 out of 49 with statutes)—have criteria that address mental retardation/illness and offender characteristics. Virginia currently does not have criteria which address personal characteristics of the offender, such as school record, criminal sophistication, physical and mental maturity, and demeanor.



**Table 1  
Other State Transfer Criteria**

State	Amenability	Prior Record	Victim Impact	Probable Cause	Weapon Use	Community Safety Concerns	Codefendants & Ages	Person vs. Property	Mental Retardation/ Illness	Offender Characteristics	Other
Alabama	x	x		x		x			x	x	x
Alaska	x	x		x							x
Arizona	x	x		x		x		x	x	x	x
Arkansas	x	x									x
California	x	x								x	x
Colorado	x	x	x	x		x		x	x	x	x
Connecticut	x	x									
Delaware	x	x	x		x	x	x	x		x	
D. C.	x	x			x	x			x	x	x
Florida	x	x	x			x	x	x	x		x
Georgia				x		x			x		x
Hawaii	x	x	x			x	x	x	x	x	x
Idaho	x	x				x		x	x	x	x
Illinois	x	x		x	x	x					x
Indiana	x	x		x		x					
Iowa	x	x		x		x					x
Kansas	x	x	x	x		x		x	x	x	x
Kentucky	x	x		x		x		x		x	x
Louisiana				x							
Maine		x		x		x		x	x	x	x
Maryland	x					x			x	x	x
Massachusetts	x	x	x	x		x		x	x	x	x
Michigan	x	x		x		x			x	x	x
Minnesota	x	x	x	x	x	x		x		x	x
Mississippi	x	x	x	x		x		x	x	x	x
Missouri	x	x	x			x		x	x	x	x
Montana		x		x		x			x	x	x
Nebraska (1)	x	x				x	x		x	x	x
Nevada (2)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
N. Hampshire	x	x				x	x	x	x	x	x
New Jersey	x	x		x	x	x		x			x
New Mexico (3)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
New York (3)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
North Carolina				x							
North Dakota	x		x	x		x			x		
Ohio	x	x	x	x		x					x
Oklahoma	x	x	x			x		x	x	x	x
Oregon	x	x	x			x	x		x	x	x
Pennsylvania	x	x		x		x			x	x	x
Rhode Island (2)											
S. Carolina		x				x					x
South Dakota	x	x				x	x	x			x
Tennessee	x	x		x		x		x	x		x
Texas	x	x		x		x		x	x	x	x
Utah	x	x				x	x	x	x	x	x
Vermont	x	x	x	x		x			x	x	x
Washington						x					x
West Virginia				x					x	x	x
Wisconsin	x	x				x	x	x	x	x	x
Wyoming	x	x	x			x	x	x	x	x	x
Other State Total	38	39	15	26	5	39	10	21	29	29	40
Virginia	x	x		x		x			x		

(1) Nebraska does not have a transfer statute however, when the county attorney determines whether to file a criminal charge or a juvenile court petition, they are to consider these criteria for juveniles under the age of 16 years.

(2) Nevada and Rhode Island have no criteria other than age and offense.

(3) New York and New Mexico do not have transfer statutes.

Source: Virginia Commission on Youth graphic and analysis of other state transfer statutes 1993.

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## **VII. Administration of Surveys**

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Two sets of surveys were administered during the second year of the study. First, surveys were sent to the agencies responsible for the juvenile and adult correctional systems in each of the other states. Second, surveys were administered to Virginia State officials that are involved in the transfer process. Each of these survey efforts will be discussed in this section.

### **NATIONAL SURVEYS**

In Fall 1992, surveys were sent to the adult and juvenile correctional agencies of the other 49 states and the District of Columbia. These surveys were designed to get information on which to make a statistical profile of the juveniles in the both the juvenile and adult systems in the other states and on which to rank Virginia in terms of its per capita number of transfers. While the Commission on Youth received a 100% response rate from the states on each survey, problems with the validity of the demographic information needed to profile juveniles in both systems negated plans for comparative population analysis. Some states had neither automated client profile data bases at the juvenile correctional level nor detailed profiles at the adult corrections level. Further, among the states that did have client profile data bases were differences in the definitions and nature of the information available. However, every state adult correctional agency did respond to the request for information on the number of juveniles under the age of 18 years that had been transferred, convicted and sentenced as adults for each year from 1988-1990.

Data for each state's transferred and convicted juveniles was verified by phone during January and February 1993. Six states responded to the survey effort; however, they could not furnish the requested data for varying reasons. Vermont, Maine, Rhode Island and New Jersey did not have automated information which could identify juvenile offenders sentenced to the adult correctional agencies. This information would have to have been collected by hand and the responding states did not feel they could comply with the request in the time frame needed for analysis. Pennsylvania had local correctional facilities and information would have had to been obtained from each locality, which was deemed to be too resource and time intensive. West Virginia had the automated information; however, West Virginia was going to assess a service fee for the computer programming costs and the time frame needed for the request was outside the parameters of the analysis.

The three years information for each of the remaining 45 states was averaged to account for anomalies in the data for any given year. The average number of transfers/convictions was then standardized by the 1990 U.S. Census population for juveniles 0-18 years from that state. The per capita results were then multiplied by 10,000 to get each state's relative rank of transfers/convictions per 10,000 juveniles.

As Table 2 on the following page illustrates, Connecticut had the highest number of transfers/ convictions with 4.88 per 10,000 juveniles. North Dakota had the lowest of

**Table 2  
Other State Per Capita Transfers 1988-1990**

State	1990 Juv. Popn.	1988 Juveniles	1989 Juveniles	1990 Juveniles	Total 1988-1990	Avg. Tran. 88-90	Transfers Per Capita
Connecticut	749,581	278	400	420	1098	366	4.88
Georgia	1,727,303	596	640	694	1930	643	3.72
Alabama	1,058,788	327	361	400	1088	363	3.43
District of Columbia	117,092	26	41	43	110	37	3.13
Missouri	1,314,826	353	383	467	1203	401	3.05
Maryland	1,162,241	280	301	393	974	325	2.79
Wyoming	135,525	36	28	43	107	36	2.63
Virginia	1,504,738	285	371	372	1028	343	2.28
Florida	2,866,237	470	636	757	1863	621	2.17
Nebraska	429,012	69	83	90	242	81	1.88
Arkansas	621,131	33	75	161	269	90	1.44
Michigan	2,456,785	273	370	380	1023	341	1.39
Kansas	661,614	79	97	92	268	89	1.35
Ohio	2,799,744	224	322	588	1134	378	1.35
Louisiana	1,227,289	120	161	161	442	147	1.20
Washington	1,261,387	130	137	127	394	131	1.04
Mississippi	746,761	50	64	91	205	68	0.92
Massachusetts	1,353,075	83	123	147	353	118	0.87
Oklahoma	837,007	17	51	93	161	54	0.64
Oregon	724,130	39	38	36	113	38	0.52
California	7,750,725	297	342	481	1120	373	0.48
Nevada	296,948	5	18	17	40	13	0.44
North Carolina	1,606,149	731	748	631	210	70	0.44
Arizona	981,119	52	36	32	120	40	0.41
Delaware	163,341	n/a	5	8	13	7	0.40
Hawaii	280,126	12	5	12	29	10	0.35
Minnesota	1,166,783	n/a	48	67	115	38	0.33
Texas	4,835,839	133	125	163	421	140	0.29
*New York	4,259,549	642	842	990	330	110	0.26
Iowa	718,880	16	15	19	50	17	0.23
Indiana	1,455,964	31	25	45	101	34	0.23
New Hampshire	278,755	6	6	6	18	6	0.22
Tennessee	1,216,604	28	23	14	65	22	0.18
Illinois	2,946,366	49	29	55	133	44	0.15
South Dakota	198,462	1	4	3	8	3	0.13
Colorado	861,266	7	10	17	34	11	0.13
South Carolina	920,207	11	13	9	33	11	0.12
Montana	222,104	3	0	1	4	1	0.06
Alaska	172,344	1	1	0	2	1	0.06
New Mexico	446,741	1	2	2	5	2	0.04
Kentucky	954,094	2	4	3	9	3	0.03
Idaho	308,405	0	0	1	1	0.33	0.01
Utah	627,444	0	0	2	2	1	0.01
Wisconsin	1,288,982	1	1	1	3	1	0.01
North Dakota	175,385	0	0	0	0	0	0.00
Maine	309,002	n/a	n/a	n/a	n/a	n/a	n/a
New Jersey	1,799,462	n/a	n/a	n/a	n/a	n/a	n/a
Pennsylvania	2,794,810	n/a	n/a	n/a	n/a	n/a	n/a
Rhode Island	225,690	n/a	n/a	n/a	n/a	n/a	n/a
Vermont	143,083	n/a	n/a	n/a	n/a	n/a	n/a
West Virginia	443,577	n/a	n/a	n/a	n/a	n/a	n/a

n/a = Data was not available on number of transfers/convictions. Data for Delaware and Minnesota were not available for 1988; average is for 1989-1990. States shaded in grey have a minimum age of transfer of 15 years.

Source: Virginia Commission on Youth Survey of Other State Adult Correctional Agencies Winter 1993.

the 45 responding states with transfer statutes in the per capita number of juveniles that are transferred and convicted as adults. However, although Virginia had one of the highest age thresholds for transfer, it ranked above most of the other states with lower ages of eligibility. In addition, Virginia ranked first of those states with a higher age threshold of 15 or 16 years. These factors illustrated a willingness to use the transfer option in Virginia more often, relative to the other states in the country.

### **VIRGINIA SURVEYS**

A second set of surveys was administered to Virginia officials involved in the transfer process. There was an overall response rate of 78%; 274 out of 351 surveys were returned. Each group surveyed had the following response rate:

- Commonwealth's Attorneys 89 out of 121 (74%)
- Circuit Court Judges 100 out of 133 (75%)
- Juvenile Court Judges 67 out of 78 (86%)
- Public Defenders 18 out of 19 (95%).

Each of the officials not responding to the initial copy of the survey was sent an additional survey and received follow-up phone calls to ensure a high response rate. In addition, the Virginia Commonwealth's Attorney Services Council and the Virginia Public Defender Commission sent letters to their members urging responses to the surveys.

The number of responses to the questions varied, due to missing values on some surveys where one or more respondents did not wish to answer. In addition, five Circuit Court Judges responded to the request but could not complete their surveys. Three Circuit Court Judges from Circuit 13 did not handle any criminal caseload and felt they could not address the substantive issues. Also, two Circuit Court Judges had served less than a year and felt that they had not had sufficient caseload to answer the questions accurately. Therefore, a total of 269 surveys was analyzed.

Survey respondents were asked questions in five areas: (i) factors influencing the transfer decision, (ii) changes to the current statute, (iii) sentencing issues, (iv) dispositional issues for serious juvenile offenders, and (v) additional concerns. There were four overall findings:

- Offense and prior record are the most important factors in the transfer decision;
- The current transfer statute needs clarification and changes; however, few respondents felt that any of the current criteria should be excluded;
- Juvenile and Domestic Relations District Court Judges should be able to impose longer determinate sentences for serious juvenile offenders; and
- Juvenile and Domestic Relations District Court post-dispositional options are not adequate to deal effectively with serious juvenile offenders.

Each of the five areas of the survey will be briefly discussed in the pages which follow. More detailed survey results can be found in Appendix I.

**Factors Influencing Transfer**

Survey respondents were asked to rank six factors in terms of their importance in influencing the transfer decision. The six factors included:

- current type of offense,
- the transfer report,
- the juvenile's previous delinquent history,
- the juvenile's treatment history,
- the age of the juvenile, and
- other factors.

A large majority of all four groups surveyed felt that the current offense and prior delinquent history of the juvenile were the most important factors in the transfer decision. Eighty-six percent of the survey respondents felt that the current offense was either the first or second most important factor in the transfer decision. On the other hand, only 14% of the total respondents felt that the previous treatment history was the first or second most important factor in the transfer decision. The number and percent of each group that rated each of the six factors to be most important is as follows.

	Comm. Attorneys	J&DR Judges	Circuit Judges	Public Defenders
Current Type of Offense	71 (84%)	36 (57%)	68 (74%)	7 (41%)
Transfer Report	0 ( 0%)	3 ( 5%)	6 ( 7%)	2 (12%)
Previous Delinquent History	12 (14%)	10 (16%)	12 (12%)	5 (29%)
Treatment History	1 ( 1%)	9 (14%)	1 ( 1%)	1 ( 6%)
Age of Alleged Offender	0 ( 0%)	2 ( 3%)	3 ( 3%)	2 (12%)
"Other" Factors	<u>1</u> ( 1%)	<u>3</u> ( 5%)	<u>2</u> ( 2%)	0 ( 0%)
*N=	85	63	92	17

Twelve survey respondents rated all factors equal; therefore, N= 257. Percentages may not total 100% due to rounding.

**Changes to Current Transfer Statute**

Survey respondents were asked whether the current transfer statute (§16.1-269) provided clear guidance on delineating those juveniles for whom the state should seek transfer and for whom the judiciary should certify for transfer. Eighty percent of the total respondents felt that the current statute provided clear guidance; however, some of the areas where respondents felt further guidance and clarity were need were:

- Definitions: "amenable to treatment"  
"through available facilities"  
"nature of past treatment efforts"  
"child's response to past treatment efforts;"
- When the jurisdiction of the Juvenile and Domestic Relations District Court ceases; and
- More specific, objective and quantifiable criteria.

Fifty-one percent (136) of the total survey respondents felt that the current age criteria was appropriate. However, of the respondents who felt the age should be

lowered, the majority indicated that the age should be lowered to either age 13 or that there should be no age criteria. Commonwealth's Attorneys had the largest percentage (61%) responding that the age should be lowered. On the other hand, Juvenile and Domestic Relations District Court Judges had the smallest percentage (31%) respond that the age should be lowered.

Survey respondents were also asked if any additional offenses should be added to §16.1-269(A3) where the criteria of amenability to treatment and prior delinquent history need not be considered by the court. This section, referred to as "legislative waiver," currently includes the offenses of murder, rape and armed robbery. Fifty seven percent (151) of the survey respondents felt that additional offenses should be added. The offenses of malicious wounding, additional sex offenses in §18.2-67, and Schedule I and II drug violations were the offenses that survey respondents mentioned most often for inclusion.

### ***Sentencing Issues***

The area of the surveys on which the most overwhelming majority of the survey respondents agreed was on sentencing issues. Survey respondents were asked if Juvenile and Domestic Relations District Court Judges should be able to impose determinate sentences for juveniles 15 years and older convicted of transfer eligible offenses and committed to the state's learning centers. Eighty-two percent (218) of the respondents felt that the Judges should have this authority. The number and percent of each group that felt that determinate sentencing should be allowed were as follows:

Commonwealth's Attorneys	81 respondents (91%)
Circuit Court Judges	65 respondents (69%)
Juvenile & Domestic Relations Court Judges	58 respondents (89%)
Public Defenders	14 respondents (78%).

Also, 85% (226) of the survey respondents felt that Juvenile and Domestic Relations District Court Judges should be able to impose longer determinate sentences under the Serious Offender Statute (§16.1-285.1). Few respondents, however, were in favor of extending the jurisdiction of the juvenile court past the age of 21 years or using sentencing guidelines or a juvenile parole board.

### ***Adequacy of Post-Dispositional Options***

Survey respondents were asked a series of questions regarding the post-dispositional options available to the Juvenile and Domestic Relations District Court to deal with serious juvenile offenders. The majority of the respondents—53% (140)—felt that there were not sufficient options available for serious juvenile offenders. In addition, 82% (216) felt that Circuit Court dispositions were more punitive in terms of length of time served and methods of incarceration. This group suggested that transfers were being utilized for reasons outlined on the following page.

- 96% of the Commonwealth's Attorneys said the Circuit Court sanctions had an effect on their seeking transfers;
- 70% of the Juvenile and Domestic Relations District Court Judges said that the Circuit Court sanctions had an effect on their transfer of a juvenile's case; and,
- 81% of the Circuit Court Judges said the dispositions available to them had an effect on their acceptance of a transferred case.

Survey respondents were also asked to provide information on the types of dispositional options they felt were needed at the Juvenile and Domestic Relations District Court level. The following options were cited as being needed:

1. determinate sentences,
2. boot camps,
3. commitment to local jails,
4. secure juvenile correctional institutions,
5. special schools for youthful offenders,
6. extended juvenile court jurisdiction past age 21 years,
7. work programs, and
8. broader use of post-dispositional detention.

However, 69% (179) of the survey respondents felt that there were enough treatment programs at the Juvenile Court level to satisfy the "amenability to treatment" criteria of the transfer statute.

### ***Additional Concerns***

The survey respondents were asked questions regarding the information available to the courts in the case histories and the social reports of serious juvenile offenders. Only 18% of the survey respondents said that it was difficult to collect information regarding the offense/treatment histories of juveniles. Nevertheless, the majority of respondents supported the development of a statewide juvenile offender database.

Finally, respondents were asked to state any additional concerns they had regarding the issues of the serious juvenile offender or the transfer statute. Many of the suggestions dealt with the need for greater statutory clarity and definitions within the transfer statute; however, the following concerns were also noted:

- need for statutory provisions that terminate the jurisdiction of the Juvenile and Domestic Relations District Court once a juvenile has been transferred/convicted as an adult;
- need for statutory provisions which allow for related charges pending against a youth to be transferred to Circuit Court along with the transferred felony charge;
- need for statutory provisions that allow juveniles to be under the purview of the Department of Youth and Family Services until age 21 years, at which time they could be transferred to the Department of Corrections for completion of a determinate sentence; and

- need for statutory provisions for punishing youth who escape from juvenile facilities or injure personnel at juvenile facilities.

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## **VIII. Public Hearing**

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Copies of the Serious Juvenile Offender Task Force's draft legislative proposal were mailed to Virginia officials during the first week of November 1993 to inform them of the legislative recommendations the Task Force was considering and to solicit suggestions and support. The following groups were mailed the study summary and draft legislation and invited to make comment or participate in the public hearing:

- Commonwealth's Attorneys,
- Circuit Court Judges,
- Juvenile and Domestic Relations District Court Judges,
- State-Supported Public Defenders,
- Court Service Unit Directors,
- Secure Juvenile Detention Home Superintendents, and
- Executive Directors of the state Sheriff's Association, Fraternal Order of Police, and Chiefs of Police.

On December 16, 1993 the Task Force held a public hearing in Richmond to garner responses to the legislative proposals. Public hearing notices were sent to sheriffs throughout the state, the membership of the Fraternal Order of Police, the Detention Home Superintendents, and individuals and organizations on the Commission on Youth's Juvenile Justice mailing list. In addition, notices were provided to other professional groups for dissemination to their memberships.

Twelve persons spoke at the public hearing. The issues they discussed centered around the following issues:

1. lowering the age for transfer,
2. types of offenses for legislative waiver,
3. need to address the root causes of crime,
4. placement of juveniles in adult facilities,
5. jurisdictional concerns, and
6. costs.

Several of the recommended changes were incorporated in the final version of the legislative package that the Task Force is recommending.

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## **IX. Legislative Recommendations**

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Results of the two years' data and survey analyses were used as the basis for the Task Force to begin addressing needed changes in Virginia's transfer statute and



dispositional alternatives for serious juvenile offenders. These analyses produced a number of conclusions instrumental in guiding the Task Force's deliberations:

- the data revealed that there was "justice by geography" in terms of juveniles with similar offenses and prior records being dealt with in different ways throughout the state;
- the factors that seemed to have the greatest statistical impact on the decision to transfer were the closer a juvenile was to the age of majority and prior record;
- Virginia currently transfers/convicts more juveniles per capita than any other state, given its higher age threshold; and
- officials in Virginia felt that there needed to be more dispositional options for dealing with juvenile offenders.

With these concepts in mind, the Task Force is recommending the following changes in the *Code of Virginia*. A final draft copy of the serious offender legislation can be found as Appendix C.

### **TRANSFER STATUTE**

The Task Force is recommending amendments to §16.1-269 that include criteria which provide clearer guidance and quantifiable information for officials involved in transfer proceedings. The Task Force felt that some of the "justice by geography" was a result of a lack of clarity in the transfer statute and the survey responses supported this idea. The other state transfer statute analysis was used as a guide on specific criteria that Virginia could use to define terms and incorporate concepts that Virginia officials felt were important to the transfer decision. Thus, the Task Force recommends ten changes to Virginia's transfer statute. Each of these is discussed below.

#### ***Recommendation 1***

Repeal §16.1-269 and replace it with six sub-sections.

*Rationale:* The six sub-sections will allow for clearer delineation of the criteria and administrative steps in the transfer process. The term "child" was replaced with the term "juvenile" to conform to recent juvenile justice and courts legislation.

#### ***Recommendation 2***

The age for transfer of a juvenile for trial as an adult be lowered to age 14 years from the current age of 15 years.

*Rationale:* This recommendation is based on three considerations. First, a large number of the survey respondents felt that the age should be lowered due to increasing numbers of violent crimes by younger offenders. Second, testimony at the public hearings reflected the sentiment that the effects of crimes by persons under the age of 15 years are just as damaging to the victims as crimes committed by older juveniles and adults. Third, the prior records of juvenile offenders under the age of 15 years are, in some cases, just as extensive as those of older juveniles.

### **Recommendation 3**

Expand the criteria that the Juvenile and Domestic Relations District Court considers when deciding whether to transfer a case to include consideration of the following:

- criteria which incorporate the degree of violence in the current offense
  - (a) the seriousness and number of alleged offense(s), including:
    - (i) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner,
    - (ii) whether the alleged offense was against persons or property, with greater weight being given to offenses against persons, especially if death or injury resulted,
    - (iii) whether the maximum punishment for such an offense is greater than 20 years confinement if committed by an adult,
    - (iv) whether the alleged offense involved the use of a firearm or other dangerous weapon by brandishing, displaying, threatening with or otherwise employing such weapon, and
    - (v) the nature of the juvenile's participation in the alleged offense;
- criteria which detail the number and nature of prior offenses by the juvenile and the juvenile's prior treatment intervention
  - (a) the record and previous history of the juvenile in this or any other jurisdiction, including:
    - (i) the number and nature of previous contacts with juvenile or adult courts,
    - (ii) the number and nature of prior periods of probation,
    - (iii) the number and nature of prior commitments to learning centers,
    - (iv) the number and nature of previous residential and community-based treatments,
    - (v) whether previous adjudications and commitments were for delinquent acts that involved the infliction of serious bodily injury, and
    - (vi) whether the alleged offense is part of a repetitive pattern of similar adjudicated offenses;
- criteria which compare the dispositional alternatives available to the juvenile versus adult systems to deal effectively with the juvenile offender
  - (a) whether the juvenile can be retained in the juvenile justice system long enough for effective treatment and rehabilitation;
  - (b) the appropriateness of the services and dispositional alternatives available to both the criminal justice and juvenile justice systems for dealing with the juvenile's problems and what services and dispositional alternatives are, in fact, available; and
  - (c) whether the juvenile has previously absconded from the legal custody of the juvenile correctional entity in this or any other state;
- criteria which describe the juvenile's personal characteristics
  - (a) the juvenile's age;
  - (b) the extent, if any, of the juvenile's degree of mental retardation and/or mental illness;
  - (c) the juvenile's school record and education;
  - (d) the juvenile's mental and emotional maturity; and
  - (e) the juvenile's physical condition and maturity.

*Rationale: Currently, the Code of Virginia requires only consideration of prior record, treatment history and amenability to treatment. Survey respondents and Task Force members expressed concern about the lack of clarity in the definitions and*

*criteria the court was to consider when deciding whether to transfer a juvenile. Twenty-five percent of the juveniles transferred and convicted in Virginia during 1992 (104 out of 412) did not spend any incarceration time in correctional facilities. The Task Force felt that perhaps lack of clarity had resulted in some juveniles being transferred inappropriately and therefore not receiving incarceration. Many other states had much more detailed and directive statutes than Virginia's and those states, per capita, transfer fewer juveniles. In addition, the results of the geographical data analysis supported the fact that juveniles with similar profiles were being treated differently in terms of the dispositions they received in various areas of the state. By delineating these criteria in the Code of Virginia, the judges throughout the state will consider the same information when deciding whether to transfer a juvenile.*

#### **Recommendation 4**

The term "amenability to treatment" be replaced with the American Bar Association's recommended terminology of "the juvenile is not a proper person to remain within the jurisdiction of the juvenile court."

*Rationale: The Task Force felt that use of this national standard would help to clarify some of the concerns expressed in the surveys regarding the ambiguity of the term "amenability to treatment."*

#### **Recommendation 5**

The Juvenile and Domestic Relations District Court find by "a preponderance of the evidence" that the juvenile should be transferred, rather than the current language of the "court finds."

*Rationale: The Task Force felt that, in lowering the age and extending the terms of confinements as a dispositional option available to the juvenile court judge, there should be a higher standard of proof in order to transfer the most appropriate juvenile offenders.*

#### **Recommendation 6**

When the alleged delinquent act constitutes an offense for which the prescribed punishment is death or imprisonment for life if committed by an adult, the court may certify the juvenile without making the finding that the juvenile is not a proper person to remain within the jurisdiction of the juvenile court.

*Rationale: Fifty-seven percent of the survey respondents felt that additional offenses should be added to §16.1-269(A3), the "legislative waiver" section of the transfer statute. Rather than continue to amend the Code of Virginia annually with additional offenses, the Task Force felt that offenses punishable by either death or life imprisonment would incorporate the most heinous offenses and those suggested by the largest number of survey respondents. In addition, the terminology was also suggested and supported at the public hearing the Task Force held to elicit response to the draft legislation.*

### **Recommendation 7**

At the time the Commonwealth's Attorney is instructed to seek an indictment and try the juvenile in Circuit Court, the transferred juvenile must be removed from a local juvenile detention facility.

*Rationale:* Currently, the Code of Virginia is silent on the physical placement of juveniles during the transfer process. Many of the survey respondents cited this lack of clarity as a problem with the current transfer statute. The Task Force wanted to statutorily clarify placement and felt that, if both the Juvenile and Circuit Courts had found sufficient reason to transfer and try a juvenile as an adult, they should be removed from a predominately pre-dispositional secure juvenile facility. In addition, the overcrowding in the local detention homes is exacerbated when these serious juvenile offenders occupy secure bed space for many months while awaiting trial in Circuit Court.

### **Recommendation 8**

Additional misdemeanor charges originating out of the transferred felony will also be forwarded to Circuit Court for processing.

*Rationale:* The Task Force is recommending this in response to several survey respondents who felt it was needed to clarify the court's jurisdiction and consolidate a juvenile's case in one area of the courts.

### **Recommendation 9**

Conviction of a juvenile after transfer terminates the juvenile court's jurisdiction over that juvenile with respect to any future acts.

*Rationale:* The Task Force felt that if a juvenile had committed an offense of such a nature as to be transferred and convicted as an adult, then the juvenile would no longer be "a proper person to remain within the jurisdiction of the juvenile court." This recommendation was made by many of the survey respondents and the concept was supported by the fact that a number of other states currently have statutes that incorporate the concept in their transfer statutes.

### **Recommendation 10**

The Circuit Court shall within 30 days examine all papers, reports and orders from the juvenile and conduct a hearing to take further evidence on the issue of transfer.

*Rationale:* The 1993 Session of the General Assembly changed this portion of the transfer statute from 21 days to "a reasonable amount of time" due to docketing problems at the Circuit Court level. However, the lack of a definitive time period has resulted in some juveniles waiting in local secure detention homes for months pending their Circuit Court hearing. This length of time increases security problems and overcrowding at the local facilities. The Task Force is recommending 30 days as a compromise to allow the courts additional time, while being conscious of the problems inherent in keeping serious juvenile offenders in the local juvenile detention homes for excessive periods of time.

## **SERIOUS OFFENDER STATUTE**

The Task Force is recommending significant changes to the Serious Offender Statute (§16.1-285.1). The most notable majority of survey respondents agreed on the need for Juvenile and Domestic Relations District Court Judges to be able to impose long-term determinate sentences within the juvenile correctional system for serious juvenile offenders. In addition, many respondents felt that there were not sufficient dispositional alternatives at the juvenile court level and that transfers were being used in greater numbers for this reason. Therefore, the Task Force is recommending nine changes to the Serious Offender Statute.

### **Recommendation 11**

The offense criteria for eligibility for sentencing under this statute be changed to include a juvenile 14 years of age who has been found guilty of an offense which would be a felony if committed by an adult and (i) on parole for an offense which would be a felony if committed by an adult, or (ii) the juvenile was committed to the state for offense which would be a felony if committed by an adult within the preceding 12 months, or (iii) where the felony offense is punishable by a term of confinement of greater than 20 years if committed by an adult.

***Rationale:** The current criteria for sentencing under this statute are juvenile who is 15 years of age and (i) the juvenile is on parole or within the immediately preceding 12 months was a resident of a group home or other treatment facility or (ii) where the current offense constitutes murder, rape armed robbery or the use of a firearm in the commission of a felony. The Task Force is recommending lowering the age to parallel the recommended age of transfer eligibility, limiting the sentencing of juveniles under the statute to those that have been committed to State care before, and expanding the list of offenses by incorporating all felony offenses where the prescribed punishment would be a term of confinement of greater than 20 years if committed by an adult. The Task Force felt that this statute should be available for use with the most serious juvenile offenders still in the juvenile system and that the additional offenses were necessary to achieve this goal.*

### **Recommendation 12**

Juvenile and Domestic Relations District Court Judges be given authority to impose determinate sentences to serious offenders for a maximum of seven years or age 21 years, whichever shall come first.

***Rationale:** The survey data strongly encouraged this recommendation: (i) 82% of the survey respondents felt that juvenile court judges should be able to impose long term determinate sentences, (ii) 85% of the survey respondents felt that the length of determinate sentences eligible under the Serious Offender Statute should be extended, and (iii) 53% of the survey respondents felt that there were not sufficient juvenile court dispositional options to effectively deal with serious juvenile offenders. The seven year maximum was recommended as a viable alternative to encourage the Commonwealth to keep juveniles in the juvenile justice system, rather than the increasing number of transfers to adult court. The seven-year maximum sentence was selected to allow*

*the juvenile court to hold the youngest juveniles eligible for sentencing—14 year olds—until they are no longer under the juvenile court's jurisdiction at 21 years of age.*

### **Recommendation 13**

Mandate placement of juveniles sentenced under this statute to an appropriate learning center rather than other residential programs.

