Legislative Summary
2003 General Assembly Session
Juvenile Justice Related Legislation

This is an overview of legislation relating to juvenile justice enacted by the 2003 General Assembly.

This handbook is only intended for use as a summary of those bills enacted during the 2003 General Assembly session relating to the juvenile justice system. If you are using an electronic copy of this document, many of the bill numbers and Virginia Code citations are hyperlinked. By clicking on the bill number or Virginia Code citation, you should be able to access the enacted bill language or statute.

For questions or issues concerning any of the information contained herein, please contact Deron M. Phipps at (804) 786-6407 or via email at phippsdm@djj.state.va.us.

Part I: Department of Juvenile Justice Related Legislation

Part II: Juvenile Court Proceedings

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Part IV: Juvenile DWI & Other Drinking or Underage Driving Offenses

Part V: Domestic Violence & Stalking Protective Orders

HB 1533 Definition of Family Member, Delegate Melvin **Page 55**
HB 1533 amends Virginia Code § 16.1-228 relating to definition of family and household member. Effective July 1, 2003.

SB 834 Violation of Protective Order, Senator Howell **Page 56**
SB 834 amends Virginia Code §§ 16.1-253.2 and 18.2-60.4 relating to extending a protective order for two additional years following a violation of a protective order. Effective July 1, 2003.

SB 893 Expanding Stalking Protective Orders, Senator Watkins **Page 57**
SB 893 amends Virginia Code §§ 19.2-152.8, 19.2-152.9 and 19.2-152.10 to allow stalking protective orders to be issued following incidents of acts of violence resulting in serious bodily injury to a person. Effective July 1, 2003.

Part VI: Child Abuse and Neglect

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HB 2188 amends Virginia Code §§ 16.1-251 and 63.2-1517 relating to the emergency removal of children who have been abused or neglected. Effective July 1, 2003.

SB 1097 & HB 2128 Parental Educational Seminars in Custody and Visitation Cases, **Page 60**
SB 1097 and HB 2128 amend Virginia Code §§ 16.1-278.15 and 20-103 relating to custody, visitation and support and educational seminars. Effective July 1, 2003.

SB 1298 Termination of Parental Rights & Parties with Legitimate Interests, **Page 63**
SB 1298 amends Virginia Code §§ 16.1-241, 20-124.1 and 63.2-1215 relating to the termination of parental rights (voluntary or involuntary) and the impact upon other persons who may have a legitimate interest in a child.

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HB 2274 amends Virginia Code § 16.1-269.6 relating to trial of juveniles as adults. Effective July 1, 2003.

HB 1599 Competency of Juveniles Tried as Adults, Delegate Melvin **Page 65**
HB 1599 amends Virginia Code §§ 19.2-169.1 and 19.2-169.2 relating to restoration of competency to stand trial. Effective July 1, 2003.

Part VIII: Studies

SENATE JOINT RESOLUTION (SJ) 358, Senator Houck **Page 65**
SJ 358 directs the Virginia Commission on Youth, or its successor in interest, to make empirically based information concerning effective treatment modalities and practices for children available through the Internet.

Part I: Department of Juvenile Justice Related Legislation

HB 2518 Hiring Court Service Unit Staff
Delegate McDonnell

HB 2518 amends Virginia Code §§ 16.1-233, 16.1-235 and 16.1-236 and adds a section numbered 16.1-236.1 relating to the hiring, terminating and transferring of court service unit personnel. Effective July 1, 2003.

1.00 Summary: Clarifying the Roles of the Director and Judge When Hiring CSU Staff

Probably the most notable bill in the juvenile justice arena enacted during the 2003 General Assembly session was House Bill 2518 submitted by Delegate Bob McDonnell on behalf of the Department. HB 2518 amends Virginia Code §§ 16.1-233, 16.1-235 and 16.1-236 and creates Virginia Code § 16.1-236.1 to clarify the authority of the Director of the Department of Juvenile Justice (DJJ) to hire, transfer and terminate probation officers and supervisors as needed or demanded in state-operated court service units (CSUs). HB 2518 clearly delineates the powers to hire, fire and transfer court service unit personnel. DJJ will hire probation and probation supervisory staff, and the judiciary will select the court service unit director. For over a decade, this bill has gone down in defeat. For the Department, passage of this bill is a significant legislative event. Hopefully, HB 2518 adds some clarity to the hiring process that, at times, created some adversarial situations between the Department and the judiciary.

1.10 Sections of the Virginia Code Amended & Created

HB 2518 amended Virginia Code §§ 16.1-233, 16.1-235 and 16.1-236 and created a section numbered 16.1-236.1.

2.00 Background: Issues Providing Basis for Enacting HB 2518

Under the Virginia Code, prior to HB 2518, the hiring, assignment and termination of personnel of state-operated court service units was a responsibility shared by the judges of the juvenile and domestic relations district courts and the Director of the Department of Juvenile Justice. The Department selected candidates for employment in a state-operated court service unit through the process provided in the Virginia Personnel Act. The Department would then present to the local judge or judges a list of "certified" candidates from which the judge or judges determined who should be hired. For the vast majority of the time, the process worked well. However, when there was a disagreement between the Department and the judiciary, there were significant problems.

2.10 No Judicial Immunity for Judges When Hiring Probation Officers

Juvenile court judges do not have judicial immunity in the administration of personnel. In an official advisory opinion dated January 28, 2003, the Attorney General stated, "While judges have been long afforded absolute immunity from financial liability for their judicial acts, they do not enjoy the same level of protection for all of their functions. . . . Therefore, a juvenile court judge's powers to appoint, transfer or remove juvenile probation officers and supervisors are administrative functions and are not afforded judicial immunity." HB 2518 addresses the concerns raised by the Attorney General.

2.20 The Virginia Code Provides No Guidance When There is a Conflict

The Virginia Code currently provides no guidance when a conflict concerning a personnel issue arises between the Department and the judiciary. Disagreements between the Department and the judiciary concerning who should be hired could become problematic. Occasionally, the judge or judges have not approved of any candidate on the certified list and selected a person outside of the Virginia Personnel Act process. On one specific occasion, the person who the judges appointed failed to meet the minimum qualifications for the position as determined through the Virginia Personnel Act.

In that particular case, the Department refused to promote the individual into the position despite the judicial appointment. As you can imagine, such a situation places the Department in an adversarial relationship with the judge making the personnel decision.

On another occasion, a chief judge during the last weeks of his term appointed a particular individual to a CSU position. When his term ended, his successor as chief judge "unappointed" that individual and appointed his own choice. In one case, the chief judge's choice ranked very far down on the list of minimally qualified persons. Yet the judge refused to appoint any of the higher-ranked candidates selected through the Virginia Personnel Act and insisted that the Department continue to submit the names of candidates until his choice was reached. In another case, the judge ordered the transfer of a supervisor to a branch office of the court. This was the judge's prerogative. However, the judge then went through the personnel files of unit employees—before any selection process was undertaken pursuant to the Virginia Personnel Act—to select a replacement for the transferred supervisor.

In the above-mentioned cases, the Virginia Code failed to provide guidance to resolve such disputes. The ambiguities in the law created unnecessary conflicts between the executive branch and the judicial branch. Hopefully, HB 2518 will provide some clarity.

2.30 Under Current Law, State Probation Staff Serve Two Masters

The current system simply inhibits the effective administration and provision of services in state-operated CSUs.

3.00 Changes to Virginia Code § 16.1-233: Establishing Court Service Units & Appointment and Removal of Employees

Virginia Code § 16.1-233 provides the Department with the authority to establish court service units and to appoint and remove employees. The amendments to subsections A and C are technical in nature. There were no amendments to subsection B.

3.10 Director has Sole Authority to Transfer, Demote or Terminate CSU Staff: Va. Code § 16.1-233(D) – New Language!

The significant change made to subsection D of Virginia Code § 16.1-233 is that the transfer, demotion or termination of a CSU staff person is no longer a mutual decision made by the Director of the Department and the judge. HB 2518 provides the Director with the sole authority to order the "transfer*, demotion or separation* of any person from the court service staff."

3.11 A Transfer, Demotion or Separation is Subject to Conditions

Prior to the Director transferring, demoting or separating a person from the court service staff, the following conditions must be satisfied:

- The Transfer, Demotion or Termination Must be for Good Cause (Not New);
- Prior to Transfer, Demotion or Termination, the Director must Consult with the Judge or Judges of that Juvenile and Domestic Relations District Court (New);
- Prior to Transfer, Demotion or Termination, the Staff Person Must be Provided Notice and Opportunity to be Heard (Not New);
- The Transfer, Demotion or Termination Must be Made in Accordance with the Virginia Personnel Act (§ 2.2-2900 et seq.)(Not New).

4.00 Changes to Virginia Code § 16.1-235: State- and Locally Operated Court Service Units

Virginia Code § 16.1-235 provides the authority for establishing state-operated court service units and the authority for establishing locally operated court service units. The amendments to subsection A of Virginia Code § 16.1-235 are not substantive in that antiquated language is removed. The changes to subsection B clarify that locally operated court service units are responsible for the hiring, firing and transferring of local CSU staff.

4.01 Background on State-Operated & Locally Operated CSUs

Prior to 1973, court service units were locally operated. In 1973, the General Assembly amended Virginia Code § 16.1-235 to provide the Virginia Department of Corrections with the authority to establish and operate state court service units.[1] In 1973, localities were provided the opportunity to convert to state-operated court service units upon their request to the Department of Corrections. Thirty-two court service units elected to become state operated; three court service units remained locally operated. Under the current language in subsection A of Virginia Code § 16.1-235, localities maintain the ability to request to covert to a state-operated court service unit should they chose. Subsection B of Virginia Code § 16.1-235 provides localities with the option of remaining a locally operated court service unit.

4.02 A State-Operated CSU may Return to Locally Operated CSU

Legislation enacted by the 2002 General Assembly added subsection C to Virginia Code § 16.1-235. See Senate Bill 533 – 2002 Acts of Assembly Chapter 510. A county or city that is providing court services through a state-operated court service unit, with the approval of its governing body after consultation with the chief judge of the juvenile and domestic relations district court of the jurisdiction, may cease providing services through a state-operated court

[1] The Virginia General Assembly enacted legislation in 1989 that created the Department of Youth and Family Services. The Department of Youth and Family Services became the Department of Juvenile Justice during the juvenile justice reform. See 1996 Acts of Virginia Ch. 503.

service unit and commence operation as a local unit, subject to all laws, regulations, policies and procedures applicable to a local unit.

4.10 Changes to Subsection B of Virginia Code § 16.1-235 Removes DJJ Director from Involvement in Locally Operated CSU Hiring Process

The language in subsection B, prior to HB 2518, allowed the Director of the Department to become involved in a locally operated CSU hiring process. Although it appears that the situation never occurred, the Virginia Code stated that probation officers and parole officers at locally operated court service units were to be selected from a list of eligibles certified by the governing body or bodies of the district or the Director of the Department of Juvenile Justice. HB 2518 removes the judge and the Director from the hiring process for probation and parole staff at locally operated court service units. Pursuant to Virginia Code § 16.1-235(B), the powers to hire, transfer, demote or terminate falls under the authority of the local governing body.

4.11 Summary of New Language in Subsection B

The transfer, demotion or separation of locally operated court service unit staff must be only for good cause shown. The judge for that district must be consulted prior to the transfer, demotion or termination. Any action involving the transfer, demotion or termination of locally operated court service unit staff must be in accordance with the Virginia Personnel Act and after due notice and opportunity to be heard.

5.00 Changes to Virginia Code § 16.1-236: Personnel Actions Involving Probation or Parole Officer Supervisors

Virginia Code § 16.1-236 provides the authority to appoint probation officer supervisors in any court where more than one probation or parole officer or other court service staff has been appointed. HB 2518 removes the authority of the judge to be involved with the personnel decisions involving probation or parole officer supervisors. HB 2518 provides that probation and parole officer supervisors shall be designated by the Director, if it is a state-operated court service unit, or by the local governing body, if it is a locally operated court service unit.

5.10 Personnel Actions Involving State CSU Supervisory Staff

The transfer, demotion or separation of supervisory officers of state-operated court service units will be under the authority of the Director and shall be only for good cause shown, after consulting with the judge or judges of that juvenile and domestic relations district court, in accordance with the Virginia Personnel Act.

5.20 Personnel Actions Involving Local CSU Supervisory Staff

The transfer, demotion or separation of supervisory officers of local court service units shall be under the authority of the local governing body and shall be only for good cause shown, after consulting with the judge or judges of that juvenile and domestic relations district court and after due notice and opportunity to be heard.

6.00 Creation of Virginia Code § 16.1-236.1: Court Service Unit Directors

HB 2518 amends the Virginia Code by creating a section pertaining to the appointment of Court Service Unit Directors. Virginia Code § 16.1-236.1 provides that the judge or judges of a court service unit district will have the authority to select the director for that court service unit.

6.10 Judges Shall Select State-Operated Court Service Unit Directors: Va. Code § 16.1-236.1(A)

The judge or judges of the juvenile and domestic relations district court shall, from a list of eligible persons submitted by the Director, appoint one court service unit director for the state-operated court service unit serving that district court. The list of eligible persons shall be developed in accordance with state personnel laws and regulations and Department policies and procedures. If the judges are not satisfied with the list, they may request the Director to submit a new list containing the names of additional eligible persons.

6.11 The Authority to Fire, Demote or Transfer Falls Under the Director

The transfer, demotion or separation of a state-operated court service unit director will be under the authority of the Director and shall be only for good cause shown, after consulting with the judge or judges of that juvenile and domestic relations district court, in accordance with the Virginia Personnel Act.

6.20 Judges Shall Select Locally-Operated Court Service Unit Directors: Va. Code § 16.1-236.1(B)

Consistent with the previous amendments, HB 2518 clearly distinguishes the powers of the Director over state-operated court service units and the powers of the locality over locally-operated court service units. As with state-operated, the judge shall select the director of the court service unit. The judge shall select the director from a list of eligible persons submitted by the governing body or bodies of the district, appoint one court service unit director for the locally operated court service unit serving that district court. If the judges are not satisfied with the list, they may request the local governing body to submit a new list containing the names of additional eligible persons.

6.21 The Authority to Fire, Demote or Transfer Falls Under the Local Governing Body

The transfer, demotion or separation of a locally operated court service unit director will be under the authority of the local governing body and shall be only for good cause shown, after consulting with the judge or judges of that juvenile and domestic relations district court, in accordance with the Virginia Personnel Act.

SB 1246 Child Support Payments for Committed Youth
Senator Mims

SB 1246 amends Virginia Code §§ 16.1-286 and 16.1-290 relating to child support payments for juveniles committed to the Department of Juvenile Justice. Effective July 1, 2003.

1.00 Summary

On behalf of the Department, Senator Bill Mims submitted Senate Bill 1246. Rarely does the court order a parent to pay child support for a committed juvenile because of the cumbersome process; the probation officer conducts an investigation and the court conducts a subsequent hearing. Additionally, the amount of support is based upon the cost of commitment. SB 1246 streamlines the process. When a juvenile is committed, DJJ will apply for child support with the Division of Child Support Enforcement (DCSE). The amount of child support is then determined administratively by DCSE in accordance with the child support guidelines. This bill passed without opposition.

2.00 Issues with Ordering Child Support for Committed Youth Prior to SB 1246

When a juvenile is committed to the custody of the Department for placement in a juvenile correctional center, Virginia Code § 16.1-290 provides the authority for the juvenile court to order the parent or other legally obligated person to pay a reasonable sum commensurate with the ability to pay that will cover all or part of the cost of support and treatment of that juvenile.

2.10 Problem with Law Prior to SB 1246: Court Must Conduct an Investigation and a Hearing Before Making Support Order

Prior to SB 1246, for a court to order child support to be paid for a committed juvenile, the probation or parole officer would need to conduct an investigation and then the court would need to conduct a hearing. The investigation and subsequent hearing would occur after the juvenile was committed to the Department of Juvenile Justice. The investigation and hearing would concern the parent's ability to pay and the amount the parent ought to pay. Ultimately, the investigation and hearing occurred well after the juvenile was placed in juvenile correctional center.

2.20 Problem with Law Prior to SB 1246: Deciding Amount to be Paid was Arbitrary & Unfair

Prior to SB 1246, Virginia Code § 16.1-290 was arbitrary in determining the amount to be paid and failed to address how the support was to be collected. Subsection A provided little guidance for the court in determining the amount of support to be paid. Subsection A required the amount to be paid to be based upon the costs associated with commitment and the parent's ability to pay. The average yearly cost for committing a juvenile to a juvenile correctional center is $78,000. Although the current Code does allow the court to take into consideration the noncustodial parent's ability to pay, basing the actual amount on the cost of commitment seemed wholly unrealistic. Moreover, the Virginia Code provisions prior to SB 1246 failed to address the method for collecting child support for a juvenile committed to the Department of Juvenile Justice.

