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SENATE BILL NO. 1149

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 4, 2009)

(Patron Prior to Substitute—Senator Howell)

*A BILL to amend and reenact §§ 4.1-305, 16.1-228, 16.1-237, 16.1-260, 16.1-278.8, 16.1-290, 18.2-57.2, and 66-13 of the Code of Virginia, relating to juvenile law.***Be it enacted by the General Assembly of Virginia:****1. That §§ 4.1-305, 16.1-228, 16.1-237, 16.1-260, 16.1-278.8, 16.1-290, 18.2-57.2, and 66-13 of the Code of Virginia are amended and reenacted as follows:**

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

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

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

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

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

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

F. When any ~~person~~ *adult* who has not previously been convicted of underaged consumption, purchase or possession of alcoholic beverages in Virginia or any other state or the United States is before the court, the court may, upon entry of a plea of guilty or not guilty, if the facts found by the court would justify a finding of guilt of a violation of subsection A, without entering a judgment of guilt and with the consent of the accused, defer further proceedings and place him on probation subject to appropriate conditions. Such conditions may include the imposition of the license suspension and restricted license provisions in subsection C. However, in all such deferred proceedings, the court shall require the accused to enter a treatment or education program or both, if available, that in the opinion of

the court best suits the needs of the accused. If the accused is placed on local community-based probation, the program or services shall be located in any of the judicial districts served by the local community-based probation services agency or in any judicial district ordered by the court when the placement is with an alcohol safety action program. The services shall be provided by (i) a program licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services, (ii) certified by the Commission on VASAP, or (iii) by a program or services made available through a community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, if one has been established for the locality. When an offender is ordered to a local community-based probation services rather than the alcohol safety action program, the local community-based probation services agency shall be responsible for providing for services or referring the offender to education or treatment services as a condition of probation.

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

When any juvenile is found to have committed a violation of subsection A, the disposition of the case shall be handled according to the provisions of Article 9 (§ 16.1-278 et seq.) of Chapter 11 of Title 16.1.

§ 16.1-228. Definitions.

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

"Abused or neglected child" means any child:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;

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

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

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

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

6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § 55-79.2, with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § 9.1-902.

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

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

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

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

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

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

"Child in need of services" means (i) a child whose behavior, conduct or condition presents or results

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

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

"Child in need of supervision" means:

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

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

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

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

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

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

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

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

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

"Foster care services" means the provision of a full range of casework, treatment and community services for a planned period of time to a child who is abused or neglected as defined in § 63.2-100 or in need of services as defined in this section and his family when the child (i) has been identified as

183 needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through
184 an agreement between the local board of social services or a public agency designated by the
185 community policy and management team and the parents or guardians where legal custody remains with
186 the parents or guardians, (iii) has been committed or entrusted to a local board of social services or
187 child welfare agency, or (iv) has been placed under the supervisory responsibility of the local board
188 pursuant to § 16.1-293.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

235 "Violent juvenile felony" means any of the delinquent acts enumerated in subsection B or C of
236 § 16.1-269.1 when committed by a juvenile 14 years of age or older.

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

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

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

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

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

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

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

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

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

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

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

§ 16.1-260. Intake; petition; investigation.

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

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

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

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

306 the juvenile had previously been proceeded against informally by intake or had been adjudicated
307 delinquent *for an offense that would be a felony if committed by an adult.*

308 If a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258 and
309 the attendance officer has provided documentation to the intake officer that the relevant school division
310 has complied with the provisions of § 22.1-258, then the intake officer shall file a petition with the
311 court. The intake officer may defer filing the complaint for 90 days and proceed informally by
312 developing a truancy plan. The intake officer may proceed informally only if the juvenile has not
313 previously been proceeded against informally or adjudicated in need of supervision for failure to comply
314 with compulsory school attendance as provided in § 22.1-254. The juvenile and his parent or parents,
315 guardian or other person standing in loco parentis must agree, in writing, for the development of a
316 truancy plan. The truancy plan may include requirements that the juvenile and his parent or parents,
317 guardian or other person standing in loco parentis participate in such programs, cooperate in such
318 treatment or be subject to such conditions and limitations as necessary to ensure the juvenile's
319 compliance with compulsory school attendance as provided in § 22.1-254. The intake officer may refer
320 the juvenile to the appropriate public agency for the purpose of developing a truancy plan using an
321 interagency interdisciplinary team approach. The team may include qualified personnel who are
322 reasonably available from the appropriate department of social services, community services board, local
323 school division, court service unit and other appropriate and available public and private agencies and
324 may be the family assessment and planning team established pursuant to § 2.2-5207. If at the end of the
325 90-day period the juvenile has not successfully completed the truancy plan or the truancy program, then
326 the intake officer shall file the petition.

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

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

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

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

officer refuses to authorize a petition relating to a child in need of services or in need of supervision, a status offense, or a misdemeanor other than Class 1, his decision is final.

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

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

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

1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299 et seq.), or 7 (§ 18.2-308 et seq.) of Chapter 7 of Title 18.2;

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

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

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

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

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

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

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

9. Robbery pursuant to § 18.2-58;

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

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

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

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

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

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

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

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

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

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

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

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

429 § 16.1-278.8. Delinquent juveniles.