*Rationale: Currently, the statute allows the Department of Youth and Family Services to place juveniles sentenced under this statute in either a learning center or another type of residential program. The Task Force is recommending this change to ensure that the serious juvenile offenders sentenced under this statute be placed in the most secure environment available within the juvenile justice system.*

### **Recommendation 14**

Expand the criteria that the Juvenile and Domestic Relations Court considers when deciding whether to sentence a juvenile under this statute to include consideration of the following:

- criteria which incorporate the degree of violence in the current offense
  - (a) the seriousness and number of present offense(s), including:
    - (i) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner,
    - (ii) whether the alleged offense was against persons or property, with greater weight being given to offenses against persons, especially if death or injury resulted,
    - (iii) whether the alleged offense involved the use of a firearm or other dangerous weapon by brandishing, displaying, threatening with or otherwise employing such weapon, and
    - (iv) the nature of the juvenile's participation in the alleged offense;
- criteria which detail the number and nature of prior offenses by the juvenile and the juvenile's prior treatment intervention
  - (a) the record and previous history of the juvenile in this or any other jurisdiction, including:
    - (i) the number and nature of previous contacts with juvenile or adult courts,
    - (ii) the number and nature of prior periods of probation,
    - (iii) the number and nature of prior commitments to learning centers,
    - (iv) the number and nature of previous residential and community-based treatments,
    - (v) whether previous adjudications and commitments were for delinquent acts that involved the infliction of serious bodily injury, and
    - (vi) whether the alleged offense is part of a repetitive pattern of similar adjudicated offenses;
- criteria which consider the Department of Youth and Family Services' recommended length of stay based on treatment goals enumerated in the social history report.

*Rationale: Seventy-three percent of the other states incorporate more criteria in their statutes than does Virginia when deciding whether to transfer a juvenile to adult court. Currently, the criteria that the juvenile court considers when sentencing under this statute mirror the criteria considered during the transfer hearing. The Task Force felt that, in addition to age, the only factors that the court needed to consider were the nature of the current offense and prior record. The juvenile has already been*

determined to be a "proper person to remain within the jurisdiction of the court" and other factors which address amenability to treatment issues are no longer relevant.

### **Recommendation 15**

The Juvenile and Domestic Relations District Court be given continuing jurisdiction over the juvenile throughout his commitment and allow the Department of Youth and Family Services to remove the juvenile from a learning center without prior court order for the sole purposes of routine or emergency medical treatment, routine educational services or family emergencies.

*Rationale: Because the juvenile court is the releasing authority, the Task Force felt that the court needed continuing jurisdiction over the juvenile. In addition, the Task Force felt that the Code of Virginia needed to have specific guidelines under which the Department of Youth and Family Services could remove a juvenile from the learning center. In the past, juveniles committed under this statute have been placed in other types of residential facilities and, due to public safety concerns, the Task Force did not want this to be the case.*

### **Recommendation 16**

Require a judicial hearing through a new section, §16.1-285.2, when (i) the Department of Youth and Family Services can show good cause for early release of the juvenile and (ii) on the second anniversary of the date of commitment and annually thereafter.

*Rationale: Speakers at the public hearings and the survey respondents voiced frustration over the length of stay for juveniles committed to the Department of Youth and Family Services for serious offenses. Currently, the Department decides when to release juveniles based on the previous "Length of Stay Procedures." These administrative procedures set forth minimum lengths of stay based on severity of offense and treatment goals and programs. The Task Force felt that the judiciary, rather than an administrative agency, should be setting lengths of stay for serious offenders. In addition, it was the Task Force's conclusion that the Department's release procedures were based primarily on treatment goals and do not sufficiently address the public safety concerns that had been voiced during the course of the two-year study. However, the potential for "warehousing" was recognized. Therefore, the Task Force is recommending an annual hearing, similar to a foster care review, so the court can monitor the juvenile's case and be made aware of the progress of the treatment efforts and re-evaluate the sentence imposed.*

### **Recommendation 17**

Establish administrative procedures for the early release and annual review hearings which allow for:

- (i) notice of the hearing;
- (ii) provision of a progress report which details:
  - the facility and living arrangement provided the juvenile by the Department of Youth and Family Services,
  - the services and treatment programs afforded the juvenile,

- the juvenile's progress toward treatment goals and objectives,
  - the juvenile's potential for danger either to himself or to the community, and
  - a comprehensive aftercare plan for the juvenile; and
- (iii) consideration of additional evidence from:
- probation officers, the learning center, treatment professionals and the court service unit,
  - the juvenile, his legal counsel, parent, guardian or family member, and
  - any other sources the court deems relevant.

***Rationale:** The Task Force felt that the court and interested parties need to have a progress report to accurately gauge the juvenile's progress and potential for release. In addition, it felt that other interested parties and evidence should also be considered by the court. Stipulation of the criteria within the Code of Virginia guarantees that the same information will be collected and afforded for consideration for each juvenile.*

### **Recommendation 18**

Include criteria for the Juvenile and Domestic Relations District Court to consider when making the determination to release the juvenile. These criteria should include:

- the experiences and character of the juvenile before and after commitment,
- the nature of the offense(s) that the juvenile was found to have committed,
- the manner in which the offenses were committed,
- the protection of the community,
- the recommendations of the Department of Youth and Family Services, and
- any other factors the court deems relevant.

***Rationale:** The Task Force felt that the court needed guidance on the factors it should judge for early release eligibility. It was reasoned that these criteria would mitigate against any undo influence public sentiment might have over sentencing of a juvenile for a particular offense. Several of these considerations were contained within the release hearing statutes of other states with similar judicial release hearings.*

### **VICTIM NOTIFICATION STATUTE**

The Task Force is recommending new legislation which will for the first time allow for victim notification when a serious juvenile offender is being released from a learning center.

### **Recommendation 19**

Section 66-25.2 be amended to include statutory provisions for victims to be notified when juveniles committed under the provisions of the Serious Offender Statute are to be released.

***Rationale:** Testimony at the public hearings and other state statutes were the basis for this recommendation. The language in this statute mirrors the provisions for victim notification when adult felons are to be released by the Department of Corrections. Given the increased severity of crimes for which a juvenile may be*



*committed to a learning center, it was reasoned that similar victim notification as those applying to adult correction would be appropriate.*

### **DELINQUENT CHILDREN STATUTE**

The Task Force is proposing changes to the delinquent children statute which will narrow the criteria for eligibility for commitment to the Department of Youth and Family Services in §16.1-278.8. This is being recommended so that the most secure juvenile facilities will have the capacity to deal with serious juvenile offenders for longer periods of time.

#### **Recommendation 20**

The criteria for eligibility for commitment to a learning center in §16.1-278.8 be amended to include a juvenile older than ten years of age who commits a current offense which (i) would be a felony if committed by an adult or (ii) would be a Class 1 misdemeanor if committed by an adult and the juvenile has previously been found to be delinquent based on an offense which would be either a felony or Class 1 misdemeanor if committed by an adult.

*Rationale: Currently, the only criterion for commitment to a learning center is that a juvenile older than ten years of age commits a delinquent act. The Task Force felt that there should be at least a standard that was equal to that which allows for pre-dispositional detention. In addition, the Task Force knew that the proposed changes to the serious offender statute would have an impact on the average daily population in the learning centers and they felt that the misdemeanor juvenile could be better handled through community intervention. A separate analysis is being conducted to determine the jurisdictions from which the misdemeanor commitments are occurring. A budget amendment will be sought for community programs in those areas.*

### **PLACES OF CONFINEMENT STATUTE**

The Task Force is proposing changes to §16.1-249, the places of confinement statute, which will clarify the physical placement of juveniles during the transfer process. Included in the proposed amendments are changes in the age criteria for sight and sound separation for juveniles from adults.

#### **Recommendation 21**

§16.1-249 be amended to clarify the physical placement of juveniles during the transfer process and mandate that juveniles must be sight and sound separate from adult inmates in local jails until the Circuit Court issues an order directing the Commonwealth to seek an indictment; at this time, the juvenile need no longer be housed separately and removed from adults.

*Rationale: The Task Force is recommending this change for two reasons. First, speakers at the public hearing expressed concerns about serious juvenile offenders being housed in detention homes alongside young offenders held dispositionally on lesser offenses. Many speakers felt that these serious juvenile offenders presented public safety risks. The second reason the Task Force is recommending this change is*

*to protect the misdemeanor juvenile offenders who are in detention homes awaiting disposition in the juvenile court. The Task Force felt that, if the juvenile was dangerous enough to warrant transfer and "not a proper person to remain within the jurisdiction of the juvenile court," the juvenile should not continue to reside in the juvenile facilities. While there are relatively few juveniles housed in secure detention facilities awaiting trial (less than 1% of the total detained population in any given month), they have an average length of stay which exceeds other detainees.*

## **RELATED STATUTES**

The changes that are being proposed in Recommendations 1-21 resulted in the need for subsequent changes to other areas of the *Code of Virginia*. Recommendations 22-31 clarify and amend related statutes that have been affected by the Serious Juvenile Offender Task Force proposals.

### **Recommendation 22**

Amend the definition of "delinquent children" in §16.1-228 to take into account the termination of the juvenile court's jurisdiction following a conviction of a juvenile in Circuit Court under §16.1-269.6(C) of the proposed transfer statute.

### **Recommendation 23**

Amend §16.1-241 to incorporate the changes in the jurisdiction of the Juvenile and Domestic Relations District Court as a result of the termination of the juvenile court for future delinquent offenses under §16.1-269.6(C) of the proposed transfer statute.

### **Recommendation 24**

Amend §16.1-271 to preclude the Juvenile and Domestic Relations District Court's taking jurisdiction of a juvenile for any subsequent offenses once the juvenile has been tried and convicted in Circuit Court as an adult.

*Rationale: Recommendations 22-24 are being made to take into account the changes in the juvenile court's jurisdiction following a transferred juvenile's conviction as an adult. A large number of Virginia survey respondents, as well as a large number of other states' statutes, supported the inclusion of these concepts.*

### **Recommendation 25**

Amend §16.1-270 to lower the age for the voluntary waiver of juvenile court jurisdiction by juveniles in §16.1-270 from 15 years to 14 years.

### **Recommendation 26**

Amend §16.1-275 to change the age for physical and mental examinations for juveniles certified to the Circuit Court from 15 years to 14 years.

### **Recommendation 27**

Amend §16.1-280 to change the age for placement of juveniles certified by the Circuit Court in maximum security adult units for the criminally insane in §16.1-280 from 15 years to 14 years.

### **Recommendation 28**

Amend §16.1-299.7 to change the age from 15 years to 14 years to allow for fingerprints and photographs of juveniles charged with felony acts in §16.1-299.

**Recommendation 29**

Amend §16.1-306 to change the age for exclusion from the expungement and confidentiality provisions from 15 years to 14 years.

**Recommendation 30**

Amend §18.2-308.2 to change the age for penalties associated with possession or transportation of firearms or concealed weapons under the provisions of §18.2-308.2 from 15 years to 14 years.

*Rationale: Recommendations 25-30 are being made to change the referenced age of transfer to coincide with the Task Force's proposed amendments to § 16.1-269.*

**Recommendation 31**

Amend the legislative references in §19.2-240 and §19.2-311 to take into account the six new sub-sections of the transfer statute, §16.1-269.1-§16.1-269.6.

*Rationale: The transfer statute, § 16.1-269, is referenced in these sections and needs to be amended to take into account the new sections of the statute.*

**OTHER RECOMMENDATIONS**

The Serious Offender Task Force also incorporated two recommendations in its package at the request of governmental entities.

**Recommendation 32**

Amend §53.1-21 to clarify that the Director of the Department of Corrections cannot make commitments to local secure detention homes as defined in §16.1-228.

*Rationale: The Department of Youth and Family Services requested this recommendation to clarify that reference to "local correctional facility" relates only to local jails for adult felons and not local secure detention homes. The language in this section was not clarified when the Department of Corrections separated into two agencies and the Department of Youth and Family Services took responsibility for juvenile correction.*

**Recommendation 33**

Incorporate language which notes that any objection to the jurisdiction of the Circuit Court pursuant to §16.1-269 be waived if not made before arraignment.

*Rationale: The Committee on District Courts referred this request to the Task Force for inclusion in the legislative package to ensure that a transfer decision not be overturned on a technicality resulting from the juvenile court's failing to address the appropriate jurisdictional boxes on the transfer form.*

## **X. Acknowledgments**

In addition to the individuals who served on the Serious Juvenile Offender Task Force, the members of the Commission on Youth extend their appreciation to the following agencies and individuals for their cooperation and assistance on this study:

*Commonwealth's Attorney Services and Training Council*  
Mr. Walter Felton, Administrator

*Virginia Department of Corrections*  
Mr. Mike Leininger, Legislative Liaison

*Virginia Department of Criminal Justice Services*  
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*Virginia Public Defender Commission*  
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Ms. Kimberly O'Donnell

*Virginia Association of Juvenile and Domestic Relations District Court Judges*  
The Honorable Dale H. Harris  
The Honorable Lawrence Janow  
The Honorable Charles E. Poston

The Task Force would also like to acknowledge and express great appreciation to Ms. Mary Geisen, Research Associate for the Division of Legislative Services, for her assistance in drafting the proposed serious juvenile offender legislative package.

**Appendix A:  
Study Resolutions**

**GENERAL ASSEMBLY OF VIRGINIA—1993 SESSION**  
**HOUSE JOINT RESOLUTION NO. 431**

*Continuing the conduct of a comprehensive study of serious juvenile offenders by the Virginia Commission on Youth.*

Agreed to by the House of Delegates, February 9, 1993  
Agreed to by the Senate, February 23, 1993

WHEREAS, House Joint Resolution No. 36, adopted by the 1992 Session of the General Assembly, directed the Virginia Commission on Youth to conduct a comprehensive study of serious juvenile offenders; and

WHEREAS, the Commission was charged with profiling serious juvenile offenders by offense and record, analyzing sentencing practices, examining available treatment programs, reviewing court processing issues, and assessing the degree to which the current statutes adequately address the problem of the serious juvenile offender; and

WHEREAS, the Commission was charged with working with a designated task force to assist in the study; and

WHEREAS, in addressing the issues contained in the study mandate, the task force met six times to review data regarding arrests, transfers, learning center commitments, offender profiles, and factors influencing transfers and to seek the expertise of state agency representatives and private post-dispositional program representatives; and

WHEREAS, the task force and the Virginia Commission on Youth held three public hearings to obtain input from citizens on the issue of serious juvenile offenders; and

WHEREAS, testimony before the task force and the Commission on Youth and the initial analysis of data confirm that there are inequities in the current transfer process and that transfer statutes need revision; and

WHEREAS, although the task force and the Commission have developed specific recommendations to address the issues of uniform juvenile transfer reports and social history reports, it is the consensus of the Commission and the task force that further review of other states' transfer statutes and numbers and types of transfers is necessary; and

WHEREAS, it is also the consensus of the task force and the Commission that surveys of Virginia judges and Commonwealth's attorneys are necessary to develop specific recommendations which address the issues of the serious juvenile offender and the adequacy of the current transfer statutes; and

WHEREAS, the issue of juvenile transfers to adult court is of such importance that the task force and the Commission feel that all available data and alternatives should be examined and considered; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the study of serious juvenile offenders by the Virginia Commission on Youth be continued. The membership of the task force shall continue as established by House Joint Resolution 36 of the 1992 General Assembly.

The Commission shall complete its work in time to submit its findings and recommendations to the Governor and the 1994 Session of the General Assembly in accordance with the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

# GENERAL ASSEMBLY OF VIRGINIA--1992 SESSION

## HOUSE JOINT RESOLUTION NO. 36

*Requesting the Virginia Youth Services Commission to study serious juvenile offenders.*

Agreed to by the House of Delegates, March 5, 1992

Agreed to by the Senate, March 3, 1992

WHEREAS, the growth in juvenile arrests for felony crimes has increased threefold nationally since 1983; and

WHEREAS, the Department of Youth and Family Services reports an increase in the number of juveniles committed to state learning centers for felonies from 8 percent in 1986 to 21.6 percent in 1991; and

WHEREAS, in 1990 there were 215 juveniles certified to circuit courts, 208 of whom were convicted for felony offenses; and

WHEREAS, variations exist in the dispositional options available to juvenile and domestic relations court judges and circuit court judges in sentencing juveniles convicted of felony offenses; and

WHEREAS, population growth trends suggest an "echo boom" in the adolescent population in the next decade, placing additional strain on human service and correctional programs across the Commonwealth; and

WHEREAS, a thorough analysis of juvenile crime trends and sentencing patterns of youth convicted of felonies is needed; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia Youth Services Commission, with the assistance of the Departments of Corrections, Criminal Justice Services, and Youth and Family Services, be directed to conduct a comprehensive study of serious juvenile offenders. The Commission shall provide a profile of serious juvenile offenders by offense and record; an analysis of sentencing practices; an examination of available treatment programs; a review of court processing issues and the degree to which the current statutes adequately address the problem of the serious juvenile offender. All state agencies and institutions shall, if requested, endeavor to assist the Commission in completing this study; and, be it

RESOLVED FURTHER, That the Youth Services Commission shall designate a task force of 17 individuals to assist with the study. The task force shall report directly to the Commission and shall consist of eight members of the Youth Services Commission, and nine members to be appointed as follows: one member from the House of Delegates appointed by the Speaker, one member of the Senate appointed by Senate Committee on Privileges and Elections, four members appointed by the Governor in accordance with the recommendations of the Chief Justice of the Supreme Court to represent juvenile and domestic relations district court and circuit court, and three attorneys for the Commonwealth appointed by the Governor in accordance with the recommendations of the Commonwealth Attorney's Services and Training Council.

The Virginia Youth Services Commission shall complete its work in time to submit its findings and recommendations to the Governor and the 1993 Session of the General Assembly in accordance with the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

**Appendix B:  
Serious Juvenile Offender Task Force**



## **Study of Serious Juvenile Offenders**

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**Appendix C:**  
**Serious Juvenile Offender Legislative Package**

# 1994 SESSION

LD3504836

## HOUSE BILL NO. 1243

Offered January 25, 1994

*A BILL to amend and reenact §§ 16.1-228 and 16.1-241, as they are currently effective and as they may become effective; § 16.1-249; §§ 16.1-270, 16.1-271, 16.1-275, 16.1-278.8, and 16.1-280, as they are currently effective and as they may become effective; § 16.1-285.1; § 16.1-299, as it is currently effective and as it may become effective; § 16.1-301; § 16.1-306 as it is currently effective and as it may become effective; § 18.2-308.2; § 19.2-240, as it is currently effective and as it may become effective; and §§ 19.2-311 and 53.1-20 of the Code of Virginia; to amend the Code of Virginia by adding in Article 7 of Chapter 11 of Title 16.1 sections numbered 16.1-269.1 through 16.1-269.6, twice, as they will become effective on July 1, 1994, and as they may become effective, and by adding sections numbered 16.1-285.2 and 66-25.2; and to repeal § 16.1-269 of the Code of Virginia, as it is currently effective and as it may become effective, relating to serious juvenile offenders; penalties.*

Patrons—Jones, J.C., Almand, Baker, Ball, Barlow, Behm, Bennett, Brickley, Christian, Cohen, Cooper, Council, Cranwell, Croshaw, Cunningham, Darner, Davies, DeBoer, Deeds, Diamonstein, Forbes, Hall, Heilig, Howell, Hull, Jackson, Johnson, Jones, D.C., Mayer, McDonnell, Melvin, Phillips, Puller, Reynolds, Robinson, Scott, Van Yahres and Woodrum; Senators: Andrews, Benedetti, Calhoun, Earley, Gartlan, Holland, E.M., Holland, R.J., Houck, Howell, Lambert, Marsh, Quayle, Trumbo and Wampler

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-228 and 16.1-241, as they are currently effective and as they may become effective; § 16.1-249; §§ 16.1-270, 16.1-271, 16.1-275, 16.1-278.8, and 16.1-280, as they are currently effective and as they may become effective; § 16.1-285.1; § 16.1-299, as it is currently effective and as it may become effective; § 16.1-301; § 16.1-306 as it is currently effective and as it may become effective; § 18.2-308.2; § 19.2-240, as it is currently effective and as it may become effective; and §§ 19.2-311 and 53.1-20 of the Code of Virginia are amended and reenacted; and that the Code of Virginia is amended by adding in Article 7 of Chapter 11 of Title 16.1 sections numbered 16.1-269.1 through 16.1-269.6, as they will become effective on July 1, 1994, and by adding sections numbered 16.1-285.2 and 66-25.2, as follows:

§ 16.1-228. (For effective date - See note) Definitions.

When used in this chapter, unless the context otherwise requires:

“Abused or neglected child” means any child:

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

3. Whose parents or other person responsible for his care abandons such child;

4. Whose parents or other person responsible for his care commits or allows to be committed any sexual act upon a child in violation of the law; or

5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco parentis.

“Adoptive home” means the place of residence of any natural person in which a child

1 resides as a member of the household and in which he has been placed for the purposes  
2 of adoption or in which he has been legally adopted by another member of the household.

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

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

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

7 "Child in need of services" means a child whose behavior, conduct or condition  
8 presents or results in a serious threat to the well-being and physical safety of the child;  
9 however, no child who in good faith is under treatment solely by spiritual means through  
10 prayer in accordance with the tenets and practices of a recognized church or religious  
11 denomination shall for that reason alone be considered to be a child in need of services,  
12 nor shall any child who habitually remains away from or habitually deserts or abandons  
13 his family as a result of what the court or the local child protective services unit  
14 determines to be incidents of physical, emotional or sexual abuse in the home be  
15 considered a child in need of services for that reason alone.

16 However, to find that a child falls within these provisions, (i) the conduct complained  
17 of must present a clear and substantial danger to the child's life or health or (ii) the child  
18 or his family is in need of treatment, rehabilitation or services not presently being  
19 received, and (iii) the intervention of the court is essential to provide the treatment,  
20 rehabilitation or services needed by the child or his family.

21 "Child in need of supervision" means:

22 1. A child who, while subject to compulsory school attendance, is habitually and without  
23 justification absent from school, and (i) the child has been offered an adequate opportunity  
24 to receive the benefit of any and all educational services and programs that are required  
25 to be provided by law and which meet the child's particular educational needs, and (ii) the  
26 school system from which the child is absent or other appropriate agency has made a  
27 reasonable effort to effect the child's regular attendance without success; or

28 2. A child who, without reasonable cause and without the consent of his parent, lawful  
29 custodian or placement authority, remains away from or habitually deserts or abandons his  
30 family or lawful custodian or escapes or remains away without proper authority from a  
31 residential care facility in which he has been placed by the court, and (i) such conduct  
32 presents a clear and substantial danger to the child's life or health, (ii) the child or his  
33 family is in need of treatment, rehabilitation or services not presently being received, and  
34 (iii) the intervention of the court is essential to provide the treatment, rehabilitation or  
35 services needed by the child or his family.

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

38 "Delinquent act" means (i) an act designated a crime under the law of this  
39 Commonwealth, or an ordinance of any city, county, town or service district, or under  
40 federal law, (ii) a violation of § 18.2-308.7 or (iii) a violation of a court order as provided  
41 for in § 16.1-292, but shall not include an act other than a violation of § 18.2-308.7, which  
42 is otherwise lawful, but is designated a crime only if committed by a child. For purposes  
43 of §§ 16.1-241 and 16.1-278.9, the term shall include a refusal to take a blood or breath test  
44 in violation of § 18.2-268.2 or a similar ordinance of any county, city or town.

45 "Delinquent child" means a child who has committed a delinquent act or an adult who  
46 has committed a delinquent act prior to his eighteenth birthday, *except where the*  
47 *jurisdiction of the juvenile court has been terminated under the provisions of § 16.1-269.6.*

48 "Department" means the Department of Youth and Family Services and "Director"  
49 means the administrative head in charge thereof or such of his assistants and subordinates  
50 as are designated by him to discharge the duties imposed upon him under this law.

51 "Family abuse" means any act of violence, including any forceful detention, which  
52 results in physical injury or places one in reasonable apprehension of serious bodily injury  
53 and which is committed by a person against such person's family or household member.

54 "Family or household member" means (i) the person's spouse, whether or not he or

1 she resides in the same home with the person, (ii) the person's former spouse, whether or  
2 not he or she resides in the same home with the person, (iii) the person's parents,  
3 stepparents, children, stepchildren, brothers, sisters, grandparents and grandchildren who  
4 reside in the same home with the person, (iv) the person's mother-in-law, father-in-law,  
5 sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home  
6 with the person, (v) any individual who has a child in common with the person, whether  
7 or not the person and that individual have been married or have resided together at any  
8 time, or (vi) any individual who cohabits or who, within the previous twelve months,  
9 cohabited with the person, and any children of either of them then residing in the same  
10 home with the person.

11 "Foster care" or "temporary foster care" means the provision of services or substitute  
12 care and supervision, for a child identified as needing services to prevent or eliminate the  
13 need for foster care placement or who has been committed or entrusted to a local board  
14 of public welfare or child welfare agency or for whom the board or child welfare agency  
15 has accepted supervision, in a temporary living situation until the child can return to his  
16 family or be placed in a permanent foster care placement or in an adoptive home.

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

19 "Jail" or "other facility designed for the detention of adults" means a local or regional  
20 correctional facility as defined in § 53.1-1, except those facilities utilized on a temporary  
21 basis as a court holding cell for a child incident to a court hearing or as a temporary  
22 lock-up room or ward incident to the transfer of a child to a juvenile facility.

23 "The judge" means the judge or the substitute judge of the juvenile and domestic  
24 relations district court of each county or city.

25 "This law" or "the law" means the Juvenile and Domestic Relations District Court Law  
26 embraced in this chapter.

27 "Legal custody" means (i) a legal status created by court order which vests in a  
28 custodian the right to have physical custody of the child, to determine and redetermine  
29 where and with whom he shall live, the right and duty to protect, train and discipline him  
30 and to provide him with food, shelter, education and ordinary medical care, all subject to  
31 any residual parental rights and responsibilities or (ii) the legal status created by court  
32 order of joint custody as defined in § 20-107.2.

33 "Permanent foster care placement" means the place of residence in which a child  
34 resides and in which he has been placed pursuant to the provisions of §§ 63.1-56 and  
35 63.1-206.1 with the expectation and agreement between the placing agency and the place of  
36 permanent foster care that the child shall remain in the placement until he reaches the  
37 age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or  
38 § 63.1-248.9. A permanent foster care placement may be a place of residence of any  
39 natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

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

43 "Shelter care" means the temporary care of children in physically unrestricting  
44 facilities.

45 "State Board" means the State Board of Youth and Family Services.

46 "Status offender" means a child who commits an act prohibited by law which would not  
47 be criminal if committed by an adult.

48 "Status offense" means an act prohibited by law which would not be an offense if  
49 committed by an adult.

50 "Residual parental rights and responsibilities" means all rights and responsibilities  
51 remaining with the parent after the transfer of legal custody or guardianship of the person,  
52 including but not limited to the right of visitation, consent to adoption, the right to  
53 determine religious affiliation and the responsibility for support.

54 § 16.1-228. (Delayed effective date - See notes) Definitions.

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7 2. Whose parents or other person responsible for his care neglects or refuses to provide  
8 care necessary for his health; however, no child who in good faith is under treatment  
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20 of adoption or in which he has been legally adopted by another member of the household.

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52 (iii) the intervention of the court is essential to provide the treatment, rehabilitation or  
53 services needed by the child or his family.

54 "The court" or the "family court" means the family court of each county or city.

1 "Delinquent act" means (i) an act designated a crime under the law of this  
2 Commonwealth, or an ordinance of any city, county, town or service district, or under  
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18 she resides in the same home with the person, (ii) the person's former spouse, whether or  
19 not he or she resides in the same home with the person, (iii) the person's parents,  
20 stepparents, children, stepchildren, brothers, sisters, grandparents and grandchildren who  
21 reside in the same home with the person, (iv) the person's mother-in-law, father-in-law,  
22 sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home  
23 with the person, (v) any individual who has a child in common with the person, whether  
24 or not the person and that individual have been married or have resided together at any  
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32 has accepted supervision, in a temporary living situation until the child can return to his  
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39 lock-up room or ward incident to the transfer of a child to a juvenile facility.

40 "The judge" means the judge or the substitute judge of the family court of each county  
41 or city.

42 "This law" or "the law" means the Family Court Law embraced in this chapter.

43 "Legal custody" means (i) a legal status created by court order which vests in a  
44 custodian the right to have physical custody of the child, to determine and redetermine  
45 where and with whom he shall live, the right and duty to protect, train and discipline him  
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53 age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or  
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1 natural person or persons deemed appropriate to meet a child's needs on a long-term basis.  
2 "Secure facility" or "detention home" means a local or regional public or private  
3 locked residential facility which has construction fixtures designed to prevent escape and to  
4 restrict the movement and activities of children held in lawful custody.

5 "Shelter care" means the temporary care of children in physically unrestricting  
6 facilities.

7 "State Board" means the State Board of Youth and Family Services.

8 "Status offender" means a child who commits an act prohibited by law which would not  
9 be criminal if committed by an adult.

10 "Status offense" means an act prohibited by law which would not be an offense if  
11 committed by an adult.

12 "Residual parental rights and responsibilities" means all rights and responsibilities  
13 remaining with the parent after the transfer of legal custody or guardianship of the person,  
14 including but not limited to the right of visitation, consent to adoption, the right to  
15 determine religious affiliation and the responsibility for support.

16 § 16.1-241. (For effective date - See note) Jurisdiction.

17 The judges of the juvenile and domestic relations district court elected or appointed  
18 under this law shall be conservators of the peace within the corporate limits of the cities  
19 and the boundaries of the counties for which they are respectively chosen and within one  
20 mile beyond the limits of such cities and counties. Except as hereinafter provided, each  
21 juvenile and domestic relations district court shall have, within the limits of the territory  
22 for which it is created, exclusive original jurisdiction, and within one mile beyond the  
23 limits of said city or county, concurrent jurisdiction with the juvenile court or courts of the  
24 adjoining city or county over all cases, matters and proceedings involving:

25 A. The custody, visitation, support, control or disposition of a child:

26 1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a  
27 status offender, or delinquent, *except where the jurisdiction of the juvenile court has been*  
28 *terminated under the provisions of § 16.1-269.6,*

29 2. Who is abandoned by his parent or other custodian or who by reason of the absence  
30 or physical or mental incapacity of his parents is without parental care and guardianship;

31 2a. Who is at risk of being abused or neglected by a parent or custodian who has been  
32 adjudicated as having abused or neglected another child in the care of the parent or  
33 custodian;

34 3. Whose custody, visitation or support is a subject of controversy or requires  
35 determination. In such cases jurisdiction shall be concurrent with and not exclusive of  
36 courts having equity jurisdiction, except as provided in § 16.1-244;

37 4. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or  
38 § 63.1-204 or whose parent or parents for good cause desire to be relieved of his care and  
39 custody;

40 5. Where the termination of residual parental rights and responsibilities is sought. In  
41 such cases jurisdiction shall be concurrent with and not exclusive of courts having equity  
42 jurisdiction, as provided in § 16.1-244;

43 6. Who is charged with a traffic infraction as defined in § 46.2-100.

