REPORT OF THE
VIRGINIA STATE CRIME COMMISSION

HJR 113 (2008) Final Report: Study of Virginia's Juvenile Justice System

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 12

COMMONWEALTH OF VIRGINIA
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COMMONWEALTH of VIRGINIA

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January 13, 2009

TO: The Honorable Timothy M. Kaine, Governor of Virginia

And

Members of the Virginia General Assembly

The *Code of Virginia* § 30-156 authorizes the Virginia State Crime Commission to study, report and make recommendations on all areas of public safety and protection. Section 30-158(3) provides the Commission with the power to conduct studies and gather information and data in order to accomplish its purposes as set forth in § 30-156...and formulate its recommendations to the Governor and the General Assembly.

Enclosed for your review and consideration is the final report of the study on Virginia's Juvenile Justice system. The Commission received assistance from all affected agencies and gratefully acknowledges their input.

Respectfully,

David B. Albo
Chairman

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I. Authority for Study

The Code of Virginia, § 30-156, authorizes the Virginia State Crime Commission ("Crime Commission") to study, report and make recommendations on all areas of public safety and protection. In so doing, the Crime Commission shall endeavor to ascertain the causes of crime and recommend ways to reduce and prevent it, explore and recommend methods of rehabilitation of convicted criminals, study compensation of persons in law enforcement and related fields and study other related matters including apprehension, trial and punishment of criminal offenders.[1] Section 30-158(3) empowers the Crime Commission to conduct studies and gather information and data in order to accomplish its purpose as set forth in § 30-156 ... and formulate its recommendations to the Governor and the General Assembly.

Using the statutory authority granted to the Crime Commission, staff conducted a study on Virginia's juvenile justice system.

II. Executive Summary

During the 2006 Session of the Virginia General Assembly, Delegate Brian Moran introduced House Joint Resolution 136 (HJR 136),[2] which directed the Virginia State Crime Commission to study the Virginia juvenile justice system over a two-year period. Specifically, the Commission was to examine recidivism, disproportionate minority contact within the juvenile justice system, quality of and access to legal counsel, accountability in the courts, and diversion. The Commission was also tasked with analyzing Title 16.1 of the Code of Virginia to determine the adequacy and effectiveness of current statutes and procedures relating to juvenile delinquency.

Because of the detailed information that was produced during the first two years of the study, an additional year was needed to fully examine the newly-identified issues in conjunction with the current matters cited in the initial resolution. The goals for the continuation of the study through 2008 included: ascertaining juvenile justice related training opportunities for Commonwealth's Attorneys and their assistants; examining the role of Commonwealth's Attorneys offices in the Juvenile and Domestic Relations (JDR) courts; determining the training provided for intake officers; reviewing juvenile law training provided for circuit court judges; discovering truancy patterns and exploring Department of Education programs directed toward truancy issues; determining the number of juveniles identified as having mental health and/or substance abuse needs in detention centers and DJJ correctional facilities; monitoring juvenile justice legislation; re-entry back into the community; and creating a list of proven practices for Court Service Units.

[1] VA CODE ANN. § 30-156 (Michie 2008).
[2] H.J.Res. 136 Va. General Assemb. (2006). *See* Attachment 1.

During the 2008 Session of the Virginia General Assembly, the Commission was directed to continue its study of Virginia's juvenile justice system for a third year under House Joint Resolution 113 (HJR 113)[3] as introduced by Delegate Brian Moran. Under this new resolution, the Commission was directed to continue to examine the issues outlined in HJR 136, as well as some additional concerns identified throughout the first part of the study. HJR 113 also incorporated House Joint Resolution 160 (HJR 160),[4] introduced by Delegate Clarence Phillips, which provided for a two-year study of the juvenile justice system to: (i) review the severity of offenses committed by juveniles in the Commonwealth; (ii) evaluate the effects on the learning environment and educational process when juvenile offenders are returned to the public school classroom; (iii) identify and examine more effective methods of rehabilitating juveniles, particularly juveniles who commit serious offenses; and, (iv) recommend such changes as the Commission may deem necessary to provide a more effective juvenile justice system.

The Crime Commission utilized several research methodologies to address the directives of the mandates regarding the juvenile justice system in the Commonwealth, including: (i) completing a literature review; (ii) attending local, regional and national professional juvenile justice meetings and conferences; (iii) conducting focus groups of juvenile justice professionals; (iv) field visits to Juvenile and Domestic Relations (JDR) courts; (v) surveys of key juvenile justice professionals; and, (vi) analysis of Title 16.1 of the Code of Virginia.

Legislative initiatives and best practice recommendations were presented and discussed by the Crime Commission at the October 14, 2008, December 9, 2008, and January 13, 2009, meetings. Commission members endorsed legislation for introduction regarding amendments to Title 16.1 during the 2009 Session of the Virginia General Assembly. Additionally, the study was approved for continuation for an additional year to devote attention solely to juvenile certification and transfer issues.

[3]H.J. Res. 113, Va. Gen. Assem. (2006). *See* Attachment 2.
[4]H.J. Res. 160, Va. Gen. Assem. (2008). *See* Attachment 3.

III. Background

A. Study History

The Crime Commission's study of juvenile justice was initiated, in part, due to a report on juvenile counsel published by the American Bar Association (ABA) Juvenile Justice Center and the Mid-Atlantic Juvenile Defender Center. In 2002, these organizations published a joint report entitled "Virginia: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings," that cited numerous problems with the juvenile justice system in the Commonwealth. The report asserted that quality representation is lacking in delinquency proceedings due to timing of appointment, uninformed waiver of counsel, lack of public defender offices in some localities, untrained and inexperienced counsel, lack of ancillary resources, and the perception that juvenile court is seen as a "kiddy court."[5] It should be noted that while the report provided the impetus for a lengthy study of the juvenile criminal justice system in Virginia, it was published four years before the Crime Commission was directed to perform the study. In the interim, some of the problems identified had already been partially addressed, or completely remedied, by the legislature. The list below delineates key findings as stated in the ABA report.[6]

- *Timing of Appointment of Counsel*
  Under Virginia law, counsel is not appointed until after the initial hearing, referred to as the advisement hearing. For detained youth the advisement hearing is combined with the detention hearing. Defense counsel's inability to participate early in the process hinders representation.

- *Waiver of Counsel*
  A related outcome of absence of counsel is the high incidence of children waiving their right to counsel without prior consultation with a lawyer or trained advocate.[7]

- *Untrained and Inexperienced*
  In both appointed counsel and public defender office jurisdictions there is a lack of required juvenile specific training and experience. While some training opportunities exist, attorneys reported that issue-specific training was not required, unavailable and even unnecessary.

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[5] *An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, Ilona Picou, Patricia Puritz, and Mary Ann Scali, A.B.A. Juvenile Justice Center and the Mid-Atlantic Juvenile Defender Center (2002).

[6] The following findings are direct quotes from the ABA report. They do not represent any actual findings or even necessarily the views of the Crime Commission.

[7] This was partially remedied in 2004, when Va. Code § 16.1-266(C)(3) was modified to require that waiver of an attorney, in cases where the juvenile is alleged to have committed an offense that could result in a commitment, may only be done after consultation with an attorney. Va. Acts ch. 437 (2004). In 2005, this was somewhat limited; the mandatory consultation with an attorney prior to waving the right to counsel was restricted to cases where the juvenile has been charged with a felony. Va. Acts ch. 427 (2005).

- *Inadequate Ancillary Resources*
  A lack of ancillary resources, including the assistance of support staff, investigators, paralegals and social workers was present throughout the system; it was recognized, however, that the entire juvenile justice system in Virginia is under-funded and overburdened.

- *Inappropriate Referrals*
  A consistent view emerged that the juvenile justice system was being loaded down with inappropriate referrals—particularly mental health and school-related cases.

- *Second-Rate Status*
  Many people view juvenile court as "kiddy court" and the overall practice of delinquency law as unimportant.

- *Over Reliance on Court Service Units*
  In Virginia, the Department of Juvenile Justice (DJJ) is a powerful executive branch agency that manages community programs and services, community supervision, case management, and the custody and care of committed juveniles. The DJJ's case management division or Court Service Unit (CSU) bears enormous responsibility in juvenile court, making decisions that affect children at every stage of the process. CSU employees were found to be, at times, performing functions traditionally slated for judges and prosecutors, such as keeping a child out of the system by means of informal dispositions, authorizing detention, presenting the detention case to the court, advising youth of their rights, and presenting misdemeanor petitions to the court. Youth are left confused about the roles of court personnel and the system overall.

- *Prosecutorial Discretion*
  Defenders in several jurisdictions reported abuse of prosecutorial discretion by some Commonwealth's Attorneys in leveraging negotiations by threatening to transfer cases to circuit court.

- *Overrepresentation and Disparate Treatment*
  Disparate treatment of minority youth and the sentiment that skin color matters in Virginia were pervasive and glaring. Despite demographic differences, there was agreement in every jurisdiction that children and youth of color are overrepresented in Virginia's juvenile justice system.

- *Attorney Compensation*
  One of the lowest in the country, the $112 maximum paid to defense counsel to see a child's case through the delinquency system inadvertently place a premium on high volume and dispensing with cases quickly, typically through a hurried plea process.

Additionally, it should be mentioned that the last major reform to the Virginia juvenile justice system was conducted over a decade ago. Legislators across the country reacted in the mid-to-late-1990s to the increase in violent juvenile crime rates seen during the 1980s by reforming their states' overall juvenile justice system. With both the national and state juvenile crime rates on the rise, many elected officials and political leaders felt the need to create tougher penalties and sanctions for juvenile offenders, focusing primarily on youth between the ages of eleven and seventeen years. Virginia was no exception. In 1994 and 1996, Virginia made its laws more punitive for transfer provisions, sentencing authority, and confidentiality of juvenile records. Following the findings from the Commission on Youth's (COY) Serious Juvenile Offenders study and recommendations made by the Juvenile Justice Reform Commission, the Virginia General Assembly adopted many of these recommendations regarding juvenile justice laws.[8] With the exception of one dissension from the commission, there was an overwhelming push for tougher laws on juveniles in reaction to the rising crime rates. In 1994, Senate Bill 520 and House Bill 1243 made the following substantial changes:

- Lowered the age from fifteen to fourteen at which a juvenile may be tried as an adult in circuit court for felonies;

- Dissolved the requirement for a juvenile's transfer hearing to show the juvenile is not a proper person to stay in JDR court if the following charges were made:

  1. A Class 1 or 2 felony violation under Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 or, if the juvenile is sixteen years of age or older, a Class 3 felony violation of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 for: (i) murder under Article 1; (ii) mob-related felony under Article 2; (iii) kidnapping or abduction under Article 3; or (iv) assault or bodily wounding under Article 4; or,

  2. Any unclassified felony violation of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 which carries a maximum penalty of imprisonment for life or a term of imprisonment of forty years if committed by an adult;

- Established that once a juvenile is *convicted* as an adult, he will be treated as an adult in all future proceedings;

- Established that only juveniles with felony or Class 1 misdemeanor convictions would be subject to commitment to the Department of Youth and Family Services (DYFS), now the Department of Juvenile Justice (DJJ);[9]

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[8] REPORT OF THE VIRGINIA COMMISSION ON YOUTH ON THE STUDY OF SERIOUS JUVENILE OFFENDERS, Virginia Commission on Youth, H.D. 81 (1994).

[9] Technically, juveniles are not convicted of crimes, unless they have been transferred. The correct terminology is they have been adjudicated delinquent of a misdemeanor, or adjudicated delinquent of an offense that would be a felony if committed by an adult. However, even many attorneys shorten these lengthy phrases to "convicted of a Class 1 misdemeanor" or "convicted of a felony."

- Specified the hearing for early release of a juvenile from DYFS; and,

- Added the requirement that when a serious offender was to be released from DYFS, that the department notify the court, sheriff, chief of police, and the Commonwealth's Attorney from the locality where the juvenile was sentenced. The Department was also to notify any victim if the victim submitted a written request for notification.[10]

In 1996, more reforms were added to Virginia's juvenile code. Senate Bill 44 and House Bill 251 made the following changes:

- Established that a juvenile, once *tried* as an adult, would then be treated as an adult in all future proceedings;

- Established the discretion of a Commonwealth's Attorney to determine whether to transfer a juvenile for felony charges under subsection B of §16.1-269.1 of the Code of Virginia;

- Required DYFS to notify a juvenile's local school of reentry and work with the school to establish a reenrollment plan;

- Established that court proceedings involving a juvenile over the age of fourteen would be open proceedings, unless otherwise determined. It also opened the court records of such proceedings, except for portions kept confidential to protect a witness or another juvenile;

- Limited indeterminate commitments to DYFS to 36 months or the age of 21, with exception for commitments based on murder or manslaughter; and,

- Provided for blood samples to be taken for the state's DNA bank. It also included taking fingerprints and photographs of juveniles fourteen and older having committed a felony, or Class 1 or Class 2 misdemeanor for the Central Criminal Records Exchange (CCRE). Those CCRE records no longer were to be automatically deleted at the age of 29, but kept in cases of firearm purchases, fingerprint comparison, sentencing purposes, and for Court Service Units.[11]

Given the issues identified in the ABA report and the reforms adopted in the mid-1990s in Virginia, a comprehensive review of the current juvenile justice system was appropriate. Before carrying out any formal study activities, a literature review was conducted to gain a better understanding of factors affecting juvenile delinquency, and to gather relevant national and state statistics.

[10] 1994 Va. Acts chs. 859 and 949.
[11] 1996 Va. Acts chs. 755 and 914.

B. Literature Review

During the first year of its study, staff conducted an extensive literature review of existing national, state and academic juvenile justice studies. The following section includes a brief summary of findings from the literature review.

Juvenile Justice Reform

There is much discussion in academic literature on the treatment of juveniles in delinquency and criminal cases. States across the nation are experimenting with new policies and efforts to minimize juvenile crime and detention, and looking into redirecting efforts towards the "front-end versus the back-end approach," (i.e. concentrating more on prevention than punishment and incarceration). Some studies have reported that prevention programs can be successful in reducing juvenile delinquency and other behaviors, such as truancy, that may contribute to delinquent behavior.[12] Recent research has also shown that a juvenile's brain development is very different from that of an adult.[13] Neurological and physiological changes occur during adolescent brain development that offers explanations for risk taking behaviors and the lack of emotional maturity seen in juveniles. The frontal lobe of the brain is the last part of the brain to develop, typically not mature until the mid 20s, and is responsible for cognitive skill development, such as decision making, planning for the future, impulsivity, judgment, and foresight of consequences.[14] These discoveries support the assertion that adolescents are less morally culpable for their actions than competent adults and are more capable of change and rehabilitation.[15] The bulk of the evidence suggests that transfer laws, at least as currently implemented and publicized, have little or no general deterrent effect in preventing serious juvenile crime.[16] Evidence also suggests that the transfer of juveniles to adult court may have harmful effects, such as increasing recidivism rates, limiting a juvenile's ability to successfully participate in society, and promoting life-course criminality.[17]

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[12] Virginia Family Impact Seminars, *Truancy and Dropout Prevention Policies: Strategies for Virginia's Youth*, Virginia Commonwealth University, Center for Public Policy, October 22, 2008, *available at* http://www.pubapps.vcu.edu/gov/VFIS/Docs/Briefing%20book3.pdf.

[13] National Institute of Mental Health, *Imaging Study Shows Brain Maturing* (press release), *available at* http://www.nimh.nih.gov/science-news/2004/imaging-study-shows-brain-maturing.shtml.

[14] Mary Beckman, *Crime, Culpability and the Adolescent Brain*, Science Magazine, July 30, 2004, vol. 305 at 596.

[15] Adam Ortiz, ABA Juvenile Justice Center, Cruel and Unusual Punishment: The Juvenile Death Penalty Adolescence, Brain Development and Legal Culpability, *available at* http://www.abanet.org/crimjust/juvjus/Adolescence.pdf.

[16] Richard E. Redding, Juvenile Justice Bulletin; *Juvenile Transfer Laws: An Effective Deterrent to Delinquency*, U.S. DOJ OJJDP (2008).

[17] Id.

National-Level Trends

Based on U.S. Census Data for the period of time between 1990 and 2000, the juvenile population, ages 10-17, increased 23% from 637,222 to 781,196. Since then, the juvenile population has continued to rise and as of the July 1, 2007, it was estimated at 815,207.[18]

Since the passage of numerous "get tough" juvenile crime laws during the 1990s, both nationally and in Virginia, juvenile arrests have steadily been on the decline. It is unknown whether arrests declined as a result of the stricter penalties or other causes. Following almost a decade of consistency, the juvenile Violent Crime Index[19] arrest rate began to rise in 1989 and soared in 1994, so that it was 61% above its 1988 level.[20] However, between 1994 and 1997, the juvenile Violent Crime Index arrest rate dropped 23%, and by 1997, it had nearly returned to the 1989 level.[21] Between 1994 and 2003, national juvenile arrests fell by 18%. In comparison, adult arrests rose 1% during that time.[22] It is important to note that between 1980 and 1997, Violent Crime Index arrest rates increased substantially for all ages, and at a higher rate for adults than juveniles.[23]

State-Level Trends

In the ten-year period from the 1990 to the 2000 U.S. Census, the Virginia population increased by about 865,000 people. During this time, the juvenile population increased 14.4% from 1,519,127 juveniles in 1990 to 1,738,262 juveniles in 2000.[24]

According to the Virginia State Police, there were 59,281 total juvenile arrests in 1996 and 38,599 in 2006, representing a decrease of 34%.[25] Virginia's juvenile arrest rate for violent crime in 2006 was 171 per 100,000, ranking the Commonwealth the 16th lowest nationally.[26] The U.S. average was 315 arrests for violent crime per 100,000 youths. In 2006, Virginia's juvenile property crime arrest rate was 905 per 100,000, ranking Virginia the 10th lowest in the United States. The national average was 1,256 per 100,000.

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[18] AGE 2000: CENSUS 2000 BRIEF, U.S. Census Bureau, *available at* http://www.census.gov/prod/2001pubs/c2kbr01-12.pdf.

[19] As defined by the FBI, these four violent crimes are murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault.

[20] JUVENILE JUSTICE BULLETIN: JUVENILE ARRESTS 1997, U.S. DOJ OJJDP (1998) *available at* http://www.ojjdp.ncjrs.org/jjbulletin/9812_2/contents.html.

[21] Id.

[22] JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT, U.S. DOJ, OJJDP (2006), *available at* http://ojjdp.ncjrs.org/ojstatbb/nr2006/downloads/NR2006.pdf.

[23] JUVENILE ARRESTS 1997, *at* note 20.

[24] AGE 2000, *at* note 18.

[25] CRIME IN VIRGINIA, Virginia Uniform Crime Reporting Program, Virginia State Police (2007), *available at* http://www.vsp.state.va.us/downloads/Crime_in_Virginia_2007.pdf.

[26] Howard N. Snyder, Juvenile Justice Bulletin; *Juvenile Arrests 2006*, U.S. DOJ OJJDP (2008), *available at* http://www.ncjrs.gov/pdffiles1/ojjdp/221338.pdf.

JDR courts in Virginia have jurisdiction over all matters involving children under the age of eighteen, including for example, crimes where the child is a victim, crimes where the child is alleged to have committed the offense, custody, visitation, and support matters of children, social service petitions including children in need of services cases, and parental termination cases.[27] This is not to say that JDR courts have exclusive jurisdiction over these matters. Circuit courts can also hear these types of cases and are the courts where all appeals from JDR courts will be heard.

Prior to 1990, Virginia's juvenile corrections were administered by the Virginia Department of Corrections, which also administers adult corrections. The Virginia Department of Youth and Family Services was created in 1990 by the General Assembly and later renamed as the Virginia Department of Juvenile Justice (DJJ) with its primary responsibility as the oversight of the juvenile justice system. As part of the agency's integrated approach to addressing juvenile justice in Virginia, the DJJ oversees statewide juvenile correctional centers, provides services and programs, and collaborates with local officials and community providers. The juvenile justice system as a whole is very different from the adult criminal justice system with numerous differences in terminology[28] and varying sentencing options available, which makes the juvenile justice system complex and oftentimes challenging to navigate.[29] The DJJ Annual Data Resource Guide provides information related to Virginia's juvenile justice system.[30]

Virginia is fortunate that the DJJ maintains extensive data related to juveniles. It publishes a Data Resource Guide each year with detailed information regarding juvenile demographics, CSU intake complaints, dispositions, offenses, length of stay, and other detailed case information.[31] Based on data contained in this report, the DJJ commitments have dropped from 1,463 in FY2000 to 863 in FY2007. The DJJ's overall population has decreased over the past seven years and only the more serious offenders are being detained and treated at DJJ detention facilities. More offenders committing and recommitting crimes of lower severity are under community supervision supported by local resources. Table 1 below illustrates percentage of admissions to DJJ by demographics from 2004-2007.

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[27] VA CODE ANN. § 16.1-241 (Michie 2008).
[28] Juvenile Justice Terminology. *See* Attachment 4.
[29] Virginia DJJ, flow chart. *See* Attachment 5.
[30] *Available at* www.djj.virginia.gov.
[31] DATA RESOURCE GUIDE: FISCAL YEAR 2007, The Virginia Department of Juvenile Justice (2007).

Table 1: Admissions to the DJJ by Demographics

Demographics	2004	2005	2006	2007
Race				
Black	64.5%	66.6%	67.8%	66.0%
White	31.8%	27.0%	25.7%	26.4%
Hispanic	2.6%	4.3%	4.5%	6.4%
Other	1.1%	2.1%	2.1%	1.2%
Sex				
Male	90.9%	90.1%	90.9%	90.8%
Female	9.1%	9.9%	9.1%	9.2%
Age				
Under 14	2.8%	2.9%	2.3%	1.7%
14	8.2%	8.0%	7.7%	6.8%
15	18.5%	18.2%	19.1%	17.4%
16	30.2%	27.2%	31.8%	28.7%
17	35.0%	36.1%	33.6%	37.6%
18	5.1%	6.7%	5.4%	7.0%
19 or older	0.3%	0.8%	0.1%	0.8%

Source: The Department of Juvenile Justice, Data Resource Guide, 2007.

As illustrated in the table above, a few findings are apparent. First, males comprise the vast majority of admissions to the DJJ. Second, black youth comprised nearly two-thirds of admissions every year from 2004-2007. Finally, sixteen and seventeen year olds account for the largest proportion of admissions each year.

Table 2 below shows the DJJ juvenile admissions population based on region. As illustrated below, the DJJ divides Virginia into three main regions: Western, Northern, and Eastern. The DJJ also uses these regions to group Court Service Unit districts for organizational purposes. While more juveniles come from the Eastern Region (48.1%) than the other two regions, the Eastern Region contains two more CSU districts than the other regions. Of the 35 regions, the Western Region contains 11 CSU districts and the lowest general population, the Northern Region contains 11 CSU districts, and the Eastern Region contains 13 districts.

Table 2: Admissions to the DJJ by Region

Demographics	2004	2005	2006	2007
Region				
Western	17.2%	16.1%	13.8%	16.1%
Northern	27.6%	26.9%	30.3%	35.8%
Eastern	55.2%	57.0%	55.9%	48.1%
Total Admissions	***978***	***922***	***869***	***833***

Source: Department of Juvenile Justice, Data Resource Guide, 2007.

Table 3 below includes a 12 month period of reconviction rates for released juveniles by various demographics.

Table 3: 12 Month Reconviction Rates for FY 2005[32]

Demographics	JCC Releases			Probation Placements		
Sex	**Total Reconvictions**			**Total Reconvictions**		
Male	846	322	38.1%	5,461	1,636	30.0%
Female	91	22	24.2%	1,932	332	17.2%
Race						
Black	608	244	40.1%	3,178	1,030	32.4%
White	283	87	30.7%	3,478	775	22.3%
Hispanic	33	8	24.2%	528	125	23.7%
Other	13	5	38.5%	209	38	18.2%
Age						
Under 12	0	0	0.0%	100	13	13.0%
12	0	0	0.0%	228	48	21.1%
13	10	4	40.0%	605	171	28.3%
14	23	11	47.8%	1,136	344	30.3%
15	69	30	43.5%	1,556	468	30.1%
16	197	71	36.0%	1,833	465	25.4%
17	274	103	37.6%	1,707	411	24.1%
18 or older	364	125	34.3%	228	48	21.1%
Total	***937***	***344***	***36.7%***	***7,393***	***1,968***	***26.60%***

Source: Department of Juvenile Justice, Data Resource Guide, 2007.

Recidivism has declined over six percent in the past two years from 41.7% in 2004 to 35.3% in 2006.[33] The DJJ defines recidivism by reconviction. As is consistent with the regular admissions to the DJJ, black youth show the highest reconviction rate in FY2005, making up 40.1% of the JCC release and 32.4% of the probation placement recidivist populations. Males are also more likely to be reconvicted than females. The data for the group of 18 or older is incomplete because the DJJ currently does not have the capability to track all juveniles once they are over the age of 18. Once the DJJ and the Department of Corrections are able to streamline their data, DJJ will be able to show more accurate numbers for its recidivist population.

[32] This is the most current data available, as of January 2009. The reconviction rates for FY2006 have not been published yet.

[33] DATA RESOURCE GUIDE: FISCAL YEAR 2008, Virginia Department of Juvenile Justice (2008).

IV. Methodology

A. Overview of Research Plan

The spring of 2006, Crime Commission staff began activities pursuant to the HJR136 mandates. During the initial year of study, staff focused on the collection of information from juvenile justice professionals in Virginia. Staff also conducted several focus groups and courtroom observations at JDR courtrooms across the Commonwealth and attended national and statewide juvenile justice meetings and conferences. A JDR court judge workgroup was created to help identify the most pressing concerns within the juvenile justice system. Based on the information gathered from professionals in the field and the workgroup, staff developed a comprehensive survey that was distributed to all JDR court judges and Court Service Unit (CSU) Directors across the Commonwealth. Finally, staff conducted a thorough analysis of Title 16.1 of the Code of Virginia. The information gathered from the aforementioned activities resulted in a number of legislative recommendations and best practices. Each activity is briefly summarized below.

B. Attendance at Professional Meetings and Conferences

Staff attended numerous professional meetings, trainings, and conferences at the local, state, and national levels. As this study was supported by a federal grant, staff had the opportunity to attend two national conferences, one sponsored by the National Council of Juvenile and Family Court Judges and the National District Attorneys Association and the second sponsored by the Center for the Study and Prevention of Violence. Staff consistently attended juvenile justice meetings throughout Virginia hosted by agencies and individuals such as the Virginia Department of Criminal Justice Services (DCJS), the Virginia Coalition for Juvenile Justice, the DJJ CSU directors, the DJJ Judicial Liaison Committee, the Advisory Committee on Juvenile Justice, and the Board of the DJJ. Additionally, staff participated in state and local trainings sponsored by the National Center for Family Law at the University of Richmond T.C. Williams School of Law, the Virginia Indigent Defense Commission, the Supreme Court of Virginia, the Virginia Commission on Youth, and the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services. Again, the information obtained at these meetings helped to identify the most pressing issues to focus upon in the current study.

C. Courtroom Observations and Focus Groups

Staff was given an opportunity to observe JDR courtroom proceedings in various court districts representative of the diverse demographics and regions of the Commonwealth. The localities selected included:

- Augusta County;

- City of Alexandria;
- City of Bristol;
- City of Fairfax;
- City of Richmond;
- City of Virginia Beach;
- Henry County;
- New Kent County; and,
- Roanoke County.

In each locality, staff observed JDR court proceedings and participated in focus groups with local JDR court professionals. The following individuals were requested to attend in each locality: school representatives (e.g., truancy officers, school resource officers and program directors); Court Service Unit employees (e.g., directors, intake officers, and probation officers); JDR and Circuit Court judges; law enforcement representatives; and any other participants in the juvenile justice process, such as members from advocacy groups or heads of locality-specific programs. Each focus group averaged 12-15 members and lasted approximately two hours. Topics discussed included the issues cited in HJR 136, as well as funding, truancy and Children in Need of Services (CHINS), school involvement in the juvenile justice system, mental health and resources (MH/MR), transfer, Juvenile Detention Alternatives Initiative (JDAI), collaboration of local offices involved in juvenile justice, prevention, parental involvement and accountability, challenges within the juvenile justice system, and initiatives, services, and programs that have proven successful or have shown promise. Despite differences in population size and geographic location, all of the localities brought up similar topics, concerns, and issues. This consensus further justified the issues chosen to be the focus of the current study in addition to those already mandated.