2.30 Problem with Law Prior to SB 1246: Auditor of Public Accounts Audit

The Auditor of Public Accounts (APA) audited the financial records and operations of the Department of Juvenile Justice for the year ended June 30, 2000. The APA conducted the audit according to the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States.

2.31 APA's Finding: Improve Child Support Collection Procedures

The APA found that the Department needed to improve its procedures for the collection of child support payments for juveniles in state custody. The APA found that the Department collected child support payments of $119,000 in fiscal year 2000. However, the Department needed to work with the local courts and with the DCSE to develop and improve procedures to address the following issues:

- The courts did not always inform the Department about a child support order; therefore, the Department did not expect the payments. The Department needed to implement procedures to improve communications with the local court to know of all orders for children in state custody.

- The Department did not have procedures to address non-payment of child support for juveniles in state custody. Of the 1,400 juveniles committed to the Department in 2000, the Department knew of 73 child support cases. Of these cases, the Department did not receive child support collections in 34 cases ordered by the court. The Department and DCSE need to work together to develop procedures so that they can pursue the collection of these payments.

- The Department received some payments that they cannot associate with a juvenile. The Department collected and deposited these payments, but did not know which juvenile they related to. Of the 73 cases previously mentioned, the Department received payments for 19 cases that they could not associate with a juvenile. The Department could not determine if these payments relate to juveniles still in state custody or released.

2.32 APA Follow-Up Report

In a follow-up report released on May 13, 2002, the APA audit found:

- The Department of Social Services (DSS) enforced and collected some child support orders; however, there was no coordinated effort between the two departments to ensure child support payments. As a result, there was not reassignment of payment from the custodial parent to DJJ when a juvenile came into state custody.

- The audit found instances where DJJ continued to receive payment years after the juvenile's release.

- The Department received payments that could not be associated with a juvenile. The Department continues to collect and deposit these funds without investigating why they are receiving the funds.

3.00 Amendments to Virginia Code § 16.1-290 – The New Language

SB 1246 attempts to address the above-mentioned issues by allowing the Department to collect child support through an administrative process operated by DCSE. When a juvenile is committed to the custody of the Department for placement in a juvenile correctional center, Virginia Code § 16.1-290 now requires the Department to apply for child support through DCSE.

3.10 New Language is Modeled Upon Foster Care Provisions

The language in SB 1246 is modeled upon the provisions of the Virginia Code allowing a local department of social services to collect child support for a child removed from the custody of his parents or other responsible person and placed in foster care. Currently, subsection C of Virginia Code § 16.1-290 requires the court to order child support payments for a child placed in foster care. Whenever a juvenile is placed in foster care by the court, the court must order and decree that the parent or other legally obligated person must pay DSS pursuant to §§ 20-108.1, 20-108.2, 63.1-204.2 and 63.1-251.3.

3.20 DJJ can File for Child Support Directly with DCSE

SB 1246 creates subsection D to Virginia Code § 16.1-290 to allow the Department to apply directly to DCSE whenever a juvenile is placed in temporary custody of the Department pursuant to subdivision 4a of § 16.1-278.8 or committed to the Department pursuant to subdivision A 14 of § 16.1-278.8. This amendment allows the Department to bypass the court and to proceed administratively in gaining child support for a juvenile.

3.21 No Investigation & No Court Hearing

SB 1246 eliminates the need for an investigation to be completed by court service unit staff and eliminates the requirement of a separate hearing conducted by the juvenile court to determine the amount of support the responsible person ought to pay. DCSE will determine the amount of child support to be paid. The person obligated to pay child support will be able to contest the administrative determination through an appeal process that may include a court hearing.

3.22 Speed & Efficiency

The Department never implemented a formal internal process for collecting and tracking child support payments. DCSE will be able to process and act upon an application for child support much quicker and more efficiently than the court and the Department was able to do. Should the responsible person dispute the award of child support or the amount of the support, that person would be able to appeal that administrative order to the appropriate court.

3.30 Amount to be Determined by Child Support Guidelines

The amount the responsible person is obligated to pay will be determined in accordance with the child support guidelines as promulgated by DSS. Currently, the amount to be paid in child support is based upon the costs of support and treatment for the committed juvenile as determined by each individual court. The cost of supporting and treating a juvenile placed in a juvenile correctional center is approximately $77,313 per year.[2] This bill places predefined and consistent parameters around the amount of child support to be paid.

3.40 Technical Amendments to Virginia Code § 16.1-286

Virginia Code § 16.1-286 allows the juvenile court to take custody of a child and place that child, pursuant to the provisions of subdivision 5 of § 16.1-278.4 or 13 b of § 16.1-278.8, in a private or locally operated public facility or nonresidential program with funding in accordance with the Comprehensive Services Act for At-Risk Youth and Families (§ 2.2-5200 et seq.). Virginia Code § 16.1-286 provides the court with the authority to order the parent or other legally responsible person to pay child support for a child placed in a residential treatment facility. SB 1246 amends Virginia Code § 16.1-286 to be consistent with the changes made to Virginia Code § 16.1-290.

SB 1246 also removes the obligation of the Director to maintain a roster concerning the whereabouts of all children placed pursuant to this section.

HB 1559 Truancy: Defer & Dismiss
Delegate Orrock

HB 1559 amends Virginia Code § 16.1-260 to allow an intake officer to divert a juvenile who is alleged to be truant and proceed informally. Effective July 1, 2003.

1.00 Summary: Informal Diversion for Alleged Truants

To say that the 1999 changes to the truancy laws burdened caseloads and court dockets is an understatement. That is why the Department jumped at the opportunity to work with Delegate Robert Orrock on House Bill 1559. HB 1559 allows the intake officer to defer filing a truancy complaint petition for 90 days and to proceed informally against a juvenile. If the juvenile successfully completes the diversion plan, then the petition will not be filed with the court. As Delegate Morgan Griffith said, "HB 1559 is essentially a defer and dismiss bill for truants."

1.01 HB 1559 Originally Created Truancy Court

As originally introduced, HB 1559 amended the Virginia Code to allow the creation of truancy courts. However, the General Assembly has clearly demonstrated a reluctance to enact legislation that creates specialized court dockets. Therefore, the concept of a specialized court to focus only upon truants appeared to have little chance in becoming enacted.

[2] This amount includes $17,910, which is the cost to educate a juvenile annually by the Department of Correctional Education.

1.10 Issue of Treating Truants on the Same Level as Violent Juvenile Felons

HB 1559 addresses an issue of balance and equity with respect to the treatment of juveniles who are alleged to be truants compared to those juveniles alleged to have committed violent juvenile felonies. Under current Virginia law, the juvenile code treats alleged truants the same as alleged violent juvenile felons at the time of intake. HB 1559 amends the Virginia Code to allow truants to be treated in the same manner at intake as low-end felons, misdemeanants and children alleged to be in need of supervision or in need of services (CHINSup and CHINS cases).

1.20 Some Relief?

HB 1559 enhances the administration of justice and assists with addressing the issue of limited resources. As truancy cases have risen 46% over the last three years, this provision of the law has proven to be a drain on court service units and burdensome upon court dockets. Hopefully, HB 1559 will provide some relief to an already crowded juvenile court docket and provide juvenile intake officers a little more flexibility in handling truancy cases.

2.00 Overview of Existing Law Pertaining to Intake: Va. Code § 16.1-260

HB 1559 amends Virginia Code § 16.1-260 relating to the filing of petitions by a juvenile intake officer. See § 16.1-260 for a brief overview.

2.10 Juvenile Court Action is Initiated by Petition: Va. Code § 16.1-260(A)

All proceedings in juvenile court are initiated by petition. The intake officer is the primary person responsible for receiving complaints and requests and processing petition to initiate juvenile court action.

2.20 Petitions for Delinquency, CHINS and CHINSup are Initiated by Complaints

Petitions alleging delinquency, child in need of services (CHINS) or a child in need of supervision (CHINSup) are initiated by complaints brought to the intake officer. Complaints alleging that a child is a delinquent, a child in need of services or a child in need of supervision can be made by the parent, law enforcement or the school.

2.21 Definition of Delinquency: Va. Code § 16.1-228

A "delinquent act" means an act designated a crime under state law, an ordinance of any city, county, town, service district or under federal law. A delinquent act does not include an act that is otherwise lawful but is designated a crime only if committed by a child. "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.

2.22 Child in Need of Services (CHINS): Va. Code § 16.1-228

A "child in need of services" means a child whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of the child.

2.23 Child in Need of Supervision (CHINSup): Va. Code § 16.1-228

A "child in need of supervision" (CHINSup) means a child who a truant or a runaway. "Truant" means a child who is subject to the compulsory school attendance law (i.e., child is under the age of 18) and is habitually and without justification absent from school. A child in need of supervision is also means a child who is a runaway.

- HB 1559 addresses a juvenile alleged to be a child in need of supervision as a result of habitual truancy.

2.30 Limited Circumstances When the Intake Officer may Refuse the Petition

There are limited circumstances involving a domestic relations complaint when the intake officer may refuse to file a petition.

2.31 No Probable Cause to Support Abuse, Neglect, CHINS, CHINSup or Delinquency Allegations

The intake officer may refuse to file a complaint 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.

2.32 Petition not in the Best Interests of the Family or the Juvenile

The intake officer may refuse to file a complaint when the authorization of a petition will not be in the best interests of the family or juvenile.

2.33 Another Agency may Effectively Deal with the Allegation

The intake officer may refuse to file a complaint when the matter may be effectively dealt with by some agency other than the court.

2.40 If Intake Officer Refuses to File a Petition, Appeal to Magistrate: Va. Code § 16.1-260(E)

If the intake officer refuses to authorize a petition, the person making the complaint may appeal the refusal to a magistrate.

2.41 No Appeal for CHINS, CHINSup and Status Offense Denials

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.

2.50 Intake Officer Must Decide Whether or not to Proceed Formally or Informally Against a Juvenile

At the time of the complaint, if the intake officer finds that the juvenile court has jurisdiction and there is probable cause that the act occurred, the intake officer must decide if he will act upon the complaint informally or initiate formal court action.

2.51 No Informal Intake if Juvenile is Alleged Violent Juvenile Felon

The 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 is not alleged to have committed a violent juvenile felony.[3]

2.52 No Informal Intake if Juvenile has been Proceeded Against Previously

If the juvenile has been proceeded against informally or adjudicated in need of supervision or delinquent, then the intake officer must initiate formal action and file a petition.

2.53 Truants are not Eligible for Informal Intake

A juvenile who is the subject of a truancy complaint filed pursuant to § 22.1-258 is not eligible for informal intake.

2.60 Informal Diversion: The Statutory Requirements for Proceeding Against a Juvenile Informally

Should the intake officer decide that a complaint alleging that a child is in need of services, in need of supervision or delinquent may be acted upon informally, subsection A of Virginia Code § 16.1-260 provides additional requirements.

2.61 Plan for Restitution and Community Service

To proceed informally, the intake officer must develop a plan for the juvenile. The plan may include restitution and the performance of community service based upon community resources and the circumstances which resulted in the complaint.

2.62 The Intake Officer Must Warn that Subsequent Offense Requires Court Action

The intake officer must 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 will result in the filing of a petition with the court.

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[3] Virginia Code § 16.1-228 defines a violent juvenile felony as 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.

2.63 If Possible, CHINSup Allegations Must be Reviewed and Re-referred: Va. Code § 16.1-260(D)

If the intake officer receives a complaint alleging that a child is in need of supervision, then the intake officer must review the matter and 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 non-judicial remedies that are available to them.

3.00 The Amendments to Virginia Code § 16.1-260: The New Truancy Provisions

As stated above, if an intake officer receives a complaint from a school alleging that a juvenile is a truant 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, the intake officer must file a petition and initiate formal court action against that juvenile. However, under the provisions of HB 1559, a juvenile who is alleged to be a truant can be diverted from formal court action and proceeded against informally one time.

3.10 Truancy Complaints can be Deferred for 90 Days

The intake officer may defer filing a truancy complaint for 90 days and proceed informally by developing a truancy plan.

3.11 90 Day Requirement is Same for All Informal Supervision

The 90 day limitation upon informal supervision for truancy cases is consistent with timeframe limiting the supervision of all informal cases. Pursuant to 6 VAC 35-150-335, all informal supervision, in the absence of a court order, shall not exceed 90 days.

3.20 Eligibility Requirement: No Previous Action Against Alleged Truant

The intake officer may proceed informally against an alleged truant only if that 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.

3.30 Eligibility Requirement: Juvenile & Parental Agreement in Writing

The juvenile and his parent or parents, guardian or other person standing in loco parentis must agree, in writing, to proceed informally and for the development of a truancy plan.

3.40 Development of Truancy Plan

A truancy plan must be developed. 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.

3.41 Development of Truancy Plan Should be the Same as any Informal Diversion

The development of a truancy plan should be consistent as with the development of a supervision plan for any informal diversion.

3.50 Truancy Plan may be Developed by Interagency Interdisciplinary Team

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.

3.60 Initiation of Court Action after 90-Day Period

If at the end of the 90-day period the juvenile has not successfully completed the truancy plan or the truancy program, the intake officer must file the petition.

HB 1520 & SB 991 Expanding the Definition of CHINS
Delegate Black & Senator Mims

HB 1520 and SB 991 amend Virginia Code § 16.1-228 relating to the definition of children in need of services. Effective July 1, 2003.

1.00 Summary: Expanding the Definition of CHINS to Cover a Third Party

HB 1520 amends Virginia Code § 16.1-228 by expanding the definition of "child in need of services" (CHINS). Prior to HB 1520, "Child in Need of Services" meant a child whose behavior, conduct or condition presented or resulted in a serious threat to the well-being and physical safety of the child. HB 1520 amends the definition of CHINS to include *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.* HB 1520 and SB 991 are identical.

1.10 Background Information

HB 1520 and SB 991 patroned by Delegate Black and Senator Mims, respectively, exemplify how one isolated event in a community can escalate into the creation of a new law. In Loudon County, two boys, aged ages five and six, severely beat a three-year-old girl. Given the young ages of the perpetrators, court proceedings were not initiated citing the common law defense of infancy. Apparently, law enforcement instructed the parents to seek recourse with the Department of Social Services (DSS). DSS offered services to the perpetrators, but those services were refused by the parents of the perpetrators. Staff with DSS said they had no authority to compel the family to receive services. Not satisfied with the response to the assault, the parents of the victim child sought assistance from local legislators.

1.20 Confusion Concerning the Applicability of the Common Law Defense of Infancy

Underscoring the basis for this legislation was confusion existing about whether or not common law is applicable in the juvenile court proceeding and whether or not an adequate remedy exists in the Virginia Code that addresses the above-described tragic occurrence. The Virginia Code does not specify a statutory minimum age for delinquency, and it is debatable whether or not the common law minimum age of seven for criminal responsibility applies in the juvenile court (see "Juvenile Law and Practice in Virginia" § 1.401, page 5 [1998] authored by Robert Shepherd).

1.21 Assault & Battery Delinquency Petitions Could Have Been Filed

One school of thought relies upon the fact that the Virginia Code does not establish a statutory minimum age for delinquency and that common law does not apply in juvenile court proceedings. Therefore, the above-mentioned circumstances involving the three-year old victim describe an assault and battery. The parents of the child could have filed a complaint with the intake officer against the two children who were alleged to have perpetrated the assault. The intake officer could have proceeded informally against the children or filed delinquency petitions or initiated formal court action. If the intake officer refused to file petitions against the two perpetrators, the parents of the injured child could have "appealed" that decision to the local magistrate.

1.22 Common Law Does Apply; No Adequate Remedy

At common law, children under the age of seven are conclusively presumed to be without criminal capacity. Children between the ages of seven and 14 are presumed to be incapable of forming criminal intent. However, in the 1999 supplement, Shepherd adds a footnote indicating that "No decision has specifically rejected the continued applicability of the infancy defenses described in Law v. Commonwealth, 75 Virginia 885 (1881)." If common law does apply, then the Virginia Code fails to provide an adequate remedy for the above-described incident.

1.30 As Originally Introduced, the Legislation had a Wider Scope

HB 1520 and SB 991 sought to expand the definition of a "child in need of services" (CHINS) to include a child "*whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of another person."* Upon introduction, HB 1520 and SB 991 immediately had "legs," meaning there was no stopping these bills; we could only hope to contain them. So, the Department worked with the patrons to narrow the scope of the new CHINS definition to apply only to those children under the age of 14. The age amendment does bring these bills in line with the common law defense of infancy.