44 The authority of the juvenile court to adjudicate matters involving the custody,  
45 visitation, support, control or disposition of a child shall not be limited to the consideration  
46 of petitions filed by a mother, father or legal guardian but shall include petitions filed at  
47 any time by any party with a legitimate interest therein. A party with a legitimate interest  
48 shall be broadly construed and shall include, but not be limited to, grandparents,  
49 stepparents, former stepparents, blood relatives and family members. The authority of the  
50 juvenile court to consider a petition involving the custody of a child shall not be proscribed  
51 or limited where the child has previously been awarded to the custody of a local board of  
52 social services.

53 B. The admission of minors for inpatient treatment in a mental health facility in  
54 accordance with the provisions of Article 16 (§ 16.1-335 et seq.) of this chapter and the

1 commitment of a mentally ill person or judicial certification of eligibility for admission to  
2 a treatment facility of a mentally retarded person in accordance with the provisions of  
3 Chapters 1 (§ 37.1-1 et seq.) and 2 (§ 37.1-63 et seq.) of Title 37.1. Jurisdiction of the  
4 commitment and certification of adults shall be concurrent with the general district court.

5 C. Except as provided in subsections D and H hereof, judicial consent to such activities  
6 as may require parental consent may be given for a child who has been separated from  
7 his parents, guardian, legal custodian or other person standing in loco parentis and is in  
8 the custody of the court when such consent is required by law.

9 D. Judicial consent for emergency surgical or medical treatment for a child who is  
10 neither married nor has ever been married, when the consent of his parent, guardian, legal  
11 custodian or other person standing in loco parentis is unobtainable because such parent,  
12 guardian, legal custodian or other person standing in loco parentis (i) is not a resident of  
13 this Commonwealth, (ii) his whereabouts is unknown, (iii) he cannot be consulted with  
14 promptness, reasonable under the circumstances or (iv) fails to give such consent or  
15 provide such treatment when requested by the judge to do so.

16 E. Any person charged with deserting, abandoning or failing to provide support for any  
17 person in violation of law.

18 F. Any parent, guardian, legal custodian or other person standing in loco parentis of a  
19 child:

20 1. Who has been abused or neglected;

21 2. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or  
22 § 63.1-204 or is otherwise before the court pursuant to subdivision A 4 of this section;

23 3. Who has been adjudicated in need of services, in need of supervision, or delinquent,  
24 if the court finds that such person has by overt act or omission induced, caused,  
25 encouraged or contributed to the conduct of the child complained of in the petition.

26 G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal  
27 custodian or other person standing in loco parentis for the purpose of obtaining treatment,  
28 rehabilitation or other services which are required by law to be provided for that child or  
29 such child's parent, guardian, legal custodian or other person standing in loco parentis.  
30 Jurisdiction in such cases shall be concurrent with and not exclusive of that of courts  
31 having equity jurisdiction as provided in § 16.1-244.

32 H. Judicial consent to apply for work permit for a child when such child is separated  
33 from his parents, legal guardian or other person standing in loco parentis.

34 I. The prosecution and punishment of persons charged with ill-treatment, abuse,  
35 abandonment or neglect of children or with any violation of law which causes or tends to  
36 cause a child to come within the purview of this law, or with any other offense against the  
37 person of a child. In prosecution for felonies over which the court has jurisdiction,  
38 jurisdiction shall be limited to determining whether or not there is probable cause.

39 J. All offenses in which one family or household member is charged with an offense in  
40 which another family or household member is the victim. In prosecution for felonies over  
41 which the court has jurisdiction, jurisdiction shall be limited to determining whether or not  
42 there is probable cause. For purposes of this subsection, "family or household member," as  
43 defined in § 16.1-228, shall also be construed to include parent and child, stepparent and  
44 stepchild, brothers and sisters, and grandparent and grandchild, regardless of whether such  
45 persons reside in the same home.

46 K. Petitions filed by a natural parent, whose parental rights to a child have been  
47 voluntarily relinquished pursuant to a court proceeding, to seek a reversal of the court  
48 order terminating such parental rights. No such petition shall be accepted, however, after  
49 the child has been placed in the home of adoptive parents.

50 L. Any person who seeks spousal support after having separated from his spouse. A  
51 decision under this subdivision shall not be res judicata in any subsequent action for  
52 spousal support in a circuit court. A circuit court shall have concurrent original jurisdiction  
53 in all causes of action under this subdivision.

54 M. Petitions filed for the purpose of obtaining an order of protection pursuant to §

1 16.1-253.1 or § 16.1-279.1.

2 N. Any person who escapes or remains away without proper authority from a  
3 residential care facility in which he had been placed by the court or as a result of his  
4 commitment to the Virginia Department of Youth and Family Services.

5 O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.) of  
6 this chapter.

7 P. Petitions for enforcement of administrative support orders entered pursuant to  
8 Chapter 13 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if  
9 the orders were entered by a juvenile and domestic relations district court upon the filing  
10 of a certified copy of such order in the juvenile and domestic relations district court.

11 Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.)  
12 of Title 20.

13 R. Petitions for the purpose of obtaining an emergency protective order pursuant to §  
14 16.1-253.4.

15 The ages specified in this law refer to the age of the child at the time of the acts  
16 complained of in the petition.

17 § 16.1-241. (Delayed effective date - See notes) Jurisdiction.

18 The judges of the family court elected or appointed under this law shall be  
19 conservators of the peace within the corporate limits of the cities and the boundaries of  
20 the counties for which they are respectively chosen and within one mile beyond the limits  
21 of such cities and counties. Except as hereinafter provided, each family court shall have,  
22 within the limits of the territory for which it is created, exclusive original jurisdiction, and  
23 within one mile beyond the limits of said city or county, concurrent jurisdiction with the  
24 family court or courts of the adjoining city or county over all cases, matters and  
25 proceedings involving:

26 A. The custody, visitation, support, control or disposition of a child:

27 1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a  
28 status offender, or delinquent, *except where the jurisdiction of the family court has been*  
29 *terminated under the provisions of § 16.1-269.6;*

30 2. Who is abandoned by his parent or other custodian or who by reason of the absence  
31 or physical or mental incapacity of his parents is without parental care and guardianship;

32 2a. Who is at risk of being abused or neglected by a parent or custodian who has been  
33 adjudicated as having abused or neglected another child in the care of the parent or  
34 custodian;

35 3. Whose custody, visitation or support is a subject of controversy or requires  
36 determination;

37 4. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or  
38 § 63.1-204 or whose parent or parents for good cause desire to be relieved of his care and  
39 custody;

40 5. Where the termination of residual parental rights and responsibilities is sought;

41 6. Who is charged with a traffic infraction as defined in § 46.2-100.

42 The authority of the family court to adjudicate matters involving the custody, visitation,  
43 support, control or disposition of a child shall not be limited to the consideration of  
44 petitions filed by a mother, father or legal guardian but shall include petitions filed at any  
45 time by any party with a legitimate interest therein. A party with a legitimate interest shall  
46 be broadly construed and shall include, but not be limited to, grandparents, stepparents,  
47 former stepparents, blood relatives and family members. The authority of the family court  
48 to consider a petition involving the custody of a child shall not be proscribed or limited  
49 where the child has previously been awarded to the custody of a local board of social  
50 services.

51 B. The admission of minors for inpatient treatment in a mental health facility in  
52 accordance with the provisions of Article 16 (§ 16.1-335 et seq.) of this chapter and the  
53 commitment of a mentally ill person or judicial certification of eligibility for admission to  
54 a treatment facility of a mentally retarded person in accordance with the provisions of

1 Chapters 1 (§ 37.1-1 et seq.) and 2 (§ 37.1-63 et seq.) of Title 37.1. Jurisdiction of the  
2 commitment and certification of adults shall be concurrent with the general district court.

3 C. Except as provided in subsections D and H hereof, judicial consent to such activities  
4 as may require parental consent may be given for a child who has been separated from  
5 his parents, guardian, legal custodian or other person standing in loco parentis and is in  
6 the custody of the court when such consent is required by law.

7 D. Judicial consent for emergency surgical or medical treatment for a child who is  
8 neither married nor has ever been married, when the consent of his parent, guardian, legal  
9 custodian or other person standing in loco parentis is unobtainable because such parent,  
10 guardian, legal custodian or other person standing in loco parentis (i) is not a resident of  
11 this Commonwealth, (ii) his whereabouts is unknown, (iii) cannot be consulted with  
12 promptness, reasonable under the circumstances or (iv) fails to give such consent or  
13 provide such treatment when requested by the judge to do so.

14 E. Any person charged with deserting, abandoning or failing to provide support for any  
15 person in violation of law pursuant to Chapter 5 (§ 20-61 et seq.) of Title 20.

16 F. Any parent, guardian, legal custodian or other person standing in loco parentis of a  
17 child:

18 1. Who has been abused or neglected;

19 2. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or  
20 § 63.1-204 or is otherwise before the court pursuant to subdivision A 4 of this section;

21 3. Who has been adjudicated in need of services, in need of supervision, or delinquent,  
22 if the court finds that such person has by overt act or omission induced, caused,  
23 encouraged or contributed to the conduct of the child complained of in the petition.

24 G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal  
25 custodian or other person standing in loco parentis for the purpose of obtaining treatment,  
26 rehabilitation or other services which are required by law to be provided for that child or  
27 such child's parent, guardian, legal custodian or other person standing in loco parentis.

28 H. Judicial consent to apply for work permit for a child when such child is separated  
29 from his parents, legal guardian or other person standing in loco parentis.

30 I. The prosecution and punishment of persons charged with ill-treatment, abuse,  
31 abandonment or neglect of children or with any violation of law which causes or tends to  
32 cause a child to come within the purview of this law, or with any other offense against the  
33 person of a child. In prosecution for felonies over which the court has jurisdiction,  
34 jurisdiction shall be limited to determining whether or not there is probable cause.

35 J. All offenses in which one family or household member is charged with an offense in  
36 which another family or household member is the victim. In prosecution for felonies over  
37 which the court has jurisdiction, jurisdiction shall be limited to determining whether or not  
38 there is probable cause. For purposes of this subsection, "family or household member," as  
39 defined in § 16.1-228, shall also be construed to include parent and child, stepparent and  
40 stepchild, brothers and sisters, and grandparent and grandchild, regardless of whether such  
41 persons reside in the same home.

42 K. Petitions filed by a natural parent, whose parental rights to a child have been  
43 voluntarily relinquished pursuant to a court proceeding, to seek a reversal of the court  
44 order terminating such parental rights. No such petition shall be accepted, however, after  
45 the child has been placed in the home of adoptive parents.

46 L. Any person who seeks spousal support after having separated from his spouse.

47 M. Petitions filed for the purpose of obtaining an order of protection pursuant to §  
48 16.1-253.1 or § 16.1-279.1.

49 N. Any person who escapes or remains away without proper authority from a  
50 residential care facility in which he had been placed by the court or as a result of his  
51 commitment to the Virginia Department of Youth and Family Services.

52 O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.) of  
53 this chapter.

54 P. Petitions for enforcement of administrative support orders entered pursuant to

1 Chapter 13 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if  
2 the orders were entered by a family court upon the filing of a certified copy of such order  
3 in the family court.

4 Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.)  
5 of Title 20.

6 R. Petitions for the purpose of obtaining an emergency protective order pursuant to §  
7 16.1-253.4.

8 S. Suits for divorce and for annulling or affirming marriage in accordance with Title 20.

9 T. Suits for separate maintenance.

10 U. Suits for equitable distribution based on a foreign decree in accordance with §  
11 20-107.3.

12 V. Petitions for adoption.

13 W. Petitions for change of name when incident to suits for annulling or affirming  
14 marriage, divorce, or adoption or when ancillary to any action within the jurisdiction of the  
15 family court.

16 X. Petitions regarding records of birth pursuant to Chapter 7 (§ 32.1-249 et seq.) of  
17 Title 32.1.

18 Y. Judicial review of school board actions pursuant to § 22.1-87 and of hearing officer  
19 decisions pursuant to §§ 22.1-214 and 22.1-214.1.

20 The ages specified in this law refer to the age of the child at the time of the acts  
21 complained of in the petition.

22 § 16.1-249. Places of confinement for juveniles.

23 A. If it is ordered that a ~~child~~ *juvenile* remain in detention or shelter care pursuant to  
24 § 16.1-248.1, such ~~child~~ *juvenile* may be detained, pending a court hearing, in the following  
25 places:

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

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

29 3. If a ~~child~~ *juvenile* is alleged to be delinquent, in a detention home or group home  
30 approved by the Department;

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

32 B. No ~~child~~ *juvenile* shall be detained or confined in any jail or other facility for the  
33 detention of adult offenders or persons charged with crime except as provided in  
34 subsection D, E, ~~E1~~, or F or G of this section.

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

40 D. When a case is transferred to the circuit court in accordance with the provisions of  
41 ~~§ 16.1-269~~ 16.1-269.1 and an order is entered by the circuit court in accordance with §  
42 16.1-269.6, or in accordance with the provisions of § 16.1-270 where the juvenile has  
43 waived the jurisdiction of the district court, the ~~child~~ *juvenile*, if in confinement may be  
44 transferred to a jail or other facility for the detention of adults ~~provided that (i) the~~  
45 ~~detention is in a room or ward entirely separate and removed from adults, (ii) adequate~~  
46 ~~supervision is provided, and (iii) the facility is approved by the State Board for detention~~  
47 ~~of children and need no longer be entirely separate and removed from adults.~~

48 E. If, in the judgment of the custodian as a result of placement of the child in a  
49 facility designated in subsection A hereof, a ~~child~~ *juvenile* ~~fifteen~~ *fourteen* years of age or  
50 older has demonstrated that he is a threat to the security or safety of the other ~~children~~  
51 ~~juveniles~~ detained or the staff of the home or facility, the judge shall determine whether  
52 such ~~child~~ *juvenile* should be transferred to another juvenile facility including a jail or  
53 other place of detention for adults pursuant to the limitations of subdivisions D (i), (ii),  
54 and (iii) of this section provided that (i) the detention is in a room or ward entirely

1 *separate and removed from adults, (ii) adequate supervision is provided, and (iii) the*  
 2 *facility is approved by the State Board of Youth and Family Services for detention of*  
 3 *juveniles.*

4 **Et. F.** If, in the judgment of the custodian, it has been demonstrated that the presence  
 5 of a ~~child fifteen~~ *juvenile fourteen* years of age or older as a result of his placement in a  
 6 facility ~~designated in subsection A~~ creates a threat to the security or safety of the other  
 7 ~~children juveniles~~ detained or the staff of the home or facility, the custodian may transfer  
 8 the ~~child juvenile~~ to another juvenile facility, or a jail or other place of detention for  
 9 adults pursuant to the limitations of ~~subdivision D~~ *clauses E (i), (ii) or and (iii)* for a  
 10 period not to exceed six hours.

11 **F. G.** If a ~~child fifteen~~ *juvenile fourteen* years of age or older is charged with an  
 12 offense which, if committed by an adult, would be a felony or Class 1 misdemeanor, and  
 13 the judge or intake officer determines that secure detention is needed for the safety of the  
 14 ~~child juvenile~~ or the community, such ~~child juvenile~~ may be detained for a period no  
 15 longer than six hours in a court holding cell incident to a court hearing, or in a temporary  
 16 lock-up room or ward for juveniles while arrangements are completed to transfer the ~~child~~  
 17 *juvenile* to a juvenile facility. Such room, ward or cell may be located in a building which  
 18 also contains a jail or other facility for the detention of adults, provided (i) such room,  
 19 ward or cell is totally separate and removed from adults or juveniles transferred to the  
 20 circuit court pursuant to ~~§ 16.1-269~~ *Article 7 (§ 16.1-269.1 et seq.) of this chapter*, (ii)  
 21 constant supervision is provided, and (iii) the facility is approved by the State Board for  
 22 the detention of ~~children juveniles~~. The State Board is authorized and directed to prescribe  
 23 minimum standards for temporary lock-up rooms, wards and court holding cells based on  
 24 the requirements set out in this subsection. The Department shall assist the localities or  
 25 combinations thereof in implementing this section and ensuring compliance herewith.

26 **G. H.** A judge may order the predispositional detention of persons eighteen years of age  
 27 or older in a juvenile facility or in an adult facility. However, a judge shall not confine  
 28 any person eighteen years of age or older in a juvenile facility unless he finds from  
 29 evidence that the presence of such a person in a juvenile facility is consistent with  
 30 assuring the safety of the ~~children juveniles~~ confined in the facility and the staff of the  
 31 facility. Such finding shall be in writing and be included in the order of detention.

32 *§ 16.1-269.1. Conditions for transfer to circuit court.*

33 *If a juvenile fourteen years of age or older is charged with an offense which would be*  
 34 *a felony if committed by an adult, the court shall, on motion of the attorney for the*  
 35 *Commonwealth and prior to a hearing on the merits, hold a transfer hearing and may*  
 36 *retain jurisdiction or transfer such juvenile for proper criminal proceedings to the*  
 37 *appropriate circuit court having criminal jurisdiction of such offenses if committed by an*  
 38 *adult. Any transfer to the appropriate circuit court shall be subject to the following*  
 39 *conditions:*

40 *1. Notice as prescribed in §§ 16.1-263 and 16.1-264 shall be given to the juvenile and*  
 41 *his parent, guardian, legal custodian or other person standing in loco parentis, or attorney;*

42 *2. The juvenile court finds that probable cause exists to believe that the juvenile*  
 43 *committed the delinquent act as alleged or a lesser included delinquent act which would*  
 44 *be a felony if committed by an adult;*

45 *3. The juvenile is competent to stand trial. The juvenile is presumed to be competent*  
 46 *and the burden is on the party alleging the juvenile is not competent to rebut the*  
 47 *presumption by a preponderance of the evidence; and*

48 *4. The court finds by a preponderance of the evidence that the juvenile is not a proper*  
 49 *person to remain within the jurisdiction of the juvenile court. In determining whether a*  
 50 *juvenile is a proper person to remain within the jurisdiction of the juvenile court, the*  
 51 *court shall consider, but not be limited to, the following factors:*

52 *a. The juvenile's age;*

53 *b. The seriousness and number of alleged offenses, including (i) whether the alleged*  
 54 *offense was committed in an aggressive, violent, premeditated, or willful manner, (ii)*

1 whether the alleged offense was against persons or property, with greater weight being  
2 given to offenses against persons, especially if death or bodily injury resulted, (iii) whether  
3 the maximum punishment for such an offense is greater than twenty years confinement if  
4 committed by an adult, (iv) whether the alleged offense involved the use of a firearm or  
5 other dangerous weapon by brandishing, displaying, threatening with or otherwise  
6 employing such weapon, and (v) the nature of the juvenile's participation in the alleged  
7 offense;

8 c. Whether the juvenile can be retained in the juvenile justice system long enough for  
9 effective treatment and rehabilitation;

10 d. The appropriateness of the services and dispositional alternatives available to both  
11 the criminal justice and juvenile justice systems for dealing with the juvenile's problems  
12 and what services and dispositional alternatives are, in fact, available;

13 e. The record and previous history of the juvenile in this or other jurisdictions,  
14 including (i) the number and nature of previous contacts with juvenile or circuit courts, (ii)  
15 the number and nature of prior periods of probation, (iii) the number and nature of prior  
16 commitments to learning centers, (iv) the number and nature of previous residential and  
17 community-based treatments, (v) whether previous adjudications and commitments were for  
18 delinquent acts that involved the infliction of serious bodily injury, and (vi) whether the  
19 alleged offense is part of a repetitive pattern of similar adjudicated offenses;

20 f. Whether the juvenile has previously absconded from the legal custody of a juvenile  
21 correctional entity in this or any other jurisdiction;

22 g. The extent, if any, of the juvenile's degree of mental retardation or mental illness;

23 h. The juvenile's school record and education;

24 i. The juvenile's mental and emotional maturity; and

25 j. The juvenile's physical condition and maturity.

26 Transfer shall not be precluded by the fact that the information specified in any of the  
27 aforementioned factors is not reasonably available to the court.

28 5. When the alleged delinquent act constitutes an offense for which the prescribed  
29 punishment is death or imprisonment for life if committed by an adult, the court may  
30 certify the juvenile without making the finding required by subdivision 4 of this section.

31 § 16.1-269.2. Admissibility of statement; investigation and report; bail.

32 A. Statements made by the juvenile at the transfer hearing provided for under §  
33 16.1-269.1 shall not be admissible against him over objection in any criminal proceedings  
34 following the transfer, except for purposes of impeachment.

35 B. Prior to the transfer hearing, a study and report to the court, in writing, relevant  
36 to the factors set out in subdivision 4 of § 16.1-269.1, shall be made by the probation  
37 services or other qualified agency designated by the court. Counsel for the juvenile shall  
38 have full access to the study and report and any other report or data concerning the  
39 juvenile which are available to the court. The court shall not consider the report until a  
40 finding has been made concerning probable cause. If the court so orders, the study and  
41 report may be expanded to include matters provided for in § 16.1-273, whereupon it may  
42 also serve as the report required by this subsection, but on the condition that it will not  
43 be submitted to the judge who will preside at any subsequent hearings except as provided  
44 for by law.

45 C. After the completion of the hearing, whether or not the juvenile court decides to  
46 retain jurisdiction over the juvenile or transfer such juvenile for criminal proceedings in  
47 the circuit court, the juvenile court shall set bail for the juvenile in accordance with  
48 Chapter 9 (§ 19.2-119 et seq.) of Title 19.2, if bail has not already been set.

49 § 16.1-269.3. Retention by juvenile court; appeal by Commonwealth.

50 If the case is not transferred, the judge who conducted the hearing shall not over the  
51 objection of an interested party preside at the adjudicatory hearing on the petition, but  
52 rather it shall be presided over by another judge of that court. If the attorney for the  
53 Commonwealth deems it to be in the public interest, and the juvenile is fourteen years of  
54 age or older and is charged with an offense which, if committed by an adult, would be



1 punishable by death or confinement in a state correctional facility for life or a maximum  
2 period of twenty years or more, he may, within ten days after the juvenile court's final  
3 decision, file a notice of appeal of the decision to the appropriate circuit court. A copy of  
4 such notice shall be furnished at the same time to the counsel for the juvenile.

5 § 16.1-269.4. *Transfer to circuit court; appeal by juvenile.*

6 If the juvenile court transfers the case, the juvenile may, within ten days after the  
7 juvenile court's final decision, file a notice of appeal of the decision to the appropriate  
8 circuit court. A copy of the notice shall be furnished at the same time to the attorney for  
9 the Commonwealth.

10 § 16.1-269.5. *Placement of juvenile.*

11 The juvenile court may order placement of the transferred juvenile in either a local  
12 correctional facility as approved by the State Board of Youth and Family Services  
13 pursuant to the limitations of § 16.1-249 E or a juvenile detention facility.

14 § 16.1-269.6. *Circuit court hearing; remand to juvenile court; presentment to grand  
15 jury; termination of juvenile court jurisdiction.*

16 A. Within seven days after (i) receipt of notice of an appeal from either the attorney  
17 for the Commonwealth or the juvenile, or (ii) upon expiration of the time in which to note  
18 an appeal, the clerk of the juvenile court shall forward to the circuit court all papers  
19 connected with the case, including the report required by this section, as well as a written  
20 court order setting forth the reasons for the juvenile court's decision. The clerk shall  
21 forward copies of the order to the attorney for the Commonwealth and other counsel of  
22 record.

23 B. The circuit court shall, within thirty days after receipt of the case from the juvenile  
24 court, (i) examine all such papers, reports and orders; (ii) conduct a hearing to take  
25 further evidence on the issue of transfer, to determine if there has been substantial  
26 compliance with § 16.1-269.1, but without redetermining whether the juvenile court had  
27 sufficient evidence to find probable cause; and (iii) enter an order either remanding the  
28 case to the juvenile court or advising the attorney for the Commonwealth that he may  
29 seek an indictment. The circuit court may extend the thirty-day period for the purpose of  
30 receiving evaluations or reports to be offered as evidence under clause (ii) hereof. Upon  
31 advising the attorney for the Commonwealth that he may seek an indictment, the circuit  
32 court shall issue an order transferring the juvenile from the juvenile detention facility to  
33 an appropriate local correctional facility where the juvenile need no longer be entirely  
34 separate and removed from adults, unless, upon motion of counsel, good cause is shown  
35 for placement of the juvenile pursuant to the limitations of clauses E (i), (ii), and (iii) of §  
36 16.1-249.

37 C. The circuit court order advising the attorney for the Commonwealth that he may  
38 seek an indictment shall divest the juvenile court of its jurisdiction over the case as well  
39 as the juvenile court's jurisdiction over any other allegations of delinquency arising from  
40 the same act, transaction or scheme giving rise to the charge for which the juvenile has  
41 been transferred. In addition, upon conviction of the juvenile following transfer and trial  
42 as an adult, the circuit court shall issue an order terminating the juvenile court's  
43 jurisdiction over that juvenile with respect to any future criminal acts alleged to have  
44 been committed by such juvenile and with respect to any pending allegations of  
45 delinquency which have not been disposed of by the juvenile court at the time of the  
46 criminal conviction. Upon receipt of the order terminating the juvenile court's jurisdiction  
47 over the juvenile, the clerk of the juvenile court shall forward any pending petitions of  
48 delinquency for proceeding in the appropriate general district court.

49 D. The judge of the circuit court who reviewed the case after receipt from the juvenile  
50 court shall not over the objection of an interested party preside over the trial of such  
51 charge or charges.

52 E. Any objection to the jurisdiction of the circuit court pursuant to this article shall be  
53 waived if not made before arraignment.

54 § 16.1-270. (For effective date - See note) Waiver of jurisdiction of juvenile court in



1 certain cases.

2 At any time prior to commencement of the adjudicatory hearing, a ~~child fifteen~~ *juvenile*  
3 *fourteen* years of age or older charged with an offense which if committed by an adult  
4 could be punishable by confinement in a state correctional facility, with the written consent  
5 of his counsel, may elect in writing to waive the jurisdiction of the juvenile court and have  
6 his case transferred to the appropriate circuit court, in which event his case shall  
7 thereafter be dealt with in the same manner as if he had been transferred pursuant to §  
8 ~~16.1-269~~ *this article*.

9 § 16.1-270. (Delayed effective date - See notes) Waiver of jurisdiction of family court in  
10 certain cases.

11 At any time prior to commencement of the adjudicatory hearing, a ~~child fifteen~~ *juvenile*  
12 *fourteen* years of age or older charged with an offense which if committed by an adult  
13 could be punishable by confinement in a state correctional facility, with the written consent  
14 of his counsel, may elect in writing to waive the jurisdiction of the family court and have  
15 his case transferred to the appropriate circuit court, in which event his case shall  
16 thereafter be dealt with in the same manner as if he had been transferred pursuant to §  
17 ~~16.1-269~~ *this article*.

18 § 16.1-271. (For effective date - See note) Subsequent offenses by juvenile.

19 The trial or treatment of a juvenile as an adult pursuant to the provisions of this  
20 chapter shall ~~not~~ preclude the juvenile court from taking jurisdiction of such juvenile for  
21 subsequent offenses committed by that juvenile.

22 ~~However, any~~ *Any* juvenile who is tried and convicted in a circuit court as an adult  
23 under the provisions of §§ ~~16.1-269 and 16.1-272~~ and sentenced to confinement in a state  
24 ~~correctional facility~~ *this article* shall be considered and treated as an adult in a *any*  
25 criminal proceeding resulting from an offense alleged to have been committed while so  
26 ~~incarcerated~~ *any alleged future criminal acts and any pending allegations of delinquency*  
27 *which have not been disposed of by the juvenile court at the time of the criminal*  
28 *conviction*.

29 All procedures and dispositions applicable to adults charged with such a criminal  
30 offense shall apply in such cases, including, but not limited to, arrest; probable cause  
31 determination by a magistrate or grand jury; the use of a warrant, summons, or capias  
32 instead of a petition to initiate the case; adult bail; preliminary hearing and right to  
33 counsel provisions; trial in a court having jurisdiction over adults; and trial and sentencing  
34 as an adult. The provisions of § ~~16.1-269~~ *this article* regarding a transfer hearing shall not  
35 be applicable to such juveniles.

36 § 16.1-271. (Delayed effective date - See notes) Subsequent offenses by juvenile.

37 The trial or treatment of a juvenile as an adult pursuant to the provisions of this  
38 chapter shall ~~not~~ preclude the family court from taking jurisdiction of such juvenile for  
39 subsequent offenses committed by that juvenile.

40 ~~However, any~~ *Any* juvenile who is tried and convicted in a circuit court as an adult  
41 under the provisions of §§ ~~16.1-269 and 16.1-272~~ and sentenced to confinement in a state  
42 ~~correctional facility~~ *this article* shall be considered and treated as an adult in a *any*  
43 criminal proceeding resulting from an offense alleged to have been committed while so  
44 ~~incarcerated~~ *any alleged future criminal acts and any pending allegations of delinquency*  
45 *which have not been disposed of by the family court at the time of the criminal*  
46 *conviction*.

47 All procedures and dispositions applicable to adults charged with such a criminal  
48 offense shall apply in such cases, including, but not limited to, arrest; probable cause  
49 determination by a magistrate or grand jury; the use of a warrant, summons, or capias  
50 instead of a petition to initiate the case; adult bail; preliminary hearing and right to  
51 counsel provisions; trial in a court having jurisdiction over adults; and trial and sentencing  
52 as an adult. The provisions of § ~~16.1-269~~ *this article* regarding a transfer hearing shall not  
53 be applicable to such juveniles.

54 § 16.1-275. (For effective date - See note) Physical and mental examinations and

1 treatment; nursing and medical care.