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

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

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

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

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

442 4a. Defer disposition and place the juvenile in the temporary custody of the Department to attend a
443 boot camp established pursuant to § 66-13 provided bed space is available for confinement and the
444 juvenile (i) has been found delinquent for an offense that would be a Class 4 misdemeanor or felony if
445 committed by an adult, (ii) has not previously been and is not currently being adjudicated delinquent or
446 found guilty of a violent juvenile felony, (iii) has not previously attended a boot camp, (iv) has not
447 previously been committed to and received by the Department, and (v) has had an assessment completed
448 by the Department or its contractor concerning the appropriateness of the candidate for a boot camp.
449 Upon the juvenile's withdrawal, removal or refusal to comply with the terms and conditions of
450 participation in the program, he shall be brought before the court for a hearing at which the court may
451 impose any other disposition as authorized by this section which could have been imposed at the time
452 the juvenile was placed in the custody of the Department;

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

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

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

465 7a. Place the juvenile on probation and order treatment for the abuse or dependence on alcohol or
466 drugs in a program licensed by the Department of Mental Health, Mental Retardation and Substance
467 Abuse Services for the treatment of juveniles for substance abuse provided that (i) the juvenile has
468 received a substance abuse screening and assessment pursuant to § 16.1-273 and that such assessment
469 reasonably indicates that the commission of the offense was motivated by, or closely related to, the
470 habitual use of alcohol or drugs and indicates that the juvenile is in need of treatment for this condition;
471 (ii) the juvenile has not previously been and is not currently being adjudicated for a violent juvenile
472 felony; and (iii) such facility is available. Upon the juvenile's withdrawal, removal, or refusal to comply
473 with the conditions of participation in the program, he shall be brought before the court for a hearing at
474 which the court may impose any other disposition authorized by this section. The court shall review
475 such placements at 30-day intervals;

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

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

486 If a curfew is imposed, the juvenile shall surrender his driver's license, which shall be held in the
487 physical custody of the court during any period of curfew restriction. The court shall send an abstract of
488 any order issued under the provisions of this section to the Department of Motor Vehicles, which shall
489 preserve a record thereof. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this
490 chapter or the provisions of Title 46.2, this record shall be available only to all law-enforcement

officers, attorneys for the Commonwealth and courts. A copy of the court order, upon which shall be noted all curfew restrictions, shall be provided to the juvenile and shall contain such information regarding the juvenile as is reasonably necessary to identify him. The juvenile may operate a motor vehicle under the court order in accordance with its terms.

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

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

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

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

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

13. Transfer legal custody to any of the following:

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

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

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

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

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

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

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

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

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

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

552 under such conditions as the court prescribes.

553 § 16.1-290. Support of committed juvenile; support from estate of juvenile.

554 A. Whenever (i) legal custody of a juvenile is vested by the court in someone other than his parents
555 or (ii) a juvenile is placed in temporary shelter care regardless of whether or not legal custody is
556 retained by his parents, after due notice in writing to the parents, the court, pursuant to §§ 20-108.1 and
557 20-108.2, or the Department of Social Services, pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title
558 63.2, shall order the parents to pay support to the Department of Social Services. If the parents fail or
559 refuse to pay such support, the court may proceed against them for contempt, or the order may be filed
560 and shall have the effect of a civil judgment.

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

563 C. Whenever a juvenile is placed in foster care by the court, the court shall order and decree that the
564 parents shall pay the Department of Social Services pursuant to §§ 20-108.1, 20-108.2, 63.2-909, and
565 63.2-1910.

566 D. Whenever a juvenile is placed in temporary custody of the Department pursuant to subdivision A
567 4a of § ~~16.1-278.8~~ or committed to the Department pursuant to subdivision A 14 or A 17 of
568 § 16.1-278.8, the Department shall apply for child support with the Department of Social Services. The
569 parents shall be responsible for child support, pursuant to §§ 20-108.1 and 20-108.2, from the date the
570 Department receives the juvenile. The Department shall notify in writing the parents of their
571 responsibilities to pay child support from the date the Department receives the juvenile.

572 § 18.2-57.2. Assault and battery against a family or household member; penalty.

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

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

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

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

588 § 66-13. Authority of Department as to juveniles committed to it; establishment of facilities;
589 arrangements for temporary care.

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

595 B. In accordance with the Juvenile Corrections Private Management Act, Chapter 2-1 (§ ~~66-25.3~~ et
596 seq.) of this title, the Department may establish, or contract with private entities, political subdivisions or
597 commissions to establish, juvenile boot camps. The Board shall prescribe standards for the development,
598 implementation and operation of the boot camps with highly structured components including, but not
599 limited to, military style drill and ceremony, physical labor, education and rigid discipline and no less
600 than six months of intensive aftercare. The Department of Correctional Education shall establish, staff,
601 and maintain educational programs for such juveniles in accordance with Chapter 18 (§ ~~22.1-339~~ et seq.)
602 of Title 22.1. A contract to expend state funds to establish a facility for a juvenile boot camp shall not
603 be executed by the Department unless an appropriation has been expressly approved as is otherwise
604 provided by law.

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

612 DC. The Department shall collect data pertaining to the demographic characteristics of juveniles
613 incarcerated in state juvenile correctional institutions, including, but not limited to, the race or ethnicity,

614 age, and gender of such persons, and the types of and extent to which health-related problems are
615 prevalent among such persons. Beginning July 1, 1997, such data shall be collected, tabulated quarterly,
616 and reported by the Director to the Governor and the General Assembly at each regular session of the
617 General Assembly thereafter.