2.00 The Definition of CHINS Prior to HB 1520 & SB 991: Va. Code § 16.1-228

Virginia Code § 16.1-228 provides the terms and definitions found in the juvenile code that are unique to the juvenile justice system. One such example is the term CHINS. CHINS stands for a "Child in Need of Services." Briefly, CHINS was defined prior to this legislation as meaning a child whose

behavior, conduct or condition presented or resulted in a serious threat to the well-being and physical safety of the child.

3.00 The Definition of CHINS as a Result of HB 1520 & SB 991: Va. Code § 16.1-228

This legislation redefines CHINS to include not only a child who has been harmed or is threatened with harm, but also now includes a child who causes harm or threatens to cause harm. Below are the elements of the new CHINS definition.

3.10 Behavior, Conduct or Condition of the Child (Not New)

The definition CHINS first looks to the behavior, conduct or condition of the child.

3.20 Behavior Conduct or Condition Causes Harm or Threat of Harm

The second element of the definition of CHINS looks to whether or not the behavior, conduct or condition of the child presents or results in a serious threat to the well-being and physical safety of that child or another person.

3.21 The Threat of Harm is to the Child (Not New)

Prior to HB 1520 and SB 990, the definition of CHINS focused only upon the child and the actual harm or threat of harm to that child.

3.22 The Threat of Harm is to Another Person (New Language)

As a result of HB 1520 and SB 990, CHINS cases may involve children who cause actual harm or create a threat of harm to another person. Please note, there are no age limitations upon the other person.

3.30 Conduct Must Present Clear and Substantial Danger (Not New)

The third element of the definition of CHINS requires that 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*.[4]

3.40 Treatment, Rehabilitation or Services Needed but not Currently Provided (Not New)

The fourth element of the definition of CHINS requires that the child or his family is in need of treatment, rehabilitation or services and that those services are not presently being received.

3.50 Court Intervention is Essential (Not New)

The fifth element requires that court intervention is essential to provide the treatment, rehabilitation or services needed by the child or his family.

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[4] The italicized language is new and was added to ensure consistency with the substantive changes to the definition of CHINS.

3.60 Exception to Definition of CHINS: Spiritual Treatment (Not New)

HB 1520 and SB 990 did not change the fact that a 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 is not for that reason alone a child in need of services.

3.70 Exception to Definition of CHINS: Runaways Because of Abuse (Not New)

A 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 is not a child in need of services for that reason alone.

4.00 Policy Implications

HB 1520 and SB 990 represent a significant policy deviation in the meaning of a child in need of services. Prior to this legislation, the definition of CHINS focused solely upon the harm or threat of harm to the child alleged to be a child in need of services. Under this new definition, the harm or threat of harm may or may not be upon the child alleged to be a child in need of services. The new definition widens the scope to include persons who were harmed or threatened with harm by the child.

4.10 Difficult to Quantify any Potential Increase in CHINS Intakes

Generally, CHINS cases involve children who have been abused or neglected and, specifically, the potential harm or threat is to the child. With the definition of threat or harm expanded to include other persons, HB 1520 and SB 990 may lead to an increase in the number of CHINS intake petitions involving juveniles under the age of 14. For example, this legislation introduces elements of assault and battery into the definition of CHINS. Any assault and battery perpetrated by a juvenile under the age of 14 could be treated as a CHINS case rather than a delinquency case. Therefore, there may be an increase in the number of CHINS petitions filed.

4.11 Increase in CHINS Cases may Result in Decrease in Delinquency Cases

It can be argued that this legislation provides the intake officer with greater flexibility when deciding whether or not to proceed against a juvenile as a delinquent or as a child in need of services. With the blurring of the lines between CHINS cases and delinquency cases, the intake officer is in the position of potentially deciding who should be proceeded against as a CHINS case and who should be proceeded against as a delinquency case. It is possible that a juvenile who is 13 years of age or younger may be proceeded against as a child in need of services instead of as a delinquent. Therefore, it is possible that the Department will see a small decrease in the number of delinquency petitions filed with the court.

HB 2541 Crime Code References
Delegate McDonnell

HB 2541 amends Virginia Code § 19.2-226 and adds a section numbered 19.2-390.01 relating to criminal justice record information and crime code references. Effective October 1, 2004.

1.00 Summary: Sentencing Commission & Virginia Crime Code References

Since a section of the Virginia Code often contains several separate offenses, the sentencing guidelines utilize Virginia crime codes (VCC) to designate each separate offense. Unfortunately, the two separate numbering systems have complicated the collection of arrest and conviction data necessary to update and revise the sentencing guidelines. Therefore, the Sentencing Commission proposed HB 2541.

2.00 HB 2541 Creates New Virginia Code § 19.2-390.01

HB 2541 creates a new Virginia Code section numbered 19.2-390.01 that requires the use of crime code references when a person is arrested for a jailable offense. Virginia Code § 19.2-390.01 requires that any criminal warrant, indictment, information, presentment, petition, summons, charging document issued by a magistrate or dispositional document from a criminal trial that involves a jailable offense, must include the Virginia crime code references for the particular offense or offenses covered.

2.10 Crime Codes Shall be Used for Collecting Data

When Virginia crime codes are provided on charging and dispositional documents, the codes shall be recorded and stored for adult offenders in criminal history computer systems maintained by the State Police; court case management computer systems maintained by the Supreme Court of Virginia; probation and parole case management computer systems maintained by the Department of Corrections and the Virginia Parole Board; pretrial and community corrections case management computer systems maintained by the Department of Criminal Justice Services and jail management computer systems maintained by the State Compensation Board. The Department of Juvenile Justice will record and store Virginia crime codes for particular offenses related to juveniles in case management computer systems.

2.20 VCC Collected Data Shall Be Used Only for Administration & Research

Virginia crime codes shall be used only to facilitate administration and research and shall not have any legal standing as they relate to a particular offense or offenses.

3.00 Amendments to Virginia Code § 19.2-226: Defects in Criminal Indictments

One of the chief concerns about mandating the use of Virginia crime codes was the potential creation of a mechanism for appealing a conviction. Therefore, HB 2541 amends Virginia Code § 19.2-226 pertaining to defects in criminal indictments. HB 2541 ensures that a mistake in docketing the correct crime code on the charging document will not vitiate the indictment. Omitting or stating incorrectly the Virginia crime code references for the particular offense or offenses covered on the indictment will not void the indictment.

3.10 Statement on Charging Documents Referring to "Administrative Use Only"

A third reenactment clause in HB 2541 states that "the charging and dispositional documents incorporating Virginia crime codes developed pursuant to this act shall indicate clearly that the crime codes are to be entered in a portion of such documents labeled 'for administrative use only' or words to that effect."

4.10 Fiscal Implications

This bill was introduced during the 2002 General Assembly session, but the Virginia State Police and the Supreme Court had significant concerns about the use of Virginia crime codes in their databases and presently use Virginia Code statute references for all offenses. The Virginia Criminal Sentencing Commission argued that that the legislation will have a minimal impact on state agencies.[5] It should be noted that DJJ, the Supreme Court and the Department of Criminal Justice Services (DCJS) stated the proposed legislation will not have a fiscal impact. The Department of Corrections (DOC) claims a minimal impact is expected but believes that any impact could be absorbed with current funding.

5.00 Delayed Effective Date – October 1, 2004

A second reenactment clause in HB 2541 states that the act will become effective on October 1, 2004.

HB 2390 Drug Offender Assessment Fund
Delegate Albo

HB 2390 amends Virginia Code § 18.2-251.02 relating to the Drug Offender Assessment Fund. Effective July 1, 2003.

HB 2390 provides that part of the monies available from the Drug Offender Assessment Fund shall be appropriated to the Department of Criminal Justice Services (DCJS) for the support of community-based probation and local pretrial service agencies in addition to the current appropriations to the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ) and the Commission on VASAP to implement and operate the offender substance abuse screening and assessment program. This bill has no impact on DJJ's ability to receive funds from the Drug Offender Assessment Fund. While DJJ has received up to $500,000 annually from this revenue source to support substance abuse screening and assessment activities, those activities have been eliminated as part of the Governor's budget reductions. DJJ returned its appropriation from this Fund as part of those reductions. As the activities supported by those revenues have been terminated, DJJ has no objection to DCJS's participation. If and when DJJ resumes such activities, it could reasonably expect to once again receive revenues from the Drug Offender Assessment Fund.

[5] The fiscal impact information was taken from the Fiscal Impact Statement completed by the Virginia Criminal Sentencing Commission. A federal grant is expected to address most of the costs for state agencies. The Department of State Police anticipates spending, in addition to the federal grant dollars, $29,025 in FY03 to add the current crime codes the statute table. Beginning in FY04, crime codes must be added to the tables generated for live scan, local records management systems, and the NIST Scanner Workstation (NST) terminals at an annual cost of $19,350. This amount of funding will support the Department in maintaining the crime codes in the statute table as well as tables generated for distribution. The changes to the Computerized Criminal History and Live Scan systems are included as part of the federal grant. The State Police should be able to absorb these costs.

Part II: Juvenile Court Proceedings

HB 2282 & SB 1060 Predispositional Detention of a Juvenile
Delegate Hurt & Senator O'Brien

HB 2282 and SB 1060 amend Virginia Code § 16.1-248.1 relating to predispositional detention of a juvenile. Effective July 1, 2003.

1.00 Summary: The Predispositional Detention of a Juvenile

HB 2282 amends Virginia Code § 16.1-248.1 relating to predispositional detention of a juvenile. Virginia Code § 16.1-248.1 provides the statutory authority for determining if a juvenile who is arrested ought to be released or detained in a juvenile detention facility or a shelter care. HB 2282 clarifies that a juvenile and domestic relations court judge has the authority to order a juvenile into detention prior to the final disposition even if the juvenile was not ordered into detention when first taken into custody. The statutory criteria for placing a juvenile in detention are not changed.

2.00 August 2002 Attorney General's Opinion Questioned Juvenile Court Authority to Detain

The need for this bill arose following an August 2002 Attorney General's opinion that questioned whether or not a juvenile court judge has the authority to temporarily detain a juvenile, after an adjudication hearing but pending the disposition hearing, when the juvenile was not originally taken into custody and detained. It was the opinion of the Attorney General that the juvenile court judge had no statutory authority to temporarily detain a juvenile, after an adjudication hearing where the juvenile is determined to be delinquent but pending the disposition hearing, when the juvenile was not originally taken into custody and detained pursuant to Virginia Code § 16.1-248.1.

2.10 Legislative Response to OAG Opinion

Four bills were introduced during this session that attempted to address the issues raised in the official opinion released by the Office of the Attorney General (OAG). SB 1060 (Senator O'Brien) and HB 2282 (Delegate Hurt) were recommendations of the OAG. HB 2411 (Delegate Marrs) was a recommendation of the Commonwealth's Attorney in Petersburg. SB 1148 (Senator Stolle) was a recommendation of the Committee on District Courts. This Department worked with the Office of the Executive Secretary for the Supreme Court in crafting the language in SB 1060. SB 1148 was rolled into SB 1060 by the Senate Committee for Courts of Justice. HB 2411 was rolled into HB 2282 by the House Committee for Courts of Justice. HB 2282 was conformed to mirror SB 1060 by the Senate Committee for Courts of Justice. As passed, HB 2282 and SB 1060 are identical.

3.00 Overview of Va. Code § 16.1-248.1: Detaining a Juvenile at "Any Time Prior to Final Disposition"

Virginia Code § 16.1-248.1 provides the statutory criteria for placing a juvenile in shelter care, in a secure facility or in a jail when that juvenile has been taken into custody. HB 2282 and SB 1060 amends Virginia Code § 16.1-248.1 to allow the judge, the intake officer or the magistrate, ***at any time prior to an order of final disposition***, to detain a juvenile in a secure facility, pursuant to a detention order or warrant, upon a finding that there is probable cause to believe the juvenile committed the act alleged and that at least one of the following conditions is met

3.01 Definition of Secure Facility or Shelter Care

A "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.

3.10 Juvenile is Alleged to have Committed a Felony or Class 1 Misdemeanor

A juvenile can be detained under subsection A 1 if there was probable cause to believe that he committed a felony or a Class 1 misdemeanor and the remaining requirements of § 16.1-248.1(A)(1) are satisfied.

3.11 If the Alleged Act is Probation or Parole Violation, Look to Underlying Offense

If a juvenile is taken into custody for a probation or parole violation, that juvenile may be detained in a secure facility if the underlying offense (i.e., the reason he is on probation or parole) would have been a felony or Class 1 misdemeanor if committed by an adult**.**

3.12 Additional Requirements that must be Satisfied Prior to Detaining a Juvenile

In addition to the offense or the underlying offense, if one of the below circumstances is met, then the juvenile can be placed in a detention facility.

- **Clear and Substantial Threat to Others or to Property**

  If there is clear and convincing evidence that the release of the juvenile constitutes a clear and substantial threat to the person or property of others, the juvenile can be detained. The judge, intake officer or magistrate should look to the seriousness of current and past offenses including other pending charges, the legal status of the juvenile and any aggravating and mitigating circumstances.

- **Clear and Substantial Threat of Harm to Juvenile**

  If there is clear and convincing evidence that the release of the juvenile presents a clear and substantial threat of serious harm to the juvenile's own life or health, the juvenile may be detained.

- **<u>Or</u> There is Clear and Substantial Threat of Absconding**

  If there is clear and convincing evidence that the juvenile has threatened to abscond from the court's jurisdiction or has a record of willful failure to appear at a court hearing within the immediately preceding 12 months, the juvenile may be detained.

3.20 Fugitives and Failure to Appear (FTA) Juveniles may be Detained

Subsections 2, 3 and 4 under Virginia Code § 16.1-248.1(A) allow a juvenile who absconds or fails to appear for a court hearing to be detained in a detention facility.

3.21 Fugitive Juvenile from Detention Home: Va. Code § 16.1-248.1(A)(2)

3.23 Failure to a Appear in Court: Va. Code § 16.1-248.1(A)(4)

3.22 Fugitive Juvenile from Outside Virginia: Va. Code § 16.1-248.1(A)(3)

When there is probable cause to believe that the juvenile is a fugitive from a jurisdiction outside the Commonwealth, then the juvenile may be placed in a secure facility. The fact that the juvenile is a fugitive from another state must be verified by petition or warrant. In such a case, the juvenile cannot be detained for a period longer than provided for in Virginia Code § 16.1-323 while arrangements are made to return the juvenile to the lawful custody of a parent, guardian or other authority in another state. Virginia Code § 16.1-323 is the Interstate Compact Relating to Juveniles.

3.23 Failure to a Appear in Court: Va. Code § 16.1-248.1(A)(4)

When the juvenile has failed to appear in court after having been duly served with a summons, the juvenile may be placed in a secure facility. Virginia Code § 16.1-248.1(A)(4) applies only in cases alleging that the juvenile committed a delinquent act or that the child is in need of services or is in need of supervision.

4.00 HB 2282 and SB 1060 Codify Common Practice in Juvenile Court

Essentially, enactment of this legislation clarifies what had been common practice in the juvenile courts concerning judicial authority to detain certain juveniles beyond the time the juvenile is initially taken into custody. Prior to the OAG opinion, if a juvenile was released upon being arrested or following the detention hearing; but, subsequently evidence arose that the juvenile should be detained in a detention facility in accordance with the provisions in Virginia Code § 16.1-248.1, common practice had been for the juvenile court to order such detention.

HB 2012 Notice of Juvenile Detention Hearing
Delegate Bell

HB 2012 amends Virginia Code § 16.1-250.1 relating to notice of juvenile detention review hearing. Effective July 1, 2003.

1.00 Summary: Probation Officer to Receive Notice of Detention Review Hearing

HB 2012 amends Virginia Code § 16.1-250.1 to ensure that notice of a juvenile detention review hearing is given to the probation and parole department of the court service unit.

1.01 Virginia Juvenile Justice Association

HB 2012 was introduced at the request of the Virginia Juvenile Justice Association.

2.00 Background: Overview Arresting & Detaining a Juvenile Prior to Disposition

HB 2012 amends Virginia Code § 16.1-250.1 pertaining to a detention review hearing. A brief overview of the statutes leading to the detention review hearing is below.