2 The juvenile court or the circuit court may cause any ~~child~~ *juvenile* within its  
3 jurisdiction under the provisions of this law to be physically examined and treated by a  
4 physician or to be examined and treated at a local mental health center. If no such  
5 appropriate facility is available locally, the court may order the ~~child~~ *juvenile* to be  
6 examined and treated by any physician or psychiatrist or examined by a clinical  
7 psychologist. The Commissioner of Mental Health, Mental Retardation and Substance Abuse  
8 Services shall provide for distribution a list of appropriate mental health centers available  
9 throughout the Commonwealth. Upon the written recommendation of the person examining  
10 the ~~child~~ *juvenile* that an adequate evaluation of the ~~child's~~ *juvenile's* treatment needs can  
11 only be performed in an inpatient hospital setting, the court shall have the power to send  
12 any such ~~child~~ *juvenile* to a state mental hospital for not more than ten days for the  
13 purpose of obtaining a recommendation for the treatment of the ~~child~~ *juvenile*. No ~~child~~  
14 *juvenile* sent to a state mental hospital pursuant to this provision shall be held or cared for  
15 in any maximum security unit where adults determined to be criminally insane reside; the  
16 ~~child~~ *juvenile* shall be kept separate and apart from such adults. However, the  
17 Commissioner of the Department of Mental Health, Mental Retardation and Substance  
18 Abuse Services may place a ~~child~~ *fifteen years of age or older juvenile* who has been  
19 certified to the circuit court for trial as an adult pursuant to § ~~16.1-260~~ *16.1-269.6* or §  
20 *16.1-270* or who has been convicted as an adult of a felony in the circuit court in a unit  
21 appropriate for the care and treatment of persons under a criminal charge when, in his  
22 discretion, such placement is necessary to protect the security or safety of other patients,  
23 staff or the public.

24 Whenever the parent or other person responsible for the care and support of a ~~child~~  
25 *juvenile* is determined by the court to be financially unable to pay the costs of such  
26 examination as ordered by the juvenile court or the circuit court, such costs may be paid  
27 according to standards, procedures and rates adopted by the State Board, from funds  
28 appropriated in the general appropriation act for the Department.

29 The juvenile court or the circuit court may cause any ~~child~~ *juvenile* within its  
30 jurisdiction who is alleged to be delinquent or in need of services to be placed in the  
31 temporary custody of the Department of Youth and Family Services for a period of time  
32 not to exceed thirty days for diagnostic assessment services after the adjudicatory hearing  
33 and prior to final disposition of his or her case. Prior to such a placement, the Department  
34 shall determine that the personnel, services and space are available in the appropriate  
35 correctional facility for the care, supervision and study of such ~~child~~ *juvenile* and that the  
36 ~~child's~~ *juvenile's* case is appropriate for referral for diagnostic services.

37 Whenever a ~~child~~ *juvenile* concerning whom a petition has been filed appears to be in  
38 need of nursing, medical or surgical care, the juvenile court or the circuit court may order  
39 the parent or other person responsible for the care and support of the ~~child~~ *juvenile* to  
40 provide such care in a hospital or otherwise and to pay the expenses thereof. If the parent  
41 or other person is unable or fails to provide such care, the juvenile court or the circuit  
42 court may refer the matter to the authority designated in accordance with law for the  
43 determination of eligibility for such services in the county or city in which such ~~child~~  
44 *juvenile* or his parents have residence or legal domicile.

45 In any such case, if a parent who is able to do so fails or refuses to comply with the  
46 order, the juvenile court or the circuit court may proceed against him as for contempt or  
47 may proceed against him for nonsupport.

48 § 16.1-275. (Delayed effective date - See notes) Physical and mental examinations and  
49 treatment; nursing and medical care.

50 The family court or the circuit court may cause any ~~child~~ *juvenile* within its  
51 jurisdiction under the provisions of this law to be physically examined and treated by a  
52 physician or to be examined and treated at a local mental health center. If no such  
53 appropriate facility is available locally, the court may order the ~~child~~ *juvenile* to be  
54 examined and treated by any physician or psychiatrist or examined by a clinical

1 psychologist. The Commissioner of Mental Health, Mental Retardation and Substance Abuse  
2 Services shall provide for distribution a list of appropriate mental health centers available  
3 throughout the Commonwealth. Upon the written recommendation of the person examining  
4 the ~~child~~ *juvenile* that an adequate evaluation of the ~~child's~~ *juvenile's* treatment needs can  
5 only be performed in an inpatient hospital setting, the court shall have the power to send  
6 any such ~~child~~ *juvenile* to a state mental hospital for not more than ten days for the  
7 purpose of obtaining a recommendation for the treatment of the ~~child~~ *juvenile*. No ~~child~~  
8 *juvenile* sent to a state mental hospital pursuant to this provision shall be held or cared for  
9 in any maximum security unit where adults determined to be criminally insane reside; the  
10 ~~child~~ *juvenile* shall be kept separate and apart from such adults. However, the  
11 Commissioner of the Department of Mental Health, Mental Retardation and Substance  
12 Abuse Services may place a ~~child~~ *fifteen years of age or older juvenile* who has been  
13 certified to the circuit court for trial as an adult pursuant to § ~~16.1-269~~ *16.1-269.6* or §  
14 *16.1-270* or who has been convicted as an adult of a felony in the circuit court in a unit  
15 appropriate for the care and treatment of persons under a criminal charge when, in his  
16 discretion, such placement is necessary to protect the security or safety of other patients,  
17 staff or the public.

18 Whenever the parent or other person responsible for the care and support of a ~~child~~  
19 *juvenile* is determined by the court to be financially unable to pay the costs of such  
20 examination as ordered by the family court or the circuit court, such costs may be paid  
21 according to standards, procedures and rates adopted by the State Board, from funds  
22 appropriated in the general appropriation act for the Department.

23 The family court or the circuit court may cause any ~~child~~ *juvenile* within its  
24 jurisdiction who is alleged to be delinquent or in need of services to be placed in the  
25 temporary custody of the Department of Youth and Family Services for a period of time  
26 not to exceed thirty days for diagnostic assessment services after the adjudicatory hearing  
27 and prior to final disposition of his or her case. Prior to such a placement, the Department  
28 shall determine that the personnel, services and space are available in the appropriate  
29 correctional facility for the care, supervision and study of such ~~child~~ *juvenile* and that the  
30 ~~child's~~ *juvenile's* case is appropriate for referral for diagnostic services.

31 Whenever a ~~child~~ *juvenile* concerning whom a petition has been filed appears to be in  
32 need of nursing, medical or surgical care, the family court or the circuit court may order  
33 the parent or other person responsible for the care and support of the ~~child~~ *juvenile* to  
34 provide such care in a hospital or otherwise and to pay the expenses thereof. If the parent  
35 or other person is unable or fails to provide such care, the family court or the circuit  
36 court may refer the matter to the authority designated in accordance with law for the  
37 determination of eligibility for such services in the county or city in which such ~~child~~  
38 *juvenile* or his parents have residence or legal domicile.

39 In any such case, if a parent who is able to do so fails or refuses to comply with the  
40 order, the family court or the circuit court may proceed against him as for contempt or  
41 may proceed against him for nonsupport.

42 § 16.1-278.8. (For effective date - See note) Delinquent juveniles.

43 If a ~~child~~ *juvenile* is found to be delinquent, except where such finding involves a  
44 refusal to take a blood or breath test in violation of § 18.2-268.2 or a similar ordinance,  
45 the juvenile court or the circuit court may make any of the following orders of disposition  
46 for his supervision, care and rehabilitation:

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

48 2. Permit the ~~child~~ *juvenile* to remain with his parent, subject to such conditions and  
49 limitations as the court may order with respect to the ~~child~~ *juvenile* and his parent;

50 3. Order the parent of a ~~child~~ *juvenile* living with him to participate in such programs,  
51 cooperate in such treatment or be subject to such conditions and limitations as the court  
52 may order and as are designed for the rehabilitation of the ~~child~~ *juvenile* and his parent;

53 4. Defer disposition for a period of time not to exceed twelve months, after which time  
54 the charge may be dismissed by the judge if the ~~child~~ *juvenile* exhibits good behavior

1 during the period for which disposition is deferred;

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

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

14 7. Place the ~~child~~ *juvenile* on probation under such conditions and limitations as the  
15 court may prescribe;

16 8. Impose a fine not to exceed \$500 upon such ~~child~~ *juvenile*;

17 9. Suspend the motor vehicle and driver's license of such ~~child~~ *juvenile* or impose a  
18 curfew on the ~~child~~ *juvenile* as to the hours during which he may operate a motor vehicle.  
19 Any ~~child~~ *juvenile* whose driver's license is suspended may be referred for an assessment  
20 and subsequent referral to appropriate services, upon such terms and conditions as the  
21 court may order. The court, in its discretion and upon a demonstration of hardship, may  
22 authorize the use of a restricted permit to operate a motor vehicle by any ~~child~~ *juvenile*  
23 who enters such program for any of the purposes set forth in subsection E of § 18.2-271.1  
24 or for travel to and from school. The restricted permit shall be issued in accordance with  
25 the provisions of such subsection. However, only an abstract of the court order which  
26 identifies the ~~child~~ *juvenile* and the conditions under which the restricted license is to be  
27 issued shall be sent to the Department of Motor Vehicles.

28 If a curfew is imposed, the ~~child~~ *juvenile* shall surrender his driver's license, which  
29 shall be held in the physical custody of the court during any period of curfew restriction.  
30 The court shall send an abstract of any order issued under the provisions of this section to  
31 the Department of Motor Vehicles, which shall preserve a record thereof. Notwithstanding  
32 the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter or the provisions of Title  
33 46.2, this record shall be available only to all law-enforcement officers, attorneys for the  
34 Commonwealth and courts. A copy of the court order, upon which shall be noted all  
35 curfew restrictions, shall be provided to the ~~child~~ *juvenile* and shall contain such  
36 information regarding the ~~child~~ *juvenile* as is reasonably necessary to identify him. The  
37 ~~child~~ *juvenile* may operate a motor vehicle under the court order in accordance with its  
38 terms.

39 Any ~~child~~ *juvenile* who operates a motor vehicle in violation of any restrictions imposed  
40 pursuant to this section shall be guilty of a violation of § 46.2-301.

41 The Department of Motor Vehicles shall refuse to issue a driver's license to any ~~child~~  
42 *juvenile* denied a driver's license until such time as is stipulated in the court order or until  
43 notification by the court of withdrawal of the order imposing the curfew;

44 10. Require the ~~child~~ *juvenile* to make restitution or reparation to the aggrieved party  
45 or parties for actual damages or loss caused by the offense for which the ~~child~~ *juvenile*  
46 was found to be delinquent;

47 11. Require the ~~child~~ *juvenile* to participate in a public service project under such  
48 conditions as the court prescribes;

49 12. In case of traffic violations, impose only those penalties which are authorized to be  
50 imposed on adults for such violations. However, for those violations punishable by  
51 confinement if committed by an adult, confinement shall be imposed only as authorized by  
52 this title;

53 13. Transfer legal custody to any of the following:

54 a. A relative or other individual who, after study, is found by the court to be qualified

1 to receive and care for the ~~child~~ *juvenile*;

2 b. A child welfare agency, private organization or facility which is licensed or otherwise  
3 authorized by law to receive and provide care for such ~~child~~ *juvenile*. The court shall not  
4 transfer legal custody of a delinquent ~~child~~ *juvenile* to an agency, organization or facility  
5 outside of the Commonwealth without the approval of the Director; or

6 c. The local board of public welfare or social services of the county or city in which  
7 the court has jurisdiction or, at the discretion of the court, to the local board of the county  
8 or city in which the ~~child~~ *juvenile* has residence if other than the county or city in which  
9 the court has jurisdiction. The board shall accept the ~~child~~ *juvenile* for care and custody,  
10 provided that it has been given reasonable notice of the pendency of the case and an  
11 opportunity to be heard. However, in an emergency in the county or city in which the  
12 court has jurisdiction, such local board may be required to temporarily accept a ~~child~~  
13 *juvenile* for a period not to exceed fourteen days without prior notice or an opportunity to  
14 be heard if the judge entering the placement order describes the emergency and the need  
15 for such temporary placement in the order. Nothing in this subdivision shall prohibit the  
16 commitment of a ~~child~~ *juvenile* to any local board of public welfare or social services in  
17 the Commonwealth when such local board consents to the commitment. The board to which  
18 the ~~child~~ *juvenile* is committed shall have the final authority to determine the appropriate  
19 placement for the ~~child~~ *juvenile*. Any order authorizing removal from the home and  
20 transferring legal custody of a ~~child~~ *juvenile* to a local board of public welfare or social  
21 services as provided in this subdivision shall be entered only upon a finding by the court  
22 that reasonable efforts have been made to prevent removal and that continued placement  
23 in the home would be contrary to the welfare of the ~~child~~ *juvenile*, and the order shall so  
24 state;

25 14. Commit the ~~child~~ *juvenile* to the Department of Youth and Family Services, but  
26 only if he is older than ten years of age *and the current offense is (i) an offense which*  
27 *would be a felony if committed by an adult or (ii) an offense which would be a Class 1*  
28 *misdemeanor if committed by an adult and the juvenile has previously been found to be*  
29 *delinquent based on an offense which would be either a felony or Class 1 misdemeanor if*  
30 *committed by an adult,*

31 15. Impose the penalty authorized by § 16.1-284;

32 16. Impose the penalty authorized by § 16.1-284.1;

33 17. Impose the penalty authorized by § 16.1-285.1; or

34 18. Impose the penalty authorized by § 16.1-278.9.

35 § 16.1-278.8. (Delayed effective date - See notes) Delinquent juveniles.

36 If a ~~child~~ *juvenile* is found to be delinquent, except where such finding involves a  
37 refusal to take a blood or breath test in violation of § 18.2-268.2 or a similar ordinance,  
38 the family court or the circuit court may make any of the following orders of disposition  
39 for his supervision, care and rehabilitation:

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

41 2. Permit the ~~child~~ *juvenile* to remain with his parent, subject to such conditions and  
42 limitations as the court may order with respect to the ~~child~~ *juvenile* and his parent;

43 3. Order the parent of a ~~child~~ *juvenile* living with him to participate in such programs,  
44 cooperate in such treatment or be subject to such conditions and limitations as the court  
45 may order and as are designed for the rehabilitation of the ~~child~~ *juvenile* and his parent;

46 4. Defer disposition for a period of time not to exceed twelve months, after which time  
47 the charge may be dismissed by the judge if the ~~child~~ *juvenile* exhibits good behavior  
48 during the period for which disposition is deferred;

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

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

7 7. Place the ~~child~~ *juvenile* on probation under such conditions and limitations as the  
8 court may prescribe;

9 8. Impose a fine not to exceed \$500 upon such ~~child~~ *juvenile*;

10 9. Suspend the motor vehicle and driver's license of such ~~child~~ *juvenile* or impose a  
11 curfew on the ~~child~~ *juvenile* as to the hours during which he may operate a motor vehicle.  
12 Any ~~child~~ *juvenile* whose driver's license is suspended may be referred for an assessment  
13 and subsequent referral to appropriate services, upon such terms and conditions as the  
14 court may order. The court, in its discretion and upon a demonstration of hardship, may  
15 authorize the use of a restricted permit to operate a motor vehicle by any ~~child~~ *juvenile*  
16 who enters such program for any of the purposes set forth in subsection E of § 18.2-271.1  
17 or for travel to and from school. The restricted permit shall be issued in accordance with  
18 the provisions of such subsection. However, only an abstract of the court order which  
19 identifies the ~~child~~ *juvenile* and the conditions under which the restricted license is to be  
20 issued shall be sent to the Department of Motor Vehicles.

21 If a curfew is imposed, the ~~child~~ *juvenile* shall surrender his driver's license, which  
22 shall be held in the physical custody of the court during any period of curfew restriction.  
23 The court shall send an abstract of any order issued under the provisions of this section to  
24 the Department of Motor Vehicles, which shall preserve a record thereof. Notwithstanding  
25 the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter or the provisions of Title  
26 46.2, this record shall be available only to all law-enforcement officers, attorneys for the  
27 Commonwealth and courts. A copy of the court order, upon which shall be noted all  
28 curfew restrictions, shall be provided to the ~~child~~ *juvenile* and shall contain such  
29 information regarding the ~~child~~ *juvenile* as is reasonably necessary to identify him. The  
30 ~~child~~ *juvenile* may operate a motor vehicle under the court order in accordance with its  
31 terms.

32 Any ~~child~~ *juvenile* who operates a motor vehicle in violation of any restrictions imposed  
33 pursuant to this section shall be guilty of a violation of § 46.2-301.

34 The Department of Motor Vehicles shall refuse to issue a driver's license to any ~~child~~  
35 *juvenile* denied a driver's license until such time as is stipulated in the court order or until  
36 notification by the court of withdrawal of the order imposing the curfew;

37 10. Require the ~~child~~ *juvenile* to make restitution or reparation to the aggrieved party  
38 or parties for actual damages or loss caused by the offense for which the ~~child~~ *juvenile*  
39 was found to be delinquent;

40 11. Require the ~~child~~ *juvenile* to participate in a public service project under such  
41 conditions as the court prescribes;

42 12. In case of traffic violations, impose only those penalties which are authorized to be  
43 imposed on adults for such violations. However, for those violations punishable by  
44 confinement if committed by an adult, confinement shall be imposed only as authorized by  
45 this title;

46 13. Transfer legal custody to any of the following:

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

49 b. A child welfare agency, private organization or facility which is licensed or otherwise  
50 authorized by law to receive and provide care for such ~~child~~ *juvenile*. The court shall not  
51 transfer legal custody of a delinquent ~~child~~ *juvenile* to an agency, organization or facility  
52 outside of the Commonwealth without the approval of the Director; or

53 c. The local board of public welfare or social services of the county or city in which  
54 the court has jurisdiction or, at the discretion of the court, to the local board of the county

1 or city in which the ~~child~~ *juvenile* has residence if other than the county or city in which  
2 the court has jurisdiction. The board shall accept the ~~child~~ *juvenile* for care and custody,  
3 provided that it has been given reasonable notice of the pendency of the case and an  
4 opportunity to be heard. However, in an emergency in the county or city in which the  
5 court has jurisdiction, such local board may be required to temporarily accept a ~~child~~  
6 *juvenile* for a period not to exceed fourteen days without prior notice or an opportunity to  
7 be heard if the judge entering the placement order describes the emergency and the need  
8 for such temporary placement in the order. Nothing in this subdivision shall prohibit the  
9 commitment of a ~~child~~ *juvenile* to any local board of public welfare or social services in  
10 the Commonwealth when such local board consents to the commitment. The board to which  
11 the ~~child~~ *juvenile* is committed shall have the final authority to determine the appropriate  
12 placement for the ~~child~~ *juvenile*. Any order authorizing removal from the home and  
13 transferring legal custody of a ~~child~~ *juvenile* to a local board of public welfare or social  
14 services as provided in this subdivision shall be entered only upon a finding by the court  
15 that reasonable efforts have been made to prevent removal and that continued placement  
16 in the home would be contrary to the welfare of the ~~child~~ *juvenile*, and the order shall so  
17 state;

18 14. Commit the ~~child~~ *juvenile* to the Department of Youth and Family Services, but  
19 only if he is older than ten years of age *and the current offense is (i) an offense which*  
20 *would be a felony if committed by an adult or (ii) an offense which would be a Class 1*  
21 *misdemeanor if committed by an adult and the juvenile has previously been found to be*  
22 *delinquent based on an offense which would be either a felony or Class 1 misdemeanor if*  
23 *committed by an adult,*

24 15. Impose the penalty authorized by § 16.1-284;

25 16. Impose the penalty authorized by § 16.1-284.1;

26 17. Impose the penalty authorized by § 16.1-285.1; or

27 18. Impose the penalty authorized by § 16.1-278.9.

28 § 16.1-280. (For effective date - See note) Commitment of mentally ill or mentally  
29 retarded juveniles.

30 When any juvenile court has found a ~~child~~ *juvenile* to be in need of services or  
31 delinquent pursuant to the provisions of this law and reasonably believes such ~~child~~  
32 *juvenile* is mentally ill or mentally retarded, the court may commit him to an appropriate  
33 hospital in accordance with the provisions of §§ 16.1-338 through 16.1-345 or admit him to a  
34 training center in accordance with the provisions of § 37.1-65.1 for observation as to his  
35 mental condition. No ~~child~~ *juvenile* shall be committed pursuant to this section or §§  
36 16.1-338 through 16.1-345 to a maximum security unit within any state hospital where adults  
37 determined to be criminally insane reside. However, the Commissioner of the Department  
38 of Mental Health, Mental Retardation and Substance Abuse Services may place a ~~child~~  
39 *fifteen years of age or older juvenile* who has been certified to the circuit court for trial  
40 as an adult pursuant to § ~~16.1-269~~ *16.1-269.6* or § 16.1-270 or who has been convicted as an  
41 adult of a felony in the circuit court in a unit appropriate for the care and treatment of  
42 persons under a criminal charge when, in his discretion, such placement is necessary to  
43 protect the security or safety of other patients, staff or public. The Commissioner shall  
44 notify the committing court of any placement in such unit. The committing court shall  
45 review the placement at thirty-day intervals.

46 § 16.1-280. (Delayed effective date - See notes) Commitment of mentally ill or mentally  
47 retarded juveniles.

48 When any family court has found a ~~child~~ *juvenile* to be in need of services or  
49 delinquent pursuant to the provisions of this law and reasonably believes such ~~child~~  
50 *juvenile* is mentally ill or mentally retarded, the court may commit him to an appropriate  
51 hospital in accordance with the provisions of §§ 16.1-338 through 16.1-345 or admit him to a  
52 training center in accordance with the provisions of § 37.1-65.1 for observation as to his  
53 mental condition. No ~~child~~ *juvenile* shall be committed pursuant to this section or §§  
54 16.1-338 through 16.1-345 to a maximum security unit within any state hospital where adults



1 determined to be criminally insane reside. However, the Commissioner of the Department  
 2 of Mental Health, Mental Retardation and Substance Abuse Services may place a ~~child~~  
 3 ~~fifteen years of age or older~~ *juvenile* who has been certified to the circuit court for trial  
 4 as an adult pursuant to § ~~16.1-269~~ *16.1-269.6* or § 16.1-270 or who has been convicted as an  
 5 adult of a felony in the circuit court in a unit appropriate for the care and treatment of  
 6 persons under a criminal charge when, in his discretion, such placement is necessary to  
 7 protect the security or safety of other patients, staff or public. The Commissioner shall  
 8 notify the committing court of any placement in such unit. The committing court shall  
 9 review the placement at thirty-day intervals.

10 § 16.1-285.1. Commitment of serious offenders.

11 A. In the case of a ~~child fifteen~~ *juvenile fourteen* years of age or older who has been  
 12 found guilty of an offense which would be a felony if committed by an adult, and (i) the  
 13 ~~child juvenile~~ is on parole *for an offense which would be a felony if committed by an*  
 14 *adult* or (ii) *the juvenile was committed to the state for an offense which would be a*  
 15 *felony if committed by an adult* within the immediately preceding twelve months was a  
 16 resident or inpatient of a group home or other treatment facility pursuant to an order of a  
 17 court in a previous delinquency proceeding or (ii), (iii) where the felony offense constitutes  
 18 murder, rape, armed robbery or the use of a firearm in the commission of a felony is  
 19 punishable by a term of confinement of greater than twenty years if the felony was  
 20 committed by an adult, and the court finds that commitment under this ~~subdivision~~ *section*  
 21 is necessary to meet the rehabilitative needs of the ~~child juvenile~~ and would serve the best  
 22 interests of the community, then the court may order the ~~child juvenile~~ committed to the  
 23 Department of Youth and Family Services for a placement in a learning center for the  
 24 period of time prescribed pursuant to this section.

25 B. Prior to committing any ~~child juvenile~~ pursuant to this section, the court shall  
 26 consider the nature of the present offense, the nature of the child's prior delinquency  
 27 record, the nature of the past treatment efforts and the child's response to them. :

28 1. *The juvenile's age;*

29 2. *The seriousness and number of the present offenses, including (i) whether the offense*  
 30 *was committed in an aggressive, violent, premeditated, or willful manner, (ii) whether the*  
 31 *offense was against persons or property, with greater weight being given to offenses*  
 32 *against persons, especially if death or injury resulted, (iii) whether the offense involved the*  
 33 *use of a firearm or other dangerous weapon by brandishing, displaying, threatening with*  
 34 *or otherwise employing such weapon, and (iv) the nature of the juvenile's participation in*  
 35 *the alleged offense;*

36 3. *The record and previous history of the juvenile in this or any other jurisdiction,*  
 37 *including (i) the number and nature of previous contacts with courts, (ii) the number and*  
 38 *nature of prior periods of probation, (iii) the number and nature of prior commitments to*  
 39 *learning centers, (iv) the number and nature of previous residential and community-based*  
 40 *treatments, (v) whether previous adjudications and commitments were for delinquent acts*  
 41 *that involved the infliction of serious bodily injury, and (vi) whether the offense is part of*  
 42 *a repetitive pattern of similar adjudicated offenses; and*

43 4. *The Department's recommended length of stay based on treatment goals enumerated*  
 44 *in the social history report.*

45 Such commitment order must be supported by a determination that the interests of the  
 46 ~~child juvenile~~ and community require that the ~~child juvenile~~ be placed under legal restraint  
 47 or discipline and that the ~~child~~ is ~~not amenable to juvenile~~ *is not a proper person to*  
 48 receive treatment or rehabilitation through other juvenile programs or facilities.

49 C. In ordering commitment pursuant to this section, the court ~~may~~ *shall* specify a  
 50 ~~minimum~~ period of commitment, ~~not less than six nor more than twelve months not to~~  
 51 ~~exceed seven years or the juvenile's twenty-first birthday, whichever shall occur first.~~

52 D. Upon receipt of a ~~child juvenile~~ committed under the provisions of this section, the  
 53 Department shall evaluate the ~~child juvenile~~ for the purpose of considering placement of  
 54 the ~~child juvenile~~ in a ~~an appropriate~~ learning center or other residential program



1 operated pursuant to such standards as may be established by the State Board, for an  
2 indeterminate period, not less than the time prescribed by the committing court. Such a  
3 placement decision shall be made based on the welfare of the child juvenile.

4 E. The court which commits the juvenile to the Department under this section shall  
5 have continuing jurisdiction over the juvenile throughout his commitment. The continuing  
6 jurisdiction of the court shall not prevent the Department from removing the juvenile from  
7 a learning center without prior court approval for the sole purposes of routine or  
8 emergency medical treatment, routine educational services, or family emergencies.

9 F. Any child juvenile committed under the provisions of this section shall not be  
10 released at a time earlier than that specified by the court as the minimum period of  
11 commitment, unless a petition for early release is approved by the committing court based  
12 upon good cause shown by the Department in its dispositional order except as provided for  
13 in § 16.1-285.2. The Department may petition the committing court for a hearing as  
14 provided for in § 16.1-285.2 for an earlier release of the juvenile when good cause exists  
15 for an earlier release. In addition, the Department shall petition the committing court for  
16 a determination as to the continued commitment of each juvenile sentenced under this  
17 section sixty days prior to the second anniversary of the juvenile's date of commitment  
18 and sixty days prior to each annual anniversary thereafter.

19 § 16.1-285.2. Release and review hearing for serious offender.

20 A. Upon receipt of a petition of the Department of Youth and Family Services for a  
21 hearing concerning a juvenile committed under § 16.1-285.1, the court shall schedule a  
22 hearing within thirty days and shall appoint counsel for the juvenile pursuant to §  
23 16.1-266. The court shall provide a copy of the petition, the progress report required by  
24 this section, and notice of the time and place of the hearing to (i) the juvenile, (ii) the  
25 juvenile's parent, legal guardian, or person standing in loco parentis, (iii) the juvenile's  
26 guardian ad litem, if any, (iv) the juvenile's legal counsel, and (v) the attorney for the  
27 Commonwealth who prosecuted the juvenile during the delinquency proceeding.

28 B. The petition shall be filed in the committing court and shall be accompanied by a  
29 progress report from the Department. This report shall describe (i) the facility and living  
30 arrangement provided for the juvenile by the Department, (ii) the services and treatment  
31 programs afforded the juvenile, (iii) the juvenile's progress toward treatment goals and  
32 objectives, (iv) the juvenile's potential for danger to either himself or the community, and  
33 (v) a comprehensive aftercare plan for the juvenile.

34 C. At the hearing the court shall consider the progress report. The court may also  
35 consider additional evidence from (i) probation officers, the learning center, treatment  
36 professionals, and the court service unit, (ii) the juvenile, his legal counsel, parent,  
37 guardian or family member, or (iii) other sources the court deems relevant. The hearing  
38 and all records relating thereto shall be governed by the confidentiality provisions of  
39 Article 12 (§ 16.1-299 et seq.) of this chapter.

40 D. At the conclusion of the hearing, the court shall order (i) continued commitment of  
41 the juvenile to the Department for completion of the original determinate period of  
42 commitment or such lesser time as the court may order or (ii) release of the juvenile  
43 under such terms and conditions as the court may prescribe. In making a determination  
44 under this section, the court shall consider (i) the experiences and character of the juvenile  
45 before and after commitment, (ii) the nature of the offenses that the juvenile was found to  
46 have committed, (iii) the manner in which the offenses were committed, (iv) the protection  
47 of the community, (v) the recommendations of the Department, and (vi) any other factors  
48 the court deems relevant. The order of the court shall be final and not subject to appeal.

49 § 16.1-299. (For effective date - See note) Fingerprints and photographs of juveniles.

50 A. Fingerprints of a child ~~fifteen~~ juvenile fourteen years of age or older who is charged  
51 with a delinquent act which would be a felony if committed by an adult shall be taken  
52 and filed with the juvenile court by law-enforcement officers on forms provided by the  
53 Central Criminal Records Exchange. Photographs may also be taken and filed by local  
54 law-enforcement officers. Fingerprints of a child juvenile thirteen years of age or older

1 who is charged with bodily wounding as provided in § 18.2-51 or § 18.2-52, use of a  
 2 firearm in committing a felony as provided in § 18.2-53.1, attempted poisoning as provided  
 3 in § 18.2-54.1, extortion as provided in § 18.2-59, robbery, rape as provided in § 18.2-61,  
 4 forcible sodomy as provided in § 18.2-67.1, inanimate object sexual penetration as provided  
 5 in § 18.2-67.2, grand larceny as provided in § 18.2-95, burglary as provided in §§ 18.2-89  
 6 through 18.2-91, arson and related crimes as provided in §§ 18.2-77 through 18.2-88 or  
 7 murder, or any attempt to commit the above mentioned felonies as provided in § 18.2-25 or  
 8 § 18.2-26 shall be taken and filed with the juvenile court by law-enforcement officers on  
 9 forms provided by the Central Criminal Records Exchange. Photographs may also be taken  
 10 and filed by local law-enforcement officers.