D. Surveys

As part of the study, staff surveyed all JDR court judges and CSU directors to collect opinions and information related to the juvenile justice system in the Commonwealth. In developing measures for the survey, an academic literature review was conducted and a special meeting with a work group of JDR court judges was held to discuss relevant issues faced in the juvenile justice system. A preliminary draft of the JDR judge survey was provided to the work group for review and suggestions.

Juvenile and Domestic Relations (JDR) Court Judges' Survey

All JDR court judges in the Commonwealth were asked to complete a comprehensive survey regarding several juvenile justice issues.[34] The survey was divided into the following sections: Judge and court profile, quality of representation for juveniles, § 16.1 statutory provisions, truancy and CHINS, judicial decision-making,

[34] Note: JDR Court Judges' Survey. *See* Attachment 6

juvenile services and diversion opportunities, and disproportionate minority contact (DMC). The survey was distributed to all 117 JDR court judges across the Commonwealth. The response rate was 76% (89 of 117).[35] All of the responding judges presided over criminal cases. The average amount of experience serving as a JDR court judge was 7.5 years. The range of experience was between less than one year to 22 years of experience. Detailed, aggregate responses were collected; however, only the most relevant findings are cited throughout this report to provide further support or illustration of key recommendations.

CSU Directors' Survey

All CSU directors were asked to complete a survey similar to the one given to the JDR judges, but with additional sections addressing mental health and substance abuse services and programs.[36] Crime Commission staff partnered with the College of William and Mary Thomas Jefferson Program in Public Policy graduate students to disseminate the survey on behalf of the Crime Commission. Responses were received from all (35 of 35) CSU Directors. Again, detailed, aggregate responses were collected; however, only the most relevant findings are cited throughout this report to provide further support or illustration of key recommendations.

E. Analysis of Title 16.1

A preliminary statutory review of Virginia's juvenile code was completed during the first year of study. Over 100 sections of the Code of Virginia, Title 16.1, Chapter 11, were reviewed and compiled. The goal of this process was to identify statutes that were duplicative, conflicting, unnecessary, ambiguous, or in need of relocation within the Code. During the second year, statutes were analyzed while taking into consideration survey results, written comments, and recommendations from juvenile justice professionals to determine whether there were any changes necessary to improve the juvenile criminal process. Overall, study results confirmed some of the preliminary analysis findings that some statutes are confusing, hard to locate, and contradictory.

Some of the greatest concerns centered among statutes regarding CHINS and CHINSup. Study participants stated that these sections were scattered throughout Chapter 11 and in need of reorganization. Additionally, many juvenile justice professionals felt that CHINS and CHINSup sections were confusing and lacked sufficient enforcement provisions. Other problematic issues identified within Title 16.1 include expungement and confidentiality of juvenile records, the confusing provisions related to possession of alcohol by minors and the resulting loss of driving privileges, and pre-trial diversions. Options available to the Commission included appointing a work group, agency, or Commission to further examine and complete a re-write or re-codification of Title 16.1, Chapter 11, or for staff to review specific sections in need of

[35] One respondent included a substitute judge, who was not included in the initial list.
[36] Note: CSU Directors' Survey. *See* Attachment 7.

amendments or reorganization. The Commission voted to approve the latter approach, resulting in the identification and compilation of a wide variety of statutes with procedural and substantive issues. Recommendations to Title 16.1, Chapter 11, were introduced as a part of the Crime Commission's legislative package during the 2009 Session of the Virginia General Assembly.[37]

During the review of Title 16.1, it was discovered that § 16.1-298 provides for the suspension of some, but not all, judgments that are imposed by a JDR court in criminal cases, pending the *de novo* appeal to the circuit court. For instance, fines, suspensions of drivers' licenses, and commitments to the DJJ are suspended, while any disposition involving the participation in a public service project, or placement in a local juvenile detention facility, is not suspended. Thus, a juvenile who appeals his commitment is potentially able to return to his home, pending the outcome of the circuit court trial, while a juvenile who is given the lesser disposition of a month in the local detention facility must remain incarcerated while waiting for his trial date in the circuit court. Commission members requested an official advisory opinion from the Office of the Attorney General as to whether or not this aspect of § 16.1-298 was constitutional.[38] In a letter dated, January 8, 2009, an informal opinion was rendered, stating that § 16.1-298 of the Code of Virginia is constitutional and does not violate the rights of a juvenile defendant to due process or equal protection.[39]

F. Summary of Methodology

During the Commission's study of Virginia's juvenile justice system, staff developed and compiled a number of legislative and best practice recommendations in an effort to identify improvements upon current policies, practices, and procedures. All of the study results and information obtained are reflective of the literature review, professional meetings, trainings, conferences, JDR courtroom observations, analysis of the Code of Virginia, focus groups, and survey results that were brought to the staff's attention, or previously mentioned. The study issues and recommendations are a result of the culmination of information received from a wide variety of individuals, resources, and data, both qualitative and quantitative. Due to the enormity of the statewide juvenile justice system, only issues cited in the study mandate were included in this study.

[37] 2009 juvenile justice legislation. *See* Attachment 8.
[38] Request for AG opinion from Crime Commission. *See* Attachment 9.
[39] Informal opinion, Virginia AG, January 8, 2009. *See* Attachment 10.

V. Study Issues and Recommendations

A. Study Issues

Transfer and Certification of Juveniles

The perception of serious juvenile crime rose in the late 1980s and early 1990s. States, in turn, decided to address the rising crime rates by making juvenile laws more punitive. With regard to transfer provisions, sentencing authority, and confidentiality, all but three states changed their laws for one or all of these issues between 1992 and 1997.[40] Nationally, transfer laws became more punitive in the mid 1990s throughout many states. As of 2006, fourteen states and the District of Columbia, allowed for prosecutorial direct-file for transfer, while all states allowed for some form of transfer or adult sanctions depending on the crime.[41] The National Coalition for Juvenile Justice recently reported that in forty-seven states, youth can be charged in adult court through judicial waiver and twenty-nine states have statutory exclusion laws that mandate some children be charged in adult court for certain offenses.[42]

Currently, both at the national and state levels of government, the issue of juvenile transfer has received widespread attention. Since the authority of transferring a juvenile to circuit court was changed by the Virginia General Assembly over ten years ago, research has been conducted to evaluate the successfulness of changes to juvenile laws, specifically the practice of transfer. The transfer process in Virginia creates three categories of crimes for which the transfer and certification of juveniles is permitted, referred to as subsections A, B, and C in the Code of Virginia.[43] Transfer under subsection A provides for a transfer hearing where a judge reviews a list of criteria to determine if the juvenile is eligible for transfer. The criteria include: the juvenile's age; the seriousness and number of alleged offenses; whether the juvenile can be retained in the juvenile justice system long enough for effective treatment and rehabilitation; the appropriateness and availability of the services and dispositional alternatives; the record and previous history of the juvenile; whether the juvenile has previously absconded from the legal custody of a juvenile correctional entity; the extent, if any, of the juvenile's degree of mental retardation or mental illness; the juvenile's school record and education; the juvenile's mental and emotional maturity; and the juvenile's physical condition and physical maturity. Mandatory transfer is required, without exception, for all the crimes under subsection B, all of which involve murder. The final category under subsection C allows for prosecutorial discretion in certification for twelve crimes including: felony homicide, felonious injury by mob, abduction, malicious wounding, malicious wounding law- enforcement officer, felonious poisoning, adulteration of products, robbery,

[40] JUVENILE OFFENDERS AND VICTIMS: 1999 NATIONAL REPORT, U.S. DOJ, OJJDP (1999).
[41] Redding, *at* note 16.
[42] *Trying and Sentencing Youth in Adult Criminal Court,* National Coalition for Juvenile Justice, *available at* http://juvjustice.org/media/factsheets/factsheet_10.pdf.
[43] VA. CODE ANN. § 16.1-269.1 (Michie 2008).

carjacking, rape, forcible sodomy, and object sexual penetration. Transfer under subsection C is one of the only instances in all of Virginia law where an attorney (the Commonwealth's Attorney) in a case has more authority than the judge. Once transferred, juveniles will be considered as adults for all future crimes if a juvenile is convicted in circuit court.

One of the main policy decisions facing Virginia is the authority of Commonwealth's Attorneys and their level of discretion when determining to transfer cases to adult court. When a juvenile is transferred and convicted under subsection C, juveniles may not be considered for all of the dispositional alternatives available in the juvenile justice system. Study results indicate that the movement of juveniles to adult court could reduce opportunities for a juvenile to be treated or offered an array of programs designed specifically for youth offenders. The juvenile justice system offers a wide variety of competency and skill building services specially designed to address juvenile issues, such as substance abuse problems, mental health needs, and anger management classes. Services and programs vary greatly by locality. Professionals in the adult criminal justice system who do not routinely handle juvenile cases may not be aware of the numerous sentencing options available. Circuit court judges do not receive detailed and intensive juvenile specific training and handle far fewer juvenile criminal cases, as compared to JDR court judges who predominantly hear juvenile cases and receive many hours of juvenile specific training.[44] Commonwealth's Attorneys and their assistants typically do not receive much juvenile specific training.[45] It should be acknowledged that prosecutors may seek additional training offered from outside approved training sources, such as the National District Attorney Association, the National College of District Attorneys, the Virginia State Bar or the Virginia CLE organization.

Instances may arise where a juvenile may be persuaded to plead guilty in the JDR court in order to avoid the possibility or threat by a Commonwealth's Attorney to transfer the case to the circuit court.[46] Data received from the Virginia Criminal Sentencing Commission shows that of all twelve crimes eligible for transfer, robbery is transferred more often than any other crime. As illustrated in Tables 4 and 5 below, in Fiscal Year 2006, a total of 313 juveniles were transferred to and convicted in circuit court and a total of 411 juveniles were transferred and convicted in Fiscal Year 2007. Large increases were seen from Fiscal Year 2006 to Fiscal Year 2007 for both robbery (94 to 140) and homicide offenses (15 to 33), respectively, followed by assault offenses, narcotics, and larceny offenses.[47]

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[44] For example, a review of the mandatory training provided to Circuit Court and JDR judges in years 2005-2008 revealed that Circuit court judges received only one session dedicated solely to juvenile specific issues as compared to JDR judges who received 47 sessions.

[45] A review of the training provided to Commonwealth's Attorneys in 2006 - 2008 by Commonwealth's Attorneys Services Council (CASC) revealed very little juvenile specific training. CASC did not offer specific juvenile justice focused training components in their programs. Their general training programs that stressed trial skills covered the prosecution of all cases, including juvenile court prosecutions.

[46] Mid-Atlantic Juvenile Defender Center.

[47] Information provided by the Virginia Criminal Sentencing Commission, by request of Crime Commission staff.

Table 4: Convictions for Juveniles Tried as Adults by Type of Offense for FY2006

	Type of Offense	Percent of Total Convictions	Total Number of Convictions
1	Robbery offenses	30.0%	94
2	Assault offenses	20.7%	65
3	Narcotics offenses	10.5%	33
4	Sexual assault offenses	9.5%	30
5	Larceny offenses	9.5%	30
6	Burglary	6.0%	20
7	Homicide offenses	4.7%	15
8	Fraud	3.5%	11
9	Weapons	2.5%	8
10	Kidnapping/Abduction	1.2%	4
11	Arson, Hit & Run, Sex crime	Less than 1% each	3

* N= 313
Source: Virginia Criminal Sentencing Commission

Table 5: Convictions for Juveniles Tried as Adults by Type of Offense for FY2007

	Type of Offense	Percent of Total Convictions	Total Number of Convictions
1	Robbery offenses	34.0%	140
2	Assault offenses	15.8%	65
3	Narcotics offenses	9.9%	41
4	Larceny offenses	9.9%	41
5	Sexual assault offenses	9.2%	38
6	Burglary	8.7%	36
7	Homicide offenses	8.0%	33
8	Fraud	1.7%	7
9	Hit & Run, Abduction, License, Weapons, Sex crime	Less than 1% each	10

* N= 411
Source: Virginia Criminal Sentencing Commission

Prior to the transfer law change in 1996, transfer reports were completed for a total of 1,168 juveniles in Fiscal Year 1996[48]. After the transfer statute was amended in 1996, the requirement for transfer reports was greatly reduced. Whereas before, a transfer report was required in every instance, now transfer reports are only required for those that proceed under subsection A. All applications for transfer under subsection B and C are done without a transfer report being written. The number of transfer reports

[48] DATA RESOURCE GUIDE: FISCAL YEAR 1996, the Virginia Department of Juvenile Justice (1996).

has steadily decreased to a low of 257 in Fiscal Year 2007, but this should not be seen as proof that prosecutors are making fewer requests for transfer. Now, many times when they request a transfer, a report is no longer required.[49]

Numerous articles reviewed in the national literature dealt with recent findings by the medical community regarding adolescent brain development, juvenile behavior, and the moral culpability of adolescents. The American Medical Association, American Psychological Association, American Psychiatric Association and the American Academy of Child and Adolescent Psychiatry all argue that the adolescent brain is still developing even at ages sixteen and seventeen, which impacts a juvenile's ability to make reasonable decisions.[50] The American Bar Association has also taken a stance on the juvenile death penalty issue and stated that for social and biological reasons, teens have increased difficulty making mature decisions and understanding the consequences of their actions.[51]

A recent study, focused on transfer laws, was conducted in August of 2008 by the Office of Juvenile Justice Delinquency Prevention ("OJJDP") and states that "although the limited extant research falls far short of providing definitive conclusions, the bulk of the empirical evidence suggests that transfer laws, as currently implemented, probably have little general deterrent effect on would-be juvenile offenders."[52] In Florida, for example, the report indicates that their state has experienced a 34% increase in recidivism rates of juvenile offenders who had been transferred to circuit court. Another recent study, conducted by the Center for Disease Control, also supports the OJJDP research and states that "available evidence indicates that transfer to the adult criminal justice system typically increases rather than decreases rates of violence among transferred youth."[53] Both of these reports provide support for the need to re-evaluate Virginia's transfer laws.

In determining whether revisions to the transfer statute would be necessary or beneficial, it is crucial to evaluate available options, as well as review past and current endeavors. Many states in the last few years have decided to re-examine their transfer statutes. During the past few Sessions of the Virginia General Assembly, legislation has been introduced regarding juvenile offenders, but none to revise the transfer statutes. The General Assembly has passed significant legislation in the last few years that may demonstrate a change in attitude toward serious juvenile offenders. For instance, during the 2008 Session of the Virginia General Assembly, legislation was passed that allowed

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[49] DATA RESOURCE GUIDE, *at* note 33.

[50] Beckman, *at* note 14.

[51] Claudia Wallis and Kristina Dell, *What Makes Teens Tick*, Time Magazine, Volume 163, No. 19, May 10, 2004. The United States Supreme Court ruled the death penalty unconstitutional for juveniles in Roper v. Simmons, 543 U.S. 551 (2005), and mentioned these medical findings in their decision.

[52] Redding, *at* note 16.

[53] EFFECTS ON VIOLENCE OF LAWS AND POLICIES FACILITATING THE TRANSFER OF YOUTH FROM THE JUVENILE TO THE ADULT JUSTICE SYSTEM, Center for Disease Control and Prevention, Task Force on Community Preventive Services (2008), *available at* http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm.

juveniles, convicted as adults in circuit court and given a "blended sentence," i.e. sentenced to serve time both in a Juvenile Correctional Center and the Department of Corrections, to gain earned sentence credits while serving the juvenile portion of the sentence in a juvenile correctional center.[54] At its December 9, 2008, meeting, the Commission voted to continue the juvenile justice study an additional year to specifically focus on the many issues identified regarding the transfer and certification of juveniles.

Juvenile Records

The access and availability of juvenile records has continuously been expanded and amended over the years. The Code of Virginia specifies how juvenile records are treated in Title 16.1, specifically §§ 16.1-300, 16.1-301, 16.1-305, 16.1-306, and 16.1-309.1. These statutes require that juvenile records be available to certain individuals based on the type of criminal offense involved. Three groups of entities maintain criminal juvenile records: law enforcement, courts, and the DJJ, all of which have authority to disseminate confidential records and reports to certain additional entities. Currently, a large number of agencies, individuals, and members of the public, such as school personnel and private organizations, have a right to juvenile records, including some that are "confidential."

Study results indicate that the availability of juvenile records may impact a juvenile's ability to get a job, join the military, and go to college. Many study participants voiced concerns that Code sections related to juvenile records are confusing and difficult to locate. Specifically, statutes related to the confidentiality of juvenile records and exceptions as to confidentiality were identified as being titled in a confusing manner and not located beside one another in an orderly way. Furthermore, study participants had concerns regarding the growing list of individuals with access to confidential juvenile records.

During JDR court observations, staff noted how differently localities treat the placement of the court docket for juvenile cases. Some jurisdictions opt to post the entire docket in the hallway of the courthouse or hold open court sessions, while others announce or televise case information prior to the hearing. The treatment of the docket by publicly posting sensitive and identifying information appears to be in conflict with certain statutes regarding the confidentiality of juvenile records. Additionally, study results indicated that a discrepancy existed in the interpretation of § 16.1-305(A), related to whether juvenile records that are "open to inspection" may be photocopied. This issue was also discussed and reviewed by the Supreme Court's Committee on District Courts. In their review, it was determined that a change to the statute was necessary to authorize copies of juvenile records. Legislation was introduced to address this problem during the 2009 Session of the Virginia General Assembly by Senator Henry Marsh.[55]

[54] H.B. 1207, Va. Gen. Assem. (2008).
[55] S.B. 928, Va. General Assemb. (2009). *See* Attachment 11.

Court-Appointed Counsel: Training and Compensation Rates

The Virginia Indigent Defense Commission ("IDC") is responsible for developing and certifying training courses for attorneys seeking eligibility to serve as court-appointed counsel, as well as maintaining a statewide list of certified court-appointed counsel.[56] In addition, in certain localities chosen by the General Assembly, the IDC is primarily responsible for providing representation to indigent defendants.[57] As part of the obligation for providing training, the IDC provides multiple continuing legal education opportunities for juvenile defenders statewide. In response to the claim made by the ABA report that quality representation is lacking in delinquency proceedings, staff reviewed training opportunities and curriculum to determine both the availability and quality of training.[58] During the past few years, numerous juvenile specific training opportunities were sponsored monthly in both the Richmond and Northern Virginia areas by the IDC. The Virginia CLE organization, the Virginia State Bar, the Mid-Atlantic Juvenile Defender Center, and local bar associations also sponsor similar juvenile specific trainings throughout the year, some of which are available online. All attorneys in Virginia must complete twelve continuing legal education credits per year, two of which must be in ethics. If an attorney wishes to do court-appointed work, he must complete a basic six hour course in criminal law. If an attorney desires to handle juvenile delinquency court-appointed cases, he must complete an additional four-hour introductory course in juvenile criminal law and JDR court procedures.[59] After initially meeting these qualifications, an attorney shall maintain his eligibility by completing at least four hours of juvenile specific training every other year.[60] Staff attended the initial four hour juvenile certification training sponsored by the IDC for court-appointed attorneys in order to personally observe training materials and procedures.[61]

Based on information received from the IDC, as of December 9, 2008, a total of 1,187 court-appointed attorneys were eligible to accept cases. This number reflects a reduction of 255 court-appointed attorneys since April 2007. The shortage of court-appointed counsel by court district is a concern for more than half (49 of 89) of JDR court judges as indicated in the judicial survey. The IDC has informally identified several likely reasons that cumulatively contribute to the decline:

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[56] VA. CODE ANN. § 19.2-163.01 (Michie 2008).

[57] There have been concerns that local IDC offices receive less compensation than Commonwealth's Attorneys' offices. This was due to the fact that many localities provide supplemental funding to their prosecutors, but were prohibited by law from giving any such aid to their public defenders' offices. During the 2007 Session of the Virginia General Assembly, legislation was passed to allow county and city offices the ability to supplement compensation of public defenders.

[58] Since this report was published, the law was amended so that a juvenile cannot waive representation, if the charge is a felony, without consultation with a lawyer.

[59] The initial training sessions shall be waived if an attorney has extensive criminal defense experience prior to his applying to be court-appointed eligible pursuant to Virginia Code § 19.2-163.03. Also, before someone can be certified as eligible for juvenile court-appointed work they must have participated in at least four cases involving juveniles in a JDR court.

[60] This is in addition to the six hours of continuing legal education an attorney must complete biennially related to criminal defense.

[61] The Virginia Indigent Defense Commission, juvenile case training segment. *See* Attachment 12.

- Juvenile law is complicated and representation of juvenile clients can take a lot more time, making these cases less cost effective for private attorneys;
- Juvenile cases were not initially included in the fee cap waiver legislation;
- Many juvenile lawyers tend toward guardian ad litem cases (which are paid hourly, with no cap); and,
- The first recertification cycle for attorneys first certified in 2005, when the list was set up, occurred in 2007. The initial certification could be waived by statute. Many waivers of the certification requirements were granted to attorneys who had been practicing. The language for recertification does not specifically provide for the same waiver. Many attorneys did not want to meet the recertification requirements for the juvenile cases.

Sections 19.2-163 and 16.1-267 of the Code of Virginia provides the fee schedule for court-appointed counsel. Virginia's compensation rate when representing a juvenile client is capped at $120 per charge in JDR court and $158 in circuit court.[62] The JDR court, in its discretion, may waive the limitation of fees and authorize additional compensation up to the supplemental statutory waiver amount when the effort and time expended warrant such a waiver. A request can also be made for additional compensation exceeding the supplementary statutory waiver, referred to as an "extraordinary waiver." The presiding judge determines whether the amount is necessary and justified, and, if so, forwards the request for final approval to the chief judge. By contrast, a circuit court does not have the authority to grant a supplemental waiver to the $158 limit for juvenile cases that exists for that court, although an extraordinary waiver is theoretically permissible.

During the 2008 Session of the Virginia General Assembly, House Bill 536, introduced by Delegate Christopher Peace, and identical to Senate Bill 610, introduced by Senator Kenneth Stolle, addressed the issue of compensation for court-appointed counsel. The bill sought to provide increased compensation in district courts for attorneys defending juvenile offenders. Compensation for court-appointed counsel, especially for juveniles, has long been a problematic issue, as counsel receives only $120 per juvenile charge. The bill proposed allowing court-appointed counsel to request a waiver on the compensation cap if they are appointed to defend a juvenile in district court for an offense that would be a felony punishable by confinement of 20 years or more if committed by an adult. The amount of the waiver is dependent on the charges being defended and the effort expended, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warranting such a waiver.

The maximum amounts of the waivers initially were to be identical to the waivers available to attorneys representing adults in circuit court. Due to budget issues, the House Appropriations Committee decreased the proposed waiver amount by over 50%. Court-appointed counsel may now only seek up to a total of $650 inclusive of the $120

[62] Supreme Court of Virginia court-appointed counsel fee schedule. Note that the circuit court fees are lower than the fees for representing an adult, if the offense involved is a felony. A waiver of this cap is possible in the JDR court, but not in the circuit court. *See* Attachment 13.

already given, as compared with the amount up to $1,235 available for defending adults for identical charges. [63]

Even though this issue was addressed during the 2008 Session of the Virginia General Assembly, the increase for JDR court cases was nominal and totals about half of the amount available if attorneys represent adults in both district and circuit court for an offense that would be a felony if committed by an adult. Seventy-three percent (65 of 89) of JDR court judges indicated that they feel that the rate of compensation is a "serious problem." Participants from all of the focus groups each cited compensation rates as a major problem. A survey of surrounding states was conducted by staff to compare Virginia's compensation rate of court-appointed attorneys in juvenile justice cases. Out of the six states surveyed, Virginia has the lowest reimbursement rate for court-appointed attorneys handling juvenile cases. Kentucky is the only state in the survey, like Virginia, that has a fixed cap for court-appointed fees. While Kentucky has fixed caps, the caps are significantly higher than in Virginia and range from $300 to $900 per case. The other four states in the survey (Maryland, North Carolina, Tennessee, and West Virginia) have no fixed caps and allow for a waiver either by a judicial or administrative official.

The following is a synopsis of each state's compensation rates:

- Virginia allows an hourly rate of $90 with a fixed cap of $120 per case and allows an extra $120 in misdemeanor and simple felony cases, or an extra $650 for more serious felonies with a judge's discretion. An additional waiver may be requested, but requires the approval of both the presiding judge and the chief judge of the court. (There is an unlimited cap in capital murder cases.)
- Kentucky provides a rate of $40 per hour with caps ranging from $300 to $900, dependent on the type of case. For violent felonies, the hourly rate is $50 with the caps ranging from $1,200 to $1,500.
- Maryland provides an hourly rate of $50 with waiveable caps dependent on the discretion of agency heads.
- North Carolina's compensation gives an hourly rate of $65 without caps. The vouchers must be approved by the judge.
- Tennessee's system provides a more elaborate compensation plan dependent on the type of charge and in-court versus out-of-court rates. The compensation rate is $40 out-of-court and $50 in-court with the caps ranging from $3,000 to $4,000 dependent on the charge. For capital cases, the hourly rate ranges from $60 to $100 based on the counsel and location.
- West Virginia provides $45 per hour for in-court time and $65 per hour for out-of-court time with ambiguous caps.

A close examination of the court-appointed counsel fee schedule reveals that juvenile court-appointed counsel receive considerably lower compensation rates than court-appointed counsel who represent adults. Attorneys who are appointed to defend a juvenile in district court for an offense that would be a felony if committed by an adult, can request a waiver on the compensation cap up to a total of $650. By means of

[63] 2008 Va. Acts ch. 760.

illustration, if an attorney is representing a juvenile for a first offense felony distribution of narcotics in a JDR court, counsel could potentially receive up to $770 (The authorized amount of $120, plus the supplemental waiver amount of $650). Yet, if an attorney is representing an adult for the same offense, counsel could potentially receive up to $2,325 because the initial statutory fee provided for adults is ten times higher than the fee for representing juveniles.[64] If the court-appointed counsel appeals the case to circuit court, a supplemental waiver is not available. This discrepancy may create a monetary incentive for an attorney to not appeal a JDR court juvenile felony conviction to circuit court in some cases. In the previous illustration, the attorney handling the narcotics distribution case, who received $770 in JDR court, could only receive an additional $158 for appealing the case to the circuit court, and re-trying it. This could lead the attorney to discourage his client from pursuing the appeal.

Information was obtained from the Office of the Executive Secretary of the Supreme Court of Virginia to ascertain how often these extraordinary waivers are requested and granted in all courts.[65] During Fiscal Year 2008, a total of 6,126 waiver requests were submitted by court-appointed counsel, of which a total of 5,952 were approved, for a total cost of $1,845,171. Of the 5,952 waivers approved, a total of 1,080 were for juvenile offenders, resulting in a cost of $185,442. For the first quarter (July 1 – September 2008) of Fiscal Year 2009 a total of 1,250 extraordinary waivers were requested in all courts. Of those, 1,227 were processed for payment above the statutory waiver amount. No extraordinary waivers were requested for juvenile delinquency appeals in circuit court during this time period.

Many focus group participants voiced concerns regarding the complexity of forms necessary to request waivers and the lack of promotion regarding statutory changes made in 2008 to expand criteria and funding for permissible waivers. Additionally, concerns were raised regarding the exclusion of CHINS and termination of parental rights cases for waiver of fee caps. Available options to remedy issues associated with court-appointed compensation rates include the following proposals:

- Allow compensation amounts in juvenile cases to be identical to adult cases;[66]
- Provide waivers for juvenile circuit court appeals that are at least identical to JDR waivers; and,[67]
- Include CHINS and termination of parental rights cases as eligible for waiver of fee caps.[68]

[64] Note that neither of the figures in this example include extraordinary waivers.
[65] Office of the Executive Secretary of the Supreme Court of Virginia report pursuant to § 19.2-163. *See* Attachment 14.
[66] VA. CODE ANN. § 19.2-163 (Michie 2008).
[67] Id.
[68] VA. CODE ANN. § 16.1-267 (Michie 2008).