2.10 Taking a Juvenile into Custody: Va. Code § 16.1-246

Virginia Code § 16.1-246 provides the circumstances in which a juvenile can be taken into immediate custody. Any time a judge issues a detention order, a juvenile may be taken into immediate custody by a clerk, the intake officer or a law-enforcement officer. However, Virginia Code § 16.1-246 also provides circumstances in which an intake officer or a law-enforcement officer may take a juvenile into custody without a court order. For example, a juvenile can be taken into custody if committing a crime in the presence of a police officer or when a witness observes a juvenile shoplifting, committing an assault and battery or carrying a weapon on school property. If there is probable cause that the juvenile committed a felony, a juvenile can be taken into custody.

2.20 Duties of Person Taking a Juvenile into Custody: Va. Code § 16.1-247

Virginia Code § 16.1-247 provides the duties and responsibilities for the person who has taken custody of the juvenile. Generally, the arresting officer taking the juvenile into custody may allow the juvenile to return home to the juvenile's parents or legal guardian. However, if the arresting officer does not believe that a juvenile should be allowed to return home, the arresting officer must bring the juvenile before a judge as soon as possible. If the court is not open at the time the juvenile is arrested, the intake officer or a magistrate assumes the duties of the judge in determining whether or not the juvenile should be detained or released. If the juvenile is detained, a detention hearing before the judge must occur on the next day the court is open.

2.30 Detaining a Juvenile in Detention: Va. Code § 16.1-248.1

Virginia Code § 16.1-248.1 provides the statutory criteria for placing a juvenile in a secure facility when that juvenile has been taken into custody. If a juvenile is alleged to have committed a felony or a Class 1 misdemeanor then that juvenile may be detained if there is clear and convincing evidence that the release of the juvenile constitutes a clear and substantial:

(i) threat to others or property of others,
(ii) threat of serious harm to the juvenile's own life or health; or
(iii) the juvenile has threatened to abscond from the court's jurisdiction.

Also, if a juvenile is taken into custody for a probation or parole violation, that juvenile may be detained in a secure facility if the underlying offense would have been a felony or Class 1 misdemeanor if committed by an adult**.**

2.40 Detention Hearings: Va. Code § 16.1-250

When a child has been taken into immediate custody and not released, a detention hearing must occur on the next day the court sits, not to exceed 72 hours.[6] Notice of the detention hearing, either oral or written, stating the time, place and purpose of the hearing must be given to the parent, guardian, legal custodian or other person standing in loco parentis to a child 12 years of age or older and to the attorney for the Commonwealth. At the detention hearing, the judge will make the determination about whether or not the juvenile should continue to be detained or should be released. The judge may release the juvenile under certain conditions and terms including the release of the juvenile on bail.

2.50 Detention Review Hearings: Va. Code § 16.1-250

In some cases when the detention hearing occurs pursuant to Virginia Code § 16.1-250, the child is not represented by counsel. Virginia Code § 16.1-250.1 provides that child with the opportunity for a detention review hearing. If the child is ordered to be detained at the detention hearing and after the hearing the child obtains counsel, counsel for the child can request a detention review hearing. Virginia Code § 16.1-250.1 requires that notice of the detention hearing, either oral or written, stating the time, place and purpose of the hearing must be given to the parent, guardian, legal custodian or other person standing in loco parentis if he can be found, the child's attorney, the child if 12 years of age or over and to the attorney for the Commonwealth. However, Virginia Code § 16.1-250.1 does not require any notification to the probation officer or the court service unit who may have been integral in making the decision to detain the child.

3.00 Amendments to Virginia Code § 16.1-250.1

HB 2012 amends Virginia Code § 16.1-250.1 pertaining to who needs to be notified about a detention review hearing. HB 2012 provides that notice of a juvenile detention review hearing must be given to the probation and parole department of the local or state court service unit as well as to the currently authorized parent, guardian, legal custodian or other person standing in loco parentis, the child's attorney, the child if 12 years of age or over and to the attorney for the Commonwealth.

3.10 Policy Implications

HB 2012 ensures that the persons necessary for a fair hearing and the facts underlying the issue of whether a child should be detained or released are present at the time such a decision is to be made. The current Code fails to ensure that representatives from the state and local court service units be provided notice of the detention review hearing. The probation officer plays an essential role at the detention hearing by providing information to the court in order for the court to make the decision to detain or release the child. This bill ensures that the juvenile probation officer will have the opportunity to present to the juvenile court the necessary information for making the determination of whether or not to detain the juvenile. The information provided by the probation officer may include the impact of the offense on the victim and community, whether or not the child has prior history of serious offenses or behaviors and whether or not the juvenile is a risk to himself or others.

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[6] If the 72 hour period expires on a Saturday, Sunday or other legal holiday, the 72 hours shall be extended to the next day that is not a Saturday, Sunday or legal holiday.

HB 2444 Juvenile Court Fees for Custody and Visitation Petitions
Delegate Griffith

HB 2444 creates Virginia Code § 16.1-69.48:5 relating to fees for services of juvenile and domestic relations district court judges and clerks in certain civil cases. Effective July 1, 2003.

1.00 Summary: $25.00 Filing Fee for Docketing Support & Visitation Petitions

HB 2444 creates Virginia Code § 16.1-69.48:5 requiring fees for services of juvenile and domestic relations district court judges and clerks in certain civil cases. HB 2444 requires that a $25 filing fee be paid by the petitioner prior to the initial commencement of any case in the juvenile and domestic relations district court when the custody or visitation of a child is a subject of controversy or requires determination.

1.01 Originally, HB 2444 Required a $45 Fee & Included Support Petitions

As originally introduced, HB 2444 required a $45 filing fee and included fees for support petitions. That amount was found to be excessive. The amendments to HB 2444 reduced the fee for filing a custody or visitation petition from $45 to $25 and removed the requirement of any fee for the filing of a support petition.

2.00 Fees Must be Paid for Visitation and Custody Petitions

The filing fee applies to custody and visitation petitions.

3.00 Fees Must be Paid to the Clerk for the Court

The filing fee must be paid to the clerk in the jurisdiction in which the petition is filed.

3.01 Original Bill Included Intake Officer

Originally, the bill required a DJJ intake officer to remit the fee to the clerk's office of the court having jurisdiction over the case when the petition is filed with the clerk. Because of the additional costs associated with implementing a collection and auditing system within DJJ, that provision was removed from the bill as it was enacted.

3.02 Collection of Fees Issue

During the fall immediately preceding the 2003 General Assembly Session, DJJ began exploring the possibility of collecting fees for the filing of petitions and the provision of certain other services. However, due to the complexity and costs associated with implementing a collection and audit system that would comply with requirements provided by the Auditor of Public Accounts, DJJ pulled any such proposals. However, the Department may explore this issue again prior to the next General Assembly session.

3.10 Case Will Not Be Set for Hearing Without Payment of Fee

A case will not be set for hearing by the clerk of the court until the fee has been paid.

3.20 No Fees for State or Local Government Entities

The fee will not be charged to any state or local government entity.

3.30 Fee Will Be Waived if Petitioner is Indigent

Virginia Code § 17.1-606 provides that fees will be waived if the person filing the petition is indigent. Therefore, an unknown portion of the persons filing these petitions may qualify as indigent. Thereby significantly reducing the potential revenue collected.

4.00 No Charge for Reissuing Service of Process One Time

When service of process is made on the respondent named in a petition for which the filing fee established by this section has been paid, such petition may be reissued once by changing the return day of such process. No fee will be charged for this reissue. Reissuance of process must be within three months after the original return day.

5.00 Potential Policy Side Note

If the petitioner alleges an issue involving custody, visitation or support, the intake officer must file the petition. (See Virginia Code § 16.1-260.) The intake officer has no discretion to determine whether the petition has merit or is frivolous. However, it was noted in a subcommittee meeting that this legislation was intended, in part, to reduce the number of unmerited or frivolous petitions being filed. A reduction in the number of unmerited or frivolous petitions would be considered a positive outcome by DJJ.

SB 825 Appoint of Guardian Ad Litem
Senator Marsh

SB 825 amends Virginia Code § 16.1-266 relating to juvenile court and the appointment of a guardian ad litem in delinquency proceedings. Effective July 1, 2003.

1.00 Summary: Appointment of Guardian Ad Litem

SB 825 addresses an issue raised by the Office of the Attorney General (OAG) in an official opinion concerning whether or not Virginia Code § 16.1-266 authorizes a juvenile court to appoint a guardian ad litem for a juvenile alleged to have committed a delinquent act in addition to the appointment of legal counsel to represent the juvenile defendant.

2.00 Background: Appointment of Counsel in Juvenile Court Proceedings - Overview of Va. Code § 16.1-266

Virginia Code § 16.1-266 provides the statutory authority for the appointment and waiver of counsel in juvenile court proceedings.

2.10 Appointment of Guardian Ad Litem in Abuse & Neglect or Custody Termination Cases: Va. Code § 16.1-266 (A) – Not New

The juvenile court is required to appoint a guardian ad litem for a child who is alleged to be abused or neglected or who is the subject of an entrustment agreement or a petition seeking termination of residual parental rights.

2.20 Child Must Be Advised of Right to Counsel in Delinquency & CHINS Cases: Va. Code § 16.1-266 (B) – Not New

Prior to the detention review hearing, the adjudicatory hearting or the transfer hearing, the court, the clerk or the probation officer must advise a juvenile alleged to be in need of services, in need of supervision or delinquent of his right to counsel. The parents or legal guardian of the child must be advised of their liability for the costs of such legal services pursuant to Virginia Code § 16.1-267, which provides the statutory authority for compensating an attorney for services rendered.

2.30 Parent or Guardian Must Be Advised of Right to Counsel in Abuse & Neglect or Custody Termination Proceedings: Va. Code § 16.1-266 (C) – Not New

The judge, clerk or probation officer must inform the parent or guardian of his right to counsel prior to the adjudicatory hearing of a petition in which a child is alleged to be abused or neglected and prior to a hearing at which a parent could be subjected to the loss of residual parental rights.

2.40 Judge Has Discretion to Appoint Counsel or Guardian Ad Litem in All Other Cases: Va. Code § 16.1-266 (D) – Not New

In all other cases, the judge maintains the discretion to appoint counsel or a guardian ad litem to represent the interests of the child or children or the parent or guardian.

2.41 No Guardian Ad Litem for the Child in Custody Cases if Both Parents Have Attorneys

In custody cases where each of the parents is represented by counsel, the court will not appoint counsel or a guardian ad litem for the child unless the court finds that the interests of the child are not adequately represented.

3.00 Official Opinion by the Attorney General

An Attorney General's Opinion issued on July 16, 2002 stated that the plain language of Virginia Code §§ 16.1-266(B) and (D) did not provide a juvenile court with the authority to appoint a guardian ad litem for a juvenile defendant in addition to the appointment of legal counsel to represent the child in a criminal or delinquency proceeding. A judge may appoint a guardian ad litem or counsel in a delinquency proceeding pursuant to Virginia Code § 16.1-266(D), but not both.

4.00 Legislative Resolution: Amendments by Senate Bill 825

SB 825 amends Virginia Code § 16.1-266 to provide that, when the juvenile and domestic relations district court deems it necessary, the court may appoint both counsel and a guardian ad litem for a party. This bill reflects what historically has been the practice in juvenile courts. This bill makes it clear that the court has the discretionary authority to appoint both when necessary. The bill was a recommendation of the Committee on District Courts.

SB 1124 & HB 1402 Parental Consent for Abortion

SB 1124 and HB 1402 amend Virginia Code § 16.1-241 relating to parental consent for abortion. Effective July 1, 2003.

1.00 Summary: Consent for an Abortion - Subsection V of Virginia Code § 16.1-241

Subsection V of Virginia Code § 16.1-241 provides the juvenile court with the jurisdictional authority to hear a case in which a juvenile is seeking an abortion but without the consent of her parents or other legal guardian. Subsection V provides the definitions and procedures governing the process allowing for a juvenile to seek an abortion with the consent of her parents or without parental consent or parental notification. SB 1124 and HB 1402 amend Virginia Code § 16.1-241 relating to parental consent for abortion.

1.10 Emancipated Juvenile Does Not Need a Court Order or Parental Consent if the Juvenile has been Emancipated

If the juvenile seeking the abortion has been emancipated, then the physician does not need the consent of the parent or a court order to perform the abortion. Also, the physician will not need to notify the parents of the emancipated girl before performing the abortion.

1.11 FYI: Virginia Code § 16.1-331 Allows Petition for Emancipation

Virginia Code § 16.1-331 allows a juvenile who is 16 years of age or that juvenile's parent or legal guardian to petition the juvenile court for a determination that the juvenile be emancipated.

1.12 FYI: Virginia Code § 16.1-333 Provides the Criteria for Emancipation

Virginia Code § 16.1-333 provides three circumstances in which the court may emancipate a juvenile. First, the court may emancipate a juvenile if the juvenile has entered into a valid marriage, whether or not that marriage has been terminated by dissolution. Second, a juvenile may be emancipated if the juvenile is on active duty with any of the armed forces of the United States of America. Finally, if the court finds that the juvenile willingly lives separate and apart from his parents or guardian, with the consent or acquiescence of the parents or guardian, and that the juvenile is or is capable of supporting himself and competently managing his own financial affairs, then the court may emancipate the juvenile.

2.00 Juvenile may Obtain Abortion with Parental Consent & Without the Juvenile Court

A juvenile may obtain an abortion without the intervention of the juvenile court if she has the consent of an authorized person. Written consent can be provided by an authorized person via a written notarized statement if the authorized person does not accompany the juvenile to the physician's office. If the authorized person does accompany the juvenile to the physician's office, then the written consent can be provided at that time.

2.10 Who May Provide Authorization – Parents or Legal Guardian

Only an "authorized person" can provide consent for a juvenile to obtain an abortion. "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.

2.11 A Forged or Fraudulent Authorization Statement may Constitute a Class 3 Misdemeanor

A 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 may be found guilty of a Class 3 misdemeanor.

2.20 What is "Authorization?"

Subsection V provides a definition for "authorization." If a parent does not accompany the juvenile to the physician's office, then the juvenile must have an "authorized" written consent form. Subsection V defines "authorized consent" as meaning 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."

2.30 Consent can be Provided in Writing at Physician's Office

If the parent accompanies the juvenile to the physician's office, then the signing of the written authorization must be witnessed by the physician or an agent thereof.

2.40 Consent must be in Writing

Regardless of whether the authorized person is present or not present with the juvenile as she seeks the abortion, the consent to the abortion must be in writing.

2.41 Written Consent Must be Entered into the Juvenile's Medical Records

In either case, the written authorization must be incorporated into the minor's medical record and maintained as a part thereof.

3.00 Jurisdiction of the Juvenile Court & Abortion: Va. Code § 16.1-241

Virginia Code § 16.1-241 provides the subject matter over which the juvenile court has jurisdiction to hear a case. As provided in subsection V, the juvenile court has exclusive original jurisdiction, and within one mile beyond the limits of said city or county, concurrent jurisdiction with the juvenile court or of the adjoining city or county, over all cases, matters and proceedings involving a juvenile's right to seek an abortion.

3.01 Substantive Amendments to Subsection V – Parental Consent Required Rather than Parental Notice

Subsection V provides the legal authority Subsection V of Virginia Code § 16.1-241 is the only section with any substantive changes made by SB 1124 and HB 1402. Please note that prior to SB 1124 and HB 1402, a juvenile seeking an abortion was only required to provide parental notification. Under SB 1124 and HB 1402, the juvenile must seek parental consent and the physician who will perform the abortion must provide parental notification unless there are extenuating circumstances.

3.10 Judicial Hearing & Decision Must Occur within 4 Days of Petition

Once a petition is filed by a juvenile seeking an abortion without the consent of her parents or notice to her parents, subsection V requires a hearing to occur and a decision to made by the judge within four days.

3.11 No filing Fees for Petitions or Appeals

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

3.12 Abortion Consent Proceedings Given Precedence

Abortion consent proceedings must 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.

3.13 Subsection V Governs these Proceedings

Subsection V of Virginia Coe § 16.1-241 governs the proceedings relating to consent for a minor's abortion.

3.20 Parties to the Proceedings

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 must advise the minor that she has a right to counsel and, upon the juvenile's request, appoint counsel for her.

3.30 Consent to Abortion Proceedings are Confidential

Court proceedings under subsection V and records of such proceedings are confidential.

4.00 Judge may allow Abortion if Juvenile is "Mature Enough"

After the hearing, the judge *shall issue an order authorizing* a physician to perform an abortion *without the consent of any authorized person, if he finds* that "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.*

5.00 Judge may allow Abortion under Specific Circumstances if Juvenile is "Not Mature Enough"

After the hearing, the judge may allow the juvenile to seek an abortion without the authorization of her parents or other legal guardian if the minor is not "mature *enough or well enough informed to make such decision"* and the abortion is in the girl's best interest.