11 B. A *child juvenile* may be fingerprinted and photographed regardless of age or offense  
 12 if he has been taken into custody for and charged with a violation of law, and a  
 13 law-enforcement officer has determined that there is probable cause to believe that latent  
 14 fingerprints found during the investigation of an offense are those of such *child juvenile*.

15 C. The fingerprints and photographs authorized in subsections A and B shall be retained  
 16 or disposed of as follows:

17 1. If a petition is not filed against a *child juvenile* whose fingerprints or photographs  
 18 have been taken in connection with an alleged violation of law, the fingerprint card, all  
 19 copies of the fingerprints and all photographs shall be destroyed sixty days after  
 20 fingerprints were taken.

21 2. If the juvenile court or the circuit court, pursuant to a transfer, waiver or appeal,  
 22 finds a *child juvenile* not guilty of a charge of delinquency, the fingerprint card, all copies  
 23 of the fingerprints and all photographs shall be destroyed within sixty days of such finding.  
 24 However, all fingerprints and photographs of a *child juvenile* who is less than thirteen  
 25 years of age and who is found guilty of a delinquent act shall also be destroyed.

26 3. If the court finds that a *child juvenile* thirteen years of age or older has committed  
 27 a delinquent act, the fingerprints and photographs may be retained in a local file pursuant  
 28 to § 16.1-301 and the fingerprints may be entered into any police department's computer  
 29 system by identification number or by any other method which insures the confidentiality  
 30 of the juvenile's name.

31 4. If a *child fifteen juvenile fourteen* years of age or older is (i) certified to the circuit  
 32 court pursuant to § ~~16.1-269~~ Article 7 (§ 16.1-269.1 et seq.) of this chapter and is  
 33 adjudicated delinquent or found guilty as an adult of the offense charged or (ii)  
 34 adjudicated delinquent or found guilty in juvenile court of any offense which would be a  
 35 felony if committed by an adult, or if a *child juvenile* thirteen years of age or older is  
 36 found guilty of any of the offenses specified in subsection A of this section or an attempt  
 37 to commit any such offense in a juvenile court and is adjudicated delinquent, copies of his  
 38 fingerprints and a report of the disposition shall be forwarded to the Central Criminal  
 39 Records Exchange by the clerk of the court which heard the case.

40 § 16.1-299. (Delayed effective date - See notes) Fingerprints and photographs of  
 41 juveniles.

42 A. Fingerprints of a *child fifteen juvenile fourteen* years of age or older who is charged  
 43 with a delinquent act which would be a felony if committed by an adult shall be taken  
 44 and filed with the juvenile court by law-enforcement officers on forms provided by the  
 45 Central Criminal Records Exchange. Photographs may also be taken and filed by local  
 46 law-enforcement officers. Fingerprints of a *child juvenile* thirteen years of age or older  
 47 who is charged with bodily wounding as provided in § 18.2-51 or § 18.2-52, use of a  
 48 firearm in committing a felony as provided in § 18.2-53.1, attempted poisoning as provided  
 49 in § 18.2-54.1, extortion as provided in § 18.2-59, robbery, rape as provided in § 18.2-61,  
 50 forcible sodomy as provided in § 18.2-67.1, inanimate object sexual penetration as provided  
 51 in § 18.2-67.2, grand larceny as provided in § 18.2-95, burglary as provided in §§ 18.2-89  
 52 through 18.2-91, arson and related crimes as provided in §§ 18.2-77 through 18.2-88 or  
 53 murder, or any attempt to commit the above mentioned felonies as provided in § 18.2-25 or  
 54 § 18.2-26 shall be taken and filed with the juvenile court by law-enforcement officers on

1 forms provided by the Central Criminal Records Exchange. Photographs may also be taken  
2 and filed by local law-enforcement officers.

3 B. A ~~child~~ *juvenile* may be fingerprinted and photographed regardless of age or offense  
4 if he has been taken into custody for and charged with a violation of law, and a  
5 law-enforcement officer has determined that there is probable cause to believe that latent  
6 fingerprints found during the investigation of an offense are those of such ~~child~~ *juvenile*.

7 C. The fingerprints and photographs authorized in subsections A and B shall be retained  
8 or disposed of as follows:

9 1. If a petition is not filed against a ~~child~~ *juvenile* whose fingerprints or photographs  
10 have been taken in connection with an alleged violation of law, the fingerprint card, all  
11 copies of the fingerprints and all photographs shall be destroyed sixty days after  
12 fingerprints were taken.

13 2. If the family court or the circuit court, pursuant to a transfer, waiver or appeal,  
14 finds a ~~child~~ *juvenile* not guilty of a charge of delinquency, the fingerprint card, all copies  
15 of the fingerprints and all photographs shall be destroyed within sixty days of such finding.  
16 However, all fingerprints and photographs of a ~~child~~ *juvenile* who is less than thirteen  
17 years of age and who is found guilty of a delinquent act shall also be destroyed.

18 3. If the court finds that a ~~child~~ *juvenile* thirteen years of age or older has committed  
19 a delinquent act, the fingerprints and photographs may be retained in a local file pursuant  
20 to § 16.1-301 and the fingerprints may be entered into any police department's computer  
21 system by identification number or by any other method which insures the confidentiality  
22 of the juvenile's name.

23 4. If a ~~child~~ *fifteen juvenile fourteen* years of age or older is (i) certified to the circuit  
24 court pursuant to § ~~16.1-269~~ *Article 7 (§ 16.1-269.1 et seq.) of this chapter* and is  
25 adjudicated delinquent or found guilty as an adult of the offense charged or (ii)  
26 adjudicated delinquent or found guilty in family court of any offense which would be a  
27 felony if committed by an adult, or if a ~~child~~ *juvenile* thirteen years of age or older is  
28 found guilty of any of the offenses specified in subsection A of this section or an attempt  
29 to commit any such offense in a juvenile court and is adjudicated delinquent, copies of his  
30 fingerprints and a report of the disposition shall be forwarded to the Central Criminal  
31 Records Exchange by the clerk of the court which heard the case.

32 § 16.1-301. Confidentiality of law-enforcement records.

33 A. The court shall require all law-enforcement agencies to take special precautions to  
34 ensure that law-enforcement records concerning a ~~child~~ *juvenile* are protected against  
35 disclosure to any unauthorized person. The police departments of the cities of the  
36 Commonwealth, and the police departments or sheriffs of the counties, as the case may be,  
37 shall keep separate records as to violations of law other than violations of motor vehicle  
38 laws committed by juveniles. Unless a charge of delinquency is transferred for criminal  
39 prosecution pursuant to § ~~16.1-269~~ *in the circuit court* or the court otherwise orders  
40 disclosure in the interests of the ~~child~~ *juvenile* or of national security, such records with  
41 respect to such ~~child~~ *juvenile* shall not be open to public inspection nor their contents  
42 disclosed to the public.

43 B. Inspection of such records shall be permitted only by the following:

44 1. A court having the ~~child~~ *juvenile* currently before it in any proceeding;

45 2. The officers of public and nongovernmental institutions or agencies to which the  
46 ~~child~~ *juvenile* is currently committed, and those responsible for his supervision after  
47 release;

48 3. Any other person, agency, or institution, by order of the court, having a legitimate  
49 interest in the case or in the work of the law-enforcement agency;

50 4. Law-enforcement officers of other jurisdictions, by order of the court, when necessary  
51 for the discharge of their current official duties;

52 5. The probation and other professional staff of a court in which the ~~child~~ *juvenile* is  
53 subsequently convicted of a criminal offense for the purpose of a presentence report or  
54 other dispositional proceedings, or by officials of penal institutions and other penal facilities

1 to which he is committed, or by a parole board in considering his parole or discharge or  
2 in exercising supervision over him;

3 6. The ~~child~~ *juvenile*, parent, guardian or other custodian and counsel for the ~~child~~  
4 *juvenile* by order of the court; and

5 7. As provided in §§ 19.2-389.1 and 19.2-390.

6 C. The police department of the cities and towns and the police departments or sheriffs  
7 of the counties may release, upon request to one another and to state and federal  
8 law-enforcement agencies, current information on juvenile arrests. The information  
9 exchanged shall be limited to name, address, physical description, date of arrest, and the  
10 charge for which the arrest was made. The information shall be used by the receiving  
11 agency for current investigation purposes only and shall not result in the creation of new  
12 files or records on individual juveniles on the part of the receiving agency.

13 § 16.1-306. (For effective date - See note) Expungement of court records.

14 A. Notwithstanding the provisions of § 16.1-69.55, the clerk of the juvenile and domestic  
15 relations district court shall, on January 2 of each year or on a date designated by the  
16 court, destroy its files, papers and records connected with any proceeding concerning a  
17 ~~child~~ *juvenile* in such court, if such ~~child~~ *juvenile* has attained the age of nineteen years  
18 and five years have elapsed since the date of the last hearing in any case of the juvenile  
19 which is subject to this section. However, if the ~~child~~ *juvenile* was found guilty of a  
20 delinquent act which would be a felony if committed by an adult, or an offense for which  
21 the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor  
22 Vehicles, the records shall be destroyed when the ~~child~~ *juvenile* has attained the age of  
23 twenty-nine.

24 B. In all files in which the court records concerning a juvenile contain a finding of  
25 guilty of a delinquent act which would be a felony if committed by an adult or an offense  
26 for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of  
27 Motor Vehicles together with findings of not innocent of other acts, all of the records of  
28 such juvenile subject to this section shall be retained and available for inspection as  
29 provided in § 16.1-305.

30 C. Except in cases where a juvenile ~~fifteen~~ *fourteen* years of age or older at the time  
31 of the offense was found guilty of a delinquent act which would be a felony if committed  
32 by an adult, a person who has been the subject of a delinquency or traffic proceeding and  
33 whose records fall within the provisions of subsection B hereof may, after ten years since  
34 the date of the last hearing in any case of the juvenile which is subject to this section, file  
35 a motion requesting the destruction of all records pertaining to his case. Notice of such  
36 motion shall be given to the attorney for the Commonwealth. After a hearing on the  
37 matter, if the court grants the motion, copies of the order shall be sent to offices or  
38 agencies that are repositories of such records, and all such offices and agencies shall  
39 comply with the order.

40 D. A person who has been the subject of a delinquency or traffic proceeding and (i)  
41 has been found innocent thereof or (ii) such proceeding was otherwise dismissed, may file  
42 a motion requesting the destruction of all records pertaining to the charge of such an act  
43 of delinquency. Notice of such motion shall be given to the attorney for the  
44 Commonwealth. Unless good cause is shown why such records should not be destroyed, the  
45 court shall grant the motion, and shall send copies of the order to all officers or agencies  
46 that are repositories of such records, and all such officers and agencies shall comply with  
47 the order.

48 E. Each person shall be notified of his rights under subsections A, C and D of this  
49 section at the time of his dispositional hearing.

50 F. Upon destruction of the records of a proceeding as provided in subsections A, B, C  
51 and D, the violation of law shall be treated as if it never occurred. All index references  
52 shall be deleted and the court and law-enforcement officers and agencies shall reply and  
53 the person may reply to any inquiry that no record exists with respect to such person.

54 G. All docket sheets shall be destroyed in the sixth year after the last hearing date

1 recorded on the docket sheet.

2 § 16.1-306. (Delayed effective date - See notes) Expungement of court records.

3 A. Notwithstanding the provisions of § 16.1-69.55 and except for adoption records  
4 governed by § 63.1-235, the clerk of the family court shall, on January 2 of each year or  
5 on a date designated by the court, destroy its files, papers and records connected with any  
6 proceeding concerning a ~~child~~ *juvenile* in such court, if such ~~child~~ *juvenile* has attained the  
7 age of nineteen years and five years have elapsed since the date of the last hearing in any  
8 case of the juvenile which is subject to this section. However, if the ~~child~~ *juvenile* was  
9 found guilty of a delinquent act which would be a felony if committed by an adult, or an  
10 offense for which the clerk is required by § 46.2-383 to furnish an abstract to the  
11 Department of Motor Vehicles, the records shall be destroyed when the ~~child~~ *juvenile* has  
12 attained the age of twenty-nine.

13 B. In all files in which the court records concerning a juvenile contain a finding of  
14 guilty of a delinquent act which would be a felony if committed by an adult or an offense  
15 for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of  
16 Motor Vehicles together with findings of not innocent of other acts, all of the records of  
17 such juvenile subject to this section shall be retained and available for inspection as  
18 provided in § 16.1-305.

19 C. Except in cases where a juvenile ~~fifteen~~ *fourteen* years of age or older at the time  
20 of the offense was found guilty of a delinquent act which would be a felony if committed  
21 by an adult, a person who has been the subject of a delinquency or traffic proceeding and  
22 whose records fall within the provisions of subsection B hereof may, after ten years since  
23 the date of the last hearing in any case of the juvenile which is subject to this section, file  
24 a motion requesting the destruction of all records pertaining to his case. Notice of such  
25 motion shall be given to the attorney for the Commonwealth. After a hearing on the  
26 matter, if the court grants the motion, copies of the order shall be sent to offices or  
27 agencies that are repositories of such records, and all such offices and agencies shall  
28 comply with the order.

29 D. A person who has been the subject of a delinquency or traffic proceeding and (i)  
30 has been found innocent thereof or (ii) such proceeding was otherwise dismissed, may file  
31 a motion requesting the destruction of all records pertaining to the charge of such an act  
32 of delinquency. Notice of such motion shall be given to the attorney for the  
33 Commonwealth. Unless good cause is shown why such records should not be destroyed, the  
34 court shall grant the motion, and shall send copies of the order to all officers or agencies  
35 that are repositories of such records, and all such officers and agencies shall comply with  
36 the order.

37 E. Each person shall be notified of his rights under subsections A, C and D of this  
38 section at the time of his dispositional hearing.

39 F. Upon destruction of the records of a proceeding as provided in subsections A, B, C  
40 and D, the violation of law shall be treated as if it never occurred. All index references  
41 shall be deleted and the court and law-enforcement officers and agencies shall reply and  
42 the person may reply to any inquiry that no record exists with respect to such person.

43 G. All docket sheets shall be destroyed in the sixth year after the last hearing date  
44 recorded on the docket sheet.

45 § 18.2-308.2. Possession or transportation of firearms or concealed weapons by convicted  
46 felons; penalties; petition for permit; when issued.

47 A. It shall be unlawful for (i) any person who has been convicted of a felony or (ii)  
48 any person under the age of twenty-nine who was found guilty as a juvenile ~~fifteen~~  
49 *fourteen* years of age or older at the time of the offense of a delinquent act which would  
50 be a felony if committed by an adult, whether such conviction or adjudication occurred  
51 under the laws of this Commonwealth, or any other state, the District of Columbia, the  
52 United States or any territory thereof, to knowingly and intentionally possess or transport  
53 any firearm or to knowingly and intentionally carry about his person, hid from common  
54 observation, any weapon described in § 18.2-308 A. A violation of this section shall be

1 punishable as a Class 6 felony. Any firearm or any concealed weapon possessed,  
2 transported or carried in violation of this section shall be forfeited to the Commonwealth  
3 and disposed of as provided in § 18.2-310.

4 B. The prohibitions of subsection A shall not apply to (i) any person who possesses a  
5 firearm or other weapon while carrying out his duties as a member of the armed forces of  
6 the United States or of the National Guard of Virginia or of any other state, (ii) any  
7 law-enforcement officer in the performance of his duties, or (iii) any person who has been  
8 pardoned or whose political disabilities have been removed pursuant to Article V, Section  
9 12 of the Constitution of Virginia provided the Governor, in the document granting the  
10 pardon or removing the person's political disabilities, may expressly place conditions upon  
11 the reinstatement of the person's right to ship, transport, possess or receive firearms.

12 C. Any person prohibited from possessing, transporting or carrying a firearm under  
13 subsection A, may petition the circuit court of the jurisdiction in which he resides for a  
14 permit to possess or carry a firearm. The court may, in its discretion and for good cause  
15 shown, grant such petition and issue a permit. The provisions of this section shall not apply  
16 to any person who has been granted a permit pursuant to this subsection.

17 § 19.2-240. (For effective date - See note) Clerks shall make out criminal docket.

18 Before every term of any court in which criminal cases are to be tried the clerk of the  
19 court shall make out a separate docket of criminal cases then pending, in the following  
20 order, numbering the same:

- 21 1. Felony cases;
- 22 2. Misdemeanor cases.

23 He shall docket all felony cases in the order in which the indictments are found and  
24 all misdemeanor cases in the order in which the presentments or indictments are found or  
25 informations are filed or appeals are allowed by magistrates and as soon as any  
26 presentments or indictments are made at a term of court he shall forthwith docket the  
27 same in the order required above.

28 Traffic infractions shall be docketed with misdemeanor cases.

29 Cases appealed from the juvenile and domestic relations district court shall not be  
30 placed on the criminal docket except for cases involving criminal offenses committed by  
31 adults as provided in § 16.1-302. Cases transferred to a circuit court from a juvenile and  
32 domestic relations district court pursuant to ~~§ 16.1-269~~ *Article 7 (§ 16.1-269.1 et seq.) of*  
33 *Chapter 11 of Title 16.1* shall be docketed as provided in this section upon return of a true  
34 bill of indictment by the grand jury.

35 § 19.2-240. (Delayed effective date - See notes) Clerks shall make out criminal docket.

36 Before every term of any court in which criminal cases are to be tried the clerk of the  
37 court shall make out a separate docket of criminal cases then pending, in the following  
38 order, numbering the same:

- 39 1. Felony cases;
- 40 2. Misdemeanor cases.

41 He shall docket all felony cases in the order in which the indictments are found and  
42 all misdemeanor cases in the order in which the presentments or indictments are found or  
43 informations are filed or appeals are allowed by magistrates and as soon as any  
44 presentments or indictments are made at a term of court he shall forthwith docket the  
45 same in the order required above.

46 Traffic infractions shall be docketed with misdemeanor cases. Cases appealed from the  
47 family court shall not be placed on the criminal docket except for cases involving criminal  
48 offenses committed by adults as provided in § 16.1-302. Cases transferred to a circuit court  
49 from a family court pursuant to ~~§ 16.1-269~~ *Article 7 (§ 16.1-269.1 et seq.) of Chapter 11 of*  
50 *Title 16.1* shall be docketed as provided in this section upon return of a true bill of  
51 indictment by the grand jury.

52 § 19.2-311. Indeterminate commitment to Department of Corrections in certain cases;  
53 duration and character of commitment; concurrence by Department.

54 A. The judge, after a finding of guilt, when fixing punishment in those cases specifically

1 enumerated in subsection B of this section, may, in his discretion, in lieu of imposing any  
2 other penalty provided by law and, with consent of the person convicted, commit such  
3 person for a period of four years, which commitment shall be indeterminate in character.  
4 Subject to the provisions of subsection C hereof, such persons shall be committed to the  
5 Department of Corrections for initial confinement for a period not to exceed three years.  
6 Such confinement shall be followed by at least one year of supervisory parole, conditioned  
7 on good behavior, but such parole period shall not, in any case, continue beyond the  
8 four-year period. The sentence of indeterminate commitment and eligibility for continuous  
9 evaluation and parole under § 19.2-313 shall remain in effect but eligibility for use of  
10 programs and facilities specified in § 53.1-64 shall lapse if such person (i) voluntarily  
11 withdraws from the youthful offender program, (ii) exhibits intractable behavior as defined  
12 in § 53.1-66, or (iii) is convicted of a second criminal offense which is a felony. A sentence  
13 imposed for any second criminal offense shall run consecutively with the indeterminate  
14 sentence.

15 B. The provisions of subsection A of this section shall be applicable to first convictions  
16 in which the person convicted:

17 1. Committed the offense of which convicted after becoming eighteen but before  
18 becoming twenty-one years of age, or was a juvenile certified for trial as an adult under  
19 the provisions of § ~~16.1-269~~ 16.1-269.6 or § 16.1-272;

20 2. Was convicted of an offense which is either (i) a felony not punishable as a Class 1  
21 felony, or (ii) a misdemeanor involving injury to a person or damage to or destruction of  
22 property; and

23 3. Is considered by the judge to be capable of returning to society as a productive  
24 citizen following a reasonable amount of rehabilitation.

25 C. Subsequent to a finding of guilt and prior to fixing punishment, the Department of  
26 Corrections and the Parole Board shall, concurrently with the evaluation required by §  
27 19.2-316, review all aspects of the case to determine whether (i) such indeterminate  
28 sentence of commitment is in the best interest of the Commonwealth and of the person  
29 convicted and (ii) facilities are available for the confinement of such person. After the  
30 review such person shall be again brought before the court, which shall review the findings  
31 of the Department and the Parole Board. The court may impose a sentence as authorized  
32 in subsection A, or any other penalty provided by law.

33 § 53.1-20. Commitment of convicted persons to custody of Director.

34 A. Beginning July 1, 1996, every person convicted of a felony and sentenced to the  
35 Department for a total period of more than two years shall be committed by the court to  
36 the custody of the Director of the Department. The Director shall receive all such persons  
37 into the state corrections system within sixty days of his receipt of the complete final  
38 order from the clerk of the committing court.

39 B. Until July 1, 1996, persons convicted of felonies and sentenced to the Department  
40 shall be committed to the custody of the Department and received by the Director into the  
41 state corrections system within sixty days of his receipt of the complete final order from  
42 the clerk of the committing court as follows:

43 1. From July 1, 1991, through June 30, 1992, all persons sentenced for a total period of  
44 more than six years.

45 2. From July 1, 1992, through June 30, 1993, all persons sentenced for a total period of  
46 more than five years.

47 3. From July 1, 1993, through June 30, 1994, all persons sentenced for a total period of  
48 more than four years.

49 4. From July 1, 1994, through June 30, 1996, all persons sentenced for a total period of  
50 more than three years.

51 5. From July 1, 1996, and thereafter, all persons sentenced for a total period of more  
52 than two years.

53 C. If the Governor finds that the number of prisoners in state facilities poses a threat  
54 to public safety, it shall be within the discretion of the Director to determine the priority



1 for receiving prisoners into the state corrections system from local correctional facilities.

2 D. All felons sentenced to a period of incarceration and not placed in a state  
3 correctional facility pursuant to this section shall serve their sentences in local correctional  
4 facilities *which shall not include a secure facility or detention home as defined in §*  
5 *16.1-228.*

6 E. Felons committed to the custody of the Department for a new felony offense shall  
7 be received by the Director into the state corrections system in accordance with the  
8 provisions of this section without any delay for resolution of (i) issues of alleged parole  
9 violations set for hearing before the Parole Board or (ii) any other pending parole-related  
10 administrative matter.

11 *§ 66-25.2. Notice to be given prior to release of serious offenders.*

12 *Prior to the release of any juvenile committed pursuant to § 16.1-285.1, the*  
13 *Department shall have notice of the release delivered by first class mail to the court*  
14 *which committed the juvenile, to the last known address of any victim of the offense for*  
15 *which the juvenile was committed if such victim has submitted a written request for*  
16 *notification to the Department, and to the sheriff, chief of police, and attorney for the*  
17 *Commonwealth of the jurisdiction (i) in which the offense occurred, (ii) in which the*  
18 *juvenile resided prior to commitment, and (iii) if different from (i) and (ii), in which the*  
19 *juvenile intends to reside subsequent to being released.*

20 2. That the Code of Virginia is amended by adding in Article 7 of Chapter 11 of Title 16.1  
21 sections numbered 16.1-269.1 through 16.1-269.6 as follows:

22 *§ 16.1-269.1. Conditions for transfer to circuit court.*

23 *If a juvenile fourteen years of age or older is charged with an offense which would be*  
24 *a felony if committed by an adult, the court shall, on motion of the attorney for the*  
25 *Commonwealth and prior to a hearing on the merits, hold a transfer hearing and may*  
26 *retain jurisdiction or transfer such juvenile for proper criminal proceedings to the*  
27 *appropriate circuit court having criminal jurisdiction of such offenses if committed by an*  
28 *adult. Any transfer to the appropriate circuit court shall be subject to the following*  
29 *conditions:*

30 1. *Notice as prescribed in §§ 16.1-263 and 16.1-264 shall be given to the juvenile and*  
31 *his parent, guardian, legal custodian or other person standing in loco parentis, or attorney;*

32 2. *The family court finds that probable cause exists to believe that the juvenile*  
33 *committed the delinquent act as alleged or a lesser included delinquent act which would*  
34 *be a felony if committed by an adult;*

35 3. *The juvenile is competent to stand trial. The juvenile is presumed to be competent*  
36 *and the burden is on the party alleging the juvenile is not competent to rebut the*  
37 *presumption by a preponderance of the evidence; and*

38 4. *The court finds by a preponderance of the evidence that the juvenile is not a proper*  
39 *person to remain within the jurisdiction of the family court. In determining whether a*  
40 *juvenile is a proper person to remain within the jurisdiction of the family court, the court*  
41 *shall consider, but not be limited to, the following factors:*

42 a. *The juvenile's age;*

43 b. *The seriousness and number of alleged offenses, including (i) whether the alleged*  
44 *offense was committed in an aggressive, violent, premeditated, or willful manner, (ii)*  
45 *whether the alleged offense was against persons or property, with greater weight being*  
46 *given to offenses against persons, especially if death or bodily injury resulted, (iii) whether*  
47 *the maximum punishment for such an offense is greater than twenty years confinement if*  
48 *committed by an adult, (iv) whether the alleged offense involved the use of a firearm or*  
49 *other dangerous weapon by brandishing, displaying, threatening with or otherwise*  
50 *employing such weapon, and (v) the nature of the juvenile's participation in the alleged*  
51 *offense;*

52 c. *Whether the juvenile can be retained in the juvenile justice system long enough for*  
53 *effective treatment and rehabilitation;*

54 d. *The appropriateness of the services and dispositional alternatives available to both*



1 *the criminal justice and juvenile justice systems for dealing with the juvenile's problems*  
2 *and what services and dispositional alternatives are, in fact, available;*

3 *e. The record and previous history of the juvenile in this or other jurisdiction,*  
4 *including (i) the number and nature of previous contacts with family or circuit courts, (ii)*  
5 *the number and nature of prior periods of probation, (iii) the number and nature of prior*  
6 *commitments to learning centers, (iv) the number and nature of previous residential and*  
7 *community-based treatments, (v) whether previous adjudications and commitments were for*  
8 *delinquent acts that involved the infliction of serious bodily injury, and (vi) whether the*  
9 *alleged offense is part of a repetitive pattern of similar adjudicated offenses;*

10 *f. Whether the juvenile has previously absconded from the legal custody of a juvenile*  
11 *correctional entity in this or any other jurisdiction;*

12 *g. The extent, if any, of the juvenile's degree of mental retardation or mental illness;*

13 *h. The juvenile's school record and education;*

14 *i. The juvenile's mental and emotional maturity; and*

15 *j. The juvenile's physical condition and maturity.*

16 *Transfer shall not be precluded by the fact that the information specified in any of the*  
17 *forementioned factors is not reasonably available to the court.*

18 *5. When the alleged delinquent act constitutes an offense for which the prescribed*  
19 *punishment is death or imprisonment for life if committed by an adult, the court may*  
20 *certify the juvenile without making the finding required by subsection 4 of this section.*

21 *§ 16.1-269.2. Admissibility of statement; investigation and report; bail.*

22 *A. Statements made by the juvenile at the transfer hearing provided for under §*  
23 *16.1-269.1 shall not be admissible against him over objection in any criminal proceedings*  
24 *following the transfer, except for purposes of impeachment.*

25 *B. Prior to the transfer hearing, a study and report to the court, in writing, relevant*  
26 *to the factors set out in subdivision 4 of § 16.1-269.1, shall be made by the probation*  
27 *services or other qualified agency designated by the court. Counsel for the juvenile shall*  
28 *have full access to the study and report and any other report or data concerning the*  
29 *juvenile which are available to the court. The court shall not consider the report until a*  
30 *finding has been made concerning probable cause. If the court so orders, the study and*  
31 *report may be expanded to include matters provided for in § 16.1-273, whereupon it may*  
32 *also serve as the report required by this subsection, but on the condition that it will not*  
33 *be submitted to the judge who will preside at any subsequent hearings except as provided*  
34 *for by law.*

35 *C. After the completion of the hearing, whether or not the family court decides to*  
36 *retain jurisdiction over the juvenile or transfer such juvenile for criminal proceedings in*  
37 *the circuit court, the family court shall set bail for the juvenile in accordance with*  
38 *Chapter 9 (§ 19.2-119 et seq.) of Title 19.2, if bail has not already been set.*

39 *§ 16.1-269.3. Retention by family court; appeal by Commonwealth.*

40 *If the case is not transferred, the judge who conducted the hearing shall not over the*  
41 *objection of an interested party preside at the adjudicatory hearing on the petition, but*  
42 *rather it shall be presided over by another judge of that court. If the attorney for the*  
43 *Commonwealth deems it to be in the public interest, and the juvenile is fourteen years of*  
44 *age or older and is charged with an offense which, if committed by an adult, would be*  
45 *punishable by death or confinement in a state correctional facility for life or a maximum*  
46 *period of twenty years or more, he may, within ten days after the family court's final*  
47 *decision, file a notice of appeal of the decision to the appropriate circuit court. A copy of*  
48 *such notice shall be furnished at the same time to the counsel for the juvenile.*

49 *§ 16.1-269.4. Transfer to circuit court; appeal by juvenile.*

50 *If the family court transfers the case, the juvenile may, within ten days after the*  
51 *family court's final decision, file a notice of appeal of the decision to the appropriate*  
52 *circuit court. A copy of the notice shall be furnished at the same time to the attorney for*  
53 *the Commonwealth.*

54 *§ 16.1-269.5. Placement of juvenile.*

1     *The family court may order placement of the transferred juvenile in either a local*  
2 *correctional facility as approved by the State Board of Youth and Family Services*  
3 *pursuant to the limitations of § 16.1-249 E or a juvenile detention facility.*

4     § 16.1-269.6. *Circuit court hearing; remand to family court; presentment to grand jury;*  
5 *termination of family court jurisdiction.*

6     A. *Within seven days after (i) receipt of notice of an appeal from either the attorney*  
7 *for the Commonwealth or the juvenile, or (ii) upon expiration of the time in which to note*  
8 *appeal, the clerk of the family court shall forward to the circuit court all papers*  
9 *connected with the case, including the report required by this section, as well as a written*  
10 *court order setting forth the reasons for the family court's decision. The clerk shall*  
11 *forward copies of the order to the attorney for the Commonwealth and other counsel of*  
12 *record.*

13     B. *The circuit court shall, within thirty days after receipt of the case from the family*  
14 *court, (i) examine all such papers, reports and orders; (ii) conduct a hearing to take*  
15 *further evidence on the issue of transfer, to determine if there has been substantial*  
16 *compliance with § 16.1-269.1, but without redetermining whether the family court had*  
17 *sufficient evidence to find probable cause; and (iii) enter an order either remanding the*  
18 *case to the family court or advising the attorney for the Commonwealth that he may seek*  
19 *an indictment. The circuit court may extend the thirty-day period for the purpose of*  
20 *receiving evaluations or reports to be offered as evidence under clause (ii) hereof. Upon*  
21 *advising the attorney for the Commonwealth that he may seek an indictment, the circuit*  
22 *court shall issue an order transferring the juvenile from the juvenile detention facility to*  
23 *an appropriate local correctional facility where the juvenile need no longer be entirely*  
24 *separate and removed from adults, unless, upon motion of counsel, good cause is shown*  
25 *for placement of the juvenile pursuant to the limitations of clauses E (i), (ii), and (iii) of §*  
26 *16.1-249.*

27     C. *The circuit court order advising the attorney for the Commonwealth that he may*  
28 *seek an indictment shall divest the family court of its jurisdiction over the case as well as*  
29 *the family court's jurisdiction over any other allegations of delinquency arising from the*  
30 *same act, transaction or scheme giving rise to the charge for which the juvenile has been*  
31 *transferred. In addition, upon conviction of the juvenile following transfer and trial as an*  
32 *adult, the circuit court shall issue an order terminating the family court's jurisdiction over*  
33 *that juvenile with respect to any future criminal acts alleged to have been committed by*  
34 *such juvenile and with respect to any pending allegations of delinquency which have not*  
35 *been disposed of by the family court at the time of the criminal conviction. Upon receipt*  
36 *of the order terminating the family court's jurisdiction over the juvenile, the clerk of the*  
37 *family court shall forward any pending petitions of delinquency for proceeding in the*  
38 *appropriate general district court.*

39     D. *The judge of the circuit court who reviewed the case after receipt from the family*  
40 *court shall not over the objection of an interested party preside over the trial of such*  
41 *charge or charges.*

42     E. *Any objection to the jurisdiction of the circuit court pursuant to this article shall be*  
43 *waived if not made before arraignment.*

44     3. That § 16.1-269, as it is currently effective and as it may become effective, of the Code  
45 of Virginia is repealed.