Disproportionate Minority Contact

Disproportionate Minority Contact (DMC), a problem which gained recognition as early as 1988, is a major concern in Virginia, as well as throughout the country, affecting many social and criminal justice systems. There is racial disparity at almost every level of the juvenile justice system in Virginia. Based on a report of Virginia's Advisory Committee on Juvenile Justice (VACJJ), the Commonwealth's juvenile justice system faces important challenges, especially DMC within the juvenile justice system.[69] According to VACJJ, although only 23% of the juvenile population are minorities, they represent disproportionate percentages throughout the juvenile justice system: minorities comprise 38% of intake offenders, 45% of intake and technical and delinquent offenders, 50% of secure detention admissions, and 66% of commitments to juvenile correctional centers. In 2002, blacks constituted 16% of the national juvenile population, but 29% of the national delinquency caseload.[70] With regard to juveniles in corrections, the Virginia juvenile custody rate (per 100,000) for whites is 143, while the rate for blacks is 715 and 273 for Hispanics. According to the DJJ, the number of black and Hispanic youth in Virginia detention homes and correctional centers continues to increase while the numbers for white youth have been decreasing. In addition, these minority juveniles were more likely than white juveniles to be held under locked arrangements.

In 2003, Virginia began a partnership with the Annie E. Casey Foundation to implement the Juvenile Detention Alternatives Initiative (JDAI). Currently, the following eight jurisdictions are involved in the initiative: Newport News, Hampton, City of Richmond, Petersburg, Hopewell, Lynchburg, Bedford City and County, and Norfolk. JDAI seeks to detain only the juveniles who most present a public safety risk prior to trial. According to DJJ, the goals are to protect public safety, reduce the unnecessary or inappropriate use of secure detention, and to re-direct public finances to more effective purposes. Most participants in the focus groups supported JDAI. While only one locality that staff visited was actively involved as a test site for JDAI, most of the other localities utilized the JDAI detention assessment instrument, which helps determine whether an apprehended juvenile should be detained. A few problems were noted by focus group participants with either JDAI or the assessment instrument that included:

- The JDAI instrument does not have the juvenile's history or family/ living situation as weighted options for determining whether to detain a juvenile.
- Local CSU workers need a blanket system for override authority on the instrument.
- There is no legal holding area for juveniles once it has been determined that they will not be detained. The police officers who brought the juvenile in must then stay with the juvenile until the parents arrive to pick up the juvenile. Police officers expend many hours on a shift to apprehend a juvenile and some admit to avoiding arresting juveniles because the process is too complicated and the amount of time required takes away from their regular patrol duties.

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[69] VIRGINIA ADVISORY COMMITTEE ON JUVENILE JUSTICE, ANNUAL REPORT, Department of Criminal Justice Services (2004).

[70] JUVENILE OFFENDERS AND VICTIMS, *at* note 22.

- A lack of communication and collaboration exists between the numerous local departments and agencies that handle juveniles.

Barriers to Service

Many of the local focus groups cited specific problems that hinder services to juveniles in the community. The following section summarizes programs, initiatives, and services that have suffered budget cuts or elimination over the past years:

Substance Abuse Reduction Effort (SABRE): Several rural localities mentioned the usefulness of the SABRE program, which is no longer in existence. This statewide program, cut due to budgetary issues, addressed drug dependency through each CSU. SABRE required mandatory drug treatment for first-time offenders. It also provided for retesting, treatment, and reintegration programs. The localities that mentioned this program cited its successfulness and need for the program to be reinstated.

Office on Youth: A few of the rural localities mentioned the need to reestablish the Office on Youth, once a statewide program that assisted in juvenile issues by providing social and delinquency services. One of the localities visited was able to continue their Office on Youth and its services, albeit at a much lower capacity, through federal grants. The localities stated that when the offices were fully funded and operational, the services they provided greatly helped the needs of juvenile delinquents and CHINS cases.

Local Corroboration: Overall, the localities with positive relationships among its court system, schools, and law enforcement agencies reported fewer problems and a higher level of ability to provide juveniles with programs and services. Some of these localities had even established regularly scheduled meetings with representatives from schools, JDR courts, law enforcement, CSUs, nonprofits with juvenile programming, and other community members active in youth services. One of the courts even had its own volunteer program that helped lighten the load for regular employees of the JDR court.

Truancy and CHINSup

During the 2006-2007 school year, there were 39,099 attendance incidents reported statewide.[71] This number represents 10.51% of all discipline, crime, and violence incidents reported. The Virginia Department of Education (DOE) reported that the efforts of attendance officers, school resource officers, school child study/student assistance teams, Family Assessment and Planning Teams (FAPT), and juvenile courts are frequently used by all localities to address truancy. According to the DOE's study, they found the following regarding the activity of truancy intervention:

[71] ANNUAL REPORT: DISCIPLINE, CRIME AND VIOLENCE SCHOOL YEAR 2006-2007,The Virginia Department of Education (2008).

- School resource officers (SRO) were reported as routinely involved in attendance cases in 22% of school divisions, occasionally involved in 48%, and rarely or never involved in 30%.
- Community-based agencies were reported to be routinely involved in intervention efforts by 24% of school divisions, occasionally involved by 48%, and rarely/never involved by 16%.
- Thirty-nine percent of school divisions reported that inter-agency reviews were conducted before approaching juvenile court intake, 23% reported reviews occurred after a judicial hearing but before disposition, and 13% reported the reviews occurred as part of the juvenile court intake process. Another 16% reported variable timelines, depending on case circumstances.
- In exploring the process and criteria used by school divisions to determine whether to pursue court action against a child or a parent, it was found that fewer than half the attendance officers interviewed reported consulting with a school board or city/county attorney; 15% reported always consulting and 33% reported consulting "as needed." Just over one-third reported having written procedures or guidelines for pursuing court action; upon closer examination, however, guidelines reviewed typically were found to be re-statements of statutory requirements rather than detailed procedures or guidance documents. Where the attendance officers consulted with a school board or city/county attorney, the school divisions were three times as likely to report written guidelines.
- Eighty-six percent of school divisions reported filing at least one CHINSup petition in the past school year; the number filed ranged from 1 to over 200. Fifty-nine percent of school divisions reported filing at least one complaint against a parent; the number of such complaints ranged from 1 to 92. Educational neglect complaints were reported to have been filed by only ten school divisions."[72]

The study also noted that 66% of attendance officers surveyed said there were inadequate personnel to respond to truancy cases in a timely and intensive manner. The study concluded that, because practices addressing truancy were so diverse throughout the state, localities could benefit from receiving model guidelines about comprehensive approaches to the issue of truancy.

Focus group participants stated that they believed one of the contributing factors of truancy was due to a perceived notion regarding the value of a high school diploma. This was, in part, related to the number and types of available vocational or technical education programs. Participants voiced concerns that students in high schools without these programs felt that a high school diploma served little or no purpose in the "real world." In 2007, the Virginia General Assembly passed House Bill 2039 and Senate Bill 1147, which required the DOE to establish technical education degrees. The DOE is currently amending their standards of accreditation to include these technical degrees, which will allow non-college bound students the opportunity to obtain a meaningful diploma for employment.

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[72] A STUDY OF TRUANCY INTERVENTION PRACTICES IN VIRGINIA, Virginia Department of Education (2006), *available at* http://www.doe.virginia.gov/info_centers/superintendents_memos/2008/09_sep/inf212.html.

As was noted by most study participants, either by discussion or through survey, truancy negatively impacts the juvenile justice system. Truant juveniles are often sent to court and are more inclined to become delinquent than non-truant youth. Chronic truant juveniles are seven times more likely to be arrested than non-truants.[73] In 2005, almost 4,900 petitions were referred to court for truancy.[74] Seventy-one percent of those were petitioned to court as CHINSup. As reported in the DJJ Data Resource Guide, CHINS and CHINSup complaints increased 4% from FY05 to FY07. Additionally, focus group participants voiced concerns regarding the long time requirements necessary to exhaust remedies through the school before coming to court on a petition.

The Commission on Youth is currently conducting a two-year extensive study regarding truancy and plans to issue a detailed report with recommendations regarding similar issues as discussed above.[75] Available options to remedy issues associated with truancy and CHINSup include the following proposals:

Parental Involvement and Accountability

A major issue, often linked with truancy and CHINSup cases, is that of parental involvement and accountability. All of locality focus groups cited cyclical delinquency as a result of inadequate parenting, which usually results in a multi-generational pattern of the same. A few localities mentioned the need for mandatory parenting skills classes to be required of all parents of truant children, delinquent children, and children subject to CHINS and CHINSup orders. Another pattern of parental instability was the lack of parental ability to enforce school attendance. Again, this was mentioned as a problem that starts early on at the elementary school level. A suggested corrective method would be to sanction the parents of elementary aged truant children. This option would require the proactive cooperation of school systems to inform the courts in a timely manner of a child missing from school. The courts would need clear enforcement of attendance with the power to impose sanctions, including jail time, for those not taking young children to school. Reducing the compulsory school attendance age was also a suggestion discussed by many focus groups participants.

In response to the many complaints and problems regarding parental accountability, staff reviewed current law to determine the adequacy and availability of penalties. Based on this analysis, staff identified ten statutes in the Code of Virginia that address parental accountability, with some allowing for jail time: § 18.2-371, §§ 22.1-254, 22.1-255, 22.1-258, 22.1-262, 22.1-263, 22.1-265, 22.1-267, 22.1-279.3 and § 16.1-241.2. Data obtained from the Virginia Compensation Board for FY03 – FY08 indicated that at least a handful of localities are making use of the statutes that allow parents to be

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[73] *Toolkit for Creating Your Own Truancy Reduction Program*, U.S. DOJ, OJJDP, *available at* http://www.ojjdp.ncjrs.gov/publications/truancy_toolkit.html.

[74] ANNUAL REPORT OF THE VIRGINIA JUVENILE JUSTICE ADVISORY COUNSEL, Department of Criminal Justice Services (2005).

[75] H.B.1263, introduced during the 2008 Session of the Virginia General Assembly, was referred to COY by the House Education Committee. *See* Attachment 15.

criminally charged for repeatedly allowing their children to be truant. It appears that, should judges opt to punish parents, there are adequate statutory remedies available.

B. Recommendations

As a result of numerous meetings with juvenile justice professionals and a thorough review of survey results and written comments, staff identified the following best practices as potential methods to address specific issues within the juvenile justice system. Due to the wide range of issues cited as problematic and the fact that many overlap, each of the best practices listed below may not be applicable statewide because of the diverse nature of localities in Virginia. This list of recommended best practices was disseminated to all relevant agencies to consider for adoption. It is underscored that these best practices were not formally adopted by the Crime Commission, but rather approved for dissemination to the professional juvenile justice community for consideration.

Commonwealth's Attorneys' Services Council

- The Commonwealth's Attorneys' Services Council should provide additional juvenile specific training for Commonwealths' Attorneys and their assistants.

Supreme Court of Virginia

- The Court should develop a policy on how the juvenile docket is treated, e.g. whether it should be posted, televised, announced;
- The Court should provide additional mandatory juvenile specific training and resources for circuit court judges;
- The Court should develop a policy on whether juvenile records "open to inspection" include copies of documents (§ 16.1-305(A)); and,
- Courts should consider the establishment of preventative programs and collaborative approaches to truancy at an early age.

The Department of Juvenile Justice

- CSU Directors should maintain a list of resources, programs, services, and options, specific to each jurisdiction, to assist JDR and circuit court judges in the identification of dispositions available;
- The Department of Juvenile Justice should encourage the participation and implementation of truancy teams in localities;
- The Department of Juvenile Justice should encourage and provide programs and services that focus on family and underlying issues that contribute to juvenile delinquency;
- The Department of Juvenile Justice should have a systematic approach to address underlying family issues for "at-risk" juveniles;
- The Department of Juvenile Justice should clarify the definition of "informal diversion" and include its use in trainings for CSU staff;

- The Department of Juvenile Justice should develop public information guides for parents and juveniles to be made available in JDR courts and CSU offices to aid them in the navigation of the overall juvenile justice system and in procedures specific to their locality;
- The Department of Juvenile Justice should work with localities to develop initiatives addressing the transportation difficulties that parents and children may face when it comes to attending programs and services;
- The Department of Juvenile Justice should encourage localities to offer programs/services to neighboring localities, when possible, or develop a statewide system for diversion opportunities so that programs/services can be consistent throughout the state;
- The Department of Juvenile Justice should consider providing each CSU with direct access to a substance abuse counselor and mental health psychologist;
- The Department of Juvenile Justice should continue the use of the Detention Assessment Instrument unless more effective measures can be identified; and,
- The Department of Juvenile Justice should give priority to evidence-based programs for alternatives to detention.

Due to the current budget issues facing Virginia, the following list of best practices were identified as part of the study as having significant fiscal impact and therefore were not reported to specific agencies or addressed by the Crime Commission.[76]

- Courts and schools should establish preventative programs and collaborative approaches to truancy at an early age;
- Schools should offer vocational programs for non-college bound students;
- Localities should explore the implementation of truancy teams, truancy court, community truancy meetings and truancy dispute resolutions;
- Programs and services for juveniles also need to focus on family issues;
- Priority should be given to evidence-based programs for alternatives to detention;
- A systematic approach to addressing underlying family issues for "at-risk" juveniles should be considered (social services, mental health, substance abuse, domestic violence, etc.);
- Allow compensation amounts in juvenile cases to be identical to adult cases;
- Provide waivers for juvenile circuit court appeals at least identical to JDR court waivers;
- Include CHINS and termination of parental rights cases for waiver of fee caps;
- Follow-up on results and recommendations from DCJS Juvenile Services Section Three-Year DMC plan;
- Follow-up on criminal justice and public safety recommendations identified by the Commission on Youth truancy and CHINS study;
- Fund CSU standards requirement for staff and personnel (example: substance abuse counselor);

[76] It should also be recognized that even the best practices reported to agencies may have some minimal costs associated.

- Fund transportation of detained youth;
- Fund mental health screenings of juveniles;
- Fund delinquency prevention programs; and,
- Fund community-based juvenile services.

VI. Summary

Overall, the study on juvenile justice revealed that professionals who participate in the juvenile justice field are satisfied with the way the system works. Several issues were identified throughout the entire study, both at the state and local levels, that may require more attention and improvement, such as truancy, mental health, and various barriers to service. One of the greatest concerns held by many juvenile justice practitioners was the disparate treatment juveniles receive based on the locality in which they reside. Funding for juvenile programs and services was also a major issue in many localities. Because the juvenile justice system is so complex and different from that of the adult criminal justice system, it would be beneficial for juveniles and their families to have information provided to them that would aid in the navigation of the overall juvenile justice system, including practices and procedures specific to their locality. While it is impractical to implement statewide requirements and oversight for all of the identified problematic issues, some aspects of the system could be remedied by increasing collaboration within localities, as well as neighboring localities, implementing programs and services that focus on family issues, and mandating juvenile specific training for individuals who work with juveniles on a limited basis. Additionally, revisions to Title 16.1 were identified as part of the study, both substantive and technical, that may be necessary to clarify certain statutes, such as CHINS.

One of the difficulties in studying the transfer and certification of juveniles to circuit court was the lack of data on juvenile offenders who have been transferred to circuit court. Currently, data is not available from the Supreme Court of Virginia to determine, by Code subsection, the number of juvenile cases transferred to circuit court. Because of the data limitations with the Court's tracking of juvenile offenders, it is unable to provide a true count of juveniles who committed a crime prior to turning age eighteen and are transferred, but who are eighteen years old when their case is heard in court. This scenario creates a "black hole," in that juveniles are not being counted because they are no longer considered juveniles at the time of trial. Also, DJJ cannot provide a breakdown of crimes for which a court has ordered a transfer. Data is only available for cases where there has been a transfer report, meaning that the transfer occurred under subsection A of § 16.1-269.1. Any transfers made under subsections B and C are not currently documented in detail by DJJ. As there is no statewide databank that captures all of the transfer data by jurisdiction, there is no means, short of going to each locality to review juvenile case files in Commonwealth's Attorneys' offices, to obtain this information. As part of the continued study in 2009, staff plans to continue to review literature related to adolescent brain development, conduct a fifty state review on other states' transfer laws, and obtain additional transfer data from the Supreme Court and DJJ.

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Over the three years that the Crime Commission has been involved with this detailed, lengthy study, we have received assistance from hundreds of people who generously gave their time, insights, and opinions. This study absolutely would not have been possible without their help. So many professionals working in this area willingly provided their particular insights that it is impossible to adequately thank everyone who made this report possible. However, the Crime Commission would like to single out for special recognition the following people who were so instrumental in helping with the study:

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Attachment 1
House Joint Resolution 136

ENROLLED

HOUSE JOINT RESOLUTION NO. 136

Directing the Virginia State Crime Commission to study Virginia's juvenile justice system. Report.

Agreed to by the House of Delegates, March 2, 2006
Agreed to by the Senate, February 28, 2006

WHEREAS, in 1997 the national detention rate was 96 juveniles per 100,000, while the rate for Virginia detention was 169 juveniles per 100,000; and

WHEREAS, in 2002, law-enforcement agencies made approximately 2.3 million arrests nationally of persons under the age of 18; and

WHEREAS, key findings of a recent American Bar Association study in Virginia that assessed the access to counsel and quality of representation in delinquency proceedings included concerns over waiver of counsel without a full understanding of the consequences, detention of juveniles without representation, unequal defense services, and an overall underfunded and overburdened juvenile justice system in Virginia; and

WHEREAS, this report also found that "late appointment of counsel, lack of resources, and multiple barriers disproportionately affected children and youth of color"; and

WHEREAS, minorities constitute 27% of the youth population in Virginia, but account for nearly 60% of juveniles arrested; and

WHEREAS, caseloads involving juvenile offenders range from 679 per year in rural areas to 1,500 per year in urban jurisdictions; and

WHEREAS, it has been 10 years since the juvenile justice system has been substantially reformed; and

WHEREAS, a study of many of the issues raised by the ABA as well as other groups should be given a complete review to determine what, if any, steps can be taken to improve the deficiencies in Virginia's juvenile justice system; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia State Crime Commission be directed to study Virginia's juvenile justice system.

In conducting its study, the Commission shall focus on recidivism, disproportionate minority contact with the justice system, improving the quality of and access to legal counsel based on the ABA recommendations, accountability in the courts, and diversion. The Crime Commission shall also analyze Title 16.1 of the Code of Virginia to determine the adequacy and effectiveness of Virginia's statutes and procedures relating to juvenile delinquency.

All agencies of the Commonwealth shall provide assistance to the Commission for this study, upon request.

The Commission shall complete its meetings for the first year by November 30, 2006, and for the second year by November 30, 2007, and the chairman shall submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the next Regular Session of the General Assembly for each year. Each executive summary shall state whether the Commission intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a House or Senate document. The executive summaries and reports shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

Attachment 2
House Joint Resolution 113

ENROLLED

HOUSE JOINT RESOLUTION NO. 113

Directing the Virginia State Crime Commission to continue its study of the juvenile justice system. Report.

Agreed to by the House of Delegates, February 8, 2008
Agreed to by the Senate, March 4, 2008

WHEREAS, House Joint Resolution No. 136 (2006) directed the Virginia State Crime Commission to conduct a two-year study of Virginia's juvenile justice system; and

WHEREAS, in the first and second years of the study, the Commission was specifically directed to study recidivism, disproportionate minority contact with the justice system, improving the quality of and access to legal counsel based on the American Bar Association recommendations, accountability in the courts, and diversion; and

WHEREAS, the information gathered from the Commission's focus groups and preliminary results of the judicial survey also revealed a need to review specific mental health and truancy issues further, and other goals of the study will include determining training availability and proven practices for key contributors within the juvenile justice system and ascertaining successful reentry programs; and

WHEREAS, the Commission's staff formed a Juvenile and Domestic Relations District Court Judge workgroup to assist in the development of a statewide juvenile and domestic relations judicial survey, which sought to obtain information concerning diversion, court-appointed counsel, and disproportionate minority contact, among other issues, and the survey received a very high response rate; and

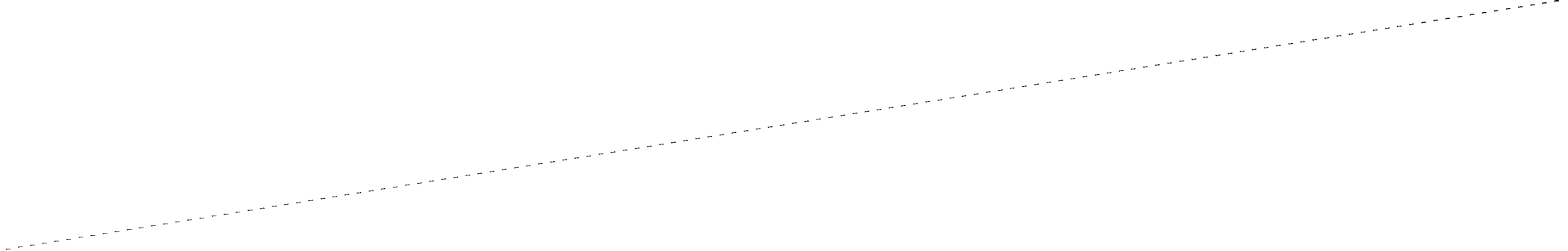
WHEREAS, also, in the second year of the study, staff met with focus groups across the state in conjunction with juvenile court observations, and valuable information was obtained and a need to further review the issues became apparent; and

WHEREAS, there is also a need to further analyze Title 16.1 of the Code of Virginia to determine the adequacy and effectiveness of Virginia's statutes and procedures relating to juvenile delinquency; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia State Crime Commission be directed to continue its study of the juvenile justice system. The Commission, in continuing its study of the juvenile justice system in the Commonwealth pursuant to HJR No. 136 (2006), shall also (i) review the severity of offenses committed by juveniles in the Commonwealth; (ii) evaluate the effects on the learning environment and educational process, particularly for other students, when juvenile offenders are returned to the public school classroom; (iii) identify and examine more effective methods of rehabilitating juveniles, particular juveniles who commit serious offenses; and (iv) recommend such changes as the Commission may deem necessary to provide a more effective juvenile justice system.

All agencies of the Commonwealth shall provide assistance to the Crime Commission for this study, upon request.

The Commission shall complete its meetings by November 30, 2008, and the Chairman shall submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the 2009 Regular Session of the General Assembly. The executive summary shall state whether the Commission intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a House or Senate document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.



Attachment 3
House Joint Resolution 160

080603680

HOUSE JOINT RESOLUTION NO. 160

Offered January 9, 2008

Prefiled January 9, 2008

Establishing a joint subcommittee to study the efficacy of the juvenile justice system and possible changes that could be made to improve the system. Report.

Patron—Phillips

Referred to Committee on Rules

WHEREAS, currently the purpose of the juvenile justice system is to rehabilitate the juvenile and not to punish him; and

WHEREAS, the growing prison population is evidence that the juvenile justice system is not effectively rehabilitating juveniles; and

WHEREAS, the crimes juveniles are committing are becoming more and more grave and the juveniles are not conforming their behavior when placed on probation or community service; and

WHEREAS, the juveniles are being placed back in the communities and schools where the original offense was committed; and

WHEREAS, even the most serious offense committed by juveniles is not met with an appropriate punishment; and

WHEREAS, the protection of law-abiding society is an important and critical role of government and the early release of juveniles and the inability of the juvenile justice system to deal effectively with juveniles endangers the community; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study the efficacy of the juvenile justice system and possible changes that could be made to improve the system. The joint subcommittee shall also study the processing of juveniles and the seriousness of the offenses being committed by juveniles. The joint subcommittee shall have a total membership of 14 that shall consist of eight legislative members, two nonlegislative citizen members, and four ex officio members. Members shall be appointed as follows: five members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; three members of the Senate to be appointed by the Senate Committee on Rules; one nonlegislative citizen member who shall be a member of a local school board in the Commonwealth to be appointed by the Speaker of the House of Delegates; and one nonlegislative citizen member who shall be a trained pediatric psychologist to be appointed by the Senate Committee on Rules. The directors of the Department of Juvenile Justice and the Department of Corrections, the Commissioner of the Department of Social Services, and the Superintendent of the Department of State Police, or their designees, shall serve ex officio with voting privileges. Nonlegislative citizen members of the joint subcommittee shall be citizens of the Commonwealth of Virginia. Unless otherwise approved in writing by the chairman of the joint subcommittee and the respective Clerk, nonlegislative citizen members shall be reimbursed only for travel originating and ending within the Commonwealth of Virginia for the purpose of attending meetings. If a companion joint resolution of the other chamber is agreed to, written authorization of both Clerks shall be required. The joint subcommittee shall elect a chairman and vice-chairman from among its membership, who shall be members of the General Assembly.

In conducting its study, the joint subcommittee shall review the recidivism rate of juveniles in the Commonwealth, the severity of offenses being committed by juveniles in the Commonwealth; the impact that juveniles who are being placed back in the classroom are having on the education of others; and the juvenile justice system as a whole. The subcommittee shall examine more effective methods of rehabilitating juveniles; more effective ways of dealing with juveniles who commit serious offenses, and changes that can be made to make the juvenile justice system more effective as a whole.

Administrative staff support shall be provided by the Office of the Clerk of the House of Delegates. Legal, research, policy analysis, and other services as requested by the joint subcommittee shall be provided by the Division of Legislative Services. All agencies of the Commonwealth shall provide assistance to the joint subcommittee for this study, upon request.

The joint subcommittee shall be limited to four meetings for the 2008 interim and four meetings for the 2009 interim, and the direct costs of this study shall not exceed $9,200 for each year without approval as set out in this resolution. Approval for unbudgeted nonmember-related expenses shall require the written authorization of the chairman of the joint subcommittee and the respective Clerk. If a companion joint resolution of the other chamber is agreed to, written authorization of both Clerks shall

be required.

No recommendation of the joint subcommittee shall be adopted if a majority of the House members or a majority of the Senate members appointed to the joint subcommittee (i) vote against the recommendation and (ii) vote for the recommendation to fail notwithstanding the majority vote of the joint subcommittee.

The joint subcommittee shall complete its meetings for the first year by November 30, 2008, and for the second year by November 30, 2009, and the chairman shall submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the next Regular Session of the General Assembly for each year. Each executive summary shall state whether the joint subcommittee intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a House or Senate document. The executive summaries and reports shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports, and shall be posted on the General Assembly's website.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may approve or disapprove expenditures for this study, extend or delay the period for the conduct of the study, or authorize additional meetings during the 2008 or 2009 interim.

Attachment 4
Juvenile Justice Terminology

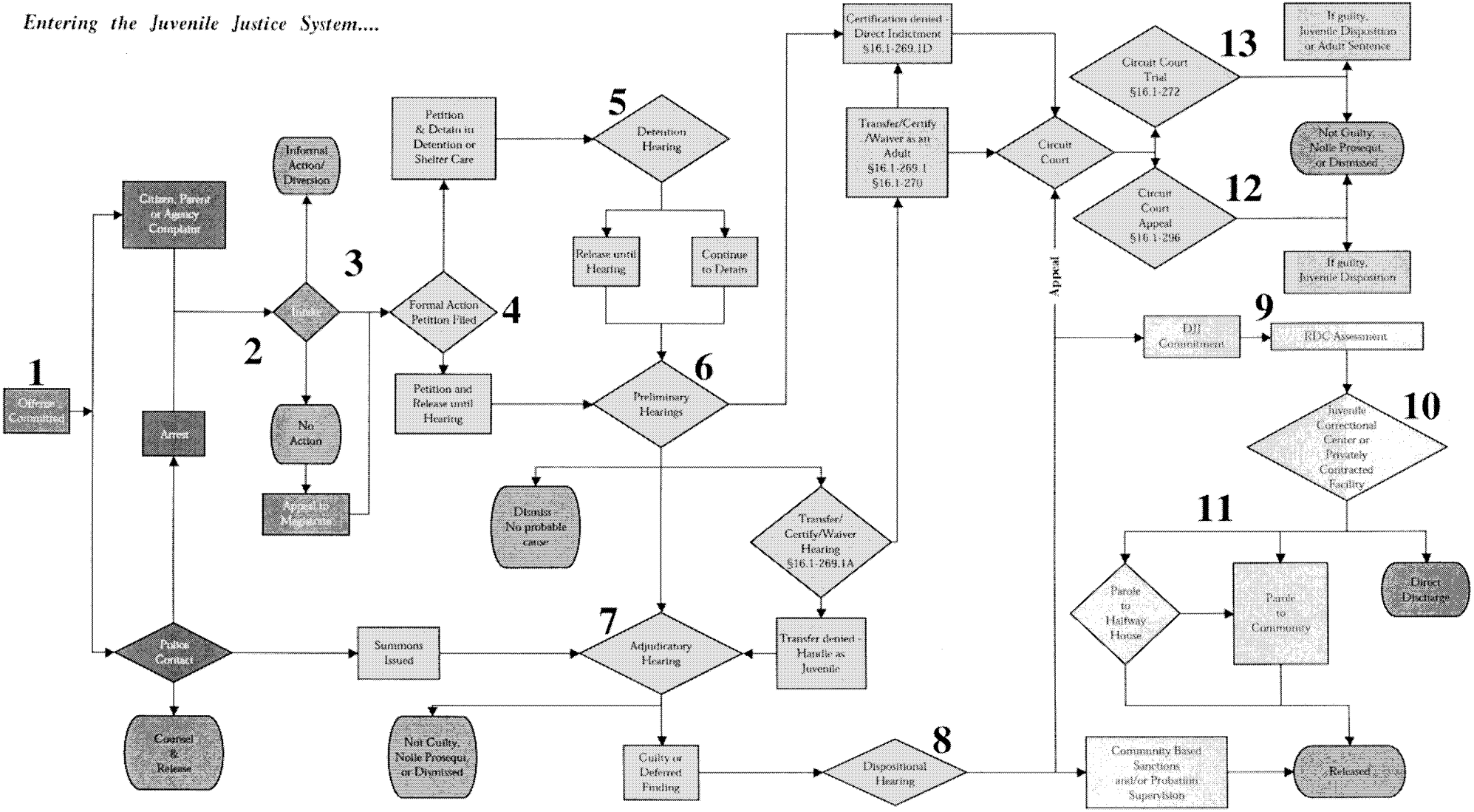
Comparison of Terms

- Adult Terms
  - Criminal
  - Crime
  - Arrest
  - Indictment
  - Plead Guilty
  - Plead not guilty
  - Plea bargain
  - Jail
  - Trial/conviction
  - Sentencing hearing
  - Sentence
  - Incarceration
  - Probation/parole

- Juvenile Terms
  - Delinquent (child)
  - Delinquent act
  - Take into custody
  - Petition
  - Agree to a finding
  - Deny the petition
  - Adjustment
  - Detention facility
  - Adjudication
  - Dispositional hearing
  - Disposition
  - Commitment
  - Aftercare

Attachment 5
Department of Juvenile Justice Flow Chart

Entering the Juvenile Justice System....