5.10 Physician Must Give Parents Notice of Intent to Perform Abortion

If the judge authorizes an abortion based on the best interests of the minor, then the order will require the physician or his agent to give notice of intent to perform the abortion.

5.20 No Notice to Parents is Required if Notice is not in the Best Interest of the Juvenile

No notice will be required if the judge finds that such notice would not be in the best interest of the minor.

5.21 Determining Whether or Not Notice to Parents is in Juvenile's Best Interest

In determining whether or not notice is in the best interest of the minor, the judge must consider the totality of the circumstances.

5.22 Notice is Not in Best Interest When Parent has been Abusive or Neglectful

Subsection V of Virginia Code § 16.1-241 clearly states that no notice will be required if the judge finds *"(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."*

6.00 Juvenile May Appeal Adverse Decision to Circuit Court

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*.

7.10 Appeal Must be Heard and Decided Within Five Days

An appeal to circuit court must be heard and decided no later than five days after the appeal is filed.

7.11 Day Five Falls on Weekend or Holiday

If the final day to act falls on a weekend or holiday, then Virginia Code § 1-13.3:1 provides that then the act may be commenced on the next day that the court is open.

7.20 No Appeals of Order Authorizing Abortion Allowed

An order authorizing an abortion without consent or without notice cannot be appealed to circuit court.

8.00 Failure to Act by Juvenile Court or Circuit Court Results in Automatic Authorization

If either the juvenile court or the circuit court fails to act within the time periods required by subsection V of Virginia Code § 16.1-241, then the court where the matter is pending must immediately authorize a physician to perform the abortion without consent of or notice to an authorized person.

9.00 Performance of Abortion by the Physician must be Lawful

If the court does authorize the juvenile to seek an abortion, then the physician must perform the abortion in circumstances or in a manner that is consistent with the lawful performance of an abortion upon an adult woman.

9.01 Definition of "Perform an Abortion"

Subsection V of Virginia Code § 16.1-241 states that to "[p]erform 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."

9.02 Violating Subsection V Could Result in a Class 3 Misdemeanor Conviction

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

9.10 A Physician Shall not Perform an Abortion Upon an Unemancipated Juvenile Without Consent or a Court

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 subsection V of Virginia Code § 16.1-241. Also, the physician or his agent provides must provide notice as the order may require.

9.11 Definition of Unemancipated Minor

Subsection V defines an "unemancipated minor" as meaning “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 [Title 16.1].”

9.20 Physician Must Notify Parents of Intent to Perform Abortion

The physician must provide the parents or the legal guardian "notice of intent to perform the abortion." Subsection V provides a definition for "notice of intent to perform the abortion.

9.21 Notice to Parent in Person or by Telephone 24 Hours in Advance of Abortion

The physician or his agent must give “actual notice of his intention to perform” the abortion the parent or legal guardian either in person or by telephone at least 24 hours previous to the performance of the abortion.

9.22 Notice can be Mailed 72 Hours in Advance of Abortion

If 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

9.30 No Consent, Court Order or Notice Required in Cases of Abuse or Neglect

If the minor declares that she is abused or neglected and the attending physician has reason to suspect that the minor may be abused or neglected, then the physician will not need parental consent, a court order or parental notice to perform the abortion.

9.31 Abuse or Neglect is Defined by Virginia Code § 63.2-100

Suspected abuse or neglect is defined in Virginia Code § 63.2-100.

9.32 Physician Must Report the Abuse or Neglect in Accordance to Virginia Code § 63.2-1509

If the physician is to perform the abortion because the juvenile was abused or neglected, then the physician must report the abuse or neglect to child protective services in accordance with Virginia Code § 63.2-1509.

9.40 Physician may Perform Abortion if there is a Medical Emergency

If there is a medical emergency, then the physician may perform the abortion if the attending physician certifies the facts justifying the exception in the minor's medical record.

9.41 What is a Medical Emergency?

A "medical emergency" is a "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." This language is new to subsection V.

10.00 Second Enactment Clause

On occasion, a bill may contain a "second enactment clause" that places parameters or conditions upon enactment of the law such as a delay effective date or a sunset clause. SB 1124 and HB 1402 each contain an enactment clause anticipating a legal challenge to the legislation. The second enactment clause states that, "if the amendments made by this act to § 16.1-241 are ever temporarily or permanently restrained or enjoined by judicial order, the provisions of § 16.1-241 shall be enforced as though the amendments were not enacted; however, if such temporary or permanent restraining order or injunction is ever stayed or dissolved, or otherwise ceases to have effect, § 16.1-241, as amended by this act, shall have full force and effect."

HB 1915 Divesting Jurisdiction of the Juvenile Court
Delegate Almand

HB 1915 amends Virginia Code § 16.1-244 relating to concurrent jurisdiction of juvenile and circuit courts in domestic cases. Effective July 1, 2003.

1.00 Background: Concurrent Jurisdiction Over Custody, Visitation & Support Cases

Virginia Code § 16.1-244 provides that the juvenile court and the circuit court have concurrent jurisdiction over custody, guardianship, visitation or support of children cases when such matters are incidental to the determination of causes pending in such courts.

1.01 Definition of Concurrent Jurisdiction

Concurrent jurisdiction means "[j]urisdiction exercised by different courts, at the same time, over same subject matter, and within the same territory, and wherein litigants may, in the first instance, resort to either court indifferently." (See, Black's Law Dictionary, Sixth Edition, West Publishing, 1990, citing State v. Stuve, 260 Iowa 1023, 150 N.W.2d 597, 602.)

1.20 Divorce Suit in Circuit Court Divests the Juvenile Court of Jurisdiction

When a suit for divorce is filed in a circuit court, in which the custody, guardianship, visitation or support of children of the parties or spousal support is raised by the pleadings and a hearing is set, the juvenile and domestic relations district courts will be divested of the right to enter any further decrees or orders pertaining to such matters. The circuit court will determine all custody, guardianship, visitation or support issues unless both parties agreed to a referral to the juvenile court.

2.00 Legislative Change: HB 1915 Clarifies When Jurisdiction is Divested – New

Virginia Code § 16.1-244 is amended to clarify that the juvenile and domestic relations district court is divested of jurisdiction over the custody, guardianship, visitation or support when such issues are raised in the circuit court in a pendente lite hearing and where the circuit court is set to hear the issue on a date certain or on a motions docket.

2.01 Definition of Pendente Lite

Pendente Lite means "pending the lawsuit." Pendente lite means court orders that are entered during the "actual progress of a suit; during litigation." The pendente lite orders are contingent upon the outcome of the litigation. (See Black's Law Dictionary, Sixth Edition, West Publishing, 1990.)

Part III: Confidential Juvenile Information

HB 1572 Juvenile Criminal Information & Schools
Delegate Hamilton
HB 1572 amends Virginia Code §§ 16.1-301, 16.1-305.1, 16.1-305.2, 16.1-309, 22.1-254, 22.1-277, 22.1-277.2:1 and 22.1-288.2 relating to the sharing of juvenile records with school personnel. Effective July 1, 2003.

1.00 Summary: Notifying School System When a Juvenile is Exonerated

Under current law, a school system receives notification when a juvenile is arrested for committing a certain serious offense. The court clerk notifies the school if that juvenile is adjudicated delinquent for that serious offense. However, the school system will not receive any notification if that juvenile is exonerated or the charges are dismissed, withdrawn or reduced. HB 1572 ensures that the court clerk notifies the school system of the disposition of the case no matter the outcome.

1.10 Virginia Commission on Youth Work Group

The bill is the result of a study group convened by the Commission on Youth to look at caveats in the Virginia Code that inhibited the appropriate sharing of confidential information. Members in that group included DJJ staff and the following persons and agencies: Delegates Albo and Melvin, Gary Close, Lelia Hopper, Bill Muse, Judges Kim O'Donnell and Patricia West, Chesapeake City Attorney John Oliver, William Reichhardt Esq., Adrienne Volenik Esq., Senators Mary Margaret Whipple and Mims, DSS, DMHMRSAS, Department of Education, Office of the Executive Secretary, Supreme Court of Virginia, staff from a Juvenile Court Clerk's Office and the Division of Legislative Services.

2.00 Making Reports to Schools: Va. Code §§ 16.1-260 and 16.1-305.1

Virginia Code § 16.1-260 requires an intake officer to notify the school system when a juvenile has been arrested for certain serious offenses. Virginia Code § 16.1-305.1 requires the clerk of the court to notify the school system of an adjudication for a reportable offense.

2.10 Offenses Requiring School Notification:

The below offenses are the offenses in which the school superintendent must be notified by the intake officer with follow-up by the clerk's office:

- **Firearm offense** pursuant to Articles 4 (§ 18.2-279 et seq.- discharging firearms or missiles within or at building or dwelling house), 5 (§ 18.2-288 et seq., The Uniform Machine Gun Act), 6 (§ 18.2-299 et seq., "Sawed-off" Shotgun and "Sawed-off" Rifle Act) or 7 (§ 18.2-308 et seq., Concealed Weapons) of Chapter 7 of Title 18.2.
- **Homicide** pursuant to Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2. Such offenses include murder and manslaughter.
- **Felonious assault and bodily wounding** pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2. Such offenses may include malicious bodily injury, shooting or stabbing with intent to kill or maim and aggravated malicious wounding.
- **Sexual assault** pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2. These offenses include rape, carnal knowledge of certain minors and sexual battery.
- **Controlled substances** pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2. Such offenses include the manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances.
- **Marijuana distribution**, manufacture or sale pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2. Article 1 covers marijuana offenses. The possession of marijuana is not a reportable offense.
- **Arson** or related offense pursuant to Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2. Such offenses include the burning of a dwelling house or building and making threats to bomb buildings.
- **Burglary** or related offenses pursuant to §§ 18.2-89 through 18.2-93. These offenses include entering a dwelling house with the intent to commit larceny, assault and battery or a felony; breaking and entering a dwelling with the intent to commit a misdemeanor; entering a bank, armed, with the intent to commit larceny is reportable.
- **Robbery** pursuant to § 18.2-58.

2.20 Under Old Law, Clerk Only Notified School of Adjudication

Prior to HB 1572, Virginia Code § 16.1-305.1 only required the court to notify the school system if that juvenile was adjudicated or found guilty of that serious offense for which the school system received notification. However, if that juvenile is exonerated of the serious offense or is found to have committed a lesser serious offense, the clerk's office did not have the statutory authority or responsibility to pass along such information to the school system.

2.30 The Amendments to Virginia Code § 16.1-305.1 – The New Stuff

The most significant aspect of HB 1572 is the amendment to Virginia Code § 16.1-305.1 requiring the clerk to provide written notification to the school superintendent of the court's final disposition, including whether the juvenile was exonerated or adjudicated for a lesser offense. Unless there is an appeal, the clerk's office has 15 days to make the notification.

2.31 Notification to School or Former School Division

Notification of the disposition of the case must be made to the superintendent of the school division in which the child is enrolled at the time of the disposition. If the juvenile is no longer enrolled in that school division, notification must be sent to the school division in which he was enrolled at the time of the offense.

2.32 Superintendent May Forward Notification to New School Division

If the child is not enrolled in the school division that receives notification under this section, the superintendent of that division may forward the notification to the superintendent of the school division where the child is enrolled.

2.33 Superintendent May Share Information With Certain Staff

A superintendent who receives notification under this section may disclose the information received to anyone to whom he or a principal disclosed that a petition had been filed. Further disclosure of information received under this section by the superintendent to school personnel is authorized only as provided in § 22.1-288.2.

2.34 The Intake Officer Will Make Notifications if Charges Are Withdrawn or Handled Informally

If charges are withdrawn at intake or handled informally without a court disposition, the intake officer will provide written notification of the action to the superintendent of the school division in which the child is enrolled at that time or, if he is not enrolled in school, the division in which he was enrolled at the time of the offense.

2.40 Policy Note

This amendment ensures that, if a school system is notified that an enrolled student is alleged to have committed an enumerated offense, the school system will also receive notification if that same student is exonerated or found to have committed a lesser offense. This amendment ensures that the school system will be notified of the resolution of the case no matter what the resolution. This amendment also will assist in ensuring that a student is not unnecessarily labeled or unfairly stigmatized.

3.00 Sharing Law-Enforcement Records: Va. Code § 16.1-301

Virginia Code § 16.1-301 pertains to the confidentiality of law-enforcement records. Virginia Code § 16.1-301 allows, but not mandates, the chief law-enforcement officer of a jurisdiction to disclose to school officials that a juvenile is a suspect in or has been charged with (i) a violent juvenile felony; (ii) a crime involving arson or bombs; (iii) a crime involving drugs or drug paraphernalia or (iv) a crime involving weapons. However, there are no current Code provisions that require the law-enforcement entity to follow-up with the school system about resolution of the allegation against the juvenile.

3.10 Amendments to Virginia Code § 16.1-301

HB 1572 amends Virginia Code § 16.1-301 by requiring that, if the chief of police, sheriff or a designee (hereinafter referred to as law enforcement) disclosed to a school principal that a juvenile is a suspect in or has been charged with a crime listed above, that law-enforcement officer must ensure that the principal receives notice of the court's final disposition, including whether the juvenile was exonerated or adjudicated for a lesser offense. If charges are withdrawn in intake or handled informally without a court disposition or if charges are not filed within 90 days of the initial disclosure, the chief of police, sheriff or a designee shall so notify the school principal to whom disclosure was made.

4.00 The Amendment to Virginia Code § 16.1-309: Penalty for Unlawful Disclosure

The amendment to Virginia Code § 16.1-309 is technical in nature. Virginia Code § 16.1-309 provides the penalties for the unlawful disclosure of confidential juvenile record information. HB 1572 clarifies that school personnel who disclose information obtained pursuant to pursuant to Virginia Code §§ 16.1-305.1 and 22.1-288.2 will not be criminally liable when the disclosure is made in compliance with those sections.

5.00 Technical Amendments to Virginia Code §§ 22.1-254, 22.1-277, 22.1-277.2:1 and 22.1-288.2

For the most part, the amendments to Virginia Code § 22.1-254 are also technical. Virginia Code § 22.1-254 is the compulsory attendance law. HB 1572 ensures that subsection E of Virginia Code § 22.1-254 is consistent with the changes in Virginia Code § 16.1-305.1. However, there is a subtle change to subsection E. Rather than requiring a disposition by the juvenile court to be reportable to the superintendent in order to require the juvenile to attend an alternative program, the amendment only requires that the offense be a reportable offense under Virginia Code § 16.1-260(G). Also, Virginia Code § 22.1-277 provides the statutory authority for a school division to suspend a juvenile for certain offenses. HB 1572 ensures that Virginia Code § 22.1-277 is consistent with the amendments in Virginia Code § 22.1-277. The amendments to Virginia Code §§ 22.1-277.2:1 and 22.1-288.2 also ensure that those sections of the Code are consistent with the changes to Title 16.1.

SB 1078 Releasing Confidential Department Records
Senator Rerras

SB 1078 amends Virginia Code § 16.1-300 relating to confidentiality of Department records. Effective July 1, 2003.

1.00 Summary: Any Former Probationer or Parolee Can Access His Own Records

SB 1078 amends Virginia Code § 16.1-300 to provide the following: (1) that any person who has reached the age of majority (not only those who were previously wards of the Department) may request his own records; (2) that persons treating individuals in the juvenile justice system (not just wards of the Department) may request access to the juvenile's records; and (3) that the Department may withhold information, with the concurrence of the juvenile and domestic relations (J&DR) court having jurisdiction, when disclosure would be harmful to the juvenile or a third party. The bill also

clarifies which court will have jurisdiction when a juvenile has been, but is no longer, in the custody of the Department. This bill is the result of a Commission on Youth study of juvenile records.

2.00 Sharing Information With Former Ward or Probationer: Va. Code § 16.1-300 (A)

Virginia Code § 16.1-300 provides the statutory guidance for disclosing confidential information about a juvenile. The Department relies on this section of the Code when it receives a request to release confidential juvenile records.

2.10 Prior to SB 1078, Only Former Wards Could Access Confidential Information

Prior to SB 1078, Virginia Code § 16.1-300 (A) (4) provided that only a person who previously had been a ward of the Department and who reached the age of majority may access his own records or reports. Subsection (A) (4) did not mention a person over the age of 18 and who had been previously before the court or under the supervision of a court service unit. Whereas a former ward could access his confidential record, a former probationer could not. Virginia Code § 16.1-300 contained no language that allowed a person over the age of 18 who was on probation to inspect his Department records.