46     4. That the provisions of the second enactment clause of this act shall become effective on  
47 the same date as and subject to the provisions of the third enactment of Chapter 929 of  
48 the 1993 Acts of Assembly.

49     5. That the provisions of this act may result in a net increase in periods of imprisonment  
50 in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the  
51 necessary appropriation is \$ 1,417,660.

52

53

54

**Appendix D:  
Dissenting Opinion**

**Dissent of Robert E. Shepherd, Jr., from the Commission on Youth's endorsement of the Report of the Task Force on Serious Juvenile Offenders pursuant to Senate Joint Resolution 431**

I dissent in part from the action of the Commission on Youth in endorsing the recommendations of the Task Force on Serious Juvenile Offenders as embodied in a new "Serious Juvenile Offender Act," through various amendments to the Code. I had the honor and privilege of serving on the Task Force under the sensitive, hard-working and even-handed leadership of Delegate Jerrauld C. Jones, the Vice-Chair of the Commission, with the helpful and dedicated staff work of Executive Director Nancy Ross and Kim Echelberger, and Mary Giesen from Legislative Services. The Task Force worked very hard to make recommendations based on the best possible information about serious juvenile crime and offenders, after careful deliberation, and I believe that the group was largely successful. I strongly endorse the overwhelming core of the Task Force's recommendations, even though I am not universally in agreement with them, because they are the product of long-term careful debate and deliberation by a broadly representative body.

However, there are three specific recommendations which I cannot endorse, and from which I must dissent. First, I do not believe that the evidence was sufficiently persuasive to justify lowering the age for possible transfer of a youth to a circuit court for trial as an adult to fourteen years old. The age for possible transfer has been fifteen in Virginia for a number of years, and this age is consistent with the recommendations of all the national standards produced by several disparate groups after due deliberation and study. For example, the American Bar Association's *Juvenile Justice Standards Relating to Transfer Between Courts* recommend a minimum age of fifteen for eligibility for adult trial and treatment. Some fourteen-year-olds are still children, and not adolescents, and most youths of that age do not belong in an adult correctional

institution where there is limited access to rehabilitative treatment and greater vulnerability to physical and sexual assaults. I would much prefer that we develop more effective programs within the juvenile justice system for addressing serious juvenile offending rather than simply abandoning ever younger children to the perils of a largely bankrupt and overcrowded adult system.

Likewise, I object to the statutory incorporation of presumptive waivers to adult court based solely on the nature of the offense. The Task Force worked very hard and with admirable consensus to develop specific criteria to guide a judge in determining whether a youth is "not a proper person to remain within the jurisdiction of the juvenile court." These criteria include as prominent factors the seriousness and the nature of the offense, and the circumstances under which it was committed, and I believe such judicial consideration is highly appropriate. Virginia has highly competent, dedicated, and knowledgeable judges fully capable of utilizing these criteria to determine whether a particular juvenile is more appropriate for trial as an adult than as a juvenile, and I would prefer to lodge that discretion with them. To use particular offenses, or a category of offenses, to drive the transfer decision is to ignore consideration of the individual characteristics of the juvenile, the degree of participation in the offense, and the likelihood of meaningful treatment in either the juvenile or adult systems. It also places undue power to influence transfer in the hands of the prosecution through determining the precise charge to place against a youth, so that a charge of first degree murder could result in a presumptive transfer while a charge of voluntary manslaughter could allow for treatment as a juvenile. This presumption in favor of waiver to adult court also flies in the face of national studies which show that youths tried as juveniles received swifter and surer justice than those tried as adults for the same offenses, that they are more likely to be incarcerated in secure institutions (although for shorter

periods of time), that they are more likely to receive educational, vocational, and substance abuse treatment and training, and that they commit fewer new offenses after release, that those offenses are less severe, and they are more widely spaced. They are also six to eight times less likely to be assaulted during their period of incarceration.

Finally, I disagree with the decision to amend Virginia Code § 16.1-285.1 so as to allow a judge to commit a juvenile to the Department of Youth and Family Services for a determinate period of time up to seven years or until the child's twenty-first birthday. That same section currently gives judges the power to utilize a determinate commitment for twelve months, and I was persuaded to increase that judicial authority to a period of three years. Once again, the American Bar Association's *Juvenile Justice Standards Relating to Juvenile Delinquency and Sanctions* recommend a cap of thirty-six months on any period of incarceration as a juvenile, and I believe that the evidence regarding the efficacy of institutional care supports that standard. Studies done by the California Youth Authority show that increases in the length of secure incarceration are reflected in comparable increases in recidivism. Thus, more is not necessarily better.

The programs in this country that are most effective in impacting positively on delinquent behavior are those programs which combine relatively short--eighteen months--periods of incarceration with relatively long--eighteen months--periods of intensive aftercare back in the community. The key to effective treatment is this emphasis on reintegration into society, and that is given too short shrift by the Task Force's focus on length of imprisonment.

I fear that we are ignoring that which we know is effective in reducing delinquent behavior by antisocial youths in an effort to show that we are "doing something about crime." I would rather we "get smart" than "get tough" in addressing the increasing problem of serious and violent juvenile offending. We need to be focusing our sights on

and placing more resources in prevention rather than simply in interdiction. The Task Force members agree with this in principle but in these three respects I believe they abandoned that focus, and I cannot join them. The Commonwealth, its citizens, and its youth owe the Task Force, its Chairman, Delegate Jones, the staff, and the Commission, a deep debt of gratitude for the long hours of volunteer effort invested in this effort, and I feel privileged to have been a part of it, even though I cannot subscribe fully to the Task Force's recommendations.

**Appendix E:**  
**Serious Juvenile Offender Task Force Workplan**



## SERIOUS JUVENILE OFFENDER TASK FORCE WORKPLAN

LOCALITY/STATE AGENCY Virginia Commission on Youth

PAGE 1 OF 3

OBJECTIVE - ACTIVITY	PLANNED		ACTUAL		DOCUMENTATION	STATUS OF ACTIVITY
	BEGIN	END	BEGIN	END		
1. Development of Working Definition of Serious Juvenile Offender.						
(a) Review of 215 case records of waived juveniles.	July 1	Oct. 30	Aug. 1	Oct. 1	- DYFS Juvenile Offender Profile Study	- 1,028 juveniles convicted in Circuit Court identified by PSI data base 1988-90
(b) Identification of salient factors in 215 case files.	July 1	Oct. 30	Aug. 1	Sept. 15	- PSI database	- COY and Research Center Staff identified salient factors
(c) Identification of comparison juvenile offender population committed to DYFS.	Aug. 1	Nov. 30	Sept. 1	Oct. 1	- Circuit Court records	- 1,614 juveniles committed to DYFS identified FY 1989-91
(d) Identification and analysis of other state's transfer criteria.	Nov. 1	Sept.1	Oct. 15	June 21	- Case records of juvenile committed to DYFS Learning Centers	- Random case file on 365 DYFS committed youth for transferable crimes FY 1989 -91
(e) Identification of other state's retained and waived juvenile populations.	Nov. 1	Sept.1	Oct. 15	June 21	- Task Force meeting minutes	- Surveys were sent and received from 45 other states; the per capita transfer/conviction analysis was completed 6/93.
(f) Identification of Virginia survey respondents factors in identifying serious juvenile offenders.	March 1	June 30	June 16		- Copies of Surveys sent to other states and a copy of the completed analysis.	- Copies of all transfer statutes were received and analyzed during 6/93.
(g) Identification of recent publications and studies concerning serious juvenile offenders.	Dec. 1	Sept. 1	Nov. 1		- Copies of the statutes received from the other states and a copy of the completed analysis.	- 17 recent studies have been obtained, have been analyzed.
(h) Task Force consensus on definitional terms.	Aug. 1	Dec. 30	July 21	Nov. 30	- Current research on serious juvenile offenders.	- Task Force reached consensus on definitional terms in proposed legislation.
2. Development of Serious Offender Profile						
(a) Analysis of 215 waived juvenile case files by age, race, sex, committing offense, prior record, sentence, length of time served and prior system interventions.	Aug. 1	Nov. 30	Aug. 1	Oct. 1	- PSI database 1988-90	- Analysis of 1,028 waived juvenile information, 1,614 total learning center commitments for length of time served, sentence and demographic profiles completed and interim report printed Dec. 1992.
(b) Analysis of DYFS comparison group's case file by age, race, sex, committing offense, prior record, sentence, length of time served and prior system interventions.	Aug. 1	Nov. 30	Aug. 15	Oct. 1	- DOC Fast Files for Releases FY 1990-92	- Length of time served for sample of 364 waived juveniles and 364 learning center juvenile completed and interim report printed Dec. 1992.
(c) Analysis of factors influencing commitment to learning centers versus transfer/conviction in adult court	Oct. 1	Nov. 30	Oct. 1	Nov. 18	- Learning Center client profile database FY 1989-91	- Multivariate analysis on two groups completed in Nov. 1992 and interim report printed Dec. 1992.

OBJECTIVE - ACTIVITY	PLANNED		ACTUAL		DOCUMENTATION	STATUS OF ACTIVITY
	BEGIN	END	BEGIN	END		
3. Analysis of Sentencing Practices (a) Identification of committing courts (b) Identification of Juvenile and Domestic Relations Courts retaining jurisdiction (c) Identification of jurisdictional variations (d) Dissemination of surveys to Public Defenders, Commonwealth's Attorneys, and Judges from committing and sentencing courts. (e) Follow-up interviews with staff and Judges from committing and sentencing courts (f) Comparisons of dispositional sentences between the 215 cases and those retained by Juvenile and Domestic Relations Court	July 1	Aug. 30	July 1	Aug. 1	- Analysis of sentencing patterns in J&DR Court Districts - Survey Instruments - Interview instruments - Interview transcripts - PSI database - Learning Center client file - DOC case file - Survey response rate and a copy of the survey analysis	- Statewide analysis on arrest through Circuit Court conviction completed. - Analysis of percentage transferred by offense and jurisdiction completed. - Variations by statewide rankings for incidence of offense, judicial processing completed. - Dispositional comparisons with respect to time sentenced and served completed. - Surveys received and analyzed; issues identified for legislative change.
4. Analysis of Treatment Programs (a) Site visits by Task Force members to Beaumont Learning Center, St. Brides Correctional Center, and Southampton Correctional Center. (b) Interviews with Probation Officers, Commonwealth's Attorneys, and Judges in committing courts (c) Presentations on alternative post-dispositional models for serious juvenile offenders (d) Review of treatment programs and other post-dispositional options in other states. (e) Follow-up case tracking (if possible) to identify number and percentage of subsequent offenses, GED obtainment, employment of waived and non-waived cases. <sup>1</sup>	March 15	May 30	July 21		- Task Force meeting notes - Interview instruments - Interview transcripts - Probationary case records - DOC case records - DYFS case records - Survey instruments - Presentation materials - Probationary Services Study Data (DYFS) - Materials from other states - Comments incorporated in survey analysis presentation	- Task Force visited St. Brides July 21 - Representative from AMI (Associated Marine Institute) presented on their program for serious juvenile offenders in Aug. - Task Force Members were provided information on SHOCAP in November and C.I.T.Y. in May. - Comments have been analyzed in incorporated in survey presentation.

<sup>1</sup>This work will be produced by the Criminal Justice Research Center through their analysis of 4 localities.

OBJECTIVE - ACTIVITY	PLANNED		ACTUAL		DOCUMENTATION	STATUS OF ACTIVITIES
	BEGIN	END	BEGIN	END		
5. Development of a Legislative Package						
(a) Review of salient data	Nov. 30	June 30	Aug. 24		- Task Force meeting minutes	- HJR 36 Meetings 1992-93
(b) Conducting of public hearings	April	June	Aug. 24	Oct. 21	- Hearing transcripts	- Public hearings on juvenile crime conducted Aug. 24th, Sept. 22nd and Oct. 21st.
(c) Drafting of interim report	Nov. 1	Dec. 1	Nov. 15	Dec. 8	- Interim Report	- Presentations made to the Governor's Commission on Violent Crime
(d) Dissemination for comment to the field	Dec. 1	Jan. 1	Dec. 1	Dec. 15	- 1993 Commission on Youth legislative package	- Interim Report presented and published Dec. 1992.
(e) Synthesis of field comment on interim report	Jan. 1	Jan. 8	Dec. 15	Dec. 18	- Passage of HJR 431, HB 1103, and SB 114	- Legislation continuing the HJR 36 study passed as HJR 431
(f) Introduction of legislation in 1993 General Assembly Session *	Jan. 15	March 10	Jan. 6	Feb. 27	- Policy questions	- Recommendations for carry-over legislation passed as SB 114 and HB 1103
(g) Development of Policy Questions to guide Code revisions	Jan. 15	Feb. 1	Jan. 15	Feb. 1	- Final Serious Juvenile Offender Task Force Draft legislation and Recommendations	- Development of Legislative Agenda for proposed changes complete.
(j) Full Task Force agreement on Code and policy revisions	Sept. 16	Oct. 16	July 14	Nov. 30	- Public Hearing Transcripts	- Dissemination of draft proposals and public hearing complete.
(k) Development of 1994 Legislative Package	Oct. 16	Nov. 16	July 14	Nov. 30	- Final Report Serious Juvenile Offender Study	- Legislative Package complete.
(l) Conduct public hearing on legislative package	Nov. 16	Nov. 16	Nov. 16		- 1994 Commission on Youth Legislative Package	- Final report is being drafted.
(m) Draft final report	Oct. 1	Dec. 1	Oct. 1	Progress		

\* Continuation of the study in the second year should result in substantive amendments to the Code in the 1994 session.

**Appendix F:  
Other State Survey Instrument**



# VIRGINIA COMMISSION ON YOUTH

## STATE SURVEY ON JUVENILE TRANSFERS

The 1992 Session of the Virginia General Assembly enacted House Joint Resolution 36 mandating that the Virginia Commission on Youth conduct a study of juvenile transfers to adult court. As part of this study, the Commission is collecting information from the other 49 states on: specific criteria contained in transfer laws, statistics on the demographics of transferred juveniles.

This survey is being sent to each state's adult correctional entity to assist in the collection of this information. Section I contains questions regarding the issue of juveniles, under the age of 18, that have been transferred from the juvenile system and convicted in the adult system from 1988 to 1990. Section II contains requests for additional information.

Please return the survey and data requests by December 1, 1992. If you have any questions, contact Ms. Kim Echelberger (804) 371-2481. The General Assembly of Virginia and the Virginia Commission on Youth thank you for your assistance in this important survey effort.

### SECTION 1: Juveniles Transferred/Convicted in Adult Court

1. How many juveniles, under the age of 18, were transferred from juvenile court and convicted in adult court from 1988 to 1990 (fiscal year or calendar year)?

1988:   ,    Juveniles

1989:   ,    Juveniles

1990:   ,    Juveniles

2. Of the transferred/convicted juveniles listed in question 1, please provide the following offender/offense information from 1988 to 1990:

**RACE:**

White        ,         Juveniles  
Minority        ,         Juveniles

**SEX:**

Male        ,         Juveniles  
Female        ,         Juveniles

**AGE AT TIME OF OFFENSE:**

Less than 14 Years        ,         Juveniles  
14 Years        ,         Juveniles  
15 Years        ,         Juveniles  
16 Years        ,         Juveniles  
17 Years        ,         Juveniles  
Greater than 17 Years        ,         Juveniles

**COMMITTING OFFENSE:**

Felony Person        ,         Juveniles  
Felony Property        ,         Juveniles  
Felony Drug        ,         Juveniles  
Other        ,         Juveniles

*(Please provide examples of other types of offenses):*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**SECTION 2: Requests for Additional Data**

3. Appendix A is a copy of the Virginia analysis comparing juveniles that were transferred/convicted in adult court from Fiscal Year 1988 to Fiscal Year 1990 with those juveniles eligible to be transferred but were committed to the State's juvenile correctional facilities. Using this comparison as a guide, please provide the following additional information for your state, if available:

- Additional, more specific descriptive statistics on juveniles that were transferred and convicted in adult court: previous delinquent history, educational levels, specific crimes committed, victim information, past treatment history, and length of time served.

\_\_\_\_\_  
Signature of Person Filling Out Survey

\_\_\_\_\_  
Title

**PLEASE RETURN THE COMPLETED SURVEY AND  
ALL REQUESTED INFORMATION BY NOVEMBER 15, 1992 TO:**

**Ms. Kim Echelberger,  
Legislative Research Analyst  
Virginia Commission on Youth  
Suite 517, General Assembly Building  
910 Capitol Street, Capitol Square  
Richmond, Virginia 23219**

**Phone: (804) 371-2481**

**Appendix G:  
Other State Transfer Statutes Analysis -  
Age, Offense and Nature of Waiver Results**



## Appendix G

STATE	STATUTORY PROVISION	MINIMUM AGE CRITERIA	CRIMES COVERED UNDER STATUTE	NATURE OF WAIVER
Alabama	§12-15-34	14 years	Alleged to have committed an act which would constitute a crime if committed by an adult.	Permissive
Alaska	§47.10.060	None	Minor is delinquent	Permissive
Arizona	Rule 12	None	"... in the opinion of the county attorney the child is not a proper person over whom the juvenile court should retain jurisdiction..."	Permissive
Arkansas	9-27-318	14 or 15 years	Capitol murder, 1st degree murder, 2nd degree murder, 1st degree kidnapping, aggravated robbery, rape or battery in the 1st degree.	Permissive
		16 years	An act that would constitute a felony if committed by an adult.	Permissive
California	§707	16 years	A violation of any criminal statute or ordinance.	Permissive
Colorado	19-2-806	14 years	Commission of a delinquent act which constitutes a felony.	Permissive
Connecticut*	Sec. 46b-126	14 years	Commission of a Class A felony, other than murder, or for any serious juvenile offense designated as a Class B or C felony if such child has previously been adjudicated a delinquent for a serious juvenile offense as designated by statute.	Permissive
		14 years	Commission of murder, Class A felony if previously adjudicated for a Class A felony, and Class B felony if previously adjudicated delinquent for two Class A or B felonies.	Mandatory
Delaware	§939.	None	Commission of 1st degree murder, rape, unlawful sexual intercourse in the 1st degree or kidnapping.	Mandatory
		14 years	Commission of a felony.	Permissive
		16 years	Commission of a delinquent act.	Permissive
District of Columbia	§16-2307	None	Illegal possession or control of a firearm in or within 500 ft. of a D.C. public school building or property, or public school sponsored event.	Permissive
		15 years	Commission of an act which would constitute a felony if committed by an adult.	Permissive
		16 years	Commission of a delinquent act, if child is already under commitment to an agency or institution as a delinquent.	Permissive
		18 years or older	Commission of a delinquent act if committed prior to becoming 18 years.	Permissive
		16 years	Commission of murder, forcible rape, 1st degree burglary, armed robbery or assault with intent to commit any such offense.	Direct Prosecutorial Waiver

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Florida	39.052(2)	14 years	Any delinquent act.	Permissive
		14 years	Violent crime against person (with previous delinquent adjudication(s) for murder, sexual battery, armed or strong armed robbery, and aggravated battery or assault).	Mandatory
	39.022(5)(c)	None	Violation of Florida law punishable by death or life imprisonment if committed by an adult; if indictment returned waiver becomes mandatory .	Mandatory
		None	Violation of Florida law when the juvenile requests transfer.	Voluntary
Georgia	15-11-5	15 years	Commission of a delinquent act.	Permissive
		13 years	Commission of a delinquent act that would be considered a crime punishable by life in prison or death if committed by an adult.	Permissive
		14 years	Commission of murder, voluntary manslaughter, aggravated assault, or aggravated battery while confined to a youth development center.	Mandatory
Hawaii	§571-22	16 years	Commission of an act which would constitute a felony if committed by an adult.	Permissive
		16 years	Commission of an act which would constitute 1st degree murder or attempted murder, 2nd degree murder or attempted murder or a Class A felony if committed by an adult, and (1) has previously committed or threatened to commit any of these acts, or (2) committed 2 or more felonies within the previous 2 years.	Mandatory
Idaho	16-1806	14 years	Commission of an act that would be a crime if committed by an adult.	Permissive
	16-1806(A)	18 years or older	Commission of a felony prior to his/her 18th birthday.	Permissive
		14 years	Murder, attempted murder, robbery, rape (excluding statutory), inanimate sexual penetration, infamous crimes against nature, mayhem, assault or battery with intent to commit any of the previous felonies and certain felonies within 1,000 ft. of a school or area being used for a school sponsored event.	Mandatory

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Illinois**	37.805-4	13 years	Commission of an act that constitutes a crime.	Permissive
		15 years	Commission of a forcible felony and (1) previously adjudicated for felony offense in Ill. or any other state and (2) the offense was committed in furtherance of criminal activity by an organized gang.	Mandatory
		15 years	Commission of an act that constitutes a felony and (1) previously adjudicated for a forcible felony in Ill. or any other state and (2) the offense was committed in furtherance of criminal activity by an organized gang.	Mandatory
		15 years	Commission of 1st degree murder, aggravated criminal sexual assault, armed robbery with a firearm, or violations of 24-1(a)(12) of the Criminal Code.	Mandatory
		15 years	Commission of an act which constitutes a violation of the Illinois Controlled Substance Act while in a school, within 1,000 feet of a school or public housing agency.	Mandatory
Indiana	31-6-2-3	14 years	A "heinous or aggravated" act or an act "that is part of a repetitive pattern of delinquent acts."	Permissive
		16 years	An act that if committed by an adult would be a felony.	Permissive
		10 years	An act that would be murder if committed by an adult.	Mandatory
		16 years	Class A or B felony (except those defined in IC 35-48-4), involuntary manslaughter and reckless homicide as Class C felonies.	Mandatory
		None	An act that would be a felony if committed by an adult (with previously conviction of a felony or non-traffic misdemeanor).	Mandatory
Iowa	§232.45	14 years	Commission of a delinquent act which would constitute a public offense.	Permissive
Kansas	38.1636	14 or 15 years	Commission of a Class A or B felony.	Permissive
		16 years	Commission of an offense.	Permissive
Kentucky	635.020	14 years	Commission of a capital offense or Class A or B felony.	Permissive
		16 years	Commission of a Class C or D felony and has 2 previous felony adjudications	Permissive
		14 years	Commission of a felony, if previously transferred and convicted as a youthful offender	Permissive
		18 years or older	Commission of a felony prior to his/her 18th birthday	Permissive

## Appendix G

Louisiana	Art. 305	16 years	Commission of 1st degree murder, 2nd degree murder, aggravated rape, or aggravated kidnapping	Mandatory (w/ probable cause only)
		15 years	Commission of 1st degree murder, 2nd degree murder, and aggravated rape	Mandatory (w/ probable cause only)
		16 years	Commission of manslaughter, armed robbery, and aggravated burglary	Permissive
		15 years	Commission of manslaughter	Permissive
Maine	15 §3101	None	Commission of murder, and Class A, B or C crime.	Permissive
Maryland	3-817.	15 years	Commission of an alleged delinquent act.	Permissive
		None	Charged with committing an act which if committed by an adult would be punishable by death or life imprisonment.	Permissive
Massachusetts	18.119.61	14 years	Commission of an offense that would be punishable for an adult by imprisonment in a State prison, if the child has previously been committed to the juvenile authority or the offense involves the threat or infliction of serious bodily harm.	Permissive
Michigan	712A.4	15 years	Commission of an act that would constitute a felony if committed by an adult.	Permissive
Minnesota	260.125	14 years	Violation of a State or Local Law or ordinance.	Permissive
		14 years	Violation of a State or Local Law or ordinance where the juvenile was previously waived and convicted on a felony charge.	Mandatory
Mississippi	§43-21-157	13 years	Commission of a delinquent act.	Permissive
Missouri**	211.071	14 years	Commission of an offense that would be considered a felony if committed by an adult.	Permissive
		17-21 years	Commission of any criminal offense, if juvenile court has retained continuing jurisdiction over the juvenile.	Mandatory
Montana	41.5.206	12 years	Commission of sexual intercourse without consent, deliberate or mitigated deliberate homicide, attempted deliberate or mitigated deliberate homicide.	Permissive
		16 years	Negligent homicide, arson, aggravated or felony assault, robbery, burglary or aggravated burglary, aggravated kidnapping, possession of explosive, criminal sale of dangerous drugs or attempted commission of any of these offenses.	Permissive
Nebraska**+	N/A <sup>1</sup>	N/A	N/A	N/A
Nevada	62.080	16 years	Commission of an offense that would be a felony if committed by an adult.	Permissive
New Hampshire	169-B:24	None	Commission of an offense that would constitute a felony if committed by an adult.	Permissive

<sup>1</sup>Nebraska has concurrent original jurisdiction between the juvenile court and the district courts for any juvenile under age 16 that commits a felony offense and concurrent jurisdiction between juvenile court and the district *and* county courts for juveniles 16-17 that commit felony offenses.

## Appendix G

New Jersey	2A:4A-27	None	Commission of murder; Juvenile can request transfer.	Voluntary
	2A:4A-26	14 years	Commission of a delinquent act; Juvenile can request transfer.	Voluntary
		14 years	Commission of non-vehicular homicide, 1st degree robbery, aggravated sexual assault, 2nd degree aggravated assault, kidnapping, arson, delinquent act when juvenile has previously been convicted of any of the above or received confinement in as an adult in the state penitentiary, violent offense against person, distribution of any controlled substance in school or within 1,000 ft. of a school or school bus, or criminal conspiracy to commit any of the above.	Permissive
New Mexico <sup>2</sup>	N/A	N/A	N/A	N/A
New York*+	N/A	N/A	N/A	N/A
North Carolina	§7A-608	14 years	Commission of an offense that would be a felony if committed by an adult.	Permissive
		14 years	Commission of a Class A felony.	Mandatory
		16 years	Commission of a criminal offense when already under the jurisdiction of the adult court.	Mandatory
North Dakota	27.20.34	14 years	Commission of a delinquent act, under State or local law, involving the infliction or threat of serious bodily harm.	Permissive
		16 years	Commission of a delinquent act which is designated a crime or public offense by State or local law; juvenile can request transfer.	Voluntary
Ohio	§2151.26	15 years	Commission of an act that would constitute a felony if committed by an adult.	Permissive
		None	Commission of aggravated murder or murder when the juvenile has previously been adjudicated a delinquent for either murder or aggravated murder.	Mandatory
Oklahoma	10.51.1112	None	Commission of a delinquent offense which would constitute a felony if committed by an adult.	Permissive
Oregon	419.533	15 years	Commission of murder, aggravated murder, 1st degree manslaughter, 1st degree assault, 1st degree rape, 1st degree sodomy, or 1st degree robbery.	Permissive
		16 years	Commission of murder, aggravated murder, any Class A or B felony, 2nd degree escape, 3rd degree assault, coercion, 2nd degree arson and 3rd degree robbery.	Permissive
Pennsylvania	42§ 6355	14 years	A delinquent act that would be considered a felony if committed by an adult.	Permissive
		14 years	Charged with murder.	Mandatory

<sup>2</sup>House Bill 473 from the 1993 Session of the New Mexico Legislature amended the Juvenile Code to no longer have "transfer" proceedings. New Mexico has a three tiered approach to juvenile delinquents: (1) Serious Youthful Offenders (ages 16-17 years charged with 1st degree murder) who are tried in adult court; (2) Youthful Offenders (ages 15-18 years charged with various felony offenses) who are tried in juvenile court, however the test of amenability is made at the disposition hearing rather than at a transfer hearing and the juvenile judge may impose either juvenile or adult sanctions; and (3) Delinquent Offenders (under 18 years and charged with all delinquent offenses not covered by Youthful Offender provisions) who are tried in juvenile court and eligible only for juvenile court sanctions. See Appendix A for definitions of these offenders.