Preadjudicatory Process → *Adjudicatory Process* → *Dispositional Process* → *....Exiting the Juvenile Justice System*

Source: Department of Juvenile Justice

STEPS IN THE JUVENILE JUSTICE SYSTEM

1. The juvenile enters the system when an offense is committed and reported by a parent, citizen, agency complaint, or the police.

2. If the juvenile entered the system through police contact, a decision is made to either counsel and release the youth back to the community or to arrest. If a parent, citizen, or agency made the complaint, the complaint goes to intake.

3. An intake officer at the court service unit makes the decision whether to take informal action such as crisis-shelter care, detention outreach, or counseling; to take no action; or to file a petition. In some cases, a police officer or the original complainant will appeal to the magistrate if they disagree with the intake officer's decision. The magistrate must certify the charge, and the matter is returned to intake to file a petition.

4. Once a petition has been filed, an intake officer decides if the juvenile should be detained or released to his or her parents/guardians. The decision is based on the juvenile's risk to self, community, or flight and is guided by completion of the Detention Assessment Instrument.

5. If the decision is made to detain the juvenile, a detention hearing is held within 72 hours in the juvenile and domestic relations district court to determine the need for further detention and examine the merits of the charges.

6. A preliminary hearing is held to ensure that the case has enough merit to carry it to trial. Issues of competency, insanity, subpoenas, and witnesses are addressed also. If no probable cause exists, the case is dismissed. If cause is determined, the case moves to the adjudicatory hearing. Also during this phase, issues of transfers and waivers are addressed by the court. If certification is ordered or a direct indictment issued, the case goes to the circuit court (see sections 12-13).

7. Innocence or guilt is determined at the adjudicatory hearing. Witnesses and testimony are presented similar to an adult trial. If found not guilty, the case is dismissed. If found guilty, a dispositional hearing is held.

8. At the dispositional hearing, the pre-disposition report (social history) is used to assist in selecting appropriate sanctions and services. The court decides if the juvenile will be committed to DJJ or face community sanctions such as warnings, restitutions, or fines. A conditional disposition may be imposed such as probation, which includes participation in CSU programs, referral to local services or facilities, to other agencies, to private placement, or to post-dispositional detention. Once the requirements have been met, the juvenile is released by the court.

9. If committed to DJJ, the juvenile must undergo psychological, educational, social, and medical evaluations conducted at RDC.

10. From RDC, the juvenile may go to a privately operated residential facility or a juvenile correctional center (JCC). At the JCC, a committed juvenile receives 24-hour supervision, education, treatment services, recreational services, and a variety of special programs.

11. After completion of the commitment period, a juvenile may be placed on parole or directly released. During parole, the juvenile transitions to the community through agency program efforts and is afforded local services. Some juveniles may need 24-hour residential care and treatment services provided by a halfway house. Upon completion of parole or entry into the adult criminal justice system, the youth is discharged from the juvenile system.

12. A case may be sent into the appeals process following the dispositional hearing. After presentation to the circuit court, the case is reconsidered and the issue of guilt is examined. If the juvenile is found not guilty, the case is dismissed. If found guilty, the circuit court judge administers an appropriate juvenile disposition.

13. If the circuit court received the case through a direct indictment, a trial will take place. If found not guilty, the case is dismissed. If found guilty, the judge will decide whether to render a juvenile disposition or an adult sentence.

Attachment 6
Juvenile and Domestic Relations District Court Judges' Survey

VIRGINIA STATE CRIME COMMISSION

JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT (JDR) JUDGES' SURVEY

You may recall that the Crime Commission conducted a survey of JDR Judges last year as part of our comprehensive study on the juvenile justice system. As a result of survey findings, focus group discussions, conferences and trainings, JDR courtroom observations, meetings with juvenile justice professionals in the field and literature review findings, a number of potential policy issues have emerged.

Commission members would like to give you the opportunity to express your general support or non-support for the following recommendations. Individual responses will be kept strictly confidential. Your responses are very important to the overall success of this study mandate from the General Assembly.

Please return the survey by November 7, 2008. If you have any questions, contact Kristen Howard at (804) 225-4534 or KHoward@leg.state.va.us. The General Assembly of Virginia and the Virginia State Crime Commission thank you for your assistance in this important study effort.

SECTION 1: RECOMMENDATIONS

DIRECTIONS: Please indicate whether you "support," "do not support," or "support with revisions" the following recommendations. If you "do not support" the recommendation, please indicate why. If you "support with revisions," please indicate how the recommendation should be revised to meet your support.

1. **Recommendation #1:** Allow JDR judges sole discretion to transfer, with the exception of mandatory transfer crimes under subsection B. *(Please check one.)*
   - ☐ Support Recommendation
   - ☐ Do Not Support Recommendation
   - ☐ Support Recommendation with Revisions

If you do not support the recommendation, please briefly indicate why:

If you support the recommendation with revisions, please briefly indicate specific revisions:

2. **Recommendation #2:** Allow Circuit Court judges the ability to send subsection C transfers back to JDR Court for adjudication (reverse the transfer). *(Please check one.)*
   - ☐ Support Recommendation
   - ☐ Do Not Support Recommendation
   - ☐ Support Recommendation with Revisions

If you do not support the recommendation, please briefly indicate why:

If you support the recommendation with revisions, please briefly indicate specific revisions:

3. **Recommendation #3:** Allow for a device to restore a juvenile's status (currently, once transferred and convicted, juvenile is always considered an adult). *(Please check one.)*
   - ☐ Support Recommendation
   - ☐ Do Not Support Recommendation
   - ☐ Support Recommendation with Revisions

If you do not support the recommendation, please briefly indicate why:

If you support the recommendation with revisions, please briefly indicate specific revisions:

4. **Recommendation #4:** Allow for more than one pre-trial diversion opportunity for juveniles charged with felonies. *(Please check one.)*
   - ☐ Support Recommendation
   - ☐ Do Not Support Recommendation
   - ☐ Support Recommendation with Revisions

If you do not support the recommendation, please briefly indicate why:

If you support the recommendation with revisions, please briefly indicate specific revisions:

5. **Recommendation #5:** Remove certain crimes that are eligible for transfer in subsection C. *(Please check one.)*

☐ Support Recommendation *(if so,* please indicate which crimes should be removed).

- ☐ Felony homicide
- ☐ Felonious injury by mob
- ☐ Abduction
- ☐ Malicious wounding
- ☐ Malicious wounding of a law-enforcement officer
- ☐ Felonious poisoning
- ☐ Adulteration of products
- ☐ Robbery
- ☐ Carjacking
- ☐ Rape
- ☐ Forcible Sodomy
- ☐ Object Sexual Penetration

☐ Do Not Support Recommendation

☐ Support Recommendation with Revisions

If you do not support the recommendation, please briefly indicate why:

If you support the recommendation with revisions, please briefly indicate specific revisions. If you think certain crimes should be removed, please list crimes:

6. **Recommendation #6:** Require that the Court retain records only for violent felonies in (§ 16.1-306). *(Please check one.)*

☐ Support Recommendation

☐ Do Not Support Recommendation

☐ Support Recommendation with Revisions

If you do not support the recommendation, please briefly indicate why:

If you support the recommendation with revisions, please briefly indicate specific revisions:

7. **Recommendation #7:** Limit Post-D detentions to juveniles adjudicated delinquent of Class 1 misdemeanors and felonies (i.e. Class 2 misdemeanor would no longer be eligible for Post-D detention) (§ 16.1-284.1). *(Please check one.)*

☐ Support Recommendation

☐ Do Not Support Recommendation

☐ Support the Recommendation with Revisions

If you do not support the recommendation, please briefly indicate why:

If you support the recommendation with revisions, please briefly indicate specific revisions:

8. **Recommendation #8:** Change § 16.1-287, so that prior time in DOC would make a juvenile ineligible for commitment to DJJ. As such, a juvenile would return to DOC for future serious offenses. *(Please check one.)*

   ☐ Support Recommendation
   ☐ Do Not Support Recommendation
   ☐ Support the Recommendation with Revisions

If you do not support the recommendation, please briefly indicate why:

If you support the recommendation with revisions, please briefly indicate specific revisions:

9. **Recommendation #9:** Conduct a complete rewrite of Chapter 11 of Title 16.1.
   (Please check one.)

   ☐ Support Recommendation
   ☐ Do Not Support Recommendation
   ☐ Support the Recommendation with Revisions

If you do not support the recommendation, please briefly indicate why:

If you support the recommendation with revisions, please briefly indicate specific revisions:

SECTION 2: RECOMMENDATION PRIORITY

DIRECTIONS: To the best of your ability, please rank from 1 to 9, the priority you believe should be placed on the above recommendations. Each number should only be used once. 1 indicates that the recommendation should be given the highest priority; whereas, 9 indicates that the recommendation should be given the lowest priority.

_____: Allow JDR judges sole discretion to transfer, with the exception of mandatory transfer crimes under subsection B.

_____: Allow Circuit Court judges the ability to send subsection C transfers back to JDR Court for adjudication (reverse the transfer).

_____: Allow for a device to restore a juvenile's status (currently, once transferred and convicted, juvenile is always considered an adult).

_____: Allow for more than one pre-trial diversion opportunity for juveniles charged with felonies.

_____: Remove certain crimes eligible for transfer in subsection C.

_____: Require that the Court retain records only for violent felonies.

_____: Limit Post-D detentions to juveniles adjudicated delinquent of Class 1 misdemeanors and felonies (i.e. Class 2 misdemeanor would no longer be eligible for Post-D detention).

_____: Change § 16.1-287, so that prior time in DOC would make a juvenile ineligible for commitment to DJJ. As such, a juvenile would return to DOC for future serious offenses.

_____: Conduct a complete rewrite of Chapter 11 of Title 16.1.

Thank you for your time in completing this survey. Your responses will be very useful to Commission members in determining the most pressing issues identified in the above policies.

PLEASE RETURN THE COMPLETED SURVEY BY E-MAIL, FAX, OR MAIL BY NOVEMBER 7, 2008 TO:

Kristen Howard, Deputy Director
Virginia State Crime Commission
Patrick Henry Building
1111 East Broad Street, Suite B036
Richmond, Virginia 23219-0406
PHONE (804) 225-4534 FAX (804) 786-7872
KHoward@leg.state.va.us

Attachment 7
Court Service Unit Directors' Survey

VIRGINIA STATE CRIME COMMISSION

COURT SERVICE UNIT DIRECTORS' SURVEY

You may recall that the Crime Commission conducted a survey of CSU Directors last year as part of our comprehensive study on the juvenile justice system. As a result of survey findings, focus group discussions, conferences and trainings, JDR courtroom observations, meetings with juvenile justice professionals in the field and literature review findings, a number of potential policy issues have emerged.

Commission members would like to give you the opportunity to express your general support or non-support for the following policy issues. Individual responses will be kept strictly confidential. Your responses are very important to the overall success of this study mandate from the General Assembly.

Please return the survey by November 7, 2008. If you have any questions, contact Kristen Howard at (804) 225-4534 or KHoward@leg.state.va.us. The General Assembly of Virginia and the Virginia State Crime Commission thank you for your assistance in this important study effort.

SECTION 1: POLICY ISSUES

DIRECTIONS: Please indicate whether you "support," "do not support," or "support with revisions" the following policies. If you "do not support" the policy, please indicate why. If you "support with revisions," please indicate how the policy should be revised to meet your support.

1. **Policy #1:** Allow JDR judges sole discretion to transfer, with the exception of mandatory transfer crimes under subsection B. *(Please check one.)*
   - ☐ Support Policy
   - ☐ Do Not Support Policy
   - ☐ Support Policy with Revisions

If you do not support the policy, please briefly indicate why:

If you support the policy with revisions, please briefly indicate specific revisions:

2. **Policy #2:** Allow Circuit Court judges the ability to send subsection C transfers back to JDR Court for adjudication (reverse the transfer). *(Please check one.)*
   - ☐ Support Policy
   - ☐ Do Not Support Policy
   - ☐ Support Policy with Revisions

If you do not support the policy, please briefly indicate why:

If you support the policy with revisions, please briefly indicate specific revisions:

3. **Policy #3:** Allow for a device to restore a juvenile's status (currently, once transferred and convicted, juvenile is always considered an adult). *(Please check one.)*
   - ☐ Support Policy
   - ☐ Do Not Support Policy
   - ☐ Support Policy with Revisions

If you do not support the policy, please briefly indicate why:

If you support the policy with revisions, please briefly indicate specific revisions:

4. **Policy #4:** Allow for more than one pre-trial diversion opportunity for juveniles charged with felonies. *(Please check one.)*
   - ☐ Support Policy
   - ☐ Do Not Support Policy
   - ☐ Support Policy with Revisions

If you do not support the policy, please briefly indicate why:

If you support the policy with revisions, please briefly indicate specific revisions:

5. **Policy #5:** Remove certain crimes that are eligible for transfer in subsection C.
(Please check one.)

☐ Support Policy *(if so,* please indicate which crimes should be removed).

- ☐ Felony homicide
- ☐ Felonious injury by mob
- ☐ Abduction
- ☐ Malicious wounding
- ☐ Malicious wounding of a law-enforcement officer
- ☐ Felonious poisoning
- ☐ Adulteration of products
- ☐ Robbery
- ☐ Carjacking
- ☐ Rape
- ☐ Forcible Sodomy
- ☐ Object Sexual Penetration

☐ Do Not Support Policy

☐ Support Policy with Revisions

If you <u>do not support</u> the policy, please briefly indicate why:

If you <u>support the policy with revisions</u>, please briefly indicate specific revisions. If you think certain crimes should be removed, please list crimes:

6. **Policy #6:** Require that the Court retain records <u>only</u> for violent felonies in (§ 16.1-306).
(Please check one.)

☐ Support Policy

☐ Do Not Support Policy

☐ Support Policy with Revisions

If you <u>do not support</u> the policy, please briefly indicate why:

If you <u>support the policy with revisions</u>, please briefly indicate specific revisions:

7. **Policy #7:** Limit Post-D detentions to juveniles adjudicated delinquent of Class 1 misdemeanors and felonies (i.e. Class 2 misdemeanor would no longer be eligible for Post-D detention) (§ 16.1-284.1). *(Please check one.)*

☐ Support Policy

☐ Do Not Support Policy

☐ Support the Policy with Revisions

If you do not support the policy, please briefly indicate why:

If you support the policy with revisions, please briefly indicate specific revisions:

8. **Policy #8:** Change § 16.1-287, so that prior time in DOC would make a juvenile ineligible for commitment to DJJ. As such, a juvenile would return to DOC for future serious offenses. *(Please check one.)*

   ☐ Support Policy
   ☐ Do Not Support Policy
   ☐ Support the Policy with Revisions

If you do not support the policy, please briefly indicate why:

If you support the policy with revisions, please briefly indicate specific revisions:

9. **Policy #9:** Conduct a complete rewrite of Chapter 11 of Title 16.1.
   (Please check one.)

   ☐ Support Policy
   ☐ Do Not Support Policy
   ☐ Support the Policy with Revisions

If you do not support the policy, please briefly indicate why:

If you support the policy with revisions, please briefly indicate specific revisions:

SECTION 2: POLICY PRIORITY

DIRECTIONS: To the best of your ability, please rank from 1 to 9, the priority you believe should be placed on the above policies. Each number should only be used once. 1 indicates that the policy should be given the highest priority; whereas, 9 indicates that the policy should be given the lowest priority.

_____: Allow JDR judges sole discretion to transfer, with the exception of mandatory transfer crimes under subsection B.

_____: Allow Circuit Court judges the ability to send subsection C transfers back to JDR Court for adjudication (reverse the transfer).

_____: Allow for a device to restore a juvenile's status (currently, once transferred and convicted, juvenile is always considered an adult).

_____: Allow for more than one pre-trial diversion opportunity for juveniles charged with felonies.

_____: Remove certain crimes eligible for transfer in subsection C.

_____: Require that the Court retain records only for violent felonies.

_____: Limit Post-D detentions to juveniles adjudicated delinquent of Class 1 misdemeanors and felonies (i.e. Class 2 misdemeanor would no longer be eligible for Post-D detention).

_____: Change § 16.1-287, so that prior time in DOC would make a juvenile ineligible for commitment to DJJ. As such, a juvenile would return to DOC for future serious offenses.

_____: Conduct a complete rewrite of Chapter 11 of Title 16.1.

Thank you for your time in completing this survey. Your responses will be very useful to Commission members in determining the most pressing issues identified in the above policies.

PLEASE RETURN THE COMPLETED SURVEY BY E-MAIL, FAX, OR MAIL BY NOVEMBER 7, 2008 TO:

Kristen Howard, Deputy Director
Virginia State Crime Commission
Patrick Henry Building
1111 East Broad Street, Suite B036
Richmond, Virginia 23219-0406
PHONE (804) 225-4534 FAX (804) 786-7872
KHoward@leg.state.va.us

Attachment 8
2009 Juvenile Justice Legislation

090705838

SENATE BILL NO. 1149

Offered January 14, 2009

Prefiled January 13, 2009

A BILL to amend and reenact §§ 4.1-305, 15.2-1704, 16.1-228, 16.1-237, 16.1-241, 16.1-253.1, 16.1-253.2, 16.1-253.4, 16.1-260, 16.1-278.8, 16.1-278.14, 16.1-290, 16.1-296, 16.1-298, 18.2-57.2, 18.2-119, 18.2-308.1:4, 55-225.5, 55-248.18:1, 55-248.31 and 66-13 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 16.1-253.5 and 16.1-305.01, and to repeal §§ 16.1-279.1 and 16.1-309.1 of the Code of Virginia, relating to juvenile law.

Patron—Howell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-305, 15.2-1704, 16.1-228, 16.1-237, 16.1-241, 16.1-253.1, 16.1-253.2, 16.1-253.4, 16.1-260, 16.1-278.8, 16.1-278.14, 16.1-290, 16.1-296, 16.1-298, 18.2-57.2, 18.2-119, 18.2-308.1:4, 55-225.5, 55-248.18:1, 55-248.31 and 66-13 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 16.1-253.5 and 16.1-305.01 as follows:

§ 4.1-305. Purchasing or possessing alcoholic beverages unlawful in certain cases; venue; exceptions; penalty; forfeiture; deferred proceedings; treatment and education programs and services.

A. No person to whom an alcoholic beverage may not lawfully be sold under § 4.1-304 shall consume, purchase or possess, or attempt to consume, purchase or possess, any alcoholic beverage, except (i) pursuant to subdivisions 1 through 7 of § 4.1-200; (ii) where possession of the alcoholic beverages by a person less than 21 years of age is due to such person's making a delivery of alcoholic beverages in pursuance of his employment or an order of his parent; or (iii) by any state, federal, or local law-enforcement officer when possession of an alcoholic beverage is necessary in the performance of his duties. Such person may be prosecuted either in the county or city in which the alcohol was possessed or consumed, or in the county or city in which the person exhibits evidence of physical indicia of consumption of alcohol.

B. No person under the age of 21 years shall use or attempt to use any (i) altered, fictitious, facsimile or simulated license to operate a motor vehicle, (ii) altered, fictitious, facsimile or simulated document, including, but not limited to a birth certificate or student identification card, or (iii) motor vehicle operator's license, birth certificate or student identification card of another person in order to establish a false identification or false age for himself to consume, purchase or attempt to consume or purchase an alcoholic beverage.

C. Any person found guilty of a violation of this section shall be guilty of a Class 1 misdemeanor; and upon conviction, (i) such person shall be ordered to pay a mandatory minimum fine of $500 or ordered to perform a mandatory minimum of 50 hours of community service as a condition of probation supervision and (ii) the license to operate a motor vehicle in the Commonwealth of any such person age 18 or older shall be suspended for a period of not less than six months and not more than one year. The court, in its discretion and upon a demonstration of hardship, may authorize any person convicted of a violation of this section the use of a restricted permit to operate a motor vehicle in accordance with the provisions of subsection D of § 16.1-278.9 or subsection E of § 18.2-271.1 or when referred to a local community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1. During the period of license suspension, the court may require a person issued a restricted permit under the provisions of this subsection to be (i) monitored by an alcohol safety action program, or (ii) supervised by a local community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, if one has been established for the locality. The alcohol safety action program or local community-based probation services agency shall report to the court any violation of the terms of the restricted permit, the required alcohol safety action program monitoring or local community-based probation services and any condition related thereto or any failure to remain alcohol-free during the suspension period.

D. Any alcoholic beverage purchased or possessed in violation of this section shall be deemed contraband and forfeited to the Commonwealth in accordance with § 4.1-338.

E. Any retail licensee who in good faith promptly notifies the Board or any state or local law-enforcement agency of a violation or suspected violation of this section shall be accorded immunity from an administrative penalty for a violation of § 4.1-304.

F. When any ~~person~~ *adult* who has not previously been convicted of underaged consumption,

purchase or possession of alcoholic beverages in Virginia or any other state or the United States is before the court, the court may, upon entry of a plea of guilty or not guilty, if the facts found by the court would justify a finding of guilt of a violation of subsection A, without entering a judgment of guilt and with the consent of the accused, defer further proceedings and place him on probation subject to appropriate conditions. Such conditions may include the imposition of the license suspension and restricted license provisions in subsection C. However, in all such deferred proceedings, the court shall require the accused to enter a treatment or education program or both, if available, that in the opinion of the court best suits the needs of the accused. If the accused is placed on local community-based probation, the program or services shall be located in any of the judicial districts served by the local community-based probation services agency or in any judicial district ordered by the court when the placement is with an alcohol safety action program. The services shall be provided by (i) a program licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services, (ii) certified by the Commission on VASAP, or (iii) by a program or services made available through a community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, if one has been established for the locality. When an offender is ordered to a local community-based probation services rather than the alcohol safety action program, the local community-based probation services agency shall be responsible for providing for services or referring the offender to education or treatment services as a condition of probation.

Upon violation of a condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the conditions, the court shall discharge the person and dismiss the proceedings against him without an adjudication of guilt. A discharge and dismissal hereunder shall be treated as a conviction for the purpose of applying this section in any subsequent proceedings.

§ 15.2-1704. Powers and duties of police force.

A. The police force of a locality is hereby invested with all the power and authority which formerly belonged to the office of constable at common law and is responsible for the prevention and detection of crime, the apprehension of criminals, the safeguard of life and property, the preservation of peace and the enforcement of state and local laws, regulations, and ordinances.

B. A police officer has no authority in civil matters, except (i) to execute and serve temporary detention and emergency custody orders and any other powers granted to law-enforcement officers in § 37.2-808 or 37.2-809, (ii) to serve an order of protection pursuant to §§ 16.1-253.1, 16.1-253.4, and ~~16.1-279.1~~ *16.1-253.5*, (iii) to execute all warrants or summons as may be placed in his hands by any magistrate serving the locality and to make due return thereof, and (iv) to deliver, serve, execute, and enforce orders of isolation and quarantine issued pursuant to §§ 32.1-48.09, 32.1-48.012, and 32.1-48.014 and to deliver, serve, execute, and enforce an emergency custody order issued pursuant to § 32.1-48.02. A town police officer, after receiving training under subdivision 8 of § 9.1-102, may, with the concurrence of the local sheriff, also serve civil papers, and make return thereof, only when the town is the plaintiff and the defendant can be found within the corporate limits of the town.

§ 16.1-228. 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, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;

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;

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; or

6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § 55-79.2, with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor

for which registration is required as a violent sexual offender pursuant to § 9.1-902.

If a civil proceeding under this chapter is based solely on the parent having left the child at a hospital or rescue squad, it shall be an affirmative defense that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended rescue squad that employs emergency medical technicians, within 14 days of the child's birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

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

"Adult" means a person 18 years of age or older.

"Ancillary crime" or "ancillary charge" means any delinquent act committed by a juvenile as a part of the same act or transaction as, or which constitutes a part of a common scheme or plan with, a delinquent act which would be a felony if committed by an adult.

~~"Boot camp" means a short term secure or nonsecure juvenile residential facility with highly structured components including, but not limited to, military style drill and ceremony, physical labor, education and rigid discipline, and no less than six months of intensive aftercare.~~

"Child," "juvenile," or "minor" means a person less than 18 years of age.

"Child in need of services" means (i) a child whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of the child or (ii) a child under the age of 14 whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of another person; 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 a child in need of services, nor shall any child who habitually remains away from or habitually deserts or abandons his family as a result of what the court or the local child protective services unit determines to be incidents of physical, emotional or sexual abuse in the home be considered a child in need of services for that reason alone.

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

"Child in need of supervision" means:

1. A child who, while subject to compulsory school attendance, is habitually and without justification absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of any and all educational services and programs that are required to be provided by law and which meet the child's particular educational needs, (ii) the school system from which the child is absent or other appropriate agency has made a reasonable effort to effect the child's regular attendance without success, and (iii) the school system has provided documentation that it has complied with the provisions of § 22.1-258; or

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

"Child welfare agency" means a child-placing agency, child-caring institution or independent foster home as defined in § 63.2-100.

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

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

"Delinquent child" means a child who has committed a delinquent act or an adult who has committed a delinquent act prior to his 18th birthday, except where the jurisdiction of the juvenile court has been terminated under the provisions of § 16.1-269.6.

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

"Family abuse" means any act involving violence, force, or threat including, but not limited to, any forceful detention, which results in bodily injury or places one in reasonable apprehension of bodily injury and which is committed by a person against such person's family or household member.

"Family or household member" means (i) the person's spouse, whether or not he or she resides in the same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents and grandchildren, regardless of whether such persons reside in the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, (v) any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time, or (vi) any individual who cohabits or who, within the previous 12 months, cohabited with the person, and any children of either of them then residing in the same home with the person.

"Foster care services" means the provision of a full range of casework, treatment and community services for a planned period of time to a child who is abused or neglected as defined in § 63.2-100 or in need of services as defined in this section and his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between the local board of social services or a public agency designated by the community policy and management team and the parents or guardians where legal custody remains with the parents or guardians, (iii) has been committed or entrusted to a local board of social services or child welfare agency, or (iv) has been placed under the supervisory responsibility of the local board pursuant to § 16.1-293.

"Independent living arrangement" means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older and who has been committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. "Independent living services" may also mean services and activities provided to a person who was in foster care on his 18th birthday and has not yet reached the age of 21 years. Such services shall include counseling, education, housing, employment, and money management skills development and access to essential documents and other appropriate services to help children or persons prepare for self-sufficiency.