2.20 Amendment to Allow Any Person to Access His Own Records

SB 1078 ensures that any person who has been (i) before the court, (ii) under supervision, or (iii) receiving services from a court service unit or who is committed to the Department of Juvenile Justice and has reached the age of majority may access his own social, medical, psychiatric and psychological reports and records.

3.00 Refusing to Disclose Information: Va. Code § 16.1-300 (B)

Prior to SB 1078, the Department could withhold releasing confidential information to the child's parent, guardian, legal custodian or other person standing in loco parentis when disclosure of the confidential information would be detrimental to the child. SB 1078 expands the discretion of the Department to withhold information when releasing such information to the child's parent, guardian, legal custodian or other person standing in loco parentis would be detrimental to the child or ***to a third party***.

3.10 Juvenile Court Must Concur

Prior to SB 1078, the juvenile court having jurisdiction over the facility where the child is currently located would concur in such determination to withhold information. Because the child may no longer reside in a facility, SB 1078 amends subsection B by adding that the department can withhold confidential information provided that the juvenile court "*that last had jurisdiction over the child if such child is no longer in the custody or under the supervision of the Department"* concurs in such determination.

4.00 Person's Right to Appeal Department's Refusal: Va. Code § 16.1-300 (B)

Prior to SB 1078, only the parent or guardian had the right to appeal the decision to withhold information to the circuit court. SB 1078 amended subsection B of Virginia Code § 16.1-300 to allow any person authorized under subsection A of Virginia Code § 16.1-300 to inspect Department records the right to appeal the decision to withhold information to the circuit court. SB 1078 amends subsection B to provide that jurisdiction over the appeal will lie with the circuit court where the facility with the child is located or with the circuit court "*that had jurisdiction over the original proceeding or over an appeal of the juvenile and domestic relations district court final order of disposition concerning the child if such child is no longer in the custody or under the supervision of the Department*."

HB 2155 Sharing Medical Records with Detention Facilities
Delegate Hamilton

HB 2155 amends Virginia Code § 32.1-127.1:03 and creates a section numbered 16.1-248.3 relating to disclosure of medical records of certain juveniles. Effective July 1, 2003.

1.00 Summary: Sharing Medical Records With Detention Facilities

HB 2155 adds a new section (§ 16.1-248.3) to the Code of Virginia authorizing the director of a secure facility or a shelter care facility to obtain the medical records of a juvenile in its care directly from a health care provider if consent for release is refused or not readily obtainable from the parent or guardian. The records may be obtained only if necessary (i) for the provision of health care to the juvenile, (ii) to protect the health and safety of the juvenile or other residents or staff of the facility or (iii) to maintain the security and safety of the facility.

1.01 Commission on Youth Work Group

Department staff participated in the work group study conducted by the Commission on Youth that led to this bill.

2.00 Local Detention Facilities May Access Medical Records: Va. Code § 16.1-248.3

Virginia Code § 16.1-248.3 allows a local detention facility to access the medical records of a juvenile who is confined in that secure facility.

2.10 Director, Superintendent of Designee May Access the Records

Whenever a juvenile is placed in a secure facility or a shelter care facility pursuant to Virginia Code §16.1-248.1, the director of the facility or his designee will be entitled to obtain medical records concerning the juvenile from a provider.

2.11 New Section Only Applies to Pre-Dispositional Detainment

The authority to access the medical records only extends to juveniles who are placed in detention prior to final disposition under Virginia Code §16.1-248.1.

2.20 Director or Designee Must Attempt to Gain Consent From Parents or Juvenile

2.30 Director May Gain Consent From Juvenile Pursuant to Virginia Code § 54.1-2969

2.40 Director May Obtain Records Without Consent Only Under Certain Conditions

Virginia Code § 16.1-248.3 provides specific conditions that must be met for the director of the detention home to access the medical records of a juvenile detained in that facility.

2.41 Parental or Juvenile Consent Not Provided or Available

The parent, legal guardian or the juvenile must refuse to provide consent or consent is not readily obtainable.

2.42 Obtaining the Medical Records Must Be Necessary

Gaining access to the medical records without consent must be necessary (i) for the provision of health care to the juvenile, (ii) to protect the health and safety of the juvenile or other residents or staff of the facility or (iii) to maintain the security and safety of the facility.

2.50 Written Documentation That Conditions for Disclosure Were Met

The director or his designee must document in writing the reason that the records were requested and that a reasonable attempt was made to obtain consent for the release of records and that consent was refused or not readily obtainable.

2.60 Re-disclosure of Information is Prohibited

No person to whom disclosure of records was made can re-disclose or reveal the records, beyond the purpose for which such disclosure was made, without first obtaining specific consent to re-disclose from the juvenile's parent or legal guardian or, in instances where the juvenile may consent pursuant to Virginia Code § 54.1-2969, from the juvenile.

3.00 Definition of Provider & Records

The local detention facility may access the medical records from a “provider.” The definitions of “provider” and “records” can be found in Virginia Code § 32.1-127.1:03.

3.10 Who is a Provider?

Virginia Code § 32.1-127.1:03 defines “provider” as having the same meaning as set forth in the definition of “health care provider” in Virginia Code § 8.01-581.1, except that state-operated facilities shall also be considered providers for the purposes of this section. “Provider” shall also include all persons who are licensed, certified, registered or permitted by any of the health regulatory boards within the Department of Health Professions, except persons regulated by the Board of Funeral Directors and Embalmers or the Board of Veterinary Medicine.

3.11 Definition of Health Care Provider

Virginia Code § 8.01-581.1 defines "health care provider" as meaning (i) a person, corporation, facility or institution licensed by this Commonwealth to provide health care or professional services as a physician or hospital, dentist, pharmacist, registered nurse or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, physical therapy assistant, clinical psychologist, clinical social worker, professional counselor, licensed dental hygienist, health maintenance organization or emergency medical care attendant or technician who provides services on a fee basis, (ii) a professional corporation, all of whose shareholders or members are so licensed, (iii) a partnership, all of whose partners are so licensed, (iv) a nursing home as defined in § 54.1-3100 except those nursing institutions conducted by and for those who rely upon treatment by spiritual means alone through prayer in accordance with a recognized church or religious denomination, (v) a professional limited liability company comprised of members as described in Virginia Code § 13.1-1102 (A) (2), (vi) a corporation, partnership, limited liability company or any other entity, except a state-operated facility, which employs or engages a licensed health care provider and which primarily renders health care services or (vii) a director, officer, employee, independent contractor or agent of the persons or entities referenced herein, acting within the course and scope of his employment or engagement as related to health care or professional services.

4.00 Confidential Substance Abuse Records Are Not Obtainable

Substance abuse records subject to federal regulations, Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2, are not obtainable under Virginia Code § 16.1-248.3.

5.00 No Access to HIV Tests

Virginia Code § 16.1-248.3 does not allow disclosure of results of a test for human immunodeficiency virus. Such disclosure is only permitted under Virginia Code § 32.1-36.1.

6.00 Policy Note

Juveniles are often placed in detention or shelter care without health care information readily available. It is important that the facility be able to obtain medical information from a provider when the health and safety of the juvenile or facility staff may be at risk or when the security of the facility might be jeopardized.

HB 2231 Access to Juvenile Records

HB 2231 amends Virginia Code §§ 16.1-300 and 16.1-305 to include pretrial services agencies in the list of those with access to juvenile court records for the purpose of preparing pre- and post-sentence reports. Effective July 1, 2002.

1.00 Summary: Cleans Up Language Enacted During 2002 Session

During the 2002 session, the General Assembly enacted HB 310 and HB 1205. Those bills allowed access of a juvenile's confidential juvenile court records by a local community-based probation agency for the purpose of preparing a pretrial investigation report or of a pre- or post-sentence report upon a

finding of guilty in a circuit court. Any officer of a local pretrial services agency or of a local community-based probation program operated pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (Virginia Code § 9.1-173 et seq.) will have access to a person's records in juvenile court without a court order for the purpose of preparing the discretionary sentencing guidelines worksheets and related risk assessment instruments as directed by the circuit court. HB 2231 appears only to clarify who the actual persons HB 310 and HB 1205 intended to have access to confidential juvenile records.

2.00 No Substantive Change in the Law

This bill appears to only clarify the intent of HB 310 and HB 1205 enacted during the 2002 Session. Consistent with the legislation enacted last year, HB 2231 specifically identifies the pretrial services officer and local community-based probation officer as included in the list of persons able to access confidential juvenile records in the custody of the Department of Juvenile Justice for the purpose of preparing pretrial investigation, including risk assessment instruments, pre-sentence reports, discretionary sentencing guidelines worksheets or any court-ordered post-sentence investigation report. This bill does not appear to make a substantive change in the law. HB 2231 clarifies who the parties are that may access the records necessary to complete these reports.

HB 2432 DNA Samples of Juveniles Convicted of Felonious Acts
Delegate Hugo

HB 2432 amends Virginia Code § 19.2-389.1 relating to DNA samples of juveniles convicted of felonious acts. Effective July 1, 2003.

1.00 Summary: Juvenile Criminal History to be Shared With the Division of Forensic Science

HB 2432 provides that criminal history information concerning juveniles shall be available to the Division of Forensic Science to verify its authority (based upon the felonious nature of the juvenile's criminal act) to maintain the juvenile's sample in the DNA data bank.

2.00 Background - Arrest Reports on Adults to the Central Criminal Records Exchange (CCRE): Va. Code § 19.2-390 - Not New

Virginia Code § 19.2-390 requires law-enforcement officers to make a report to the CCRE upon any arrest for any felony and any misdemeanor confineable in jail or prison.[7]

3.00 Background - Arrest Reports on Juveniles to the CCRE: Va. Code § 16.1-299(A) - Not New

Virginia Code § 16.1-299 provides the statutory authority for the taking of a juvenile's fingerprints and photograph upon arrest or conviction. Virginia Code § 16.1-299 also specifies when a juvenile's criminal history information must be provided to the CCRE.

[7] The crimes for which a CCRE report is required are treason, any felony, any offense punishable as a misdemeanor under Title 54.1 or any misdemeanor punishable by confinement in jail under Title 18.2 or 19.2, except an arrest for a violation of § 18.2-119, Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2, Article 2 (§ 18.2-415 et seq.) of Chapter 9 of Title 18.2 or any similar ordinance of any county, city or town.

3.10 Any Felony Juvenile Arrests May Be Reported to the CCRE - Not New

Virginia Code § 16.1-299 allows law-enforcement officers to take fingerprints and photographs of any juvenile who is arrested for an act that would be reported to the CCRE pursuant to Virginia Code § 19.2-390 (A) if the act was committed ay an adult.

3.11 Destroy Prints & Photographs if No Petition or Warrant Is Filed: Va. Code § 16.1-299(C) - Not New

If a petition or warrant is not filed against a juvenile whose fingerprints or photographs have been taken in connection with an alleged violation of law, the fingerprint card, all copies of the fingerprints and all photographs must be destroyed within 60 days after fingerprints were taken.

3.20 Any Felony Adjudications and Convictions Must Be Reported - Not New

Copies of a juvenile's fingerprints and a report of the disposition must be sent to the CCRE and to the jurisdiction making the arrest by the clerk of the court when that juvenile, no matter the age, is adjudicated delinquent or found guilty of a felony offense or an offense for which a report to the CCRE is required by Virginia Code § 19.2-390 (C).

4.00 Prints & Photographs of Juvenile is Not Guilty of a Violent Juvenile Felony: Va. Code § 16.1-299(C) - Not New

If a juvenile charged with a delinquent act other than a violent juvenile felony is found not guilty, all copies of the fingerprints and all photographs must be destroyed within six months of the date of the disposition.

4.10 Prints & Photographs of Juveniles Over the Age of 14 and Not Guilty of a Violent Juvenile Felony Will Be Kept: Va. Code § 16.1-299(C) - Not New

The fingerprint card, all copies of the fingerprints and all photographs of a juvenile over the age of 14 who is found not guilty of a violent juvenile felony will be kept.

5.00 Reasons for Sharing Juvenile Information in the CCRE: Va. Code § 19.2-389.1

Under Virginia Code § 19.2-389.1, juvenile CCRE information is disseminated for the purpose of (i) determining eligibility to possess or purchase a firearm; (ii) aiding in the preparation of pretrial investigation reports, pre- or post-sentence investigation reports or in the preparation of the discretionary sentencing guidelines worksheets; (iii) aiding local community-based probation programs with investigating or serving adult local-responsible offenders and all court service units serving juvenile delinquent offenders and (iv) comparing fingerprints in the Automated Fingerprint Information System (AFIS) computer.

5.10 HB 2432 Adds Division of Forensic Science to Virginia Code § 19.2-389.1 - New!

Virginia Code § 16.1-299.1 requires a juvenile 14 years of age or older who is convicted of a felony or adjudicated delinquent for a felony to have a sample of his blood, saliva or tissue taken for DNA

analysis. HB 2432 allows the Division of Forensic Science to verify its authority to maintain the DNA sample by accessing information contained in the CCRE for the purpose of determining whether or not the juvenile was convicted or adjudicated delinquent for a felonious act.

SB 1077 Dissemination of Juvenile CCRE Information
Senator Rerras

SB 1077 amends Virginia Code § 19.2-389.1 relating to dissemination of juvenile record information. Effective July 1, 2003.

1.00 Background: CCRE Reports - Va. Code § 16.1-299

Virginia Code § 16.1-299 allows law-enforcement officers to take fingerprints and photographs of a juvenile who is taken into custody and charged with a delinquent act that would be reported to the CCRE if the act was committed by an adult. (See Virginia Code § 19.2-390 (A).) If fingerprints are taken, they are maintained separately from adult records; and a copy is filed with the juvenile court on forms provided by the CCRE. If the juvenile is found not guilty, the fingerprint card, all copies of the fingerprints and all photographs are destroyed 60 days after the fingerprints were taken. If a juvenile over the age of 14 is arrested for a violent juvenile felony as defined in Virginia Code § 16.1-228, the law-enforcement officer must take fingerprints and photographs. However, if a juvenile, no matter the age, is found not guilty of a violent felony, the fingerprint card, all copies of the fingerprints and all photographs will not be destroyed.

2.00 Purposes for Disseminating CCRE Information: Va. Code § 19.2-389.1

Virginia Code § 16.1-299, juvenile CCRE information is also disseminated for the purpose of (i) determining eligibility to possess or purchase a firearm; (ii) aiding the preparation of a pretrial investigation reports, pre- or post-sentence investigation reports or in the preparation of the discretionary sentencing guidelines worksheets; (iii) aiding local community-based probation programs with investigating or serving adult local-responsible offenders and all court service units serving juvenile delinquent offenders and (iv) comparing fingerprints in the Automated Fingerprint Information System (AFIS) computer.

3.00 Amendments to Virginia Code § 19.2-389.1 Made by SB 1077

Under Virginia Code § 19.2-389.1, juvenile CCRE information is also disseminated for the purpose of:

HB 2680 Reports by School Principals to Law-Enforcement
Delegate Black

HB 2680 amends Virginia Code §§ 8.01-47 and 22.1-279.3:1 relating to reports of certain acts by school authorities. Effective July 1, 2003.

1.00 School Personnel Must Make Incident Reports to School Principal: Va. Code § 22.1-279.3:1

Virginia Code § 19.2-389.1 (A) requires an incident report be made to the school principal when a juvenile has committed a certain act on a school bus, school property or at a school-sponsored event. Under the provisions of Virginia Code § 22.1-279.3:1, school staff persons must report to the school

principal incidents by any person on a school bus, on school property or at a school-sponsored activity (except where indicated) involving (i) the assault or assault and battery, without bodily injury; (ii) the assault and battery that results in bodily injury, sexual assault, death, shooting, stabbing, cutting or wounding of any person; (iii) any conduct involving alcohol, marijuana, a controlled substance, imitation controlled substance or an anabolic steroid, including the theft or attempted theft of student prescription medications; (iv) any threats against school personnel; (v) the illegal carrying of a firearm (only onto school property); (vi) any illegal conduct involving firebombs, explosive materials or devices, hoax explosive devices as defined in Virginia Code § 18.2-85, explosive or incendiary devices as defined in Virginia Code § 18.2-433.1 or chemical bombs as described in § 18.2-87.1 or (vii) any threats or false threats.

2.00 School Principal Must Make Reports to Law Enforcement

When a principal receives a report, Virginia Code § 22.1-279.3:1 (D) requires the principal to notify law enforcement of certain types of incidents.