## Appendix G

Rhode Island	14.1.7	None	Commission of an offense which would be punishable by life imprisonment if committed by an adult.	Permissive
		16 years	Commission of an offense which would constitute a felony if committed by an adult.	Permissive
	14.1-7.1	16 years	Commission of an offense which would constitute a felony if committed by an adult and juvenile has two prior delinquent offenses that would constitute felonies if committed by an adult.	Mandatory
South Carolina	§20-7-430	16 years	Commission of an offense which would be a misdemeanor or felony if committed by an adult.	Permissive
		14 years	Commission of assault, assault and battery with intent to kill, assault and battery of a high an aggravated nature, arson, housebreaking, burglary, kidnapping, attempted criminal sexual conduct or robbery with two prior unrelated adjudications of any of the previous offenses.	Permissive
		None	Murder or criminal sexual assault.	Permissive
South Dakota	26-11-4	None	Commission of a delinquent act.	Permissive
Tennessee	37-1-134	14 years	Commission of murder, rape, aggravated rape, robbery with a deadly weapon, or kidnapping.	Permissive
		16 years	Commission of a delinquent act.	Permissive
Texas	54.02	15 years	Violation of a penal law of the grade of felony.	Permissive
Utah	78.3a.25	14 years	Commission of an act that would constitute a felony if committed by an adult.	Permissive
		16 years	Commission of criminal homicide or attempted criminal homicide or any other offense that would be a capital offense of a 1st degree felony when a criminal information is file by the county attorney.	Mandatory
Vermont*	T.33§5506	10-13 years	Commission of arson causing death, assault and robbery with a dangerous weapon, assault and robbery causing bodily injury, aggravated assault, murder, manslaughter, kidnapping, maiming, sexual assault, aggravated sexual assault, and burglary of sleeping apartments at nighttime.	Permissive
		14-15 years	Commission of arson causing death, assault and robbery with a dangerous weapon, assault and robbery causing bodily injury, aggravated assault, murder, manslaughter, kidnapping, maiming, sexual assault, aggravated sexual assault, and burglary of sleeping apartments at nighttime.	Mandatory
Washington	13.40.110	15 years	Commits or attempts to commit a Class A felony.	Permissive
		17 years only	Commits assault in the 2nd degree, 1st degree extortion, indecent liberties, 2nd degree rape of a child, 1st or 2nd degree child molestation, 2nd degree kidnapping, 2nd degree rape or 2nd degree robbery.	Permissive

## Appendix G

West Virginia	§49-5-10	16 years	Commission of a delinquent act; if juvenile demands transfer.	Voluntary
		None	Commission of treason, murder, robbery involving the use of a firearms or other deadly weapons, kidnapping, 1st degree arson, 1st degree sexual assault, an offense of violence to person which would be a felony if committed by an adult when juvenile has previous adjudication of a felony, any felony offense when juvenile has twice previously been adjudicated delinquent for felony offenses.	Permissive
		16 years	Commission of an offense against person that would constitute a felony if committed by an adult.	Permissive
		16 years	Commission of an offense that would constitute a felony if committed by an adult if the juvenile has previously been adjudicated delinquent for a felony offense.	Permissive
Wisconsin	48.18	14 years	Commission of 1st degree intentional homicide or 1st degree reckless homicide as a result of manufacture, delivery, administration or assisting in administration of a controlled substance classified in schedule I or II.	Permissive
		16 years	Violation of any state criminal law.	Permissive
Wyoming	§14-6-237	None	Commission of a delinquent act.	Permissive

\*Age of majority for criminal prosecution as an adult is 16 years.

\*\*Age of majority for criminal prosecution as an adult is 17 years.

+New York, Nebraska do not have a transfer statutes

Source: Commission on Youth analysis of transfer statutes obtained from each state as of February 1993 (with the exception of the District of Columbia, Georgia, New Mexico and Wyoming 6/93 and Massachusetts, Montana, North Dakota & Utah 1990 NCJJ version) and National Center for Juvenile Justice, *Waiver/Transfer/Certification of Juveniles to Criminal Court* (1992).

**Appendix H:  
Other State Transfer Statutes Analysis -  
Additional Criteria Definitions and Results**



## **Other State Transfer Criteria Definitions**

**Amenability:** Includes references in the statute to (1) possibility of rehabilitation through programs, procedures, etc. of the juvenile court, (2) past treatment efforts, (3) juvenile's response to past treatment efforts, and (4) whether juvenile is amenable to further juvenile justice system treatment.

**Prior Record:** Includes references to (1) the nature and extent of prior delinquent records, (2) prior contacts with law enforcement, (3) prior juvenile commitments and probation period, etc.

**Victim Impact:** Includes references to (1) the impact of the offense on the victim, (2) whether personal injury was inflicted during or in flight from offense, etc.

**Probable Cause:** Includes specific reference in the statute that probable cause must be met that the juvenile committed the alleged offense.

**Weapon Use:** Includes references to (1) whether a dangerous instrument or deadly weapon was used during the commission of the alleged offense, or (2) whether the handgun or other firearm was used during commission of the alleged offense.

**Community Safety Concerns:** Includes references to (1) the welfare and best interests of the community, (2) the safety of the community, (3) the protection of the community, etc.

**Codefendants/Ages:** Includes references to whether other participants in the same offense are either (1) over the age of majority and thus being tried as adult, or (2) minors who have already been transferred and will be tried as adults.

**Person vs Property:** Includes references to whether the offense was against person or property and/or gives greater weight to offenses against person.

**Mental Retardation/Illness:** Includes references to mental retardation, mental illness, mental capacity, mental health, and mental maturity.

**Offender Characteristics:** Includes references to criteria which describe the juvenile such as criminal sophistication, physical maturity, demeanor, emotional attitude, family circumstances, school participation/record, etc.

**Other:** Includes such criteria as (1) prosecutorial merits of the case, (2) aggressive, violent, premeditated or willful manner in which the act was committed, (3) serves the best interests of the child, (4) requirements for physical and/or mental exams prior to transfer, (5) domicile of child, (6) the programs, facilities, or dispositional resources available to either the adult and/or juvenile court(s), and any other criteria that does not fit in one of the listed categories.

## Appendix H1

### OTHER STATE ADDITIONAL TRANSFER STATUTE CRITERIA

- Arkansas "... the seriousness of the offense and whether violence was employed by the juvenile in the commission of the offense."
- Alabama
- (1) There are not reasonable grounds to believe he [child alleged to have committed the offense] is committable to an institution or agency for the mentally retarded or mentally ill
  - (2) Nature of alleged offense
  - (3) Demeanor
  - (4) The extent and nature of the child's physical and mental maturity
  - (5) The interests of the community require that the child be placed under legal restraint
  - (6) A finding of probable cause for believing that the allegations are true and correct
- \*\* Once a child is transferred/convicted/adjudicated as a youthful offender the juvenile court's jurisdiction over that child for any future or pending allegations of delinquency will be terminated.
- Alaska
- (1) Probable cause for believing that a minor is delinquent
  - (2) The facilities available to the Division of Youth and Adult Authority for treating the minor
- Arizona
- (1) The court determines that there is probable cause to believe that the offense has been committed and that the child committed it
  - (2) Whether the public safety or interest would be served by the transfer of the child for criminal prosecution
  - (3) The seriousness of the alleged offense and whether it was committed in an aggressive, violent, premeditated or willful manner
  - (4) Whether the alleged offense was against person or against property, and whether personal injury resulted
  - (5) The sophistication and maturity of the child as determined by consideration of the child's age, intelligence, education, environment, emotional attitude and pattern of living
  - (6) The child's physical, mental and emotional condition
  - (7) The prospects for adequate protection of the public
  - (8) Any other factors which appear to be relevant to the determination of the transfer issue
- California
- (1) The degree of criminal sophistication exhibited by the minor
  - (2) The circumstances and gravity of the offense alleged to have been committed by the minor
- Colorado
- (1) Whether there is probable cause to believe that the juvenile has committed a delinquent act
  - (2) Whether the interests of the juvenile or of the community would be better served by the juvenile court's waiving its jurisdiction over the juvenile and transferring jurisdiction over him to district court

- (3) The seriousness of the offense and whether the protection of the community requires isolation of the juvenile beyond that afforded by juvenile facilities
- (4) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner
- (5) Whether the alleged offense was against persons or property, greater weight being given to offenses against persons
- (6) The maturity of the juvenile as determined by considerations of his home, environment, emotional attitude, and pattern of living
- (7) The interests of the community in the impositions of a punishment commensurate with the gravity of the offense
- (8) The impact of the offense on the victim
- (9) That the juvenile is 16 years of age or older "at the time of the offense and the present act constitutes a crime of violence" as defined in the Colorado statutes.
- (10) "... a record of two or more previously sustained petitions for delinquent acts which constitute felonies shall establish prima facie evidence that to retain jurisdiction in the juvenile court would be contrary to the best interests of the juvenile or of the community."

Delaware

- (1) Whether, in view of the age and other personal characteristics of the child, the people of Delaware may best be protected and the child may best be made a useful member of society by some form of correctional treatment which the Family Court lacks power to assign
- (2) Whether it is alleged death or serious personal injury was inflicted by the child upon anyone in the course of commission of the offense or in immediate flight therefrom
- (3) Whether other participants in the same offense are being tried as adult offense
- (4) Whether it is alleged a dangerous instrument was used by the child
- (5) Whether other participants in the same offense are being tried as adult offenders

D.C.

- (1) "When there are grounds to believe that the child is substantially retarded or mentally ill, the Division [the Family Division of the Superior Court of the District of Columbia] shall stay the proceedings for the purpose of obtaining an examination. After examination, the Division shall proceed to a determination [of whether the child has reasonable prospects for rehabilitation before his majority] unless it determines that the child is incompetent to participate in the proceedings, in which event it shall order the child committed to a mental hospital [pursuant to the D.C. Code]."
- (2) The Division shall order the transfer if it determines that it is in the interest of the public welfare and protection of the public security and there are no reasonable prospects for rehabilitation
- (3) The child's age
- (4) The child's mental condition
- (5) The techniques, facilities, and personnel for rehabilitation available to the juvenile court and the court that would have jurisdiction after transfer
- (6) Evidence bearing on probable cause or likelihood that the child committed the act alleged *shall not* be admitted at the transfer hearing

Effective Date for new statute amendments below 5/5/93:

- (7) For purposes of the transfer hearing the Division shall assume that the child committed the delinquent act alleged

(8) "There is a rebuttable presumption that a child 15 through 18 years of age who has been charged with any of the following offenses, should be transferred for criminal prosecution in the interest of public welfare and the protection of public security:

- (1) Murder, forcible rape, burglary in the first degree, robbery while armed, or assault with intent to commit any such offense;
- (2) Any offense listed in paragraph (1) of this subsection [commission of an act that would constitute a felony if committed by an adult] and any other offense properly joinable with such an offense;
- (3) Any crime committed with a firearm; or
- (4) Any offense that if the child were charged as an adult would constitute a violent felony and the child has three or more prior delinquency adjudications."

\*\* Once a child is transferred/adjudicated/convicted the juvenile court's jurisdiction over that child for any future or pending allegations of delinquency is terminated.

#### Florida

- (1) Protection of the community is best served;
- (2) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.
- (3) Whether alleged offense was against person or property, greater weight being given to offenses against persons, especially if personal injury resulted.
- (4) The prosecutive merits of the report, affidavit or complaint.
- (5) The desirability of trial and disposition of the entire offense in one court when the child's associates in the alleged crime are adults or children who are to be tried as adults.
- (6) The sophistication and maturity of the child.

#### Georgia

- (1) There are reasonable grounds to believe that the child committed the delinquent act
- (2) The child is not committable to an institution for the mentally retarded or mentally ill
- (3) The interests of the child and the community require that the child be placed under legal restraint and the transfer be made

#### Hawaii

- (1) Court finds there is no evidence the person is committable to an institution for the mentally defective or retarded or mentally ill
- (2) The seriousness of the alleged offense
- (3) Whether the offense was committed in an aggressive, violent, premeditated, or willful manner
- (4) Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted
- (5) The desirability of trial and disposition of the entire offense in one court when the minor's associates in the alleged offense are adults who will be charged with a crime
- (6) The sophistication and maturity of the minor as determined by consideration of the minor's home, environmental situation, emotional attitude, and pattern of living
- (7) "The prospects for adequate protection of the public ... by the use of procedures, services, and facilities currently available to the family court."

(8) "All other relevant matters."

\*\* "Transfer of a minor for criminal proceedings terminates the jurisdiction of the juvenile court over the minor with respect to any subsequent acts which would otherwise be within the court's jurisdiction..."

Idaho

- (1) The seriousness of the offense and whether the protection of the community requires isolation of the child beyond that afforded by juvenile facilities
- (2) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner
- (3) Whether the alleged offense was against person or property, greater weight being given to offense against persons
- (4) The maturity of the child as determined by considerations of his home, environment, emotional attitude, and pattern of living

Illinois

- (1) Whether there is evidence there is sufficient evidence upon which a grand jury may be expected to return an indictment
- (2) Whether there is evidence that the alleged offense was committed in an aggressive and premeditated manner
- (3) The age of the minor
- (4) Whether the best interest of the minor and the security of the public may require that the minor continue in custody or under supervision for a period extending beyond his minority
- (5) Whether the minor possessed a deadly weapon when committing the alleged offense

Indiana

- (1) There is probable cause to believe the child committed the act
- (2) Safety and welfare of the community
- (3) Best interest of the child and the welfare of the community to remain in jj system.

Iowa

- (1) The nature of the alleged delinquent act and the circumstances under which it was committed
- (2) The programs, facilities and personnel which would be available to the court that would have jurisdiction in the event the juvenile court waives its jurisdiction so that the child can be prosecuted as an adult
- (3) Waiver of the court's jurisdiction over the child for the alleged commission of the public offense would be in the best interests of the community
- (4) The court determines, or has previously determined in a detention hearing, "that there is probable cause to believe that the child has committed a delinquent act which would constitute a public offense"
- (5) Waiver of the court's jurisdiction over the child for the alleged commission of the public offense would be in the best interests of the child and the community

Kansas

- (1) The seriousness of the alleged offense and whether the protection of the community requires prosecution as an adult
- (2) Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner
- (3) Whether the offense was against person or against property, greater weight being given to offenses against person, especially if personal injury resulted
- (4) The number of alleged offenses unadjudicated and pending against respondent

- (5) The sophistication or maturity of the respondent as determined by consideration of the respondent's home, environment, emotional attitude, pattern of living or desire to be treated as an adult
- (6) Whether the interests of the respondent or of the community would be better served by criminal prosecution
- (7) Probable cause to believe the felony has been committed by the respondent

Louisiana

- (1) Probable cause must be met

Maine

- (1) Whether the offense was committed in an aggressive, violent, premeditated or willful manner
- (2) Greater weight being given to offenses against the person than against property
- (3) Whether the juvenile's emotional attitude and pattern of living indicate that it is unlikely that future criminal conduct will be deterred by the dispositional alternatives available to the juvenile court.
- (4) That there is probable cause to believe that a crime has been committed
- (5) By a preponderance of the evidence, that the maturity of the juvenile indicates that the juvenile would be more appropriately prosecuted as if he were an adult
- (6) By a preponderance of the evidence, that the nature and seriousness of the alleged juvenile crime indicate that the protection of the community will require detention of the juvenile in a facility which is more secure than those available as dispositional alternatives to the juvenile court

Maryland

- (1) The court shall assume that the child committed the delinquent act alleged
- (2) Age of the child
- (3) Mental and physical condition of the child
- (4) The nature of the offense and the child's alleged participation in it
- (5) The public safety

Massachusetts

- (1) There is probable cause that the child committed the offense
- (2) The court shall determine whether the child presents a danger to the public
- (3) The nature, circumstances, and seriousness of the alleged offense
- (4) The child's age and maturity
- (5) The family, school and social history of the child
- (6) The nature of services available through the juvenile justice system
- (7) The adequate protection of the public
- (8) If a child is charged with 1st or 2nd degree murder, there shall exist a rebuttable presumption that the child presents a significant danger to the public and that such child is not amenable to rehabilitation within the juvenile justice system.

Michigan

- (1) Character of the child
- (2) His or her physical and mental maturity
- (3) His or her pattern of living
- (4) Whether, despite the child's potential for treatment, the nature of the child's delinquent behavior is likely to render the child dangerous to the public if released at the age of 19 or 21
- (5) Whether the child is more likely to be rehabilitated by the services and facilities available in adult programs and procedures than in juvenile programs and procedures

(6) Whether it is in the best interests of the public welfare and protection of the public security that the child stand trial as an adult offender

Minnesota

- (1) There is probable cause
- (2) The public safety is not served under the provisions of laws relating to juvenile court
- (3) A Prima facie case that public safety is not served and the child is not suitable for treatment have been established if the child was 16 years of age and: (SEE Attachment A).

Mississippi

- (1) Whether probable cause exists to believe that the child committed the alleged offense
  - (2) Whether or not the alleged offense constituted a substantial danger to the public
  - (3) The seriousness of the alleged offense
  - (4) Whether or not the transfer is required to protect the public
  - (5) Whether the alleged offense was against persons or against property, greater weight being given to the offense against persons, especially if personal injury resulted
  - (6) The sophistication, maturity and educational background of the child
  - (7) The child's home situation, emotional condition and life style
  - (8) The dispositional resources available to the juvenile justice system
  - (9) The dispositional resources available to the adult correctional system for the child if treated as an adult
  - (10) Any other factors deemed relevant by the court
- \*\* Once a youth is transferred/convicted as an adult "the jurisdiction of the youth court over the youth is forever terminated for a delinquent act"

Missouri

- (1) The seriousness of the offense alleged and whether the protection of the community requires transfer to the court of general jurisdiction
- (2) Whether the offense alleged involved viciousness, force and violence
- (3) Whether the offense alleged was against persons or property with greater weight being given to the offense against persons, especially if personal injury resulted
- (4) The sophistication and maturity of the child as determined by consideration of his home and environmental situation, emotional condition and pattern of living
- (5) The program and facilities available to the juvenile court in considering disposition

Montana

- (1) There is probable cause to believe that:
  - (i) the youth committed the delinquent act alleged;
  - (ii) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and
  - (iii) the alleged offense was committed in an aggressive, violent or premeditated manner.
- (2) The sophistication and maturity of the youth, determined by consideration of his home, environmental situation, and emotional attitude and pattern of living
- (3) The lack of a prior juvenile history with youth courts will not of itself be grounds for denying the transfer.

Nebraska Does not have a transfer statute; however in §43-276 when the county attorney is deciding whether to file in criminal or juvenile court for juveniles 16-17 they should consider:

- (1) Whether there is evidence that the alleged offense included violence or was committed in an aggressive and premeditated manner
- (2) The motivation for the commission of the offense
- (3) The age of the juvenile and the ages and circumstances of any others involved in the offense
- (4) The sophistication and maturity of the juvenile as determined by consideration of his or her home, school activities, emotional attitude and desire to be treated as an adult, pattern of living, and whether he or she has had previous contact with law enforcement agencies and the courts and the nature thereof
- (5) Whether the best interests of the juvenile and the security of the public may require that the juvenile continue in custody or under supervision for a period extending beyond his or her maturity and, if so, the available alternatives best suited to this purpose
- (6) Such other matters as the county attorney deems relevant to his or her decision

Nevada Does not have additional criteria other than age/offense.

New Hampshire

- (1) The seriousness of the alleged offense to the community and whether the protection of the community requires transfer
- (2) The aggressive, violent, premeditated or willful nature of the alleged offense
- (3) Whether the alleged offense was against persons or property
- (4) The prosecutive merit of the complaint
- (5) The desirability of trial and disposition of the entire offense in one court if the minor's associates in the alleged offense were adults who will be charged with a crime
- (6) The sophistication and maturity of the minor
- (7) The prospects for adequate protection of the public through the juvenile court system

\*\* Statute contains provisions for placement of the juvenile while awaiting adult court certification of the transfer and placement once the certification is complete.

New Jersey

- (1) There is probable cause to believe that the juvenile committed the delinquent act or act(s)
- (2) An offense against person committed in an aggressive, violent or willful manner
- (3) Unlawful possession of a firearm, destructive devise or prohibited weapon
- (4) Crimes which are part of a continuing criminal activity in concert with two or more persons and the circumstances of the crime show the juvenile has knowingly devoted himself to criminal activity as a source of livelihood
- (5) The nature and circumstances of the charge are sufficiently serious that the interests of the public require waiver

New Mexico Does not have a transfer statute.

North Carolina

- (1) There is probable cause to believe juvenile committed offense.



- North Dakota
- (1) There are reasonable grounds to believe that the child committed the delinquent act alleged
  - (2) The child is not treatable in an institution for the mentally retarded or mentally ill
  - (3) The interests of the community require that the child be placed under legal restraint or discipline
  - (4) If the child is fourteen or fifteen years old, the child committed a delinquent act involving the infliction or threat of serious bodily harm

- Ohio
- (1) Probable cause to believe that the child committed the alleged act
  - (2) An examination, including a mental and physical examination, of the child made by a public or private agency or a person qualified to make the examination
  - (3) There are reasonable grounds to believe that the safety of the community may require that he be placed under legal restraint, including if necessary, for the period extending beyond his majority
  - (4) Whether the victim of the delinquent act was 65 years of age or older or permanently and totally disabled at the time of the commission of the act; if the court finds this to be fact, it shall be considered by the court in favor of transfer, but shall not control the decision of the court
  - (5) Whether the child is domiciled in Ohio or a foreign state or nation; if the child is domiciled in a foreign state or nation the laws pertaining to transfer and the alleged offense(s) shall be considered when determining if the child is amenable to treatment as a juvenile or a threat to public safety

- Oklahoma
- (1) That prosecutive merit exists
  - (2) The seriousness of the alleged offense
  - (3) Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner
  - (4) Whether the offense was against persons or property, greater weight being give to offenses against person especially if personal injury resulted
  - (5) The sophistication and maturity of the juvenile and his capability of distinguishing right from wrong as determined by consideration of his psychological evaluation, home, environmental situation, emotional attitude and pattern of living
  - (6) The prospects for adequate protection of the public by use of procedures and facilities currently available to the juvenile court
  - (7) Whether the offense occurred while the juvenile was escaping or in an escape status from an institution for delinquent children.
- \*\* If transferred/convicted as an adult, all subsequent offense shall be dealt with in adult court

- Oregon
- (1) The child at the time of the alleged offense was of sufficient sophistication and maturity to appreciate the nature and quality of conduct involved
  - (2) A preponderance of the evidence that retaining jurisdiction will not serve the best interests of the child and of society
  - (3) The protection required by the community, given the seriousness of the offense alleged
  - (4) The aggressive, violent, premeditated or willful manner in which the offense was alleged to have been committed
  - (5) The physical, emotional, and mental health of the child

- (6) The gravity of the loss, damage or injury caused or attempted during the offense
- (7) The prosecutive merits of the case against the child
- (8) The desirability of disposing of all cases in one trial if there were adult cooffenders

- Pennsylvania
- (1) There is a prima facie case that the child committed the delinquent act
  - (2) Age
  - (3) Mental capacity
  - (4) Maturity
  - (5) Degree of criminal sophistication exhibited by the child
  - (6) That the child is not committable to an institution for the mentally retarded or mentally ill (*bar to transfer*)
  - (7) Probation or institutional reports, if any
  - (8) The nature and circumstances of the acts for which the transfer is sought
  - (9) Interests of the community require legal restraint or discipline
  - (10) Offense would carry a sentence of more than 3 years if committed by an adult

Rhode Island Does not have additional criteria other than age/offense.

South

- Carolina
- (1) The court deems it contrary to the best interest of such child or of the public to retain jurisdiction

- South Dakota
- (1) Whether it would be contrary to the best interest of the child or of the public to retain jurisdiction [in juvenile court] over the child
  - (2) The seriousness of the alleged offense to the community and whether protection of the community requires waiver
  - (3) Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner
  - (4) Whether the alleged offense was against persons or property with greater weight being given to offense against persons
  - (5) The prosecutive merit of the complaint; the state shall not be required to establish probable cause to show prosecutive merit
  - (6) The desirability of trial and disposition of the entire offense in one proceeding when the child's associates in the alleged offense are adults
  - (7) The prospect for adequate protection of the public by the use of the procedures, services and facilities currently available to the juvenile court

- Tennessee
- (1) The court finds that there are reasonable grounds to believe that the child committed the delinquent act
  - (2) The child is not committable to an institution for the mentally retarded or mentally ill
  - (3) The interests of the community require that the child be put under legal restraint or discipline
  - (4) Whether the offense was against person or property, with greater weight in favor of transfer given to offenses against person
  - (5) Whether the offense was committed in an aggressive and premeditated manner
  - (6) Any person, who was transferred under 37-1-134 and who was more than 14 years of age and less than 16 years of age at the time of the offense and is

subsequently convicted and committed, *shall* be housed in a juvenile correctional facility until such person reaches 16 years, at which time such person may be transferred upon the order of the committing court to an adult facility.

(7) After a child has been sentenced to an adult institution, the department of corrections *may* file a petition requesting the committing court to allow the department to transfer the defendant to an institution for juvenile delinquents and held until his eighteenth birthday.

(8) The juvenile court may, unless the adult court orders otherwise, order the confinement of the youth in a juvenile detention facility pending trial.

#### Texas

(1) Prior to the transfer hearing the juvenile court shall order and obtain a complete diagnostic study, social evaluation and full investigation of the child.

(2) Whether the alleged offense was against person or property with greater weight in favor of transfer given to offenses against the person

(3) Whether the alleged offense was committed in an aggressive and premeditated manner

(4) Whether there is evidence on which a grand jury may be expected to return an indictment

(5) The sophistication and maturity of the child

(6) The prospects of adequate protection of the public by use of procedures, services, and facilities currently available to the juvenile court

#### Utah

(1) It would be contrary to the best interests of the juvenile or of the public for the juvenile court to retain jurisdiction

(2) The seriousness of the offense and whether the protection of the community requires isolation of the juvenile beyond that afforded by juvenile facilities

(3) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner

(4) Whether the alleged offense was against persons or property, greater weight being given to offenses against persons

(5) The maturity of the juvenile as determined by considerations of his home, environment, emotional attitude, and pattern of living

(6) The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in the district court

#### Vermont

(1) There is probable cause to believe that the child committed the act

(2) Public safety and the interests of the community would not be served by treatment of the child under the provisions of law relating to juvenile courts and delinquent children

(3) The maturity of the child as determined by consideration of his age; home; environment; emotional, psychological and physical maturity; and relationship with and adjustment to school and the community

(4) Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner

(5) The nature of any personal injuries resulting from or intended to be caused by the alleged act

(6) Whether the protection of the community would be better served by transferring jurisdiction from the juvenile court to a court of criminal jurisdiction

#### Washington

(1) That transfer would be in the best interest of the juvenile or the public

- West Virginia
- (1) There is probable cause to believe that the child committed the alleged act
  - (2) The child's mental and physical condition
  - (3) Maturity
  - (4) Emotional attitude
  - (5) Home or family environment
  - (6) School experience or similar personal matters

- Wisconsin
- (1) Case has prosecutive merit
  - (2) The personality of the child
  - (3) Whether the child is mentally ill or developmentally disabled
  - (4) The child's motives and attitudes
  - (5) The child's physical and mental maturity
  - (6) The child's pattern of living
  - (7) The type and seriousness of the offense, including whether it was against persons or property, the extent to which it was committed in a violent, aggressive, premeditated or willful manner
  - (8) The adequacy and suitability of facilities, services and procedures available for treatment of the child and protection of the public within the juvenile justice system, and, where applicable, the mental health system
  - (9) The desirability of trial and disposition of the entire offense in one court if the juvenile was allegedly associated in the offense with persons who will be charged with a crime in circuit court

- Wyoming
- (1) The seriousness of the alleged offense to the community and whether the protection of the community requires waiver
  - (2) Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner
  - (3) Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted
  - (4) The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime
  - (5) The sophistication and maturity of the juvenile as determined by consideration of his home, environment situation, emotional attitude and pattern of living
  - (6) The prospects for adequate protection of the public by the use of procedures, services and facilities currently available to the juvenile court

## Attachment A

Minnesota criteria for prima facie evidence that public safety is not served or the child is not suitable for treatment:

(1) is alleged by delinquency petition to have committed an aggravated felony against the person and (a) in committing the offense, the child acted with particular cruelty or disregard for the life or safety of another; or (b) the offense involved a high degree of sophistication or planning by the juvenile; or (c) the juvenile, at the time of the offense, used, whether by brandishing, displaying, threatening with, or otherwise employing, a firearm; or

(2) is alleged by delinquency petition to have committed murder in the first degree;

(3) is alleged by delinquency petition (a) to have committed the delinquent act of escape from confinement of a state juvenile correctional facility or a local juvenile correctional facility and (b) to have committed an offense as part of, or subsequent to, escape from custody that would be a felony listed in [the Minnesota Code] if committed by an adult; or

(4) has been found by the court, pursuant to an admission in court or after trial, to have committed an offense within the preceding 24 months which would be a felony if committed by an adult, and is alleged by delinquency petition to have committed murder in the 2nd or 3rd degree, manslaughter in the 1st degree, criminal sexual conduct in the 1st degree or assault in the 1st degree; or

(5) has been found by the court, pursuant to an admission in court or after trial, to have committed two offenses, not in the same behavioral incident, within the preceding 24 months which would be felonies if committed by an adult, and is alleged by delinquency petition to have committed 2nd degree manslaughter, kidnapping, 2nd degree criminal sexual conduct, 1st degree arson, aggravated robbery, or 2nd degree assault; or

(6) has been found by the court, pursuant to an admission in court or after trial, to have committed two offenses, not in the same behavioral incident, within the preceding 24 months, one or both of which would be the felony of burglary of a dwelling if committed by an adult, and the child is alleged by the delinquency petition to have committed another burglary of a dwelling. For purposes of this subdivision, "dwelling" means a building which is, in whole or in part, usually occupied by one or more persons living there at night; or

(7) has been found by the court, pursuant to an admission in court or after trial, to have committed three offenses, not in the same behavioral incident, within the preceding 24 months, which would be the felonies if committed by an adult, and is alleged by delinquency petition to have committed any felony other than those described in clause (2), (4) or (5); or

(8) is alleged by delinquency petition to have committed an aggravated felony against the person in furtherance of criminal activity by an organized gang;

(9) has previously been found by the court, pursuant to an admission in court or after trial, to have committed an offense which would be a felony if committed by an adult, and is alleged by delinquency petition to have committed a felony-level violation involving the unlawful sale or possession of a schedule I or II controlled substance, while in a park or in a school zone.