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

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

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

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

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

"Permanent foster care placement" means the place of residence in which a child resides and in which he has been placed pursuant to the provisions of §§ 63.2-900 and 63.2-908 with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or 63.2-1517. A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

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

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

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

"State Board" means the State Board of Juvenile Justice.

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

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

"Violent juvenile felony" means any of the delinquent acts enumerated in subsection B or C of § 16.1-269.1 when committed by a juvenile 14 years of age or older.

§ 16.1-237. Powers, duties and functions of probation and parole officers.

In addition to any other powers and duties imposed by this law, a probation or parole officer appointed hereunder shall:

A. Investigate all cases referred to him by the judge or any person designated so to do, and shall render reports of such investigation as required;

B. Supervise persons placed under his supervision and shall keep informed concerning the conduct and condition of every person under his supervision by visiting, requiring reports and in other ways, and shall report thereon as required;

C. Under the general supervision of the director of the court service unit, investigate complaints and accept for informal supervision cases wherein such handling would best serve the interests of all concerned;

D. Use all suitable methods not inconsistent with conditions imposed by the court to aid and encourage persons on probation or parole and to bring about improvement in their conduct and condition;

E. Furnish to each person placed on probation or parole a written statement of the conditions of his probation or parole and instruct him regarding the same;

F. Keep records of his work *and relevant photographs* and perform such other duties as the judge or other person designated by the judge or the Director shall require;

G. Have the authority to administer oaths and take acknowledgements for the purposes of §§ 16.1-259 and 16.1-260 to facilitate the processes of intake and petition;

H. Have the powers of arrest of a police officer and the power to carry a concealed weapon when specifically so authorized by the judge; and

I. Determine by reviewing the Local Inmate Data System or the Juvenile Tracking System (JTS) upon intake and again prior to discharge whether a blood, saliva, or tissue sample has been taken for DNA analysis for each offender required to submit a sample pursuant to § 16.1-299.1 and, if no sample has been taken, require an offender to submit a sample for DNA analysis.

§ 16.1-241. Jurisdiction; consent for abortion.

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

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

1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent except where the jurisdiction of the juvenile court has been terminated or divested;

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

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

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

4. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817 or whose parent or parents for good cause desire to be relieved of his care and custody;

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

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

In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection B of § 16.1-269.1, and for any charges ancillary thereto, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 14 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection C of § 16.1-269.1, and for all charges ancillary thereto, if the attorney for the Commonwealth has given notice as provided in subsection C of § 16.1-269.1, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 14 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. A determination by the juvenile court following a preliminary hearing pursuant to subsection B or C of § 16.1-269.1 to certify a charge to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge. In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as provided in § 16.1-269.6.

In all other cases involving delinquent acts, and in cases in which an ancillary charge remains after a violent juvenile felony charge has been dismissed or a violent juvenile felony has been reduced to a lesser offense not constituting a violent juvenile felony, the jurisdiction of the juvenile court shall not be divested unless there is a transfer pursuant to subsection A of § 16.1-269.1.

The authority of the juvenile court to adjudicate matters involving the custody, visitation, support, control or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed at any time by any party with a legitimate interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. A party with a legitimate interest shall not include any person (i) whose parental rights have been terminated by court order, either voluntarily or involuntarily, (ii) whose interest in the child derives from or through a person whose parental rights have been terminated by court order, either voluntarily or involuntarily, including, but not limited to, grandparents, stepparents, former stepparents, blood relatives and family members, if the child subsequently has been legally adopted, except where a final order of adoption is entered pursuant to § 63.2-1241, or (iii) who has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, when the child who is the subject of the petition was conceived as a result of such violation. The authority of the juvenile court to consider a petition involving the custody of a child shall not be proscribed or limited where the child has previously been awarded to the custody of a local board of social services.

B. The admission of minors for inpatient treatment in a mental health facility in accordance with the provisions of Article 16 (§ 16.1-335 et seq.) of this chapter and the involuntary admission of a person with mental illness or judicial certification of eligibility for admission to a training center for persons with mental retardation in accordance with the provisions of Chapters 1 (§ 37.2-100 et seq.) and 8 (§ 37.2-800 et seq.) of Title 37.2. Jurisdiction of the involuntary admission and certification of adults shall be concurrent with the general district court.

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

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

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

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

1. Who has been abused or neglected;

2. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817 or is otherwise before the court pursuant to subdivision A 4 of this section; or

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

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

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

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

J. All offenses in which one family or household member is charged with an offense in which another family or household member is the victim and all offenses under § 18.2-49.1.

In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. Any objection based on jurisdiction under this subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial, before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for challenging directly or collaterally the jurisdiction of the court in which the case is tried.

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

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

M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or ~~16.1-279.1~~ *16.1-253.5*.

N. Any person who escapes or remains away without proper authority from a residential care facility in which he had been placed by the court or as a result of his commitment to the Virginia Department of Juvenile Justice.

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

P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2, or by another state in the same manner as if the orders were entered by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the juvenile and domestic relations district court.

Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20. A circuit court shall have concurrent original jurisdiction to the extent provided for in § 20-49.2.

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

S. Petitions filed by school boards against parents pursuant to §§ 16.1-241.2 and 22.1-279.3.

T. Petitions to enforce any request for information or subpoena that is not complied with or to review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect pursuant to § 63.2-1526.

U. Petitions filed in connection with parental placement adoption consent hearings pursuant to § 63.2-1233. Such proceedings shall be advanced on the docket so as to be heard by the court within 10 days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

V. Petitions filed by a juvenile seeking judicial authorization for a physician to perform an abortion if a minor elects not to seek consent of an authorized person.

After a hearing, a judge shall issue an order authorizing a physician to perform an abortion, without the consent of any authorized person, if he finds that (i) the minor is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independent of the wishes of any authorized person, or (ii) the minor is not mature enough or well enough informed to make such decision, but the desired abortion would be in her best interest.

If the judge authorizes an abortion based on the best interests of the minor, such order shall expressly state that such authorization is subject to the physician or his agent giving notice of intent to perform the abortion; however, no such notice shall be required if the judge finds that such notice would not be in the best interest of the minor. In determining whether notice is in the best interest of the minor, the judge shall consider the totality of the circumstances; however, he shall find that notice is not in the best interest of the minor if he finds that (i) one or more authorized persons with whom the

minor regularly and customarily resides is abusive or neglectful, and (ii) every other authorized person, if any, is either abusive or neglectful or has refused to accept responsibility as parent, legal guardian, custodian or person standing in loco parentis.

The minor may participate in the court proceedings on her own behalf, and the court may appoint a guardian ad litem for the minor. The court shall advise the minor that she has a right to counsel and shall, upon her request, appoint counsel for her.

Notwithstanding any other provision of law, the provisions of this subsection shall govern proceedings relating to consent for a minor's abortion. Court proceedings under this subsection and records of such proceedings shall be confidential. Such proceedings shall be given precedence over other pending matters so that the court may reach a decision promptly and without delay in order to serve the best interests of the minor. Court proceedings under this subsection shall be heard and decided as soon as practicable but in no event later than four days after the petition is filed.

An expedited confidential appeal to the circuit court shall be available to any minor for whom the court denies an order authorizing an abortion without consent or without notice. Any such appeal shall be heard and decided no later than five days after the appeal is filed. The time periods required by this subsection shall be subject to subsection B of § 1-210. An order authorizing an abortion without consent or without notice shall not be subject to appeal.

No filing fees shall be required of the minor at trial or upon appeal.

If either the original court or the circuit court fails to act within the time periods required by this subsection, the court before which the proceeding is pending shall immediately authorize a physician to perform the abortion without consent of or notice to an authorized person.

Nothing contained in this subsection shall be construed to authorize a physician to perform an abortion on a minor in circumstances or in a manner that would be unlawful if performed on an adult woman.

A physician shall not knowingly perform an abortion upon an unemancipated minor unless consent has been obtained or the minor delivers to the physician a court order entered pursuant to this section and the physician or his agent provides such notice as such order may require. However, neither consent nor judicial authorization nor notice shall be required if the minor declares that she is abused or neglected and the attending physician has reason to suspect that the minor may be an abused or neglected child as defined in § 63.2-100 and reports the suspected abuse or neglect in accordance with § 63.2-1509; or if there is a medical emergency, in which case the attending physician shall certify the facts justifying the exception in the minor's medical record.

For purposes of this subsection:

"Authorization" means the minor has delivered to the physician a notarized, written statement signed by an authorized person that the authorized person knows of the minor's intent to have an abortion and consents to such abortion being performed on the minor.

"Authorized person" means (i) a parent or duly appointed legal guardian or custodian of the minor or (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling with whom the minor regularly and customarily resides and who has care and control of the minor. Any person who knows he is not an authorized person and who knowingly and willfully signs an authorization statement consenting to an abortion for a minor is guilty of a Class 3 misdemeanor.

"Consent" means that (i) the physician has given notice of intent to perform the abortion and has received authorization from an authorized person, or (ii) at least one authorized person is present with the minor seeking the abortion and provides written authorization to the physician, which shall be witnessed by the physician or an agent thereof. In either case, the written authorization shall be incorporated into the minor's medical record and maintained as a part thereof.

"Medical emergency" means any condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of the pregnant minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function.

"Notice of intent to perform the abortion" means that (i) the physician or his agent has given actual notice of his intention to perform such abortion to an authorized person, either in person or by telephone, at least 24 hours previous to the performance of the abortion; or (ii) the physician or his agent, after a reasonable effort to notify an authorized person, has mailed notice to an authorized person by certified mail, addressed to such person at his usual place of abode, with return receipt requested, at least 72 hours prior to the performance of the abortion.

"Perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical procedure or to induce a miscarriage as provided in § 18.2-72, 18.2-73, or 18.2-74.

"Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid marriage, even though the marriage may have been terminated by dissolution; (ii) active duty with any of the Armed Forces of the United States; (iii) willingly living separate and apart from his or her parents or guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an

order of emancipation pursuant to Article 15 (§ 16.1-331 et seq.) of this chapter.

W. Petitions filed pursuant to Article 17 (§ 16.1-349 et seq.) of this chapter relating to standby guardians for minor children.

X. Petitions filed pursuant to § 18.2-370.5 for an order allowing the petitioner to enter and be present on school or child day center property. In such cases jurisdiction shall be concurrent with and not exclusive of circuit courts.

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

Notwithstanding any other provision of law, no fees shall be charged by a sheriff for the service of any process in a proceeding pursuant to subdivision 3 of subsection A, except as provided in subdivision A 6 of § 17.1-272, or subsection B, D, M or R of this section.

Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion in violation of subsection V shall be guilty of a Class 3 misdemeanor.

§ 16.1-253.1. Preliminary protective orders in cases of family abuse; confidentiality.

A. Upon the filing of a petition alleging that the petitioner is or has been, within a reasonable period of time, subjected to family abuse, the court may issue a preliminary protective order against an allegedly abusing person in order to protect the health and safety of the petitioner or any family or household member of the petitioner. The order may be issued in an ex parte proceeding upon good cause shown when the petition is supported by an affidavit or sworn testimony before the judge or intake officer. Immediate and present danger of family abuse or evidence sufficient to establish probable cause that family abuse has recently occurred shall constitute good cause.

A preliminary protective order may include any one or more of the following conditions to be imposed on the allegedly abusing person:

1. Prohibiting acts of family abuse.

2. Prohibiting such other contacts between the parties as the court deems appropriate.

3. Prohibiting such other contacts with the allegedly abused family or household member as the court deems necessary to protect the safety of such persons.

4. Granting the petitioner possession of the premises occupied by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession shall affect title to any real or personal property.

5. Enjoining the respondent from terminating any necessary utility service to a premises that the petitioner has been granted possession of pursuant to subdivision 4 or, where appropriate, ordering the respondent to restore utility services to such premises.

6. Granting the petitioner temporary possession or use of a motor vehicle owned by the petitioner alone or jointly owned by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession or use shall affect title to the vehicle.

7. Requiring that the allegedly abusing person provide suitable alternative housing for the petitioner and any other family or household member and, where appropriate, requiring the respondent to pay deposits to connect or restore necessary utility services in the alternative housing provided.

8. Any other relief necessary for the protection of the petitioner and family or household members of the petitioner.

B. The court shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer identifying information provided to the court electronically to the Virginia Criminal Information Network. A copy of a preliminary protective order and an addendum containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order and addendum by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in person as provided in § 16.1-264 and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order and an addendum containing identifying information to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order and addendum, the primary law-enforcement agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in person as provided in § 16.1-264. Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. The preliminary order shall specify a

date for the full hearing. The hearing shall be held within 15 days of the issuance of the preliminary order. If the respondent fails to appear at this hearing because the respondent was not personally served, the court may extend the protective order for a period not to exceed six months. The extended protective order shall be served forthwith on the respondent. However, upon motion of the respondent and for good cause shown, the court may continue the hearing. The preliminary order shall remain in effect until the hearing. Upon request after the order is issued, the clerk shall provide the petitioner with a copy of the order and information regarding the date and time of service. The order shall further specify that either party may at any time file a motion with the court requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given precedence on the docket of the court.

Upon receipt of the return of service or other proof of service pursuant to subsection C of § 16.1-264, the clerk shall forthwith forward an attested copy of the preliminary protective order to the primary law-enforcement agency, and the agency shall forthwith verify and enter any modification as necessary into the Virginia Criminal Information Network as described above. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due return made to the court.

C. The preliminary order is effective upon personal service on the allegedly abusing person. Except as otherwise provided in § 16.1-253.2, a violation of the order shall constitute contempt of court.

D. At a full hearing on the petition, the court may issue a protective order pursuant to ~~§ 16.1-279.1~~ *§ 16.1-253.5* if the court finds that the petitioner has proven the allegation of family abuse by a preponderance of the evidence.

E. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

F. As used in this section, "copy" includes a facsimile copy.

G. No fee shall be charged for filing or serving any petition or order pursuant to this section.

H. If any identifying information in the addendum is determined to be incorrect by the entering agency, the agency shall enter the corrected information into the Virginia Criminal Information Network.

§ 16.1-253.2. Violation of provisions of protective orders; penalty.

In addition to any other penalty provided by law, any person who violates any provision of a protective order issued pursuant to §§ 16.1-253, 16.1-253.1, 16.1-253.4, *16.1-253.5,* 16.1-278.14, ~~16.1-279.1~~ or subsection B of § 20-103, which prohibits such person from going or remaining upon land, buildings or premises or from further acts of family abuse, or which prohibits contacts between the respondent and the respondent's family or household member as the court deems appropriate is guilty of a Class 1 misdemeanor. The punishment for any person convicted of a second offense of violating a protective order, when the offense is committed within five years of the prior conviction and when either the instant or prior offense was based on an act or threat of violence, shall include a mandatory minimum term of confinement of 60 days. Any person convicted of a third or subsequent offense of violating a protective order, when the offense is committed within 20 years of the first conviction and when either the instant or one of the prior offenses was based on an act or threat of violence is guilty of a Class 6 felony and the punishment shall include a mandatory minimum term of confinement of six months.

If the respondent commits an assault and battery upon any party protected by the protective order, resulting in serious bodily injury to the party, he is guilty of a Class 6 felony. Any person who violates such a protective order by furtively entering the home of any protected party while the party is present, or by entering and remaining in the home of the protected party until the party arrives, is guilty of a Class 6 felony, in addition to any other penalty provided by law.

Upon conviction of any offense hereunder for which a mandatory minimum term of confinement is not specified, the person shall be sentenced to a term of confinement and in no case shall the entire term imposed be suspended. Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order pursuant to ~~§ 16.1-279.1~~ *§ 16.1-253.5* for a specified period not exceeding two years from the date of conviction.

§ 16.1-253.4. Emergency protective orders authorized in certain cases; penalty.

A. Any judge of a circuit court, general district court, juvenile and domestic relations district court or magistrate may issue a written or oral ex parte emergency protective order pursuant to this section in order to protect the health or safety of any person.

B. When a law-enforcement officer or an allegedly abused person asserts under oath to a judge or

magistrate, and on that assertion or other evidence the judge or magistrate (i) finds that a warrant for a violation of § 18.2-57.2 has been issued or issues a warrant for violation of § 18.2-57.2 and finds that there is probable danger of further acts of family abuse against a family or household member by the respondent or (ii) finds that reasonable grounds exist to believe that the respondent has committed family abuse and there is probable danger of a further such offense against a family or household member by the respondent, the judge or magistrate shall issue an ex parte emergency protective order, except if the respondent is a minor, an emergency protective order shall not be required, imposing one or more of the following conditions on the respondent:

1. Prohibiting acts of family abuse;

2. Prohibiting such contacts by the respondent with family or household members of the respondent as the judge or magistrate deems necessary to protect the safety of such persons; and

3. Granting the family or household member possession of the premises occupied by the parties to the exclusion of the respondent; however, no such grant of possession shall affect title to any real or personal property.

When the judge or magistrate considers the issuance of an emergency protective order pursuant to clause (i) of this subsection, he shall presume that there is probable danger of further acts of family abuse against a family or household member by the respondent unless the presumption is rebutted by the allegedly abused person.

C. An emergency protective order issued pursuant to this section shall expire at the end of the third day following issuance. If the expiration occurs at a time that the court is not in session, the emergency protective order shall be extended until the end of the next business day that the juvenile and domestic relations district court is in session. When issuing an emergency protective order under this section, the judge or magistrate shall provide the protected person or the law-enforcement officer seeking the emergency protective order with the form for use in filing petitions pursuant to § 16.1-253.1 and written information regarding protective orders that shall include the telephone numbers of domestic violence agencies and legal referral sources on a form prepared by the Supreme Court. If these forms are provided to a law-enforcement officer, the officer may provide these forms to the protected person when giving the emergency protective order to the protected person. The respondent may at any time file a motion with the court requesting a hearing to dissolve or modify the order issued hereunder. The hearing on the motion shall be given precedence on the docket of the court.

D. A law-enforcement officer may request an emergency protective order pursuant to this section and, if the person in need of protection is physically or mentally incapable of filing a petition pursuant to § 16.1-253.1 or ~~§ 16.1-279.1~~ *§ 16.1-253.5*, may request the extension of an emergency protective order for an additional period of time not to exceed three days after expiration of the original order. The request for an emergency protective order or extension of an order may be made orally, in person or by electronic means, and the judge of a circuit court, general district court, or juvenile and domestic relations district court or a magistrate may issue an oral emergency protective order. An oral emergency protective order issued pursuant to this section shall be reduced to writing, by the law-enforcement officer requesting the order or the magistrate on a preprinted form approved and provided by the Supreme Court of Virginia. The completed form shall include a statement of the grounds for the order asserted by the officer or the allegedly abused person.

E. The court or magistrate shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer identifying information provided to the court or magistrate electronically to the Virginia Criminal Information Network. A copy of an emergency protective order issued pursuant to this section and an addendum containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order and addendum by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith upon the respondent and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order and an addendum containing identifying information to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order and addendum, the primary law-enforcement agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the respondent. Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. One copy of the order shall be given to the allegedly abused person

when it is issued, and one copy shall be filed with the written report required by § 19.2-81.3 C. The judge or magistrate who issues an oral order pursuant to an electronic request by a law-enforcement officer shall verify the written order to determine whether the officer who reduced it to writing accurately transcribed the contents of the oral order. The original copy shall be filed with the clerk of the juvenile and domestic relations district court within five business days of the issuance of the order. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due return made to the court. Upon request, the clerk shall provide the allegedly abused person with information regarding the date and time of service.

F. The availability of an emergency protective order shall not be affected by the fact that the family or household member left the premises to avoid the danger of family abuse by the respondent.

G. The issuance of an emergency protective order shall not be considered evidence of any wrongdoing by the respondent.

H. As used in this section, a "law-enforcement officer" means any (i) full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth and (ii) member of an auxiliary police force established pursuant to subsection B of § 15.2-1731. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

I. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

J. As used in this section, "copy" includes a facsimile copy.

K. No fee shall be charged for filing or serving any petition or order pursuant to this section.

L. If any identifying information in the addendum is determined to be incorrect by the entering agency, the agency shall enter the corrected information into the Virginia Criminal Information Network.

§ 16.1-253.5. Protective order in cases of family abuse.

A. In cases of family abuse, the court may issue a protective order to protect the health and safety of the petitioner and family or household members of the petitioner. A protective order issued under this section may include any one or more of the following conditions to be imposed on the respondent:

1. Prohibiting acts of family abuse;

2. Prohibiting such contacts by the respondent with the petitioner or family or household members of the petitioner as the court deems necessary for the health or safety of such persons;

3. Granting the petitioner possession of the residence occupied by the parties to the exclusion of the respondent; however, no such grant of possession shall affect title to any real or personal property;

4. Enjoining the respondent from terminating any necessary utility service to the residence to which the petitioner was granted possession pursuant to subdivision 3 or, where appropriate, ordering the respondent to restore utility services to that residence;

5. Granting the petitioner temporary possession or use of a motor vehicle owned by the petitioner alone or jointly owned by the parties to the exclusion of the respondent; however, no such grant of possession or use shall affect title to the vehicle;

6. Requiring that the respondent provide suitable alternative housing for the petitioner and, if appropriate, any other family or household member and where appropriate, requiring the respondent to pay deposits to connect or restore necessary utility services in the alternative housing provided;

7. Ordering the respondent to participate in treatment, counseling or other programs as the court deems appropriate; and

8. Any other relief necessary for the protection of the petitioner and family or household members of the petitioner, including a provision for temporary custody or visitation of a minor child.

A1. If a protective order is issued pursuant to subsection A of this section, the court may also issue a temporary child support order for the support of any children of the petitioner whom the respondent has a legal obligation to support. Such order shall terminate upon the determination of support pursuant to § 20-108.1.

B. The protective order may be issued for a specified period; however, unless otherwise authorized by law, a protective order may not be issued under this section for a period longer than two years. The protective order shall expire at the end of the last day identified for the two-year period and if no date

is identified, it shall expire at the end of the two years following the date of issuance. A copy of the protective order shall be served on the respondent and provided to the petitioner as soon as possible. The court shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer identifying information provided to the court electronically to the Virginia Criminal Information Network and shall forthwith forward the attested copy of the protective order and an addendum containing any such identifying information to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order and addendum by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith upon the respondent and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order and an addendum containing identifying information to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order and addendum, the primary law-enforcement agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith upon the respondent. Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due return made to the court.

C. Except as otherwise provided in § 16.1-253.2, a violation of a protective order issued under this section shall constitute contempt of court.

D. The court may assess costs and attorneys' fees against either party regardless of whether an order of protection has been issued as a result of a full hearing.

E. Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths, the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing violent or threatening acts or harassment against or contact or communication with or physical proximity to another person, including any of the conditions specified in subsection A, shall be accorded full faith and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person against whom the order is sought to be enforced sufficient to protect such person's due process rights and consistent with federal law. A person entitled to protection under such a foreign order may file the order in any juvenile and domestic relations district court by filing with the court an attested or exemplified copy of the order. Upon such a filing, the clerk shall forthwith forward an attested copy of the order to the primary law-enforcement agency responsible for service and entry of protective orders, which shall upon receipt, enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where practical, the court may transfer information electronically to the Virginia Criminal Information Network.

Upon inquiry by any law-enforcement agency of the Commonwealth, the clerk shall make a copy available of any foreign order filed with that court. A law-enforcement officer may, in the performance of his duties, rely upon a copy of a foreign protective order or other suitable evidence, which has been provided to him by any source and may also rely upon the statement of any person protected by the order that the order remains in effect.

F. Either party may at any time file a written motion with the court requesting a hearing to dissolve or modify the order. Proceedings to dissolve or modify a protective order shall be given precedence on the docket of the court.

G. As used in this section, "copy" includes a facsimile copy.

H. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of

such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

I. No fee shall be charged for filing or serving any petition or order pursuant to this section.

J. If any identifying information in the addendum is determined to be incorrect by the entering agency, the agency shall enter the corrected information into the Virginia Criminal Information Network.

§ 16.1-260. Intake; petition; investigation.

A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of a petition, except as provided in subsection H of this section and in § 16.1-259. The form and content of the petition shall be as provided in § 16.1-262. No individual shall be required to obtain support services from the Department of Social Services prior to filing a petition seeking support for a child. Complaints, requests and the processing of petitions to initiate a case shall be the responsibility of the intake officer. However, (i) the attorney for the Commonwealth of the city or county may file a petition on his own motion with the clerk, (ii) designated nonattorney employees of the Department of Social Services may complete, sign and file petitions and motions relating to the establishment, modification, or enforcement of support on forms approved by the Supreme Court of Virginia with the clerk, ~~and~~ (iii) any attorney may file petitions on behalf of his client with the clerk except petitions alleging that the subject of the petition is a child alleged to be in need of services, in need of supervision or delinquent, *and (iv) the guardian ad litem of a child may file on behalf of his client a petition alleging that the child is in need of services, or is in need of supervision.* Complaints alleging abuse or neglect of a child shall be referred initially to the local department of social services in accordance with the provisions of Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2. Motions and other subsequent pleadings in a case shall be filed directly with the clerk. The intake officer or clerk with whom the petition or motion is filed shall inquire whether the petitioner is receiving child support services or public assistance. No individual who is receiving support services or public assistance shall be denied the right to file a petition or motion to establish, modify or enforce an order for support of a child. If the petitioner is seeking or receiving child support services or public assistance, the clerk, upon issuance of process, shall forward a copy of the petition or motion, together with notice of the court date, to the Division of Child Support Enforcement.

B. The appearance of a child before an intake officer may be by (i) personal appearance before the intake officer or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, an intake officer may exercise all powers conferred by law. All communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by facsimile process. The facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of § 19.2-3.1.

When the court service unit of any court receives a complaint alleging facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241, the unit, through an intake officer, may proceed informally to make such adjustment as is practicable without the filing of a petition or may authorize a petition to be filed by any complainant having sufficient knowledge of the matter to establish probable cause for the issuance of the petition.

An intake officer may proceed informally on a complaint alleging a child is in need of services, in need of supervision or delinquent only if the juvenile (i) is not alleged to have committed a violent juvenile felony or (ii) has not previously been proceeded against informally or adjudicated delinquent for an offense that would be a felony if committed by an adult. A petition alleging that a juvenile committed a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is delinquent for an offense that would be a felony if committed by an adult shall be filed with the court if the juvenile had previously been proceeded against informally by intake or had been adjudicated delinquent *for an offense that would be a felony if committed by an adult.*

If a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258 and the attendance officer has provided documentation to the intake officer that the relevant school division has complied with the provisions of § 22.1-258, then the intake officer shall file a petition with the court. The intake officer may defer filing the complaint for 90 days and proceed informally by developing a truancy plan. The intake officer may proceed informally only if the juvenile has not previously been proceeded against informally or adjudicated in need of supervision for failure to comply with compulsory school attendance as provided in § 22.1-254. The juvenile and his parent or parents, guardian or other person standing in loco parentis must agree, in writing, for the development of a truancy plan. The truancy plan may include requirements that the juvenile and his parent or parents, guardian or other person standing in loco parentis participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as necessary to ensure the juvenile's

compliance with compulsory school attendance as provided in § 22.1-254. The intake officer may refer the juvenile to the appropriate public agency for the purpose of developing a truancy plan using an interagency interdisciplinary team approach. The team may include qualified personnel who are reasonably available from the appropriate department of social services, community services board, local school division, court service unit and other appropriate and available public and private agencies and may be the family assessment and planning team established pursuant to § 2.2-5207. If at the end of the 90-day period the juvenile has not successfully completed the truancy plan or the truancy program, then the intake officer shall file the petition.

Whenever informal action is taken as provided in this subsection on a complaint alleging that a child is in need of services, in need of supervision or delinquent, the intake officer shall (i) develop a plan for the juvenile, which may include restitution and the performance of community service, based upon community resources and the circumstances which resulted in the complaint, (ii) create an official record of the action taken by the intake officer and file such record in the juvenile's case file, and (iii) advise the juvenile and the juvenile's parent, guardian or other person standing in loco parentis and the complainant that any subsequent complaint alleging that the child is in need of supervision or delinquent based upon facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241 will result in the filing of a petition with the court.