3.10 Amendments to Virginia Code § 22.1-279.3:1: HB 2680 Makes Assault & Battery Incident Reports Discretionary

Prior to HB 2680, when the principal received a report about any of the conduct listed in subsection A, the school principal was required to make a report to local law-enforcement if the conduct was a criminal act. However, HB 2680 eliminates the mandate that principals must report incidents involving assault and assault and battery to local law enforcement. Reporting incidents involving assault and assault and battery are now discretionary.

4.00 Amendments to Virginia Code § 8.01-47 Appear to be Technical

The amendments to Virginia Code § 8.01-47 providing immunity to school personnel investigating or reporting certain incidents are technical in nature.

Part IV: Juvenile DWI & Other Drinking or Underage Driving Offenses

HB 1527 Abuse & Lose – Juvenile DWI

HB 1527 amends Virginia Code § 16.1-278.9 relating to loss of driving privileges for driving under the influence or refusal to submit to blood or breath test; deferred findings. Effective July 1, 2003.

1.00 Summary: Disposition for DWI Under Virginia Code § 16.1-278.9

Virginia Code § 16.1-278.9 provides the juvenile court with the dispositional authority to suspend or revoke a juvenile's driving license in cases involving alcohol, drugs, controlled substances, truancy and the illegal possession of weapons. Under the law prior to HB 1527, Virginia Code § 16.1-278.9 required the court to defer the adjudication of delinquency in a case where a juvenile was driving under the influence or in a case where the juvenile refused to submit to a blood or breath test and dismiss the case if the juvenile successfully completed such terms and conditions deemed appropriate by the court.

2.00 Amendments to Virginia Code § 16.1-278.9: HB 1527 Provides the Juvenile Court With Discretion to Make a Finding of Delinquency

HB 1527 removes the mandated defer and dismissal provisions in Virginia Code § 16.1-278.9 (A) and (F) to allow the juvenile court the flexibility of making a finding of delinquency. HB 1527 makes discretionary the provisions requiring a deferred finding in juvenile cases of drunk driving and refusal to submit to blood or breath tests. If the court desires, it now has the authority to make a finding of delinquency in juvenile cases involving drunk driving or refusal to submit to blood or breath tests.

3.00 Policy Note

The impetus for HB 1527 arose following a very serious automobile accident caused by an intoxicated juvenile. During the adjudication of the juvenile, it was realized that the juvenile court's only option was to defer the finding against the juvenile and dismiss if the juvenile successfully complied with the terms and conditions imposed by the juvenile court. Given the gravity of the consequences of the accident, deferral and dismissal seemed inadequate. As a result, HB 1527 was introduced to specifically focus upon juveniles who drive drunk and upon juveniles who refuse to submit to a blood or breath test. HB 1527 provides the juvenile court with discretion when disposing a case involving a juvenile found delinquent of driving under the influence.

HB 2000 Underage Possession of Alcohol
Delegate Bell

HB 2000 amends Virginia Code § 4.1-305 relating to underage possession of alcoholic beverages. Effective July 1, 2003.

1.00 Summary: Jurisdiction for Possession of Alcohol Includes Where Person Exhibits Evidence

HB 2000 amends Virginia Code § 4.1-305 to provide that prosecution for underage possession of alcohol may occur either in the county or city in which the alcohol was consumed or in the county or city in which the person exhibited evidence of prior consumption.

2.00 Underage Possession of Alcohol is Illegal: Va. Code § 4.1-305

Virginia Code § 4.1-304 makes it illegal for a person to sell alcoholic beverages to persons under the age of 21.[8] Virginia Code § 4.1-305 makes it illegal for a person under the age of 21 to purchase or possess alcoholic beverages.

2.10 Confusion Over Where Prosecution Could Occur

In some jurisdictions there was confusion concerning where a person under the age of 21 may be prosecuted for the illegal purchase or possession of alcohol.

[8] Virginia Code § 4.1-304 makes it illegal to sell alcohol to a person who is under the age of 21, interdicted or intoxicated. The person selling the alcohol must at the time of such sale know or have reason to believe that the person to whom the sale is made is less than 21 years of age, interdicted or intoxicated.

2.20 HB 2000 Clarifies Where Jurisdiction Lies

HB 2000 amends subsection A of Virginia Code § 4.1-305 to provide that a "*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.*"

3.00 Side Note - Fake IDs Are Illegal: Va. Code § 4.1-305(B) – Not New!

For your information, Virginia Code 4.1-305 (B) makes it illegal for a person under the age of 21 years to use a fake identification of any type for the purpose of purchasing or attempting to purchase an alcoholic beverage.

HB 2229 Underage Purchase or Possession of Alcohol
Delegate Cline

HB 2229 amends Virginia Code § 4.1-305 relating to underage possession or purchase of alcohol. Effective July 1, 2003.

1.00 Summary: Punishment for Possessing Alcohol

Like HB 2000, HB 2229 amends Virginia Code § 4.1-305. Whereas HB 2000 amended subsection A pertaining to where a prosecution for the underage purchase or possession of alcohol may occur, HB 2229 amends subsections (C) and (F) pertaining to the punishments available upon conviction.

2.00 Punishment for Underage Drinking Conviction: Va. Code § 4.1-305

It is a Class 1 misdemeanor to be convicted of purchasing, possessing or consuming alcohol or for using a fake ID. The authorized punishment for conviction of a Class 1 misdemeanor is confinement in jail for not more than 12 months and a fine of not more than $2,500, either or both. In addition, the person will be ordered to pay a fine of at least $500 or ordered to perform a minimum of *50* hours of community service. Additionally, upon conviction, the person's driver's license may be suspended for up to one year.

2.10 Defer & Dismiss - Conviction May Be Set Aside for 1st Time Offender: Va. Code § 4.1-305(F) - Not New

Virginia Code § 4.1-305(F) provides that the court may defer and dismiss the charges pending successful completion of terms and conditions deemed by the court to be necessary.

In order to defer and dismiss, the court must find sufficient facts to justify a finding of guilt. The person must agree to deferring the charge. Upon fulfillment of the conditions, the court will discharge the person and dismiss the proceedings against him without an adjudication of guilt. Please note, a discharge and dismissal will be treated as a conviction for the purpose of applying this section of the Code in any subsequent proceedings.

2.20 Probation & Suspended Driver's License - Not New

The person must be placed on probation, and the court may suspend or restrict the person's driver's license.

2.30 Court Must Order Treatment or Education Program - Not New

In all such deferred proceedings, the court must require the accused to enter a treatment or education program or both.

3.00 Amendments to Virginia Code § 4.1-305 Made by HB 2229

HB 2229 provides that a person convicted of underage possession of alcohol or using a false identification to purchase alcohol may be placed on probation pursuant to deferred disposition and referred to a community-based probation program if such program has been established as an alternative to a referral to a Virginia Alcohol Safety Action program or Department of Mental Health, Mental Retardation and Substance Abuse Services program if a community-based program is available.

3.10 The Substance Abuse Program May Be In Any Judicial District

The program may be located in the judicial district in which the charge is brought or in any judicial district ordered by the court.

3.20 The Substance Abuse Program Must Be Licensed

The substance abuse services must be provided by a program licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services, (ii) certified by the Commission on VASAP or (iii) provided by a program made available through a community-based probation program established pursuant to Virginia Code § 9.1-174.

3.30 The Community-Based Program Assumes Responsibility for the Offender

When an offender is ordered to enter a local community-based probation program rather than the alcohol safety action program, the local community-based probation program shall be responsible for providing services or referring the offender to education or treatment services as a condition of probation.

4.00 Violation of Condition Means Adjudication of Guilt

Upon violation of a condition, the court may enter an adjudication of guilt and proceed as otherwise provided.

SB 1190 Petitions for Restricted Diver's Licenses
Senator Wagner

SB 1190 amended Virginia Code § 46.2-334.01 relating to the issuance of driver's license to persons under the age of 19. Effective July 1, 2003.

1.00 Summary: Juvenile may Petition Juvenile Court to Modify Restricted License to Allow to the Juvenile to Drive to Work

SB 1190 amended Virginia Code § 46.2-334.01 relating to the issuance of driver's license to persons under the age of 19. Subsection 2 of Virginia Code § 46.2-334.01 allows the Commissioner of the department of Motor Vehicles to suspend the driver's license for up to 90 days of a person less than 19 years of age when that person is convicted for a second time for a moving violation. SB 1190 amends subsection 2 to allow the person to whose driver's licenses have been suspended for a second moving violation to obtain restricted licenses to drive to and from work if there is no other means of transportation by which they can travel to and from work.

2.00 The New Virginia Code Language

Specifically, the amendment states that, *Any person who has had his driver's license or privilege to operate a motor vehicle suspended in accordance with this subdivision* ***may petition the juvenile and domestic relations district court*** *of his residence for a restricted license to authorize such person to drive a motor vehicle in the Commonwealth to and from his home to the place of his employment, provided there is no other means of transportation by which such person may travel between his home and his place of employment. On such petition the court may, in its discretion, authorize the issuance of a restricted license for a period not to exceed the term of the suspension of the person's license or privilege to operate a motor vehicle in the Commonwealth. Such restricted license shall be valid solely for operation of a motor vehicle between such person's home and his place of employment.*

HB 1786 Curfew & Driving Restrictions
Delegate Kilgore

HB 1786 amends Virginia Code § 46.2-334.01 relating to provisional driver's licenses. Effective July 1, 2003.

1.00 Summary: Curfew & Passenger Violations May Net 6 Month Suspension

HB 1786 amends Virginia Code § 46.2-334.01 to specify that a violation of the curfew or passenger restrictions of a provisional driver's license is a traffic infraction and that for a second or subsequent violation the court may suspend the juvenile's privilege to drive for up to six months. Provisional driver's licenses are initial licenses issued to persons younger than 18 years of age, and the drivers are restricted in the number of child passengers they may carry and the hours during which they may drive. This bill was recommended by the Committee on District Courts. Amendments made in the House Transportation Committee clarify that the court may impose the prescribed penalties for a violation of either subsection (B) or (C).

2.00 Jurisdiction of the Juvenile Court Over Traffic Infractions: Va. Code § 16.1-241

Virginia Code § 16.1-241 provides that the juvenile court has jurisdiction over a child who is charged with a traffic infraction as defined in Virginia Code § 46.2-100. A traffic infraction is defined by Virginia Code § 46.2-100 as meaning a violation of law punishable as provided in Virginia Code § 46.2-113, which is neither a felony nor a misdemeanor.

3.00 Juvenile Court Dispositions for Traffic Offenses: Va. Code § 16.1-278.10

In cases involving a child who is charged with a traffic infraction, the court may impose only those penalties that are authorized to be imposed on adults for such infractions.

4.00 No Conflict Between Virginia Code § 46.2-334.01 & Virginia Code § 16.1-278.10

There is no conflict between Virginia Code § 46.2-334.01, as amended by this bill, and Virginia Code § 16.1-278.10, which provides that "In cases involving a child who is charged with a traffic infraction, the court may impose only those penalties which are authorized to be imposed on adults for such infractions." Virginia Code § 16.1-278.10 establishes the general principle, while Virginia Code § 46.2-334.01 provides a specific rule.

5.00 Traffic Offenses Do Not Require Intake Petitions: Va. Code § 16.1-260 (H)

Virginia Code § 16.1-260 (H) provides that the filing of an intake petition is not necessary to commence action in the juvenile court in cases involving the violation of the traffic laws. 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.

Part V: Domestic Violence & Stalking Protective Orders

HB 1533 Definition of Family Member
Delegate Melvin

HB 1533 amends Virginia Code § 16.1-228 relating to definition of family and household member. Effective July 1, 2003.

1.00 Summary: Adding Half-Siblings to the Definition of Family and Household Member

Currently, Virginia Code § 16.1-228 defines a family or household member as a person's spouse, former spouse, parents, stepparents, children, stepchildren, brothers, sisters, grandparents and grandchildren, including in-laws. The definition of family or household member is the underlying basis for the issuance of protective orders in cases involving family abuse. The definition of family or household member under Virginia Code § 16.1-228 is also used in Title 20 in cases involving suit for divorce, custody or visitation. The current statutory provisions in the Code are silent about half-brothers and half-sisters. HB 1533 amends the definition of family or household member by adding half-brothers and half-sisters to the definition of family or household member.

2.00 Oversight? Curative? No Substantive Change

This bill appears to address an oversight or caveat in the Virginia Code. Clearly, given the breadth of the current definition of a family or household member, half-siblings were contemplated as falling within the definition. There was no opposition to ensuring that half-siblings receive the same protection as other family members from family violence and abuse. In fact, this Department considered HB 1533 as codifying current practice rather than making a substantive change to the Virginia Code.

SB 834 Violation of Protective Order
Senator Howell

SB 834 amends Virginia Code §§ 16.1-253.2 and 18.2-60.4 relating to extending a protective order for two additional years following a violation of a protective order. Effective July 1, 2003.

1.00 Penalty for Violating Protective Orders: Va. Code § 16.1-253.2

Virginia Code § 16.1-253.2 provides the penalty for violating a protective order issued pursuant to §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.14, 16.1-279.1 or subsection B of § 20-103. Such protective orders prohibit the named person from going or remaining upon land, buildings or premises or from further acts of family abuse, including contact between the named person and that person's family or household member. Under Virginia Code § 16.1-253, a violation of a protective order constitutes a Class 1 misdemeanor. Upon conviction, the person will be sentenced to a term of confinement and in no case shall the entire term imposed be suspended.

1.10 Amendments to Virginia Code § 16.1-253.2

SB 834 provides that when a defendant is convicted of violating a domestic protective order, the court must issue a new protective order for a specified period not to exceed two years from the date of conviction.

2.00 Violation of Stalking Protective Order: Va. Code § 18.2-60.4

A person who violates a stalking protective order issued pursuant to Virginia Code §§ 19.2-152.8, 19.2-152.9 or § 19.2-152.10 is guilty of a Class 1 misdemeanor.

2.10 Amendments to Virginia Code § 18.2-60.4

SB 834 provides that when a defendant is convicted of violating a stalking protective order, the court must issue a new protective order for a specified period not to exceed two years from the date of conviction.

SB 893 Expanding Stalking Protective Orders
Senator Watkins

SB 893 amends Virginia Code §§ 19.2-152.8, 19.2-152.9 and 19.2-152.10 to allow stalking protective orders to be issued following incidents of acts of violence resulting in serious bodily injury to a person. Effective July 1, 2003.

1.00 Summary

Virginia Code §§ 19.2-152.8, 19.2-152.9 and 19.2-152.10 provide the courts with the authority to issue stalking protective orders. SB 893 expands Virginia Code §§ 19.2-152.8 (Emergency Protective Orders), 19.2-152.9 (Preliminary Protective Orders) and 19.2-152.10 (Protective Orders) to allow stalking protective orders to be issued following incidents of acts of violence where the alleged victim of a criminal offense resulting in a serious bodily injury to the alleged victim asserts under oath to a judge or magistrate that such person is being or has been subjected to stalking or a criminal offense resulting in a serious bodily injury to the alleged victim.

Part VI: Child Abuse and Neglect

HB 2188 Emergency Removal of Abused and Neglected Children
Delegate Christopher Saxman

HB 2188 amends Virginia Code §§ 16.1-251 and 63.2-1517 relating to the emergency removal of children who have been abused or neglected. Effective July 1, 2003.

1.00 Summary

HB 2188 requires a petitioner who fails to obtain an emergency removal order after four hours have elapsed from the time the child was taken into custody to state the reasons for the delay. The bill also states that the parents or guardians of the child must be given notice as soon as practicable and every effort shall be made to provide such notice in person.

2.00 Emergency Removal Order (ERO): Va. Code § 16.1-251

Virginia Code § 16.1-251 provides the authority for taking a child into immediate custody and placing that child in shelter care pursuant to the issuance of an emergency removal order.

2.10 EROs Are Issued in Cases of Abuse & Neglect by the Judge

An ERO can be issued by either a judge or an intake officer in cases where a child is being abused or neglected.

2.11 Ex parte Hearing with Affidavit or Sworn Testimony

An ERO can be issued ex parte by the court upon a petition supported by an affidavit or by sworn testimony in person before the judge or intake officer.

2.12 Intake Officer may Receive Sworn Testimony or Affidavit

An ERO is issued by the judge. The affidavit or sworn testimony may be provided to the intake officer.

2.20 Criteria for Issuing an ERO

The ERO can be issued if the affidavit or sworn testimony to the judge or the intake officer establishes the following:

2.21 Imminent Threat & Severe or Irremediable Injury is Likely

The affidavit or sworn testimony must show that if the child is not removed from the custody of his parents or legal guardian, the child would be subjected to an imminent threat to life or health to the extent that severe or irremediable injury would likely result.