## Appendix H2

### OTHER STATE DEFINITIONS OF "AMENABILITY TO TREATMENT"

- Arkansas (1) "[whether a repetitive pattern of adjudicated offenses] would lead to the determination that the juvenile is beyond rehabilitation under existing rehabilitation programs, as evidenced by past efforts to treat and rehabilitate the juvenile and the response to such efforts;"  
(2) The prior history, character traits, mental maturity, and any other factor which reflects upon the juvenile's prospects for rehabilitation
- Alabama (1) "the nature of past treatment efforts and the nature of the child's response to such efforts."
- Alaska (1) "the minor is not amenable to treatment under this chapter [Welfare, Social Services & Institutions]..."  
(2) "a minor is unamenable to treatment under this chapter [Welfare, Social Services & Institutions] if the minor probably cannot be rehabilitated by treatment under this chapter before reaching 20 years of age. In determining whether a minor is unamenable to treatment, the court may consider:  
(1) the seriousness of the offense the minor is alleged to have committed,  
(2) the minor's history of delinquency,  
(3) the probable cause of the minor's delinquent behavior, and  
(4) the facilities available to the division of youth and adult authority for treating the minor."
- Arizona (1) "the likelihood of reasonable rehabilitation of the child by the use of services and facilities currently available to juvenile court."
- California (1) "the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of the following criteria:  
... Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.  
... Success of previous attempts by the juvenile court to rehabilitate the minor."
- Colorado (1) The likelihood of rehabilitation of the juvenile by use of facilities available to the juvenile court
- Connecticut (1) The child is not amenable to treatment in any institution or state agency or other available facility designed for the care and treatment of children to which said court may effect placement of such child which is suitable for his care or treatment
- Delaware (1) "The Court shall conduct a hearing to determine if the child "is amenable to the rehabilitative process of the Court. In determining whether the child is amenable, the Court shall take into consideration, among others, the following factors which are deemed to be non-exclusive:

(1) Whether in view of the age and other personal characteristics of the child, the people of Delaware may best be protected and the child may best be made a useful member of society by some form of correctional treatment which the Family Court lacks power to assign; or

(2) Whether it is alleged death or serious personal injury was inflicted by the child upon anyone in the course of commission of the offense or in immediate flight therefrom; or

(3) Whether the child has been convicted of any prior criminal offense; or

(4) Whether the child has previously been subjected to any form of correctional treatment by the Family Court; or

(5) Whether it is alleged a dangerous instrument was used by the child; or

(6) Whether other participants in the same offense are being tried as adult offenders.

If it decides the child is amenable, it may proceed to hear the case."

D.C.

(1) "Evidence of the following factors shall be considered in determining whether they are reasonable prospects for rehabilitating a child prior to his majority:

(1) the child's age;

(2) the nature of the present offense and the extent and nature of the child's prior delinquency record;

(3) the child's mental condition;

(4) the nature of past treatment efforts and the nature of the child's response to past treatment efforts; and

(5) the techniques, facilities, and personnel for rehabilitation available to the Division [Family Division of the Superior Court of the District of Columbia] and the court that would have jurisdiction after transfer.

Florida

(1) "the likelihood of reasonable rehabilitation of the child, if he is found to have committed the alleged offense, by the use of procedures, services, and facilities currently available to the [juvenile] court."

Georgia

Statute does not address amenability to treatment.

Hawaii

(1) the child is not "treatable in any available institution or facility within the State designed for the care and treatment of children"

(2) "the likelihood of reasonable rehabilitation of the minor (if the minor is found to have committed the alleged offense) by the use of the procedures, services, and facilities available to the family court."

Idaho

(1) "The likelihood of rehabilitation of the child by use of facilities available to the [juvenile] court."

Illinois

(1) "Whether there are facilities particularly available to the Juvenile Court for the treatment and rehabilitation of the minor."

Indiana

(1) "... the child is beyond rehabilitation under the juvenile justice system."

Iowa

(1) The court determines that the state has established that there are not reasonable prospects for rehabilitating the child if the juvenile court retains

jurisdiction over the child and the child is adjudicated to have committed the delinquent act

(2) "... past efforts of such [juvenile] authorities to treat and rehabilitate the child and the response to such efforts."

(3) The programs, facilities and personnel available to the juvenile court for rehabilitation and treatment of the child

Kansas (1) Whether there are facilities and programs available to the court which are likely to rehabilitate the respondent prior to the expiration of the court's jurisdiction under this [juvenile] code

Louisiana Does not address the issue of amenability to treatment

Maine Does not address the issue of amenability to treatment

Maryland (1) The child's amenability to treatment in any institution, facility, or program available to delinquents

Massachusetts (1) The court shall determine whether the child is amenable to rehabilitation in the juvenile system  
(2) The success or lack of success of any past treatment efforts for the child  
(3) The likelihood of rehabilitation of the child

Michigan (1) "Whether the offense is part of a repetitive pattern of offenses which would lead to 1 of the following determinations:  
(i) The child is not amenable to treatment.  
(ii) That despite the child's potential for treatment, the nature of the child's delinquent behavior is likely to disrupt the rehabilitation of other children in the treatment program."

Minnesota (1) The prosecuting attorney has shown by convincing evidence that the child is not suitable to treatment under the provision of laws relating to the juvenile courts  
(2) See Appendix A

Mississippi (1) Clear and convincing evidence that there are no reasonable prospects of rehabilitation within the juvenile justice system  
(2) Whether or not the child can be retained in the juvenile justice system long enough for effective treatment or rehabilitation

Missouri (1) Whether there are reasonable prospects of rehabilitation within the juvenile justice system  
(2) Whether the child can benefit from the treatment or rehabilitative programs available to the juvenile court

Montana Does not address the issue of amenability to treatment

Nebraska *Does not have a transfer statute; however in §43-276 when the county attorney is deciding whether to file in criminal or juvenile court for juveniles 16-17 they should consider:*

(1) They type of treatment such juvenile would most likely be amenable to



(2) Whether there are facilities particularly available to the juvenile court for treatment and rehabilitation of the juvenile

Nevada Does not have additional criteria other than age/offense.

New Hampshire (1) The likelihood of reasonable rehabilitation of the minor through the juvenile court system

New Jersey (1) If in any case the juvenile can show that the probability of his rehabilitation by the use of the procedures, services and facilities available to the [juvenile] court prior to the juvenile reaching the age of 19 substantially outweighs the reasons for waiver

North Carolina Statute does not address amenability to treatment

North Dakota (1) The child is not amenable to treatment or rehabilitation as a juvenile through available programs

Ohio (1) He is not amenable to care or rehabilitation or further care or rehabilitation in any facility designed for the care, supervision, and rehabilitation of delinquent children

Oklahoma (1) The likelihood of reasonable rehabilitation of the juvenile if he is found to have committed the alleged offense, by the use of procedure and facilities currently available to the juvenile court

Oregon (1) The amenability of the child to treatment and rehabilitation given the techniques, facilities and personnel for rehabilitation available to the juvenile court and to the criminal court which would have jurisdiction after transfer  
(2) The previous history of the child, including prior treatment efforts and out-of-home placements

Pennsylvania (1) "the success or failure of any previous attempts by juvenile court to rehabilitate the child"  
(2) "whether the child can be rehabilitated prior to the expiration of the juvenile court jurisdiction"

Rhode Island Statute does not address amenability to treatment

South Carolina Statute does not address amenability to treatment

South Dakota (1) The likelihood of reasonable rehabilitation of the juvenile, if found to have committed the alleged offense, by the use of procedures, services and facilities currently available to the juvenile court

Tennessee (1) The nature of past treatment efforts and the nature of the child's response thereto

(2) The possible rehabilitation of the child by use of procedures, services and facilities currently available to the court in this state

Texas (1) The likelihood of rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court

Utah (1) The likelihood of rehabilitation of the juvenile by use of facilities available to the juvenile court

Vermont (1) The nature of past treatment efforts and the nature of the child's response to them

(2) The prospects for rehabilitation of the child by use of procedures, services and facilities available through juvenile proceedings

Washington Statute does not address amenability to treatment

West Virginia Statute does not address amenability to treatment

Wisconsin (1) Prior treatment history and apparent potential for responding to future treatment

Wyoming (1) The likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the juvenile court

**Appendix H3**  
**State Definitions of "Prior Record Considerations"**

- Arkansas (1) Whether the offense is part of a repetitive pattern of adjudicated offenses
- Alabama (1) The extent and nature of the child's prior delinquent record
- Alaska (1) Minor's history of delinquency
- Arizona (1) The record and previous history of the child, including previous contacts with juvenile courts and law enforcement agencies in this and other jurisdictions, prior periods of probation in any court and their results, and any prior commitments to juvenile residential placements and secure institutions  
(2) Whether the child has previously been transferred for criminal prosecution in this or any other state
- California (1) The minor's previous delinquent history
- Colorado (1) The record and previous history of the juvenile  
(2) That the juvenile was twice previously adjudicated a delinquent juvenile for delinquent acts which constitute felonies  
(3) That the juvenile was previously adjudicated a juvenile delinquent for a delinquent act which constitutes a crime of violence as defined in Colorado statutes  
(4) That the juvenile was previously committed to the department of institutions following an adjudication for a delinquent act which constitutes a felony  
(5) That the juvenile is 16 years of age or older at the time of the offense and the present act constitutes a crime of violence as defined by Colorado statutes  
(6) That the juvenile is 16 years of age or older at the time of the offense and has been twice previously adjudicated a juvenile delinquent for delinquent acts against property which constitute felonies.
- Connecticut (1) "... the serious and dangerous nature of the [previous delinquent] acts and the physical, mental and emotional history and condition of the child, are such that the child is a danger to society and requires more secure and longer term handling than the juvenile justice system is able to provide and the institutions to which said court may sentence a defendant sixteen years of age [majority] or over are more suitable for the care and treatment of such child"  
(2) Transfer *may be* initiated for violation of a Class B or C felony "if such child has previously been adjudicated a delinquent for a serious juvenile offense"  
(3) Transfer is mandatory for any child charged with violation of a Class A felony, other than murder, provided such child has previously been adjudicated a delinquent at any age for a violation of a Class A felony  
(4) Transfer is mandatory for any child charged with violation of a Class B felony, provided such child has previously been adjudicated a delinquent at any age for two violations of Class A or B felonies
- Delaware (1) Whether the child has been convicted of any prior criminal offense

- D.C. (1) The nature of the present offense and the extent and nature of the child's prior delinquency record
- Florida (1) Previous contacts with the department, other law enforcement agencies, and the courts  
(2) Prior periods of probation or community control  
(3) Prior adjudication that the child committed a delinquent act or violation of law, greater weight being given if the child has previously been found by a court to have committed a delinquent act or violation of law involving an offense classified as a felony or has twice previously been found to have committed a delinquent act or violation of law involving an offense classified as a misdemeanor  
(4) Prior commitments to institutions
- Georgia Statute does not address prior record
- Hawaii (1) The record and previous history of the minor including previous contacts with the Family Court, other law enforcement agencies, courts in other jurisdictions, prior records of probation to this court, or prior commitments to juvenile institutions
- Idaho (1) The child's record and previous history of contacts with the juvenile justice system
- Illinois (1) The previous history of the minor
- Indiana (1)...an act that is "part of a repetitive pattern of delinquent acts, even though less severe."
- Iowa (1) The nature and extent of the child's prior contacts with juvenile authorities
- Kansas (1) "The previous history of the respondent, including whether the respondent has been adjudicated a delinquent or miscreant under the Kansas juvenile code or a juvenile offender under this code, and if so, whether the offenses were against persons or property, and any other previous history of antisocial behavior or patterns of physical violence"
- Louisiana Statute does not address prior record
- Maine (1) The record and previous history of the juvenile
- Maryland Statute does not address prior record
- Massachusetts (1) The child's court and delinquency record
- Michigan (1) The prior record and character of the child
- Minnesota (1) See Appendix A for prior record considerations.
- Mississippi (1) The history of the child, including experience with the juvenile justice system, other courts, probation, commitments to juvenile institutions or other placements

Missouri (1) Whether the offense alleged is part of a repetitive pattern of offenses which indicates that the child may be beyond rehabilitation under the juvenile code  
(2) The record and history of the child, including experience with the juvenile justice system, other courts, supervision, commitments to juvenile justice institutions and other placements

Montana (1) The record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions

Nebraska *Does not have a transfer statute; however in §43-276 when the county attorney is deciding whether to file in criminal or juvenile court for juveniles 16-17 they should consider:*

(1) The previous history of the juvenile, including whether he or she had been convicted of any previous offenses or adjudicated in juvenile court, and, if so, whether such offenses were crimes against the person or relating to property, and other previous history of antisocial behavior, if any, including any patterns of physical violence

Nevada Statute does not have additional criteria other than age/offense.

New Hampshire (1) The minor's prior record and prior contacts with law enforcement agencies

New Jersey (1) The prior record of the juvenile is sufficiently serious that the interests of the public require waiver  
(2) A crime committed at a time when the juvenile had previously been adjudicated delinquent, or convicted, on the basis of [the offense enumerated in the transfer statute] as a juvenile  
(2) A crime committed at a time when the juvenile had previously been sentenced and confined in an adult penal institution

New Mexico Does not have a transfer statute

North Carolina Statute does not address prior record

North Dakota Statute does not address prior record

Ohio (1) The child previously has been adjudicated a delinquent child for the commission of an act that would constitute aggravated murder or murder if committed by an adult

Oklahoma (1) The record and previous history of the juvenile, including previous contacts with community agencies, law enforcement agencies, schools, juvenile courts and other jurisdictions, prior periods of probation or prior commitments to juvenile institutions

Oregon (1) The child's prior record of acts which would be crimes if committed by an adult  
(2) The previous history of the child

Pennsylvania (1) Previous records  
(2) "The nature and extent of any prior delinquent history"

Rhode Island Statute does not have additional criteria other than age/offense.

South

Carolina (1) If a child fourteen or fifteen years of age who has two prior and unrelated adjudications of assault, assault and battery with intent to kill, assault and battery of a high and aggravated nature, arson, housebreaking, burglary, kidnapping, attempted criminal sexual conduct or robbery and is currently charged with a third or subsequent such offense

South Dakota (1) The record and previous history of the juvenile

Tennessee (1) The extent and nature of the child's prior delinquency records

Texas (1) The record and previous history of the child

Utah (1) The record and previous history of the juvenile

Vermont (1) The extent and nature of the child's prior record of delinquency

Washington Statute does not address prior record

West Virginia Statute does not address prior record

Wisconsin (1) The prior record of the child, including whether the child has been previously found delinquent, whether such delinquency involved the infliction of serious bodily injury, and prior offenses

Wyoming (1) The record and previous history of the juvenile, including previous contacts with the law enforcement agencies, juvenile courts and other jurisdictions, prior records of probation to this court, or prior commitments to juvenile institutions

**Appendix I:  
Virginia Survey Results**

## Appendix I Virginia Survey Results

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### I. Methodology

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- **Surveys were administered to:**
  - 121 Commonwealth's Attorneys**
  - 133 Circuit Court Judges**
  - 78 Juvenile and Domestic Relations District Court Judges**
  - 19 Public Defenders**
  - 351 Total**
  
- **Response Rates: Overall 78%**
  - 89 (74%) Commonwealth's Attorneys**
  - 100 (75%) Circuit Court Judges**
  - 67 (86%) Juvenile and Domestic Relations District Court Judges**
  - 18 (95%) Public Defenders**
  - 274 Total**
  
- **Follow-up Attempts:**
  - 1. Virginia Commonwealth's Attorney Services Council**
  - 2. Virginia Public Defender Commission**
  - 3. Letters, phone calls and reminders from Task Force Members**
  - 4. Staff Phone Calls to 64 Offices**
  - 5. Second Surveys Sent to 76 Offices**
  
- **The number of responses to questions may vary due to missing values on some surveys where one or more respondents did not wish to answer. Three Circuit Court Judges from Circuit 13 responded to the requests, however because they do not handle any criminal caseload they did not complete the survey. In addition, two Circuit Court Judge responded to the request but because they had served on the bench less than a year they did not feel qualified to complete the surveys. Thus, 269 surveys were analyzed.**

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### II. Overall Findings

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- **Offense and prior record are the most important factors in the transfer decision.**
- **The current statute needs clarification and changes, however, few felt that any of the current criteria should be excluded.**



- Juvenile and Domestic Relations District Court Judges should be able to impose determinate sentences.
- Post-dispositional options at the Juvenile and Domestic Relations District Court level are not adequate to effectively deal with serious juvenile offenders.

### III. Factors Influencing Transfer Decisions

- Offense and prior delinquent history are the most important factors in the decision to transfer. 86% (221) of the total respondents felt that the current offense was either the first or second most important factor in the decision to transfer; 71% (182) felt it was the most important factor.
- 14% (36) of the total respondents felt that previous treatment history was the first or second most important factor in the transfer decision.
- Number and percent of each group that found each factor to be the most important factor in the transfer decision:

	<u>CAs</u>	<u>J&amp;DR</u>	<u>CCJud</u>	<u>PD</u>
Current Type of Offense:	71(84%)	36(57%)	68(74%)	7(41%)
Transfer Report:	0( 0%)	3( 5%)	6( 7%)	2(12%)
Previous Delinquent History:	12(14%)	10(16%)	12(12%)	5(29%)
Treatment History:	1( 1%)	9(14%)	1( 1%)	1( 6%)
Age of Alleged Offender:	0( 0%)	2( 3%)	3( 3%)	2(12%)
Other Factors:	<u>1</u> ( 1%)	<u>3</u> ( 5%)	<u>2</u> ( 2%)	<u>0</u> ( 0%)
	*N= 85	63	92	17

\*12 survey respondents rated all factors equal; therefore n=257; percentages may not total 100% due to rounding.

- Examples of "other factors" include:
  1. Victim concerns (injury, relationship with offender, age)
  2. Use of a weapon, particularly a handgun
  3. Presence of codefendants and their ages
  4. Attitude and cooperation of the juvenile
  5. Family circumstance and home environment

### IV. Changes to Current Transfer Statute

- 80% (214) of the total respondents felt that the current transfer statute provides clear guidance on which juveniles to transfer:

- 75% (66) Commonwealth's Attorneys
- 83% (78) Circuit Court Judges
- 85% (57) Juvenile and Domestic Relations District Court Judges
- 72% (13) Public Defenders

Some of the areas where survey respondents felt further guidance was needed:

1. Definitions- "amenable to treatment or rehabilitation"  
 "through available facilities"  
 "nature of past treatment efforts and child response to past treatment efforts"  
 "mentally retarded and criminally insane"
  2. When the jurisdiction of the J&DR Court ceases and becomes vested in the Circuit Court
  3. More specific, objective, quantified criteria
  4. A de novo hearing at the Circuit Court level to hear appeals of the transfer decision
- 14% (36) of the total respondents felt that additional criteria should be included in the transfer statute. Examples of criteria include:
    1. Home environment/family situation
    2. Maturity of juvenile
    3. Use of firearm during commission of offense
    4. Impact on victim/future potential victims
    5. Specificity in terms of available treatment options/past treatment efforts
  - 51% of the total respondents (136) felt that the current age criteria was appropriate; 49% (133) felt that the current age criteria should be changed:

	<u>CAs</u>	<u>J&amp;DR</u>	<u>CCJud</u>	<u>PD</u>	<u>Total</u>
No Age Barrier:	20	6	14	0	40(30%)
13 Years and Above:	20	5	16	1	42(32%)
14 Years and Above:	13	8	13	1	35(27%)
16 Years and Above:	1	2	2	5	10( 8%)
17 Years and Above:	<u>0</u>	<u>0</u>	<u>0</u>	<u>5</u>	<u>5( 4%)</u>
N=	54	21	45	12	132*
Percentage of Each Group=	(61%)	(31%)	(47%)	(67%)	

\*One respondent found the current age criteria inappropriate, however did not respond to a suggested alternative; therefore N=132; Percentages do not total 100% due to rounding.

- Only 22% (60) of the total respondents felt that any of the current criteria in the transfer statute should be excluded from consideration; the criteria that these respondents felt most needed to be excluded was the degree of mental retardation/illness (35 respondents).

- 57% (151) of the total respondents felt that additional offenses should be included in §16.1-269(A3) where the criteria of amenability to treatment and prior delinquent history need not be considered.

Examples of additional offenses that should be included in §16.1-269(A3) include*:	
<b>1. Malicious Wounding</b> §18.2-51 <i>Malicious Wounding</i> §18.2-51.2 <i>Aggravated Malicious Wounding</i> §18.2-51.1 <i>Malicious Wounding of Law Enforcement Officer</i>	<b>56 respondents</b>
<b>2. Additional Sex Offenses</b> §18.2-67.1 <i>Forcible Sodomy</i> §18.2-67.2 <i>Inanimate Sexual Penetration</i> §18.2-67.3 <i>Aggravated Sexual Battery</i>	<b>49 respondents</b>
<b>3. Schedule I &amp; II Drug Violations</b> § 18.2-248 <i>Manufacture, Sale, Distribution and Possession with Intent to Distribute, Manufacture or Sale</i>	<b>47 respondents</b>
<b>4. Felonies Involving a Firearm</b> §18.2-53.1 <i>Use or Display of a Firearms while committing or attempting to commit murder, rape, robbery burglary, malicious wounding or abduction.</i>	<b>24 respondents</b>
*For full list of suggested additional offenses see Attachment 1.	

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## V. Sentencing Issues

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- 82% (218) of the respondents felt that Juvenile and Domestic Relations District Court Judges should be able to impose determinate sentences on juveniles committed to the State's Learning Centers for transferable offenses.
  - 81 (91%) of Commonwealth's Attorneys
  - 65 (69%) of Circuit Court Judges
  - 58 (89%) of Juvenile and Domestic District Relations Court Judges
  - 14 (78%) of Public Defenders
- 85% (226) of the respondents felt that Juvenile and Domestic Relations District Court Judges should be able to impose determinate sentences on juveniles committed under the Serious Offender Statute (§16.1-285.1).
  - 83 (93%) of Commonwealth's Attorneys

66 (71%) of Circuit Court Judges  
 62 (92%) of Juvenile and Domestic District Relations Court Judges  
 15 (83%) of Public Defenders

- However, only 45% felt that sentencing guidelines should be used.
- 17% (45) of the respondents were in favor of extending the Juvenile and Domestic Relations District Court jurisdiction, as specified in §16.1-242, for transfer eligible cases past 21 years.

42 out of the 45 respondents felt that the jurisdiction should be extended for juveniles who committed crimes against persons.

Of those that did favor the extension, the following ages were suggested:

23-25 years	(31 respondents)
28-30 years	( 5 respondents)
Unlimited years	( 9 respondents)

- Only 19% (47) of the total respondents felt that there should be a youthful offender parole board to consider release dates and recommend treatment programs.
  - 9 (10%) of Commonwealth's Attorneys
  - 18 (20%) of Circuit Court Judges
  - 14 (23%) of Juvenile and Domestic District Relations Court Judges
  - 6 (35%) of Public Defenders

Examples of reasons given for and against the parole board included:

Reasons for Board

Reasons Against Board

(1) Obtain greater objectivity	(1) More waste of resources
(2) More extensive aftercare and follow-up	(2) Not needed; current system good
(3) Greater accountability to ensure complete rehabilitation and community safety	(3) Juveniles have different aftercare and release considerations
(4) Provide uniformity, structure and control to release process	(4) Would allow for consideration of non-treatment related issues
(5) Make sure juvenile offenders are not released too quickly	

## **VI. Adequacy of Post-Dispositional Options**

- **53% (140) of the respondents did not feel that there were sufficient dispositional options at the Juvenile and Domestic Relations District Court level to effectively deal with serious juvenile offenders.**

**The following are examples of the types of dispositional options they felt were needed:**

- (1) Determinate sentences**
  - (2) Boot camps**
  - (3) Commitment to jails**
  - (4) Secure juvenile correctional institution**
  - (5) Special schools for serious youthful offenders**
  - (6) Extended jurisdiction of juveniles past age of 21 years**
  - (7) Work programs that benefit community and/or victim**
  - (8) Broader use of post-dispositional detention**
- **82% (216) felt that Circuit Court dispositions are more punitive, in terms of length of time served and methods of incarceration, than those available to the Juvenile and Domestic Relations District Court.**

- (1) 96% of Commonwealth's attorneys said these sanctions had an effect on their seeking transfers;**
- (2) 70% of the Juvenile and Domestic Relations District Court Judges said that these sanctions had an effect on their transferring juvenile cases; and**
- (3) 81% of the Circuit Court Judges said these sanctions had an effect on their acceptance of transfer cases.**

- **However, 22% of the Commonwealth's attorneys reported that they sought juvenile transfers to access either juvenile boot camps or the Youthful Offender Programs at St. Bride's and Southampton Correctional Centers.**
- **36% (94) of the respondents were in favor of extending the Department of Youth and Family Service's jurisdiction to hold a juvenile receiving treatment for a transfer eligible offense past the age of 21 years.**

**Of those that did favor the extension, the following ages were suggested:**

<b>22-24 years</b>	<b>(14 respondents)</b>
<b>25 years</b>	<b>(52 respondents)</b>
<b>28-30 years</b>	<b>( 9 respondents)</b>
<b>Unlimited years</b>	<b>(19 respondents)</b>

**91 out of the 95 respondents felt that the jurisdiction should be extended for juveniles who committed crimes against persons; 58 respondents felt it should be extended for felony drug offenses.**

- **69% (179) of the total respondents felt that there were enough treatment programs at the Juvenile and Domestic Relations District Court level to satisfy the "amenability to treatment" criteria prior to transferring juvenile cases in their area.**

**54 (64%) of Commonwealth's Attorneys**

**73 (82%) of Circuit Court Judges**

**44 (67%) of Juvenile and Domestic District Relations Court Judges**

**8 (44%) of Public Defenders**

**The following are examples of the types of treatment programs that respondents reported were needed:**

- (1) Drug treatment programs (particularly residential treatment)**
- (2) Long term sex offender programs (particularly residential treatment)**
- (3) Early intervention and prevention programs**
- (4) Programs are available, funding for placements is a problem**
- (5) Community outreach programs**
- (6) Mental health treatment programs (particularly residential treatment)**
- (7) Family counseling programs**
- (8) More detention homes, community based homes and half-way houses**
- (9) Vocational training and job skills**

- **At least one Juvenile and Domestic Relations District Court Judge and one Circuit Court Judge in each of the following court districts reported that there were not enough treatment programs at the Juvenile and Domestic Relations District Court level to satisfy the "amenability to treatment" criteria prior to transferring juvenile cases in their area: 5th district, 6th district, 7th district, 14th district, 19th district and 27th district.**

## **VII. Additional Concerns**

- **18% (47) of the total respondents reported that they found it difficult to collect information regarding the offense/treatment histories of juveniles charged with transfer eligible offenses.**
- **76% (199) of the total respondents supported the development of a statewide juvenile offender database.**
- **The following issues were mentioned by respondents as additional concerns or issues they had with the transfer statute and serious juvenile offenders:**

- **The twenty-one day period in which the Circuit Court must decide whether provisions of §16.1-269 have been met is inadequate;**
- **Clearer statutory provisions that specify the Circuit Court's right to refuse cases;**
- **Statutory provisions for the placement of juveniles that have been transferred, but are awaiting acceptance by the Circuit Court;**
- **There is a lack of coordination between state care and local aftercare or programs;**
- **Statutory provisions that once juveniles are transferred/convicted as adults, jurisdiction of the J&DR Court is terminated for future offenses;**
- **Statutory provisions that allow for juveniles to spend time under the Department of Youth and Family Service's supervision until age 21 years, but allow for transfer to the Department of Corrections for additional incarceration until appropriate care and rehabilitation has been achieved for juveniles convicted of serious offenses;**
- **Statutory provisions that allow for related charges pending against a youth to be transferred to Circuit Court along with the transferred felony charge(s).**
- **Statutory provisions for punishing escapes from juvenile facilities or injuring personnel at juvenile facilities;**

## ATTACHMENT 1: Survey Responses

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**Suggested Offenses to add to §16.1-269(A3) where the criteria of amenability to treatment and prior delinquent history need not be considered:**

1. **Malicious Wounding** (*§18.2-51 Malicious Wounding, §18.2-51.2 Aggravated Malicious Wounding, §18.2-51.1 Malicious Wounding of Law Enforcement Officer*)  
11 Circuit Court Judges  
31 Commonwealth's Attorneys  
10 Juvenile and Domestic Relations District Court Judges  
56 Respondents
  
2. **Additional Sex Offenses** (*§18.2-67.1 Forcible Sodomy, §18.2-67.2 Inanimate Sexual Penetration, §18.2-67.3 Aggravated Sexual Battery*)  
17 Circuit Court Judges  
22 Commonwealth's Attorneys  
8 Juvenile and Domestic Relations District Court Judges  
2 Public Defenders  
49 Respondents
  
3. **Schedule I & II Drug Violations** (*§ 18.2-248 Manufacture, Sale, Distribution & Possession with Intent to Distribute, Manufacture or Sale*)  
14 Circuit Court Judges  
27 Commonwealth's Attorneys  
6 Juvenile and Domestic Relations District Court Judges  
47 Respondents
  
4. **Felonies Involving a Firearm** (*§18.2-53.1 Use or Display of a Firearms while committing or attempting to commit murder, rape, robbery burglary, malicious wounding or abduction*)  
6 Circuit Court Judges  
11 Commonwealth's Attorneys  
7 Juvenile and Domestic Relations District Court Judges  
24 Respondents
  
5. **Arson**  
3 Circuit Court Judges  
7 Commonwealth's Attorneys  
4 Juvenile and Domestic Relations District Court Judges  
14 Respondents
  
6. **Kidnapping** (*§18.2-47 abduction/kidnapping and §18.2-48 with intent to defile*)  
8 Circuit Court Judges  
4 Commonwealth's Attorneys  
2 Juvenile and Domestic Relations District Court Judges  
14 Respondents



**7. Attempted Murder, Rape and Robbery**

4 Circuit Court Judges  
6 Commonwealth's Attorneys  
3 Juvenile and Domestic Relations District Court Judges  
13 Respondents

**8. Breaking and Entering**

2 Circuit Court Judges  
8 Commonwealth's Attorneys  
2 Juvenile and Domestic Relations District Court Judges  
12 Respondents

**9. All Felonies with a Minimum of 20 Years to Life if Committed by an Adult**

2 Circuit Court Judges  
6 Commonwealth's Attorneys  
8 Respondents

**10. All Person Felonies**

2 Circuit Court Judges  
2 Commonwealth's Attorneys  
3 Juvenile and Domestic Relations District Court Judges  
7

**11. Any Type of Robbery (*not just armed robbery*)**

2 Circuit Court Judges  
3 Commonwealth's Attorneys  
5 Respondents