C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody, visitation or support of a child is the subject of controversy or requires determination, (ii) a person has deserted, abandoned or failed to provide support for any person in violation of law, (iii) a child or such child's parent, guardian, legal custodian or other person standing in loco parentis is entitled to treatment, rehabilitation or other services which are required by law, or (iv) family abuse has occurred and a protective order is being sought pursuant to § 16.1-253.1, 16.1-253.4, or ~~16.1-279.1~~ *16.1-253.5*. If any such complainant does not file a petition, the intake officer may file it. In cases in which a child is alleged to be abused, neglected, in need of services, in need of supervision or delinquent, if the intake officer believes that probable cause does not exist, or that the authorization of a petition will not be in the best interest of the family or juvenile or that the matter may be effectively dealt with by some agency other than the court, he may refuse to authorize the filing of a petition. The intake officer shall provide to a person seeking a protective order pursuant to § 16.1-253.1, 16.1-253.4, or ~~16.1-279.1~~ *16.1-253.5* a written explanation of the conditions, procedures and time limits applicable to the issuance of protective orders pursuant to § 16.1-253.1, 16.1-253.4, or ~~16.1-279.1~~ *16.1-253.5*.

D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall be reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be in need of supervision have utilized or attempted to utilize treatment and services available in the community and have exhausted all appropriate nonjudicial remedies which are available to them. When the intake officer determines that the parties have not attempted to utilize available treatment or services or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer the petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment facility or individual to receive treatment or services, and a petition shall not be filed. Only after the intake officer determines that the parties have made a reasonable effort to utilize available community treatment or services may he permit the petition to be filed.

E. If the intake officer refuses to authorize a petition relating to an offense that if committed by an adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified in writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic relations district court. The warrant shall be delivered forthwith to the juvenile court, and the intake officer shall accept and file a petition founded upon the warrant. If the court is closed and the magistrate finds that the criteria for detention or shelter care set forth in § 16.1-248.1 have been satisfied, the juvenile may be detained pursuant to the warrant issued in accordance with this subsection. If the intake officer refuses to authorize a petition relating to a child in need of services or in need of supervision, a status offense, or a misdemeanor other than Class 1, his decision is final.

Upon delivery to the juvenile court of a warrant issued pursuant to subdivision 2 of § 16.1-256, the intake officer shall accept and file a petition founded upon the warrant.

F. The intake officer shall notify the attorney for the Commonwealth of the filing of any petition which alleges facts of an offense which would be a felony if committed by an adult.

G. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter, the intake officer shall file a report with the division superintendent of the school division in which any student who is the subject of a petition alleging that such student who is a juvenile has committed an act, wherever committed, which would be a crime if committed by an adult. The report shall notify the division superintendent of the filing of the petition and the nature of the offense, if the violation involves:

1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299

et seq.), or 7 (§ 18.2-308 et seq.) of Chapter 7 of Title 18.2;

2. Homicide, pursuant to Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;

3. Felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2;

4. Criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

5. Manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances, pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

7. Arson and related crimes, pursuant to Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2;

8. Burglary and related offenses, pursuant to §§ 18.2-89 through 18.2-93;

9. Robbery pursuant to § 18.2-58;

10. Prohibited street gang participation pursuant to § 18.2-46.2;

11. Prohibited criminal street gang activity pursuant to § 18.2-46.2;

12. Recruitment of other juveniles for a criminal street gang activity pursuant to § 18.2-46.3; or

13. Recruitment of juveniles for criminal street gang pursuant to § 18.2-46.3.

The failure to provide information regarding the school in which the juvenile who is the subject of the petition may be enrolled shall not be grounds for refusing to file a petition.

The information provided to a division superintendent pursuant to this section may be disclosed only as provided in § 16.1-305.2.

H. The filing of a petition shall not be necessary:

1. In the case of violations of the traffic laws, including offenses involving bicycles, hitchhiking and other pedestrian offenses, game and fish laws or a violation of the ordinance of any city regulating surfing or any ordinance establishing curfew violations, animal control violations or littering violations. In such cases the court may proceed on a summons issued by the officer investigating the violation in the same manner as provided by law for adults. Additionally, an officer investigating a motor vehicle accident may, at the scene of the accident or at any other location where a juvenile who is involved in such an accident may be located, proceed on a summons in lieu of filing a petition.

2. In the case of seeking consent to apply for the issuance of a work permit pursuant to subsection H of § 16.1-241.

3. In the case of a violation of § 18.2-266 or 29.1-738, or the commission of any other alcohol-related offense, provided the juvenile is released to the custody of a parent or legal guardian pending the initial court date. The officer releasing a juvenile to the custody of a parent or legal guardian shall issue a summons to the juvenile and shall also issue a summons requiring the parent or legal guardian to appear before the court with the juvenile. Disposition of the charge shall be in the manner provided in § 16.1-278.8 or 16.1-278.9. If the juvenile so charged with a violation of § 18.2-51.4, 18.2-266, 18.2-266.1, 18.2-272, or 29.1-738 refuses to provide a sample of blood or breath or samples of both blood and breath for chemical analysis pursuant to §§ 18.2-268.1 through 18.2-268.12 or 29.1-738.2, the provisions of these sections shall be followed except that the magistrate shall authorize execution of the warrant as a summons. The summons shall be served on a parent or legal guardian and the juvenile, and a copy of the summons shall be forwarded to the court in which the violation is to be tried.

4. In the case of offenses which, if committed by an adult, would be punishable as a Class 3 or Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as provided by law for adults provided that notice of the summons to appear is mailed by the investigating officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

I. Failure to comply with the procedures set forth in this section shall not divest the juvenile court of the jurisdiction granted it in § 16.1-241.

§ 16.1-278.8. Delinquent juveniles.

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

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

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

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

4. Defer disposition for a specific period of time established by the court with due regard for the gravity of the offense and the juvenile's history, after which time the charge may be dismissed by the judge if the juvenile exhibits good behavior during the period for which disposition is deferred;

4a. Defer disposition and place the juvenile in the temporary custody of the Department to attend a boot camp established pursuant to § 66-13 provided bed space is available for confinement and the juvenile (i) has been found delinquent for an offense that would be a Class 1 misdemeanor or felony if committed by an adult, (ii) has not previously been and is not currently being adjudicated delinquent or found guilty of a violent juvenile felony, (iii) has not previously attended a boot camp, (iv) has not previously been committed to and received by the Department, and (v) has had an assessment completed by the Department or its contractor concerning the appropriateness of the candidate for a boot camp. Upon the juvenile's withdrawal, removal or refusal to comply with the terms and conditions of participation in the program, he shall be brought before the court for a hearing at which the court may impose any other disposition as authorized by this section which could have been imposed at the time the juvenile was placed in the custody of the Department;

5. Without entering a judgment of guilty and with the consent of the juvenile and his attorney, defer disposition of the delinquency charge for a specific period of time established by the court with due regard for the gravity of the offense and the juvenile's history, and place the juvenile on probation under such conditions and limitations as the court may prescribe. Upon fulfillment of the terms and conditions, the court shall discharge the juvenile and dismiss the proceedings against him. Discharge and dismissal under these provisions shall be without adjudication of guilt;

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

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

7a. Place the juvenile on probation and order treatment for the abuse or dependence on alcohol or drugs in a program licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services for the treatment of juveniles for substance abuse provided that (i) the juvenile has received a substance abuse screening and assessment pursuant to § 16.1-273 and that such assessment reasonably indicates that the commission of the offense was motivated by, or closely related to, the habitual use of alcohol or drugs and indicates that the juvenile is in need of treatment for this condition; (ii) the juvenile has not previously been and is not currently being adjudicated for a violent juvenile felony; and (iii) such facility is available. Upon the juvenile's withdrawal, removal, or refusal to comply with the conditions of participation in the program, he shall be brought before the court for a hearing at which the court may impose any other disposition authorized by this section. The court shall review such placements at 30-day intervals;

8. Impose a fine not to exceed $500 upon such juvenile;

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

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

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

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

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

11. Require the juvenile to participate in a public service project under such conditions as the court

prescribes;

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

13. Transfer legal custody to any of the following:

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

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

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

14. Commit the juvenile to the Department of Juvenile Justice, but only if he is 11 years of age or older and the current offense is (i) an offense that would be a felony if committed by an adult, (ii) an offense that 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 that would be a felony if committed by an adult, or (iii) an offense that would be a Class 1 misdemeanor if committed by an adult and the juvenile has previously been adjudicated delinquent of three or more offenses that would be a Class 1 misdemeanor if committed by an adult, and each such offense was not a part of a common act, transaction or scheme;

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

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

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

18. Impose the penalty authorized by § 16.1-278.9; or

19. Require the juvenile to participate in a gang-activity prevention program including, but not limited to, programs funded under the Virginia Juvenile Community Crime Control Act pursuant to § 16.1-309.7, if available, when a juvenile has been found delinquent of any of the following violations: § 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or 18.2-147, or any violation of a local ordinance adopted pursuant to § 15.2-1812.2.

B. If the court finds a juvenile delinquent of any of the following offenses, the court shall require the juvenile to make at least partial restitution or reparation for any property damage, for loss caused by the offense, or for actual medical expenses incurred by the victim as a result of the offense: § 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or 18.2-147; or for any violation of a local ordinance adopted pursuant to § 15.2-1812.2. The court shall further require the juvenile to participate in a community service project under such conditions as the court prescribes.

§ 16.1-278.14. Criminal jurisdiction; protective orders; family offenses.

In cases involving the violation of any law, regulation or ordinance for the education, protection or care of children or involving offenses committed by one family or household member against another, the juvenile court or the circuit court may impose a penalty prescribed by applicable sections of the Code and may impose conditions and limitations upon the defendant to protect the health or safety of family or household members, including, but not limited to, a protective order as provided in ~~§ 16.1-279.1~~ *§ 16.1-253.5*, treatment and counseling for the defendant and payment by the defendant for crisis shelter care for the complaining family or household member.

§ 16.1-290. Support of committed juvenile; support from estate of juvenile.

A. Whenever (i) legal custody of a juvenile is vested by the court in someone other than his parents or (ii) a juvenile is placed in temporary shelter care regardless of whether or not legal custody is retained by his parents, after due notice in writing to the parents, the court, pursuant to §§ 20-108.1 and

20-108.2, or the Department of Social Services, pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2, shall order the parents to pay support to the Department of Social Services. If the parents fail or refuse to pay such support, the court may proceed against them for contempt, or the order may be filed and shall have the effect of a civil judgment.

B. If a juvenile has an estate in the hands of a guardian or trustee, the guardian or trustee may be required to pay for his education and maintenance so long as there may be funds for that purpose.

C. Whenever a juvenile is placed in foster care by the court, the court shall order and decree that the parents shall pay the Department of Social Services pursuant to §§ 20-108.1, 20-108.2, 63.2-909, and 63.2-1910.

D. Whenever a juvenile is ~~placed in temporary custody of the Department pursuant to subdivision A 4a of § 16.1-278.8 or~~ committed to the Department pursuant to subdivision A 14 or A 17 of § 16.1-278.8, the Department shall apply for child support with the Department of Social Services. The parents shall be responsible for child support, pursuant to §§ 20-108.1 and 20-108.2, from the date the Department receives the juvenile. The Department shall notify in writing the parents of their responsibilities to pay child support from the date the Department receives the juvenile.

§ 16.1-296. Jurisdiction of appeals; procedure.

A. From any final order or judgment of the juvenile court affecting the rights or interests of any person coming within its jurisdiction, an appeal may be taken within 10 days from the entry of a final judgment, order or conviction. However, in a case arising under the Uniform Interstate Family Support Act (§ 20-88.32 et seq.), a party may take an appeal pursuant to this section within 30 days from entry of a final order or judgment. Protective orders issued pursuant to ~~§ 16.1-279.1~~ *§ 16.1-253.5* in cases of family abuse and orders entered pursuant to § 16.1-278.2 are final orders from which an appeal may be taken.

B. Upon receipt of notice of such appeal the juvenile court shall forthwith transmit to the attorney for the Commonwealth a report incorporating the results of any investigation conducted pursuant to § 16.1-273, which shall be confidential in nature and made available only to the court and the attorney for the defendant (i) after the guilt or innocence of the accused has been determined or (ii) after the court has made its findings on the issues subject to appeal. After final determination of the case, the report and all copies thereof shall be forthwith returned to such juvenile court.

C. Where an appeal is taken by a child on a finding that he or she is delinquent and on a disposition pursuant to § 16.1-278.8, trial by jury on the issue of guilt or innocence of the alleged delinquent act may be had on motion of the child, the attorney for the Commonwealth or the circuit court judge. If the alleged delinquent act is one which, if committed by an adult, would constitute a felony, the child shall be entitled to a jury of 12 persons. In all other cases, the jury shall consist of seven persons. If the jury in such a trial finds the child guilty, disposition shall be by the judge pursuant to the provisions of § 16.1-278.8 after taking into consideration the report of any investigation made pursuant to § 16.1-237 or 16.1-273.

C1. In any hearing held upon an appeal taken by a child on a finding that he is delinquent and on a disposition pursuant to § 16.1-278.8, the provisions of § 16.1-302 shall apply mutatis mutandis, except in the case of trial by jury which shall be open. If proceedings in the circuit court are closed pursuant to this subsection, any records or portions thereof relating to such closed proceedings shall remain confidential.

C2. Where an appeal is taken by a juvenile on a finding that he is delinquent and on a disposition pursuant to § 16.1-278.8 and the juvenile is in a secure facility pending the appeal, the circuit court, when practicable, shall hold a hearing on the merits of the case within 45 days of the filing of the appeal. Upon receipt of the notice of appeal from the juvenile court, the circuit court shall provide a copy of the order and a copy of the notice of appeal to the attorney for the Commonwealth within seven days after receipt of notice of an appeal. The time limitations shall be tolled during any period in which the juvenile has escaped from custody. A juvenile held continuously in secure detention shall be released from confinement if there is no hearing on the merits of his case within 45 days of the filing of the appeal. The circuit court may extend the time limitations for a reasonable period of time based upon good cause shown, provided the basis for such extension is recorded in writing and filed among the papers of the proceedings.

D. When an appeal is taken in a case involving termination of parental rights brought under § 16.1-283, the circuit court shall hold a hearing on the merits of the case within 90 days of the perfecting of the appeal. An appeal of the case to the Court of Appeals shall take precedence on the docket of the Court.

E. Where an appeal is taken by an adult on a finding of guilty of an offense within the jurisdiction of the juvenile and domestic relations district court, the appeal shall be dealt with in all respects as is an appeal from a general district court pursuant to §§ 16.1-132 through 16.1-137; however, where an appeal is taken by any person on a charge of nonsupport, the procedure shall be as is provided for appeals in

prosecutions under Chapter 5 (§ 20-61 et seq.) of Title 20.

F. In all other cases on appeal, proceedings in the circuit court shall be heard without a jury; however, hearing of an issue by an advisory jury may be allowed, in the discretion of the judge, upon the motion of any party. An appeal from an order of protection issued pursuant to ~~§ 16.1-279.1~~ *§ 16.1-253.5* shall be given precedence on the docket of the court over other civil appeals taken to the circuit court from the district courts, but shall otherwise be docketed and processed as other civil cases.

G. Costs, taxes and fees on appealed cases shall be assessed only in those cases in which a trial fee could have been assessed in the juvenile and domestic relations court and shall be collected in the circuit court, except that the appeal to circuit court of any case in which a fee either was or could have been assessed pursuant to § 16.1-69.48:5 shall also be in accordance with § 16.1-296.2.

H. No appeal bond shall be required of a party appealing from an order of a juvenile and domestic relations district court except for that portion of any order or judgment establishing a support arrearage or suspending payment of support during pendency of an appeal. In cases involving support, no appeal shall be allowed until the party applying for the same or someone for him gives bond, in an amount and with sufficient surety approved by the judge or by his clerk if there is one, to abide by such judgment as may be rendered on appeal if the appeal is perfected or, if not perfected, then to satisfy the judgment of the court in which it was rendered. Upon appeal from a conviction for failure to support or from a finding of civil or criminal contempt involving a failure to support, the juvenile and domestic relations district court may require the party applying for the appeal or someone for him to give bond, with or without surety, to insure his appearance and may also require bond in an amount and with sufficient surety to secure the payment of prospective support accruing during the pendency of the appeal. An appeal will not be perfected unless such appeal bond as may be required is filed within 30 days from the entry of the final judgment or order. However, no appeal bond shall be required of the Commonwealth or when an appeal is proper to protect the estate of a decedent, an infant, a convict or an insane person, or the interest of a county, city or town.

If bond is furnished by or on behalf of any party against whom judgment has been rendered for money, the bond shall be conditioned for the performance and satisfaction of such judgment or order as may be entered against the party on appeal, and for the payment of all damages which may be awarded against him in the appellate court. If the appeal is by a party against whom there is no recovery, the bond shall be conditioned for the payment of any damages as may be awarded against him on the appeal. The provisions of § 16.1-109 shall apply to bonds required pursuant to this subsection.

This subsection shall not apply to release on bail pursuant to other subsections of this section or § 16.1-298.

I. In all cases on appeal, the circuit court in the disposition of such cases shall have all the powers and authority granted by the chapter to the juvenile and domestic relations district court. Unless otherwise specifically provided by this Code, the circuit court judge shall have the authority to appoint counsel for the parties and compensate such counsel in accordance with the provisions of Article 6 (§ 16.1-266 et seq.) of this chapter.

J. In any case which has been referred or transferred from a circuit court to a juvenile court and an appeal is taken from an order or judgment of the juvenile court, the appeal shall be taken to the circuit court in the same locality as the juvenile court to which the case had been referred or transferred.

§ 16.1-298. Effect of petition for or pendency of appeal; bail.

A. Except as provided herein, a petition for or the pendency of an appeal or writ of error shall not suspend any judgment, order or decree of the juvenile court nor operate to discharge any child concerned or involved in the case from the custody of the court or other person, institution or agency to which the child has been committed unless so ordered by the judge of the juvenile court, the judge of a circuit court or directed in a writ of supersedeas by the Court of Appeals or the Supreme Court or a judge or justice thereof.

B. The judgment, order or decree of the juvenile court shall be suspended upon a petition for or the pendency of an appeal or writ of error:

1. In cases of delinquency in which the final order of the juvenile court is pursuant to subdivision 8, 9, 10, 12, 14, or 15 of § 16.1-278.8.

2. In cases involving a child and any local ordinance.

3. In cases involving any person over the age of eighteen years.

Such suspension as is provided for in this subsection shall not apply to (i) an order for support of a spouse, parent or child or to a preliminary protective order issued pursuant to § 16.1-253, (ii) an order disposing of a motion to reconsider relating to participation in continuing programs pursuant to § 16.1-289.1, (iii) a protective order in cases of family abuse issued pursuant to ~~§ 16.1-279.1~~ *§ 16.1-253.5* or a protective order entered in conjunction with a disposition pursuant to § 16.1-278.2, 16.1-278.4, 16.1-278.5, 16.1-278.6 or 16.1-278.8, (iv) a protective order issued pursuant to § 19.2-152.10, or (v) an order pertaining to the custody, visitation, or placement of a minor child, unless so ordered by the judge of a circuit court or directed in a writ of supersedeas by the Court of Appeals

or the Supreme Court.

C. In cases where the order of the juvenile court is suspended pursuant to subsection B hereof or by order of the juvenile court or the circuit court, bail may be required as provided for in § 16.1-135.

D. If an appeal to the circuit court is withdrawn in accordance with § 16.1-106.1, the judgment, order, or decree rendered by the juvenile court shall have the same legal effect as if no appeal had been noted, except as to the disposition of any bond in circuit court or as modified by the circuit court pursuant to subsection F of § 16.1-106.1. If an appeal is withdrawn, any court-appointed counsel or court-appointed guardian ad litem shall, absent further order of the court, be relieved of any further obligation respecting the matter for which they were appointed.

E. Except as to matters pending on the docket of a circuit court as of July 1, 2008, all orders that were entered by a juvenile and domestic relations district court prior to July 1, 2008, and appealed to a circuit court, where the appeal was withdrawn, shall have the same effect as if no appeal had been noted.

§ 16.1-305.01. Exception as to confidentiality.

A. Notwithstanding any other provision of this article, where consideration of public interest requires, the judge shall make available to the public the name and address of a juvenile and the nature of the offense for which a juvenile has been adjudicated delinquent (i) for an act, which would be a Class 1, 2, or 3 felony, forcible rape, robbery or burglary or a related offense as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2 if committed by an adult or (ii) in any case where a juvenile is sentenced as an adult in circuit court.

B. 1. At any time prior to disposition, if a juvenile, charged with a delinquent act, which would be forcible rape, robbery, burglary or a related offense as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2 or a Class 1, 2, or 3 felony if committed by an adult, or held in custody by a law-enforcement officer or in a secure facility becomes a fugitive from justice, the attorney for the Commonwealth or, upon notice to the Commonwealth's attorney, the Department of Juvenile Justice or a locally operated court services unit, may petition the court having jurisdiction of the offense to authorize public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought or for which he was adjudicated and any other information, which may expedite his apprehension. Upon a showing that the juvenile is a fugitive and for good cause, the court shall order release of this information to the public. If a juvenile charged with a delinquent act that would be forcible rape, robbery, burglary, or a related offense as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2, or a Class 1, 2, or 3 felony if committed by an adult or held in custody by a law-enforcement officer or in a secure facility, becomes a fugitive from justice at a time when the court is not in session, the attorney for the Commonwealth, the Department of Juvenile Justice, or a locally operated court services unit may authorize the public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought, and any other information, which may expedite his apprehension.

2. After final disposition, if a juvenile (i) found to have committed a delinquent act, which would be forcible rape, robbery, burglary or a related offense as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2 or a Class 1, 2 or 3 felony if committed by an adult becomes a fugitive from justice or (ii) who has been committed to the Department of Juvenile Justice pursuant to subdivision 14 of § 16.1-278.8 or pursuant to 16.1-285.1 becomes a fugitive from justice by escaping from a facility operated by or under contract with the Department or from the custody of any employee of such facility, the Department may release to the public the juvenile's name, age, physical description and photograph, the charge for which he is sought or for which he was committed, and any other information, which may expedite his apprehension. The Department shall promptly notify the attorney for the Commonwealth of the jurisdiction in which the juvenile was tried whenever information is released pursuant to this subdivision. If a juvenile specified in clause (i) being held after disposition in a secure facility not operated by or under contract with the Department becomes a fugitive by such escape, the attorney for the Commonwealth of the locality in which the facility is located may release the information as provided in this subdivision.

C. Whenever a juvenile 14 years of age or older is charged with a delinquent act that would be a criminal violation of Article 2 (§ 18.2-38 et seq.) of Chapter 4 of Title 18.2, a felony involving a weapon, a felony violation of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or an "act of violence" as defined in subsection A of § 19.2-297.1 if committed by an adult, the judge may, where consideration of the public interest requires, make the juvenile's name and address available to the public.

D. Upon the request of a victim of a delinquent act, which would be a felony if committed by an adult, the court may order that such victim be informed of the charge or charges brought, the findings of the court, and the disposition of the case. For purposes of this section, "victim" shall be defined as in § 19.2-11.01.

E. Upon request, the judge or clerk may disclose if an order of emancipation of a juvenile pursuant to § 16.1-333 has been entered, provided (i) the order is not being appealed, (ii) the order has not been terminated, or (iii) there has not been a judicial determination that the order is void ab initio.

F. Notwithstanding any other provision of law, a copy of any court order that imposes a curfew or other restriction on a juvenile may be provided to the chief law-enforcement officer of the county or city wherein the juvenile resides. The chief law-enforcement officer shall only disclose information contained in the court order to other law-enforcement officers in the conduct of official duties.

G. Notwithstanding any other provision of law, where consideration of public safety requires, the Department or locally operated court service unit may release any information relating to gang involvement or the gang-related activity of others, obtained from an investigation or supervision of a juvenile identified as affiliated with a criminal street gang, as defined in § 18.2-46.1. Such information may be released to any State Police, local police department or sheriff's office, that is a part of or administered by the Commonwealth or any political subdivision thereof, and that is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth. The exchange of information shall be for the purpose of an investigation into criminal street gang activity.

H. Notwithstanding any other provision of Article 12 (§ 16.1-299 et seq.), an intake officer shall report to the Bureau of Immigration and Customs Enforcement of the United States Department of Homeland Security a juvenile who has been detained in a secure facility based on an allegation that the juvenile committed a violent juvenile felony and who the intake officer has probable cause to believe is in the United States illegally.

§ 18.2-57.2. Assault and battery against a family or household member; penalty.

A. Any person who commits an assault and battery against a family or household member is guilty of a Class 1 misdemeanor.

B. Upon a conviction for assault and battery against a family or household member, where it is alleged in the warrant, *petition,* information, or indictment on which a person is convicted, that such person has been previously convicted of two offenses against a family or household member of (i) assault and battery against a family or household member in violation of this section, (ii) malicious wounding in violation of § 18.2-51, (iii) aggravated malicious wounding in violation of § 18.2-51.2, (iv) malicious bodily injury by means of a substance in violation of § 18.2-52, or (v) an offense under the law of any other jurisdiction which has the same elements of any of the above offenses, in any combination, all of which occurred within a period of 20 years, and each of which occurred on a different date, such person is guilty of a Class 6 felony.

C. Whenever a warrant for a violation of this section is issued, the magistrate shall issue an emergency protective order as authorized by § 16.1-253.4, except if the defendant is a minor, an emergency protective order shall not be required.

D. The definition of "family or household member" in § 16.1-228 applies to this section.

§ 18.2-119. Trespass after having been forbidden to do so; penalties.

If any person without authority of law goes upon or remains upon the lands, buildings or premises of another, or any portion or area thereof, after having been forbidden to do so, either orally or in writing, by the owner, lessee, custodian or other person lawfully in charge thereof, or after having been forbidden to do so by a sign or signs posted by such persons or by the holder of any easement or other right-of-way authorized by the instrument creating such interest to post such signs on such lands, structures, premises or portion or area thereof at a place or places where it or they may be reasonably seen, or if any person, whether he is the owner, tenant or otherwise entitled to the use of such land, building or premises, goes upon, or remains upon such land, building or premises after having been prohibited from doing so by a court of competent jurisdiction by an order issued pursuant to §§ 16.1-253, 16.1-253.1, 16.1-253.4, *16.1-253.5,* 16.1-278.2 through 16.1-278.6, 16.1-278.8, 16.1-278.14, 16.1-278.15~~, 16.1-279.1~~, 19.2-152.8, 19.2-152.9 or § 19.2-152.10 or an ex parte order issued pursuant to § 20-103, and after having been served with such order, he shall be guilty of a Class 1 misdemeanor. This section shall not be construed to affect in any way the provisions of §§ 18.2-132 through 18.2-136.

§ 18.2-308.1:4. Purchase or transportation of firearm by persons subject to protective orders; penalty.

It shall be unlawful for any person who is subject to (i) a protective order entered pursuant to §§ 16.1-253, 16.1-253.1, 16.1-253.4, ~~16.1-279.1~~ *16.1-253.5*, 19.2-152.8, 19.2-152.9, or § 19.2-152.10; (ii) an order issued pursuant to subsection B of § 20-103; (iii) an order entered pursuant to subsection D of § 18.2-60.3; or (iv) an order issued by a tribunal of another state, the United States or any of its territories, possessions or commonwealths, or the District of Columbia pursuant to a statute that is substantially similar to those cited in clauses (i), (ii), or (iii) to purchase or transport any firearm while the order is in effect. Any person with a concealed handgun permit shall be prohibited from carrying any concealed firearm, and shall surrender his permit to the court entering the order, for the duration of any protective order referred to herein. A violation of this section is a Class 1 misdemeanor.

§ 55-225.5. Access following entry of certain court orders.

A. A tenant who has obtained an order from a court of competent jurisdiction pursuant to ~~§ 16.1-279.1~~ *§ 16.1-253.5* or subsection B of § 20-103 granting such tenant possession of the premises to the exclusion of one or more co-tenants or authorized occupants may provide the landlord with a copy of that court order and request that the landlord either (i) install a new lock or other security devices on the exterior doors of the dwelling unit at the landlord's actual cost or (ii) permit the tenant to do so, provided:

1. Installation of the new lock or security devices does no permanent damage to any part of the dwelling unit; and

2. A duplicate copy of all keys and instructions of how to operate all devices are given to the landlord.

Upon termination of the tenancy, the tenant shall be responsible for payment to the landlord of the reasonable costs incurred for the removal of all such devices installed and repairs to all damaged areas.

B. A landlord who has received a copy of a court order in accordance with subsection A shall not provide copies of any keys to the dwelling unit to any person excluded from the premises by such order.