2.22 Reasonable Efforts to Prevent Removal & No Less Drastic Alternatives

The affidavit or sworn testimony must show that reasonable efforts have been made to prevent removal of the child from his home and there are no alternatives less drastic than removal of the child from his home. The alternatives less drastic than removal may include the provision of medical, educational, psychiatric, psychological, homemaking or other similar services to the child or family or the issuance of a preliminary protective order pursuant to Virginia Code § 16.1-253.

2.30 Statement Concerning Why ERO Was Not Obtained Within Four Hours - New Code Language

HB 2188 amended Virginia Code § 16.1-251 (A) to require that if an ERO is not obtained within four hours of the removal of the child from his home, the petitioner must state in the affidavit or testify to the judge or the intake officer the reasons for not obtaining the emergency removal order.

2.31 As Introduced, the Petitioner Would Have One Hour to Obtain the Court Order

As originally introduced during the 2003 General Assembly session, HB 2188 required the petitioner to state the reasons for failing to obtain an order after one hour had elapsed following taking custody of the child.

2.40 No Substantive Change to the Criteria for Issuing an ERO Order

Please note, there is no substantive change to the criteria needed for issuing an emergency protective order. HB 2188 simply adds the requirement that if the petitioner fails to obtain the court order within four hours, the petitioner must state the reason why. Failure to obtain the court order within the four hours does not mean that the emergency removal order should not be granted or is not valid.

2.41 Child May be Taken Into Custody for Up to 72 Hours

The 72-hour criteria has not been changed. A CPS worker, physician or law-enforcement officer may still assume custody of a child for up to 72 hours without approval of the parents or legal guardian. However, if a court order is not obtained within the first four hours after taking custody, the petitioner must explain the circumstances surrounding the delay.

2.42 A Full Court Hearing Must Occur As Soon as Possible, But Within Five Days

Whenever a child is taken into immediate custody pursuant to an emergency removal order, a court hearing must be held in accordance with Virginia Code § 16.1-252 as soon as practicable, but in no event later than five business days after the removal of the child.

3.00 Persons Who May Take a Child Into Emergency Custody: Va. Code § 63.2-1517

Virginia Code § 63.2-1517 provides a physician, child protective services (CPS) worker of a local department of social services or law-enforcement official with the authority to take a child into custody for up to 72 hours without prior approval of parents or guardians. To take a child into custody, the below criteria must be met:

3.01 Imminent Danger to the Child's Life or Health and Likely Severe or Irremediable Injury

Consistent with the requirements in Virginia Code § 16.1-251, there must exist circumstances showing imminent danger to the child's life or health to the extent that severe or irremediable injury would likely result if the child is not removed from the home. Also, it can be shown that the child must be removed because the evidence of abuse is perishable or subject to deterioration before a hearing can be held.

3.02 A Court Order Cannot be Immediately Obtainable

3.03 The Court has Established Procedures for Placing Removed Children

3.04 Report Made to Local Department of Social Services

Whenever a child is taken into custody by a physician, a CPS worker or a law-enforcement officer, a report must be made to the local department of social services.

3.10 Parental Notification in Person: New Language Added by HB 2188

When a child is taken into custody, the parents or guardians must be notified as soon as practicable. HB 2188 added the requirement that "*Every effort shall be made to provide such notice in person.*"

3.11 As Originally Introduced, HB 2188 Required that the Parental Notification Occur Within One Hour – That Provision was Removed

Originally, HB 2188 also required that the parents or guardians are notified in person that their child has been removed from their custody within one hour of the removal of the child. If the parents or guardians cannot be located, written notification would be posted at their official residence. **Those provisions were removed from the bill.**

3.20 Court Notification & ERO Court Order Within 72 Hours

When custody of a child is assumed by a physician, CPS worker or law-enforcement officer, the court must be notified and an ERO pursuant to Virginia Code § 16.1-251 obtained within 72 hours. HB 2188 does not change the 72-hour requirement.

3.21 HB 2281 Adds Four-Hour Explanation Requirement - New Language

HB 2188 amends Virginia Code § 63.2-1517 to require that the person or agency petitioning for the emergency removal order after four hours have elapsed following taking custody of the child must state the reasons for the delay. This amendment is consistent with the amendment to Virginia Code § 16.1-251.

3.22 HB 2281 Makes No Substantive Change to the 72-Hour Requirement

HB 2281 does not make any substantive changes to the 72-hour requirement for obtaining an emergency removal court order. However, if the petitioner fails to obtain a court order within the first four hours of assuming custody of the child, the petitioner must explain the reason for the delay in the affidavit or by sworn testimony.

SB 1097 & HB 2128 Parental Educational Seminars in Custody and Visitation Cases
Senator John Edwards & Delegate John Reid

SB 1097 and HB 2128 amend Virginia Code §§ 16.1-278.15 and 20-103 relating to custody, visitation and support and educational seminars. Effective July 1, 2003.

1.00 Summary

SB 1097 and HB 2128 eliminate the 2003 sunset and modify the existing requirements that parents attend educational seminars addressing the effects of separation or divorce on children, parenting responsibilities, etc. Under the bill the parties to any petition for custody, visitation or support shall show proof that they have attended within 12 months before their first court appearance or shall attend within 45 days thereafter an educational seminar that is at least four hours in length. Once a party has completed one educational program, the required completion of additional programs is at the court's discretion. Such programs are to be completed, when possible, prior to participating in mediation or alternative dispute resolution; and the court may grant an exemption from attendance of such program for good cause shown or if there is no program reasonably available. Parties include natural or adoptive parents or any person with a legitimate interest as defined in Virginia Code § 20-124.1. The fee for such programs shall be based on ability to pay, but shall in no case exceed $50.

1.10 Legislative History

The 2000 General Assembly enacted HB 1178 (Delegate Reid) that required the court to order parents involved in custody and visitation cases to attend educational seminars on the effects of separation or divorce on children, parenting responsibilities, options for conflict resolution, and financial responsibility. HB 1178 became effective on July 1, 2001, and contained an expiration date of July 1, 2003. The Executive Secretary of the Supreme Court was requested to report on the provisions of the act to the General Assembly.

2.00 Amendments to Virginia Code § 16.1-278.15: Mandatory Educational Seminars

Subsection A of Virginia Code § 16.1-278.15 provides the juvenile court with the authority in custody, visitation or support cases to order any disposition to protect the welfare of the child and family as may be made by the circuit court.

2.10 Mandatory Educational Seminar for Parties in a Petition

The parties involved in a custody, visitation, or support case must attend an educational seminar or similar program conducted by a qualified person or organization approved by the court.

2.11 Parties Must Show Proof of Attendance within Last 12 Months

The parties must show proof to the court that they have attended the educational seminar within the 12 months prior to the court appearance.

2.12 Or, Parties Must Attend Seminar Within 45 Days of Court Appearance

If the parties did not or cannot proof attendance with the prior 12 months, then the parties must attend the seminar within 45 days of their court appearance.

2.13 All Cases are Now Required to Attend – Not Just Disputed Cases

Prior to these bills, only parties in contested custody and visitation cases were required to attend the educational seminars. These bills amend subsection A of Virginia Code § 16.1-278.15 to require all parties in such cases, regardless of whether the issue is in dispute, to attend the educational seminar.

2.14 Support Cases Now Required to Attend Educational Seminar

Prior to these bills, only parties in cases involving custody and visitation disputes were required to attend the educational seminars. This legislation now requires parties in support cases to attend the educational seminars.

2.20 Educational Seminar Must be at Least 4 Hours in Length & Discuss Effects of Divorce

The educational seminar must be four hours in length at a minimum. The content of the educational seminar must include the effects of separation or divorce on children, parenting responsibilities, options for conflict resolution and financial responsibilities.

2.30 The Court May Require Additional Programs

Once a party has completed one educational seminar or other like program, the required completion of additional programs will be at the court's discretion.

2.40 Parties May Include Parents and Legitimate Interests

These bills define parties to the petition as potentially including the natural or adoptive parents of the child and any person with a legitimate interest as defined in Virginia Code § 20-124.1.

2.41 Definition of Legitimate Interest: Va. Code § 20-124.1

Virginia Code § 20-124.1 defines a legitimate interest as including grandparents, stepparents, former stepparents, blood relatives and family members if those persons are parties in the suit before the court.

2.50 Fee Shall be Based upon Ability to Pay - Not Exceed $50.00

The fee charged a party for participation in the educational seminar will be based on the party's ability to pay; however, no fee in excess of $50 may be charged.

2.60 If Possible, Seminar Before Mediation and Alternative Dispute Resolution

If possible, the parties should attend the educational seminar before participating in mediation or alternative dispute resolution to address custody, visitation or support.

2.70 Exemption to Seminar for Good Cause or No available Program

The court may grant an exemption from attendance of such program for good cause shown or if there is no program reasonably available.

2.80 Statements Not Admissible in Court

Other than statements or admissions by a party admitting criminal activity or child abuse or neglect, no statement or admission by a party in such seminar or program shall be admissible into evidence in any subsequent proceeding.

3.00 Amendments to Virginia Code § 20-103 - Same Changes

The amendments to Virginia Code § 20-103 are substantive identical to the changes made to Virginia Code § 16.1-278.15.

SB 1298 Termination of Parental Rights & Parties with Legitimate Interests
Senator Stephen Newman

SB 1298 amends Virginia Code §§ 16.1-241, 20-124.1 and 63.2-1215 relating to the termination of parental rights (voluntary or involuntary) and the impact upon other persons who may have a legitimate interest in a child.

1.00 Summary: Termination of Legitimate Interest Following Legal Adoption

SB 1298 amends Virginia Code §§ 16.1-241, 20-124.1 and 63.2-1215 relating to the termination of parental rights (voluntary or involuntary) and clarifies that a "party with a legitimate interest" in a child, for purposes of making custody and visitation determinations, does not include persons whose interest in the child is derived from a parent (e.g., grandparents and other relatives) whose rights have been terminated if the child subsequently has been legally adopted, except in cases of stepparent adoption. SB 1298 also clarifies that the grandparents' and other relatives' legitimate interest in a child and other legal rights are not divested in cases of stepparent adoption pursuant to Virginia Code § 63.2-1241. The changes made by SB 1298 are not substantive changes in the law and only attempt to clarify current practice.

2.00 Amendments to Virginia Code § 16.1-241

Virginia Code § 16.1-241 is the jurisdictional authority of the juvenile court. SB 1298 amends the definition of legitimate interest in Virginia Code § 16.1-241 to include *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 has been legally adopted.

3.00 Amendments to Virginia Code § 20-124.1

The amendments to Virginia Code § 20-124.1 are consistent with the changes made to Virginia Code § 16.1-241.

4.00 Effect of Legal Adoption on Rights of Legitimate Interests: Virginia Code § 63.2-1215

Upon the final order of adoption, Virginia Code § 63.2-1215 provides that the birth parents shall be divested of all legal rights and obligations in respect to the child including the right to petition any court for visitation with the child. SB 1298 adds that any person whose interest in the child derives from or through the birth parent or previous adoptive parent, including grandparents, stepparents, former stepparents, blood relatives and family members shall also be divested by the final order of adoption.

4.10 This Provision Does not Apply to Adoptions by Stepparent

Virginia Code § 63.2-1241 allows the spouse of the birth parent or of the adoptive parent to adopt the child under specific circumstances such as the other natural parent is deceased. The amendments made by SB 1298 ensures that the provisions under within Virginia Code § 63.2-1241 are not impacted.

Part VII: Juveniles Tried as Adults

HB 2274 Juvenile Court Jurisdiction over Adult
Delegate Hurd

HB 2274 amends Virginia Code § 16.1-269.6 relating to trial of juveniles as adults. Effective July 1, 2003.

1.00 Summary: Juvenile Court can Assert Jurisdiction Over an Adult Transferred as a Juvenile to Circuit Court

HB 2274 amends Virginia Code§ 16.1-269.6 to provide that an order terminating the juvenile court's jurisdiction after a juvenile has once been transferred and tried as an adult shall not apply to any allegations of criminal conduct that would properly be within the jurisdiction of the juvenile and domestic relations (J&DR) district court if the defendant were an adult. Currently, upon conviction of the juvenile following transfer or certification and trial as an adult, the circuit court terminates the juvenile court's jurisdiction over that juvenile with respect to any future criminal acts alleged to have been committed by such juvenile and with respect to any pending allegations of delinquency that have not been disposed of by the juvenile court at the time of the criminal conviction.

2.00 HB 2274 Fixes an Unintended Caveat in the Virginia Code

HB 2274 fixes a loophole in the current law whereby a juvenile who has been transferred to circuit court and tried as an adult may not be subsequently tried for a family violence offense in the J&DR court when that juvenile becomes an adult.

3.00 Background – Rationale for Maintaining Jurisdiction Over an Adult

Under current law, once a juvenile is transferred to circuit court and tried as an adult for a delinquent offense, the juvenile court no longer has jurisdiction over that juvenile for any subsequent delinquent offenses committed by that juvenile when the juvenile remains under the age of 18.

However, there are situations in which the juvenile court properly has jurisdiction over adults who commit certain criminal offenses. For example, under Virginia Code § 16.1-241(J), the juvenile court has jurisdiction over an adult family or household member who is charged with an offense in which another family or household member is the victim. The juvenile court also has jurisdiction over violations of a court order regarding custody and visitation under Virginia Code § 18.2-49.1. Under the current law, the juvenile court does not have jurisdiction over an adult who was transferred or certified to circuit court to be tried as an adult when that adult was a juvenile. Therefore, the juvenile court would not have jurisdiction to hear a case where an adult abuses a family member but that adult was transferred as a juvenile to be tried in circuit court. That is not the intent of the current law and would undermine the juvenile court's ability to properly handle cases involving family violence. HB 2274 fixes that loophole.

HB 1599 Competency of Juveniles Tried as Adults
Delegate Melvin

HB 1599 amends Virginia Code §§ 19.2-169.1 and 19.2-169.2 relating to restoration of competency to stand trial. Effective July 1, 2003.

1.00 Summary: The Right to Challenge the Competency of Juveniles Tried as Adults

HB 1599 amends Virginia Code §§ 19.2-169.1 and 19.2-169.2 relating to the restoration of competency to stand trial. The purpose of HB 1599 is to ensure that a juvenile who is being tried as an adult in circuit court is afforded the right to raise the issue of his competency to stand trial.

2.00 No Impact Upon DJJ or the Juvenile Justice System

Title 19.2 of the Code of Virginia provides the criminal procedural law for the conduct of a criminal trial in circuit court. For the provisions of this bill to apply to a juvenile, the juvenile court must have waived, certified or transferred jurisdiction over the juvenile to the circuit court; and, for all intents and purposes, the juvenile is being treated as an adult. Therefore, the proposed changes in this bill would have no impact on this Department or the juvenile court because jurisdiction over the juvenile was previously terminated.

3.00 No Substantive Change to the Law - Statutory Background – The Right to be Competent

It does not appear that HB 1599 makes a substantive change to the Virginia Code. Both Virginia Code §§ 19.2-169.1 and 19.2-169.2 provide that, if in doubt, the issue of the competency of the "defendant" may be raised. Specifically, if there is probable cause to believe that the defendant lacks substantial capacity to understand the proceedings against him or to assist his attorney in his own defense, the court must order that a competency evaluation be performed by at least one psychiatrist, clinical psychologist or master's level psychologist who is qualified by training and experience in forensic evaluation. It appears that a juvenile who has been waived, certified or transferred by the juvenile court to be tried as an adult in circuit court would be considered a "defendant" and would be protected by the provisions of Virginia Code §§ 19.2-169.1 and 19.2-169.2. Regardless, HB 1599 clarifies that a juvenile who is being tried as an adult in circuit court is afforded the right to raise the issue of his competency to stand trial.

Part VIII: Studies

SENATE JOINT RESOLUTION (SJ) 358
Senator Houck

SJ 358 directs the Virginia Commission on Youth, or its successor in interest, to make empirically based information concerning effective treatment modalities and practices for children available through the Internet.

SJ 358 requires the Commission on Youth to post, maintain, and biennially update information pertaining to the effective, empirically based, treatment modalities and practices for juvenile offenders with mental health treatment needs, symptoms and disorders. The agencies of the Secretariat of Health and Human Resources that deliver services to children, the Department of Education and the Department of Juvenile Justice must post this information on their websites, provide for the

dissemination of the information in as efficient and cost-effective manner as possible and ensure access to the information by consumers, family members, advocates, mental health policy makers and other interested persons. The Virginia Commission on Youth must submit an executive summary and report of its progress in meeting the directives of this resolution no later than the first day of the 2004 Regular Session of the General Assembly.