C. This section shall not apply when the court order excluding a person was issued ex parte.

§ 55-248.18:1. Access following entry of certain court orders.

A. A tenant who has obtained an order from a court of competent jurisdiction pursuant to ~~§ 16.1-279.1~~ *§ 16.1-253.5* or subsection B of § 20-103 granting such tenant possession of the premises to the exclusion of one or more co-tenants or authorized occupants may provide the landlord with a copy of that court order and request that the landlord either (i) install a new lock or other security devices on the exterior doors of the dwelling unit at the landlord's actual cost or (ii) permit the tenant to do so, provided:

1. Installation of the new lock or security devices does no permanent damage to any part of the dwelling unit; and

2. A duplicate copy of all keys and instructions of how to operate all devices are given to the landlord.

Upon termination of the tenancy, the tenant shall be responsible for payment to the landlord of the reasonable costs incurred for the removal of all such devices installed and repairs to all damaged areas.

B. A landlord who has received a copy of a court order in accordance with subsection A shall not provide copies of any keys to the dwelling unit to any person excluded from the premises by such order.

C. This section shall not apply when the court order excluding a person was issued ex parte.

§ 55-248.31. Noncompliance with rental agreement; monetary penalty.

A. Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a violation of § 55-248.16 materially affecting health and safety, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 21 days, and that the rental agreement shall terminate as provided in the notice.

B. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate.

C. If the tenant commits a breach which is not remediable, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice. Notwithstanding anything to the contrary contained elsewhere in this chapter, when a breach of the tenant's obligations under this chapter or the rental agreement involves or constitutes a criminal or a willful act, which is not remediable and which poses a threat to health or safety, the landlord may terminate the rental agreement immediately and proceed to obtain possession of the premises. For purposes of this subsection, any illegal drug activity involving a controlled substance, as used or defined by the Drug Control Act (§ 54.1-3400 et seq.), by the tenant, the tenant's authorized occupants, or the tenant's guests or invitees, shall constitute an immediate nonremediable violation for which the landlord may proceed to terminate the tenancy without the necessity of waiting for a conviction of any criminal offense that may arise out of the same actions. In order to obtain an order of possession from a court of competent jurisdiction terminating the tenancy for illegal drug activity or for any other action that involves or constitutes a criminal or willful act, the landlord shall prove any such violations by a preponderance of the evidence. However, where the illegal drug activity is engaged in by a tenant's authorized occupants, or guests or invitees, the tenant shall be presumed to have knowledge of such illegal drug activity unless the presumption is rebutted by a preponderance of the evidence. The initial hearing on the landlord's action for immediate possession of the premises shall be held within 15 calendar days from the date of service

on the tenant; however, the court shall order an earlier hearing when emergency conditions are alleged to exist upon the premises which constitute an immediate threat to the health or safety of the other tenants. After the initial hearing, if the matter is scheduled for a subsequent hearing or for a contested trial, the court, to the extent practicable, shall order that the matter be given priority on the court's docket. Such subsequent hearing or contested trial shall be heard no later than 30 days from the date of service on the tenant. During the interim period between the date of the initial hearing and the date of any subsequent hearing or contested trial, the court may afford any further remedy or relief as is necessary to protect the interests of parties to the proceeding or the interests of any other tenant residing on the premises. Failure by the court to hold either of the hearings within the time limits set out herein shall not be a basis for dismissal of the case.

D. If the tenant is a victim of family abuse as defined in § 16.1-228 that occurred in the dwelling unit or on the premises and the perpetrator is barred from the dwelling unit pursuant to § 55-248.31:01 based upon information provided by the tenant to the landlord, or by a protective order from a court of competent jurisdiction pursuant to § 16.1-253.1, ~~16.1-279.1~~ *16.1-253.5*, or subsection B of § 20-103, the lease shall not terminate due solely to an act of family abuse against the tenant. However, these provisions shall not be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's status as a victim of family abuse and the exclusion from the dwelling unit of the perpetrator no later than 21 days from the alleged offense or (ii) the perpetrator returns to the dwelling unit or the premises, in violation of a bar notice, and the tenant fails promptly to notify the landlord within 24 hours thereafter that the perpetrator has returned to the dwelling unit or the premises, unless the tenant proves by a preponderance of the evidence that the tenant had no actual knowledge that the perpetrator violated the bar notice, or it was not possible for the tenant to notify the landlord within 24 hours, in which case the tenant shall promptly notify the landlord, but in no event more than 7 days thereafter. If the provisions of this subsection are not applicable, the tenant shall remain responsible for the acts of the other co-tenants, authorized occupants or guests or invitees pursuant to § 55-248.16, and is subject to termination of the tenancy pursuant to the lease and this chapter.

E. If the tenant has been served with a prior written notice which required the tenant to remedy a breach, and the tenant remedied such breach, where the tenant intentionally commits a subsequent breach of a like nature as the prior breach, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the subsequent breach, make reference to the prior breach of a like nature, and state that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice.

F. If rent is unpaid when due, and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the rental agreement if the rent is not paid within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55-248.35. If a check for rent is delivered to the landlord drawn on an account with insufficient funds and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment and of the landlord's intention to terminate the rental agreement if the rent is not paid by cash, cashier's check or certified check within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55-248.35. Nothing shall be construed to prevent a landlord from seeking an award of costs or attorneys' fees under § 8.01-27.1 or civil recovery under § 8.01-27.2, as a part of other damages requested on the unlawful detainer filed pursuant to § 8.01-126, provided the landlord has given notice in accordance with § 55-248.6, which notice may be included in the five-day termination notice provided in accordance with this section.

G. Except as provided in this chapter, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or § 55-248.16. The landlord shall be entitled to recover reasonable attorneys' fees unless the tenant proves by a preponderance of the evidence that the failure of the tenant to pay rent or vacate the premises was reasonable. If the rental agreement provides for the payment of reasonable attorneys' fees in the event of a breach of the agreement or noncompliance by the tenant, the landlord shall be entitled to recover and the court shall award reasonable attorneys' fees in any action based upon the tenancy in which the landlord prevails, including but not limited to actions for damages to the dwelling unit or premises, or additional rent, regardless of any previous action to obtain possession or rent, unless in any such action, the tenant proves by a preponderance of the evidence that the tenant's failure to pay rent or vacate was reasonable.

§ 66-13. Authority of Department as to juveniles committed to it; establishment of facilities; arrangements for temporary care.

A. The Department is authorized and empowered to receive juveniles committed to it by the courts of the Commonwealth. The Department shall establish, staff and maintain facilities for the rehabilitation, training and confinement of such juveniles. The Department may make arrangements with satisfactory persons, institutions or agencies, or with cities or counties maintaining places of detention for juveniles, for the temporary care of such juveniles.

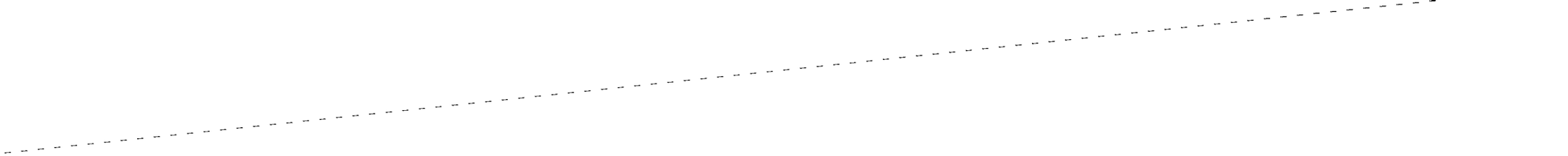
B. ~~In accordance with the Juvenile Corrections Private Management Act, Chapter 2.1 (§ 66-25.3 et seq.) of this title, the Department may establish, or contract with private entities, political subdivisions or commissions to establish, juvenile boot camps. The Board shall prescribe standards for the development, implementation and operation of the boot camps with highly structured components including, but not limited to, military style drill and ceremony, physical labor, education and rigid discipline and no less than six months of intensive aftercare. The Department of Correctional Education shall establish, staff, and maintain educational programs for such juveniles in accordance with Chapter 18 (§ 22.1-339 et seq.) of Title 22.1. A contract to expend state funds to establish a facility for a juvenile boot camp shall not be executed by the Department unless an appropriation has been expressly approved as is otherwise provided by law.~~

~~C.~~ The Department may by mutual agreement with a locality or localities and, pursuant to standards promulgated pursuant to § 16.1-309.9, establish detention homes for use by a locality or localities for pre-trial and post-dispositional detention pursuant to §§ 16.1-248.1 and 16.1-284.1. The Department may collect by mutual agreement with a locality or localities and from any locality of this Commonwealth from which a juvenile is placed in such a detention home, the reasonable cost of maintaining such juvenile in such facility and a portion of the cost of construction of such facility. Such agreements shall be subject to approval by the General Assembly in the general appropriation act.

~~D~~*C*. The Department shall collect data pertaining to the demographic characteristics of juveniles incarcerated in state juvenile correctional institutions, including, but not limited to, the race or ethnicity, age, and gender of such persons, and the types of and extent to which health-related problems are prevalent among such persons. Beginning July 1, 1997, such data shall be collected, tabulated quarterly, and reported by the Director to the Governor and the General Assembly at each regular session of the General Assembly thereafter.

2. That §§ 16.1-279.1 and 16.1-309.1 of the Code of Virginia are repealed.

Attachment 9
Request for Attorney General Opinion from Crime Commission



COMMONWEALTH of VIRGINIA

Virginia State Crime Commission

Delegate David B. Albo, *Chairman*
Senator Kenneth W. Stolle, *Vice Chairman*

Director
James O. Towey

Director of Legal Affairs
G. Stewart Petoe

Patrick Henry Building
1111 East Broad Street, Suite B036
Richmond, Virginia 23219

804-225-4534
Fax: 804-786-7872

December 11, 2008

The Honorable Robert F. McDonnell
Attorney General of Virginia
900 East Main Street
Richmond, Virginia 23219

VIA HAND DELIVERY

Re: Request for an Official Advisory Opinion

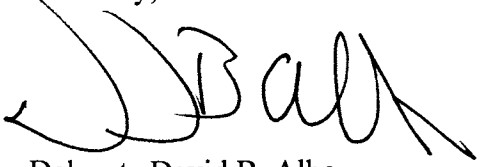
Dear General McDonnell:

In accordance with House Joint Resolutions 136 (2006) and 113 (2008), the Virginia State Crime Commission has conducted a thorough study of several aspects of Virginia's juvenile justice system. At its meeting on December 9, 2008, the Crime Commission was presented with several legislative options for consideration. A question arose concerning the constitutionality of Virginia Code § 16.1-298, which provides for the suspension of some, but not all, penalties pending a *de novo* appeal to circuit court.

Section 16.1-278.8 provides for various dispositional options available to the court when a juvenile is found delinquent. Section 16.1-298 authorizes, in cases of such delinquency, that certain juvenile court judgments, orders or decrees be suspended upon a petition for or the pendency of an appeal or writ of error. Specifically, subdivision 1 of Subsection B provides that the final order in delinquency cases shall be suspended for dispositions ordered pursuant to paragraphs 8, 9, 10, 12, 14, and 15 of § 16.1-278.8. However, such a suspension of penalties is not permitted for the dispositional options set forth in the remaining paragraphs of § 16.1-278.8. If it is a *de novo* appeal, isn't the defendant once again presumed innocent? And if so, how can any sentence be handed down pending appeal? This prompted the aforementioned question of the statute's constitutionality.

At the meeting, the Crime Commission voted unanimously to seek legal guidance from you on this matter. Consequently, pursuant to Virginia § 2.2-505, I respectfully request an official advisory opinion on the constitutionality of Virginia Code § 16.1-298 as it pertains to the suspension of some, but not all, penalties pending a *de novo* appeal to circuit court.

Sincerely,



Delegate David B. Albo

cc: James Towey, Director

Attachment 10
Informal Opinion from the Office of the Attorney General

COMMONWEALTH of VIRGINIA

Office of the Attorney General

Robert F. McDonnell
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

January 8, 2009

The Honorable David B. Albo
Member, House of Delegates
Chairman, Virginia State Crime Commission
1111 East Broad Street, Suite B036
Richmond, Virginia 23219

Dear Delegate Albo:

The Supreme Court of Virginia recognizes that construction of the Constitution and statutes of the Commonwealth by the Attorney General under § 2.2-505 of the *Code of Virginia* "is of the most persuasive character and is entitled to due consideration."[1] The same status and weight, however, is not afforded informal opinions and advice rendered by deputy and assistant attorneys general. The views expressed herein do not constitute an opinion of the Attorney General under the provisions of § 2.2-505. Consequently, this response to your inquiry represents only the individual views of one of the counsel to the Attorney General.[2]

Issue Presented

You ask whether § 16.1-298 is constitutional because it provides for suspension of some, but not all, judgments imposed by a juvenile and domestic relations district court pending an appeal to the circuit court.

Response

It is my view that § 16.1-298 is constitutional and does not violate the rights of a juvenile defendant to due process or equal protection.

Applicable Law and Discussion

You note that ordinarily when an appeal is taken from a general district court, such proceedings are heard de novo by the circuit court. You state that during a de novo appeal, the defendant is presumed innocent. Therefore, you question how a sentence may be handed down pending appeal pursuant to § 16.1-298.

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[1] Barber v. City of Danville, 149 Va. 418, 424, 141 S.E. 126, 127 (1928); *see also* Va. Beach v. Va. Rest. Ass'n, 231 Va. 130, 135, 341 S.E.2d 198, 201 (1986); Bd. of Supvrs. v. Marshall, 215 Va. 756, 762, 214 S.E.2d 146, 150 (1975).

[2] *See* VA. CODE ANN. § 2.2-501 (2008) (permitting Attorney General to appoint such deputy and assistant attorneys general as may be necessary).

Virginia courts "have 'consistently held that the protections afforded under the Virginia Constitution are co-extensive with those in the United States Constitution.'"[3] Thus, federal constitutional principles of equal protection and due process subsume any analysis of parallel provisions in the Constitution of Virginia. Further, "[a]ll legislative acts are 'presumed to be constitutional.'"[4] "This presumption is 'one of the strongest known to the law.'"[5] "Under it, courts must 'resolve any reasonable doubt' regarding the constitutionality of a law in favor of its validity."[6] "'To doubt is to affirm.'"[7]

The Supreme Court of the United States has held that the right to appellate review is not itself a necessary element of due process.[8] Because appellate review is not constitutionally guaranteed, the General Assembly is free to specify the limits and mechanisms of appellate review by statute so long as its laws do not otherwise offend the Constitution.

> [T]he Fourteenth Amendment's equal protection and due process clauses invalidate only those laws that offend principles of minimum rationality. Minimum rationality requires only that "a rational relationship exists between the disparity of treatment [among similarly situated persons] and some legitimate governmental purpose," and classifications reviewed under it are "accorded a strong presumption of validity."
>
> Under the minimum rationality standard, the General Assembly need not "actually articulate at any time the purpose or rationale supporting its classification." To be sure, the legislative classification "must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification."[9]

Further, the minimum rationality test "'is not a license for courts to judge the wisdom, fairness, or logic of legislative choices.'"[10] Sections 16.1-132 through 16.1-137 govern the procedure for appeals of adult criminal convictions from a general district court to the circuit court. Section 16.1-136 expressly provides that such appeals "shall be heard de novo" by the circuit court. "Once the trial *de novo* commences in the circuit court, the district court *judgment* is annulled, and is not thereafter available for any purpose."[11]

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[3] Rowley v. Commonwealth, 48 Va. App. 181, 187 n.2, 629 S.E.2d 188, 191 n.2 (2006) (citations omitted), *quoted in* Lilly v. Commonwealth, 50 Va. App. 173, 184, 647 S.E.2d 517, 522 (2007).

[4] Boyd v. County of Henrico, 42 Va. App. 495, 506, 592 S.E.2d 768, 774 (2004) (en banc) (quoting *In re* Phillips, 265 Va. 81, 85, 574 S.E.2d 270, 272 (2003)).

[5] *Id.* at 507, 592 S.E.2d at 774 (quoting Harrison v. Day, 200 Va. 764, 770, 107 S.E.2d 594, 598 (1959)).

[6] *Id.* (citations omitted).

[7] Peery v. Va. Bd. of Funeral Dirs. & Embalmers, 203 Va. 161, 165, 123 S.E.2d 94, 97 (1961) (quoting City of Roanoke v. Elliott, 123 Va. 393, 406, 96 S.E. 819, 824 (1918)), *quoted in* Boyd, 42 Va. App. at 507, 592 S.E.2d at 774.

[8] Griffin v. Illinois, 351 U.S. 12, 18 (1956); McKane v. Durston, 153 U.S. 684, 687 (1894).

[9] *Lilly*, 50 Va. App. at 181-82, 647 S.E.2d at 521 (citations omitted).

[10] Heller v. Doe, 509 U.S. 312, 319 (1993) (citation omitted) (holding that different treatment in commitment statutes of mentally retarded persons and mentally ill persons does not violate equal protection).

[11] Turner v. Commonwealth, 49 Va. App. 381, 386, 641 S.E.2d 771, 773 (2007) (emphasis in original).

Article 11, Chapter 11 of Title 16.1, §§ 16.1-296 through 16.1-298, governs appeals from a juvenile and domestic relations district court ("juvenile court"). Further, § 16.1-229 provides that "[w]henever any specific provision of [Chapter 11] differs from or is in conflict with any provision or requirement of any other chapters of [Title 16.1] relating to the same or a similar subject, then such specific provision shall be controlling with respect to such subject or requirement."

Section 16.1-298(A) provides that in an appeal by a juvenile from a juvenile court to the circuit court, the judgment of the juvenile court "*shall not* [be] *suspend*[ed]," except under certain circumstances. (Emphasis added.) In the past, Virginia courts have held that appeals from juvenile delinquency proceedings in a juvenile court were held de novo in the circuit courts, apparently relying on pre-1993 language in § 16.1-296, which incorporated the same de novo standard of review used in criminal appeals from the general district courts.[12] The 1993 Session of the General Assembly amended § 16.1-296(A):

> From any final order or judgment of the juvenile court ... an appeal may be taken ~~in accordance with the provisions of Chapter 7 (§ 16.1-123.1 et seq.) of this title~~ *within ten days from the entry of a final judgment, order or conviction.*[13]

Although the reference to a de novo appeal was deleted from § 16.1-296(A), Virginia courts have continued to hear appeals from a juvenile court de novo.[14] However, the Supreme Court of Virginia recently stated that "*except as altered by the provisions of Code § 16.1-298* regarding the status of the judgment of the [juvenile] court upon the filing of a petition or during the pendency of an appeal, we are of opinion that the appeal is to be heard de novo in the circuit court."[15]

Thus, instead of the *annulment* of the judgment that occurs upon the appeal from a criminal conviction in general district court, on an appeal from a juvenile court, the judgment is *suspended only as provided by* § 16.1-298. Where specific provisions of statutes conflict with a more general statute, the more specific statutes control.[16]

The fact that § 16.1-298 suspends the judgment of the juvenile court for some juveniles, but not for others, does not violate due process or equal protection because the statute addresses *dissimilarly situated juveniles*. Thus, there is no equal protection issue. However, assuming the equal protection

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[12] *See, e.g.*, Grogg v. Commonwealth, 6 Va. App. 598, 606-07, 371 S.E.2d 549, 552-53 (1988) (holding that § 16.1-136, incorporated by reference into 16.1-296, mandates de novo review in appeals from juvenile delinquency matters); *see also* VA. CODE ANN. § 16.1-296 (Supp. 1992).

[13] 1993 Va. Acts ch. 790, at 1589, 1589. However, I note that § 16.1-296(E) still provides for a de novo appeal where "an appeal is taken by an adult on a finding of guilty of an offense within the jurisdiction" of a juvenile court.

[14] *See, e.g.*, Austin v. Commonwealth, 42 Va. App. 33, 38-39, 590 S.E.2d 68, 71 (2003) (holding that when circuit court heard appeal de novo, it divested lower court of its exclusive jurisdiction over those proceedings; noting appeals from juvenile court are heard de novo).

[15] Sasson v. Shenhar, 276 Va. 611, 626 n.10, __ S.E.2d __, __ n.10 (2008) (emphasis added).

[16] *See* Gilman v. Commonwealth, 275 Va. 222, 230, 657 S.E.2d 474, 477 (2008) (holding that where specific code provisions dealing with appeals from contempt cases conflicted with general trial de novo provisions of § 16.1-136, specific statutes prevailed).

analysis were applicable, § 16.1-298 is constitutional provided a rational relationship exists between the disparity of treatment and some legitimate governmental purpose.[17]

The General Assembly has established a rational basis for suspending some, but not all, juvenile court judgments pending appeal under § 16.1-298. Where the penalties or conditions generally are punitive in nature, but do not involve serious safety concerns, § 16.1-298 suspends the penalty. For example, where the judgment involves fines, suspension of driver's license, or is for crimes that do not involve substance abuse or guns, restitution, incarceration for violation of a traffic offense, commitment to the Department of Juvenile Justice, or incarceration in jail where the juvenile has reached the age of majority after committing the offense, the judgment is suspended pending appeal. However, when the judgment is more rehabilitative in nature, or addresses serious safety concerns, the judgment is not suspended. Thus, § 16.1-298 does not suspend the juvenile court's ability to order participation in public service projects, participation in gang activity prevention programs, transfer of custody, post dispositional detention in a local facility, commitment to the Department of Juvenile Justice as a serious offender, or suspension or denial of a driver's license where the offense involved illegal drugs, alcohol, or illegal use of a handgun.

Conclusion

Accordingly, it is my view that § 16.1-298 is constitutional and does not violate the rights of a juvenile defendant to due process or equal protection.

With kindest regards, I am

Sincerely,

Stephanie L. Hamlett
Senior Counsel to the Attorney General

3:44; 3:1233; 1:941/08-107i

[17] *See, e.g.*, Nordlinger v. Hahn, 505 U.S. 1, 11 (1992). "The primary function of the juvenile courts ... is not conviction or punishment for crime; but crime prevention and juvenile rehabilitation." Kiracofe v. Commonwealth, 198 Va. 833, 844, 97 S.E.2d 14, 21 (1957).

Attachment 11
Senate Bill 928

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 16.1-305 of the Code of Virginia, relating to confidentiality of court records.

[S 928]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-305 of the Code of Virginia is amended and reenacted as follows:

§ 16.1-305. Confidentiality of court records.

A. Social, medical and psychiatric or psychological records, including reports or preliminary inquiries, predisposition studies and supervision records, of neglected and abused children, children in need of services, children in need of supervision and delinquent children shall be filed with the other papers in the juvenile's case file. All juvenile case files shall be filed separately from adult files and records of the court and shall be open for inspection only to the following:

1. The judge, probation officers and professional staff assigned to serve the juvenile and domestic relations district courts;

2. Representatives of a public or private agency or department providing supervision or having legal custody of the child or furnishing evaluation or treatment of the child ordered or requested by the court;

3. The attorney for any party, including the attorney for the Commonwealth;

4. Any other person, agency or institution, by order of the court, having a legitimate interest in the case or in the work of the court. However, for the purposes of an investigation conducted by a local community-based probation services agency, preparation of a pretrial investigation report, or of a presentence or postsentence report upon a finding of guilty in a circuit court or for the preparation of a background report for the Parole Board, adult probation and parole officers, including United States Probation and Pretrial Services Officers, any officer of a local pretrial services agency established or operated pursuant to Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2, and any officer of a local community-based probation services agency established or operated pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) shall have access to an accused's or inmate's records in juvenile court without a court order and for the purpose of preparing the discretionary sentencing guidelines worksheets and related risk assessment instruments as directed by the court pursuant to subsection C of § 19.2-298.01, the attorney for the Commonwealth and any pretrial services or probation officer shall have access to the defendant's records in juvenile court without a court order;

5. Any attorney for the Commonwealth and any local pretrial services or community-based probation officer or state adult probation or parole officer shall have direct access to the defendant's juvenile court delinquency records maintained in an electronic format by the court for the strictly limited purposes of preparing a pretrial investigation report, including any related risk assessment instrument, any presentence report, any discretionary sentencing guidelines worksheets, including related risk assessment instruments, any post-sentence investigation report or preparing for any transfer or sentencing hearing.

A copy of the court order of disposition in a delinquency case shall be provided to a probation officer or attorney for the Commonwealth, when requested for the purpose of calculating sentencing guidelines. The copies shall remain confidential, but reports may be prepared using the information contained therein as provided in §§ 19.2-298.01 and 19.2-299.

A1. Any person, agency, or institution that may inspect juvenile case files pursuant to subdivisions A 1 through A 4 shall be authorized to have copies made of such records, subject to any restrictions, conditions, or prohibitions that the court may impose.

B. All or any part of the records enumerated in subsection A, or information secured from such records, which is presented to the judge in court or otherwise in a proceeding under this law shall also be made available to the parties to the proceedings and their attorneys.

B1. If a juvenile 14 years of age or older at the time of the offense is adjudicated delinquent on the basis of an act which would be a felony if committed by an adult, all court records regarding that adjudication and any subsequent adjudication of delinquency, other than those records specified in subsection A, shall be open to the public. However, if a hearing was closed, the judge may order that certain records or portions thereof remain confidential to the extent necessary to protect any juvenile victim or juvenile witness.

C. All other juvenile records, including the docket, petitions, motions and other papers filed with a case, transcripts of testimony, findings, verdicts, orders and decrees shall be open to inspection only by

those persons and agencies designated in subsections A and B of this section. However, a licensed bail bondsman shall be entitled to know the status of a bond he has posted or provided surety on for a juvenile under § 16.1-258. This shall not authorize a bail bondsman to have access to or inspect any other portion of his principal's juvenile court records.

D. Attested copies of papers filed in connection with an adjudication of guilty for an offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles, which shows the charge, finding, disposition, name of the attorney for the juvenile, or waiver of attorney shall be furnished to an attorney for the Commonwealth upon certification by the prosecuting attorney that such papers are needed as evidence in a pending criminal, traffic, or habitual offender proceeding and that such papers will be only used for such evidentiary purpose.

D1. Attested copies of papers filed in connection with an adjudication of guilt for a delinquent act that would be a felony if committed by an adult, which show the charge, finding, disposition, name of the attorney for the juvenile, or waiver of attorney by the juvenile, shall be furnished to an attorney for the Commonwealth upon his certification that such papers are needed as evidence in a pending criminal prosecution for a violation of § 18.2-308.2 and that such papers will be only used for such evidentiary purpose.

E. Upon request, a copy of the court order of disposition in a delinquency case shall be provided to the Virginia Workers' Compensation Commission solely for purposes of determining whether to make an award to the victim of a crime, and such information shall not be disseminated or used by the Commission for any other purpose including but not limited to actions pursuant to § 19.2-368.15.

F. Staff of the court services unit or the attorney for the Commonwealth shall provide notice of the disposition in a case involving a juvenile who is committed to state care after being adjudicated for a criminal sexual assault as specified in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 to the victim or a parent of a minor victim, upon request. Additionally, if the victim or parent submits a written request, the Department of Juvenile Justice shall provide advance notice of such juvenile offender's anticipated date of release from commitment.

G. Any record in a juvenile case file which is open for inspection by the professional staff of the Department of Juvenile Justice pursuant to subsection A and is maintained in an electronic format by the court, may be transmitted electronically to the Department of Juvenile Justice. Any record so transmitted shall be subject to the provisions of § 16.1-300.

Attachment 12
Virginia Indigent Defense Commission, Juvenile Case Training Segment

INDIGENT DEFENSE CERTIFICATION TRAINING FOR COURT APPOINTED LAWYERS
Day 2

JUVENILE CASES
(4 – 1 HOUR SEGMENTS)

9:00 – 10:00: **Overview of the Juvenile Court – Professor Robert Shepherd, Jr., University of Richmond**
Background of the Court
Special Issues Concerning Juveniles (developmental issues, competency issues, Issues of criminal responsibility)
Statutes applicable only to juveniles (transfer statutes)
Diversion Options
Sentencing Options
Role of the Attorney (contra Guardian ad litem)
Client's Right of Confidentiality
Identify Treatment and Sentencing Options

10:00-11:00: **Client Interview and Pretrial Preparation – Valencia Roberts-Brower, Richmond Public Defender Office**
Develop trust relationship with client
Advise client of attorney client privilege
Educate the client as to what to expect in court
Advise client as to how to prepare for court and how to act in court
Obtain family, school, social services, and any medical or psychological records
Speak with client's counselors at school or at court services
Detention Advocacy (including review of new statutory requirements)
Obtain Discovery
Conduct Factual Investigation
Identify Mitigating Factors
Assess the Case and Devise Strategy
Consider Possible Collateral Consequences (i.e., future effects on guidelines, Immigration status)
Discuss Plea Offer with Prosecutor
File and Argue Pretrial Motions (including for release)

11:00 – 12:00: **Adjudication – Joseph Schenk, Jr., Danville Public Defender Office**
Prepare client and witnesses for trial
Record proceedings in the event of an appeal
Have a cogent theory of the defense (legal and/or factual)
Subpoena all necessary witnesses
Have sentencing witnesses and arguments prepared

12:00 – 1:00: **Disposition – R. David Warburton, Esquire, Pulaski, VA**
Learn all possible dispositional alternatives available
Obtain records from prior cases
Call witnesses for mitigation
Meet with court services to discuss options beneficial to the client and the dispo. recommendation
Prepare client to address the court
Explore alternative sentencing options
Appeal

Attachment 13
Supreme Court of Virginia Court-Appointed Counsel Fee Schedule

General Information and Instructions

Section 19.2-163 of the Code of Virginia provides the following fees for court-appointed counsel:

Court	Charge	Statutory Fee	Supplemental Statutory Waiver Amount	Fee by Additional Waiver
District	Misdemeanor	$120	Up to $120	Discretion of Court
Juvenile and Domestic Relations District	Delinquency – Equivalent to Misdemeanor or Felony, Class III to VI	$120	Up to $120	Discretion of Court
Juvenile and Domestic Relations District	Delinquency – Equivalent to Felony, Class II, or Probation Violation for Felony, Class II	$120	Up to $650	Discretion of Court
District	Felony, Class III to VI resolved in District Court	$445	Up to $155	Discretion of Court
District	Felony, Class II, resolved in District Court	$1,235	Up to $850	Discretion of Court
Circuit	Misdemeanor	$158	Not Available	Discretion of Court
Circuit	Delinquency	$158	Not Available	Discretion of Court
Circuit	Felony, Class III to VI	$445	Up to $155	Discretion of Court
Circuit	Felony, Class II	$1,235	Up to $850	Discretion of Court

Fee waivers may only be awarded by the court in which the case is concluded.

The General Assembly has authorized the above schedule for compensation for court-appointed counsel. Upon submission by counsel of a detailed accounting of time expended for court-appointed representation, the court in its discretion and subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia may waive the limitation of fees and authorize additional compensation up to the supplemental statutory waiver amount when the effort expended by counsel, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver.

Counsel may also request additional compensation exceeding these amounts by submitting a written request with a detailed accounting of the time spent and justification for the additional amount. The presiding judge shall determine, subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, whether this request for additional compensation above the supplemental statutory waiver amount is justified, in whole or part, by considering the effort expended and time reasonably necessary for the particular representation, and, if so, shall forward the request as approved to the chief judge of the circuit court or district court for approval.

There is no appeal process available if an application for waiver of fee cap is denied. Additionally, if at any time the funds appropriated to pay for waivers become insufficient, the Executive Secretary of the Supreme Court of Virginia shall so certify to the courts and no further waivers shall be approved.

If you believe that your representation of an indigent defendant warrants consideration for an additional payment, please complete the reverse side of this form and present it to the court along with your standard request for payment (Form DC-40, LIST OF ALLOWANCES) and your Attorney Time Sheet. You must complete a separate application for each charge for which you are requesting a waiver of the fee cap. This form along with the Attorney Time Sheet shall be retained in the court file.

Additional Instructions:
Date of Appointment is the original date any court assigned the representation to you.
Date Case Concluded is the date representation ended in the case for which you are seeking payment.

Attachment 14
Office of the Executive Secretary of the Supreme Court of Virginia Report Pursuant to § 19.2-163

EXECUTIVE SECRETARY
KARL R. HADE

ASSISTANT EXECUTIVE SECRETARY & LEGAL COUNSEL
EDWARD M. MACON

COURT IMPROVEMENT PROGRAM
LELIA BAUM HOPPER, DIRECTOR

EDUCATIONAL SERVICES
CAROLINE E. KIRKPATRICK, DIRECTO

FISCAL SERVICES
JOHN B. RICKMAN, DIRECTOR

HISTORICAL COMMISSION
MELINDA LEWIS, DIRECTOR

SUPREME COURT OF VIRGINIA

OFFICE OF THE EXECUTIVE SECRETARY
100 NORTH NINTH STREET
RICHMOND, VIRGINIA 23219-2334
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HUMAN RESOURCES
JOHN M. CARTER, DIRECTOR

JUDICIAL INFORMATION TECHNOLOGY
ROBERT L. SMITH, DIRECTOR

JUDICIAL PLANNING
CYRIL W. MILLER, JR., DIRECTOR

JUDICIAL PROGRAMS
KARL A. DOSS, DIRECTOR

JUDICIAL SERVICES
PAUL F. DELOSH, DIRECTOR

LEGAL RESEARCH
STEVEN L. DALLE MURA, DIRECTOR

LEGISLATIVE & PUBLIC RELATIONS
KATYA N. HERNDON, DIRECTOR

July 9, 2008

The Honorable Timothy M. Kaine
Governor of Virginia
Patrick Henry Building, 3rd Floor
1111 East Broad Street
Richmond, Virginia 23219

The Honorable Charles J. Colgan, Chairman
Senate Finance Committee
Senate of Virginia
Room 626
P.O. Box 396
Richmond, Virginia 23218

The Honorable Lacey E. Putney, Chairman
House Appropriations Committee
General Assembly Building
Room 947
P.O. Box 406
Richmond, Virginia 23218

RE: Quarterly Report pursuant to Va. Code § 19.2-163

Dear Governor Kaine and Chairmen Colgan and Putney:

Virginia Code § 19.2-163, as amended, requires the Executive Secretary to report to the Governor, members of the House Appropriations Committee and members of the Senate Finance Committee on a quarterly basis "the number and category of offenses charged involving adult and juvenile offenders in cases in which court-appointed counsel is assigned" and "the amounts paid by waiver above the initial cap to court-appointed counsel."

The vouchers submitted by court-appointed counsel through the fourth quarter of

FY2008 reflect the number and category of offenses charged involving adult and juvenile offenders as follows:

Category of Offense	Number of Charges	Amount Paid
Adult Offenders:		
Misdemeanors	112,906	$13,909,194
Felony ≤ 20 years	86,090	$25,851,560
Felony > 20 years	9,280	$6,675,367
Felony Unclassified	4,246	$1,810,536
Capital Murder	65	$1,852,924
Total:	**212,587**	**$50,099,582**
Juvenile Offenders:		
Misdemeanors	12,307	$1,574,934
Felony ≤ 20 years	4,199	$590,567
Felony > 20 years	636	$98,086
Felony Unclassified	-	-
Total:	**17,142**	**$2,263,587**
Adult + Juvenile Offenders:		
Grand Total:	**229,729**	**$52,363,169**

Since July 1, 2007, 6126 waiver requests have been submitted seeking a total of $2,048,670, and 5,952 have been approved for a total of $1,845,171 paid to court-appointed attorneys by waiver above the initial cap. A breakdown of the waivers requested by category of offense charged and type of offender is provided below.

	Waivers Approved			Waivers Denied	
Category of Offense	**Number of Waivers**	**Amount Requested**	**Amount Approved**	**Number of Waivers**	**Amount Requested**
Adult Offenders:					
Misdemeanors	3,059	$485,978	$465,562	64	$9,177
Felony ≤ 20 years	1,501	$785,069	$704,261	79	$23,220
Felony > 20 years	312	$536,629	$489,906	10	$5,239
Total:	**4,872**	**$1,807,676**	**$1,659,729**	**153**	**$37,636**
Juvenile Offenders:					
Misdemeanors	647	$99,260	$95,218	17	$2,674
Felony ≤ 20 years	361	$73,364	$66,677	3	$561
Felony > 20 years	72	$27,379	$23,547	1	$120
Total:	**1,080**	**$200,003**	**$185,442**	**21**	**$3,355**
Adult + Juvenile Offenders:					
Grand Total:	**5,952**	**$2,007,679**	**$1,845,171**	**174**	**$40,991**

If you have any questions regarding this report, please do not hesitate to contact me.

With kind regards,

Karl R. Hade

cc: Richard E. Hickman, Jr., Senate Finance Committee
Paul Van Lenten, House Appropriations Committee
Division of Legislative Automated Systems

Attachment 15
House Bill 1263

084177524

HOUSE BILL NO. 1263

Offered January 9, 2008

Prefiled January 9, 2008

A BILL to amend and reenact §§ 16.1-278.4, 16.1-278.5, 22.1-209.1:1, 22.1-258, 22.1-260, 22.1-261, 22.1-262, 22.1-265, 22.1-267, 22.1-279.3, and 22.1-279.6 of the Code of Virginia, relating to truancy and school dropout prevention.

Patron—Hall

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-278.4, 16.1-278.5, 22.1-209.1:1, 22.1-258, 22.1-260, 22.1-261, 22.1-262, 22.1-265, 22.1-267, 22.1-279.3, and 22.1-279.6 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-278.4. Children in need of services.

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

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

2. Permit the child to remain with his parent subject to such conditions and limitations as the court may order with respect to such child and his parent.

3. Order the parent with whom the child is living to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the child and his parent.

4. Beginning July 1, 1992, in the case of any child fourteen years of age or older, where the court finds that the child is not able to benefit appreciably from further schooling, the court may excuse the child from further compliance with any legal requirement of compulsory school attendance as provided under § 22.1-254 or authorize the child, notwithstanding the provisions of any other law, to be employed in any occupation which is not legally declared hazardous for children under the age of eighteen.

5. Permit the local board of social services or a public agency designated by the community policy and management team to place the child, subject to the provisions of § 16.1-281, in suitable family homes, child caring-institutions, residential facilities, or independent living arrangements with legal custody remaining with the parents or guardians. The local board or public agency and the parents or guardians shall enter into an agreement which shall specify the responsibilities of each for the care and control of the child. The board or public agency that places the child shall have the final authority to determine the appropriate placement for the child.

Any order allowing a local board or public agency to place a child where legal custody remains with the parents or guardians as provided in this section shall be entered only upon a finding by the court that reasonable efforts have been made to prevent placement out of the home and that continued placement in the home would be contrary to the welfare of the child, and the order shall so state.

6. Transfer legal custody to any of the following:

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

b. A child welfare agency, private organization or facility that is licensed or otherwise authorized by law to receive and provide care for such child. The court shall not transfer legal custody of a child in need of services to an agency, organization or facility out of the Commonwealth without the approval of the Commissioner of Social Services; or

c. The local board of social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the child has residence if other than the county or city in which the court has jurisdiction. The local board shall accept the child for care and custody, provided that it has been given reasonable notice of the pendency of the case and an opportunity to be heard. However, in an emergency in the county or city in which the court has jurisdiction, the local board may be required to accept a child for a period not to exceed fourteen days without prior notice or an opportunity to be heard if the judge entering the placement order describes the emergency and the need for such temporary placement in the order. Nothing in this subdivision shall prohibit the commitment of a child to any local board of social services in the Commonwealth when the local board consents to the commitment. The board to which the child is committed shall have the final authority to determine the appropriate placement for the child.

Any order authorizing removal from the home and transferring legal custody of a child to a local

board of social services as provided in this subdivision shall be entered only upon a finding by the court that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child, and the order shall so state.

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

B. In the case of any child subject to compulsory school attendance as provided in § 22.1-254, where the court finds that the child's parent is in violation of § 22.1-254, 22.1-255, 22.1-265, or 22.1-267, in addition to any penalties provided in § 22.1-263 or 22.1-265, the court shall order the parent with whom the child is living to participate in such programs, cooperate in such treatment, or be subject to such conditions and limitations as the court shall order and as are designed for the rehabilitation of the child or the parent, or both. Upon the failure of the parent to so participate or cooperate, or to comply with the conditions and limitations that the court orders, the court shall impose a fine of not more than $100 for each day in which the person fails to comply with the court order.

If the court finds that the parent has willfully disobeyed a lawful process, judgment, decree, or court order requiring such person to comply with the compulsory school attendance law, in addition to any conditions or limitations that the court has ordered or any penalties provided by §§ 16.1-278.2 through 16.1-278.19, § 22.1-263 or 22.1-265, the court shall impose the penalty authorized by § 18.2-371.

C. Any order entered pursuant to this section shall be provided in writing to the child, his parent or legal custodian, and to the child's attorney and shall contain adequate notice of the provisions of § 16.1-292 regarding willful violation of such order.

§ 16.1-278.5. Children in need of supervision.

A. If a child is found to be in need of supervision, the court shall, before final disposition of the case, direct the appropriate public agency to evaluate the child's service needs using an interdisciplinary team approach. The team shall consist of qualified personnel who are reasonably available from the appropriate department of social services, community services board, local school division, court service unit and other appropriate and available public and private agencies and may be the family assessment and planning team established pursuant to § 2.2-5207. A report of the evaluation shall be filed as provided in § 16.1-274 A. In lieu of directing an evaluation be made, the court may consider the report concerning the child of an interdisciplinary team which met not more than ninety days prior to the court's making a finding that the child is in need of supervision.

B. The court may make any of the following orders of disposition for the supervision, care and rehabilitation of the child:

1. Enter any order of disposition authorized by § 16.1-278.4 for a child found to be in need of services;

2. Place the child on probation under such conditions and limitations as the court may prescribe including suspension of the child's driver's license upon terms and conditions which may include the issuance of a restricted license for those purposes set forth in subsection E of § 18.2-271.1;

3. Order the child and/or his parent to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the child;

4. Require the child to participate in a public service project under such conditions as the court may prescribe; or

5. ~~a. Beginning July 1, 1992, in~~ *In* the case of any child subject to compulsory school attendance as provided in § 22.1-254, where the court finds that the child's parent is in violation of §§ 22.1-254, 22.1-255, 22.1-265, or § 22.1-267, in addition to any penalties provided in § 22.1-263 or § 22.1-265, the court ~~may~~ *shall* order the parent with whom the child is living to participate in such programs, cooperate in such treatment, or be subject to such conditions and limitations as the court ~~may~~ *shall* order and as are designed for the rehabilitation of the child and/or the parent. Upon the failure of the parent to so participate or cooperate, or to comply with the conditions and limitations that the court orders, the court ~~may~~ *shall* impose a fine of not more than $100 for each day in which the person fails to comply with the court order.

~~b.~~ If the court finds that the parent has willfully disobeyed a lawful process, judgment, decree, or court order requiring such person to comply with the compulsory school attendance law, in addition to any conditions or limitations that the court ~~may order~~ *has ordered* or any penalties provided by §§ 16.1-278.2 through 16.1-278.19, 22.1-263 or § 22.1-265, the court ~~may~~ *shall* impose the penalty authorized by § 18.2-371.

C. Any order entered pursuant to this section shall be provided in writing to the child, his parent or legal custodian, and to the child's attorney and shall contain adequate notice of the provisions of § 16.1-292 regarding willful violation of such order.

§ 22.1-209.1:1. School dropout prevention programs.

With such funds as are appropriated for this purpose, the Board of Education shall establish a program for the prevention of school dropout. All school divisions shall be eligible to receive such

noncompetitive grants ~~under the following conditions~~. *Effective July 1, 2010, local school boards shall implement school dropout prevention programs that include the following components*:

1. ~~The local school dropout prevention program includes components which emphasize~~ *An emphasis on* prevention, intervention, retrieval, and parental and community involvement;

2. ~~The program includes a component specifically~~ *Instructional programs and services* designed to eliminate the poor academic achievement among disadvantaged students in the school divisions; ~~and~~

3. Truancy prevention services that are supported through the collaboration, cooperation, and communication of a consortia of representatives of the school division, local law enforcement, business and industry, parents and the community, the faith community, and juvenile and domestic relations judges and court services personnel.

~~3.~~*4.* ~~The program includes a component for oversight~~ *Oversight* and evaluation of program effectiveness.

The Board of Education shall establish a full-time dropout prevention unit and shall employ such professional and support staff as may be necessary to ~~implement the grants program~~*assist school divisions in truancy and dropout prevention efforts*, provide coordination for the statewide dropout prevention program ~~and~~, *provide* technical assistance to school divisions, and ~~to~~ monitor ~~such~~ local dropout prevention programs to ensure compliance and uniformity in the interpretation and application of such rules and regulations as may be adopted by the Board.

§ 22.1-258. Appointment of attendance officers; notification when pupil fails to report to school.

Every school board shall have power to appoint one or more attendance officers, who shall be charged with the enforcement of the provisions of this article. Where no attendance officer is appointed by the school board, the division superintendent shall act as attendance officer.

Whenever any pupil fails to report to school on a regularly scheduled school day and no indication has been received by school personnel that the pupil's parent is aware of and supports the pupil's absence, a reasonable effort to notify by telephone the parent to obtain an explanation for the pupil's absence shall be made by the attendance officer, other school personnel, or volunteers organized by the school administration for this purpose. Any such volunteers shall not be liable for any civil damages for any acts or omissions resulting from making such reasonable efforts to notify parents and obtain such explanation when such acts or omissions are taken in good faith, unless such acts or omissions were the result of gross negligence or willful misconduct. This subsection shall not be construed to limit, withdraw, or overturn any defense or immunity already existing in statutory or common law or to affect any claim occurring prior to the effective date of this law. School divisions are encouraged to use noninstructional personnel for this notice.

Whenever any pupil fails to report to school for a total of ~~five scheduled~~ *three consecutive* school days ~~for~~ *during any part of* the school year and no indication has been received by school personnel that the pupil's parent is aware of and supports the pupil's absence, and a reasonable effort to notify the parent has failed, the school principal or his designee shall make ~~a reasonable effort to ensure that~~ direct contact ~~is made~~, *to the extent possible,* with the parent, either in person or through telephone conversation, by the attendance officer to obtain an explanation for the pupil's absence and to explain to the parent the consequences of continued nonattendance. The attendance officer, the pupil, and the pupil's parent shall jointly develop a plan to resolve the pupil's nonattendance. Such plan shall include documentation of the reasons for the pupil's nonattendance.

If the pupil is absent an additional day after direct contact with the pupil's parent and the attendance officer has received no indication that the pupil's parent is aware of and supports the pupil's absence, the attendance officer shall schedule a conference within ~~ten~~ *five* school days with the pupil, his parent, and school personnel, which conference may include other community service providers, to resolve issues related to the pupil's nonattendance. The conference shall be held no later than ~~fifteen~~ *10* school days after the ~~sixth~~ *fourth* absence. Upon the next absence by such pupil without indication to the attendance officer *or other school personnel* that the pupil's parent is aware of and supports the pupil's absence, the school principal or his designee shall notify ~~the attendance officer or~~ the division superintendent~~, as the case may be,~~ who shall enforce the provisions of this article by either or both of the following: (i) filing a complaint with the juvenile and domestic relations court alleging the pupil is a child in need of supervision *or a child in need of services, or both,* as defined in § 16.1-228 or (ii) instituting proceedings against the parent pursuant to § 18.2-371 or § 22.1-262. In filing a complaint against the student, the attendance officer shall provide *the division superintendent* written documentation of the efforts to comply with the provisions of this section. In the event that both parents have been awarded joint physical custody pursuant to § 20-124.2 and the school has received notice of such order, both parents shall be notified at the last known addresses of the parents.

Nothing in this section shall be construed to limit in any way the authority of any attendance officer or division superintendent to seek immediate compliance with the compulsory school attendance law as set forth in this article.

Attendance officers, other school personnel or volunteers organized by the school administration for this purpose shall be immune from any civil or criminal liability in connection with the notice to parents of a pupil's absence or failure to give such notice as required by this section.

§ 22.1-260. Reports of children enrolled and not enrolled; nonattendance; social security numbers required.

A. Within 10 days after the opening of the school, each public school principal shall report to the division superintendent:

1. The name, age and grade of each student enrolled in the school, and the name and address of the student's parent or guardian; and

2. To the best of the principal's information, the name of each child subject to the provisions of this article who is not enrolled in school, with the name and address of the child's parent or guardian. *Upon receiving the list from the principal containing the names of students who are subject to the provisions of this article and who are not enrolled in school, the division superintendent shall commence proceedings in accordance with the provisions of § 22.1-258 to enforce compliance with the compulsory school attendance law.*

B. At the end of each school year, each public school principal shall report to the division superintendent the number of students by grade level for whom a conference was scheduled as required by § 22.1-258. The division superintendent shall compile such grade level information for the division, *including information pertaining to proceedings instituted to enforce compliance with the compulsory school attendance law,* and provide such information to the Superintendent of Public Instruction annually.

C. For the purposes of this section, each student shall present a federal social security number within 90 days of his enrollment. The Board of Education shall, after consulting with the Social Security Administration, promulgate guidelines for determining which students are eligible to obtain social security numbers. In any case in which a student is ineligible, pursuant to these guidelines, to obtain a social security number or the parent is unwilling to present such number, the superintendent or his designee may assign another identifying number to the student or waive this requirement.

§ 22.1-261. Attendance officer to make list of children not enrolled; duties of attendance officer.

The attendance officer or the division superintendent shall check the reports submitted pursuant to subsection A of § 22.1-260 with the last school census and with reports from the State Registrar of Vital Records and Health Statistics. From these reports and from any other reliable source the attendance officer or the division superintendent shall, within five days after receiving all reports submitted pursuant to subsection A of § 22.1-260, make a list of the names of children who are not enrolled in any school and who are not exempt from school attendance. It shall be the duty of the ~~attendance officer, on behalf of the local school board,~~ *division superintendent or his designee* to investigate all cases of nonenrollment and, when no valid reason is found therefor, to notify the parent, guardian or other person having control of the child to require the attendance of such child at the school within three days from the date of such notice.

§ 22.1-262. Complaint to court when parent fails to comply with law.

A list of persons notified pursuant to § 22.1-261 shall be sent by the attendance officer *or division superintendent* to the appropriate school principal. If the parent (i) fails to comply with the provisions of § 22.1-261 within the time specified in the notice; or (ii) fails to comply with the provisions of § 22.1-254; or (iii) refuses to participate in the development of the plan to resolve the student's nonattendance or in the conference provided for in § 22.1-258, it shall be the duty of the ~~attendance officer, with the knowledge and approval of the~~ division superintendent, to make complaint against the pupil's parent in the name of the Commonwealth before the juvenile and domestic relations district court. If proceedings are instituted against the parent for failure to comply with the provisions of § 22.1-258, the ~~attendance officer is to~~ *division superintendent shall* provide documentation to the court regarding the school division's compliance with § 22.1-258. In addition thereto, such child may be proceeded against as a child in need of services or a child in need of supervision as provided in Chapter 11 (§ 16.1-226 et seq.) of Title 16.1.

§ 22.1-265. Inducing children to absent themselves.

Any person who induces or attempts to induce any child to be absent unlawfully from school or who knowingly employs or harbors, while school is in session, any child absent unlawfully shall be guilty of a Class 3 misdemeanor and may be subject to the penalties provided by subdivision 5 ~~a~~ of subsection B of § 16.1-278.5 or § 18.2-371. Upon a finding that a person knowingly and willfully violated the provisions of this section and that such person has been convicted previously of a violation of this section, such person shall be guilty of a Class 2 misdemeanor.

§ 22.1-267. Proceedings against habitually absent child.

Any child permitted by any parent, guardian, or other person having control thereof to be habitually absent from school contrary to the provisions of this article may be proceeded against as a child in need of supervision *or a child in need of services, or both,* as provided in Chapter 11 (§ 16.1-226 et seq.) of

Title 16.1.

§ 22.1-279.3. Parental responsibility and involvement requirements.

A. Each parent of a student enrolled in a public school has a duty to assist the school in enforcing the standards of student conduct and compulsory school attendance in order that education may be conducted in an atmosphere free of disruption and threat to persons or property, and supportive of individual rights.

B. A school board shall provide opportunities for parental and community involvement in every school in the school division.

C. Within one calendar month of the opening of school, each school board shall, simultaneously with any other materials customarily distributed at that time, send to the parents of each enrolled student (i) a notice of the requirements of this section; (ii) a copy of the school board's standards of student conduct; and (iii) a copy of the compulsory school attendance law. These materials shall include a notice to the parents that by signing the statement of receipt, parents shall not be deemed to waive, but to expressly reserve, their rights protected by the constitutions or laws of the United States or the Commonwealth and that a parent shall have the right to express disagreement with a school's or school division's policies or decisions.

Each parent of a student shall sign and return to the school in which the student is enrolled a statement acknowledging the receipt of the school board's standards of student conduct, the notice of the requirements of this section, and the compulsory school attendance law. Each school shall maintain records of such signed statements.

D. The school principal may request the student's parent or parents, if both parents have legal and physical custody of such student, to meet with the principal or his designee to review the school board's standards of student conduct and the parent's or parents' responsibility to participate with the school in disciplining the student and maintaining order, to ensure the student's compliance with compulsory school attendance law, and to discuss improvement of the child's behavior, school attendance, and educational progress.

E. In accordance with the due process procedures set forth in this article and the guidelines required by § 22.1-279.6, the school principal ~~may~~ *shall* notify the parents of any student who violates a school board policy or the compulsory school attendance requirements when such violation could result in the student's suspension or the filing of a court petition, whether or not the school administration has imposed such disciplinary action or filed a petition. The notice shall state (i) the date and particulars of the violation; (ii) the obligation of the parent to take actions to assist the school in improving the student's behavior and ensuring compulsory school attendance compliance; (iii) that, if the student is suspended, the parent may be required to accompany the student to meet with school officials; and (iv) that a petition with the juvenile and domestic relations court may be filed under certain circumstances to declare the student a child in need of supervision *or a child in need of services.*

F. No suspended student shall be admitted to the regular school program until such student and his parent have met with school officials to discuss improvement of the student's behavior, unless the school principal or his designee determines that readmission, without parent conference, is appropriate for the student.

G. Upon the failure of a parent to comply with the provisions of this section, the school board may, by petition to the juvenile and domestic relations court, proceed against such parent for willful and unreasonable refusal to participate in efforts to improve the student's behavior or school attendance, as follows:

1. If the court finds that the parent has willfully and unreasonably failed to meet, pursuant to a request of the principal as set forth in subsection D of this section, to review the school board's standards of student conduct and the parent's responsibility to assist the school in disciplining the student and maintaining order, and to discuss improvement of the child's behavior and educational progress, it may order the parent to so meet; or

2. If the court finds that a parent has willfully and unreasonably failed to accompany a suspended student to meet with school officials pursuant to subsection F, or upon the student's receiving a second suspension or being expelled, it ~~may~~ *shall* order the student or his parent, or both, to participate in such programs or such treatment, including, but not limited to, extended day programs, summer school, other educational programs and counseling, as the court deems appropriate to improve the student's behavior or school attendance. The order may also require participation in a parenting, counseling or a mentoring program, as appropriate or that the student or his parent, or both, shall be subject to such conditions and limitations as the court deems appropriate for the supervision, care, and rehabilitation of the student or his parent. In addition, the court may order the parent to pay a civil penalty not to exceed $500.

H. The civil penalties established pursuant to this section shall be enforceable in the juvenile and domestic relations court in which the student's school is located and shall be paid into a fund maintained by the appropriate local governing body to support programs or treatments designed to

improve the behavior of students as described in subdivision G 2. Upon the failure to pay the civil penalties imposed by this section, the attorney for the appropriate county, city, or town shall enforce the collection of such civil penalties.

I. All references in this section to the juvenile and domestic relations court shall be also deemed to mean any successor in interest of such court.

§ 22.1-279.6. Board of Education guidelines and model policies for codes of student conduct; school board regulations.

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

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

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

B. School boards shall adopt and revise, as required by § 22.1-253.13:7 and in accordance with the requirements of this section, regulations on codes of student conduct that are consistent with, but may be more stringent than, the guidelines of the Board. School boards shall include, in the regulations on codes of student conduct, procedures for suspension, expulsion, and exclusion decisions and shall biennially review the model student conduct code to incorporate discipline options and alternatives to preserve a safe, nondisruptive environment for effective teaching and learning.

Each school board shall include, in its code of student conduct, prohibitions against bullying, hazing, and profane or obscene language or conduct. School boards shall also cite, in their codes of student conduct, the provisions of § 18.2-56, which defines and prohibits hazing and imposes a Class 1 misdemeanor penalty for violations, i.e., confinement in jail for not more than 12 months and a fine of not more than $2,500, either or both.

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

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

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

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