

18103623D

**HOUSE BILL NO. 419**

Offered January 10, 2018

Prefiled January 5, 2018

A *BILL to amend and reenact §§ 16.1-228, 16.1-241, 16.1-249, 16.1-269.1, 16.1-269.3, 16.1-270, 16.1-284.1, 16.1-285.1, 16.1-299.1, 16.1-301, 16.1-302, 16.1-305, 16.1-307, 16.1-309.1, 18.2-308.2, and 18.2-308.2:2 of the Code of Virginia, relating to juveniles; trial as adult.*

Patron—Guzman

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

1. That §§ 16.1-228, 16.1-241, 16.1-249, 16.1-269.1, 16.1-269.3, 16.1-270, 16.1-284.1, 16.1-285.1, 16.1-299.1, 16.1-301, 16.1-302, 16.1-305, 16.1-307, 16.1-309.1, 18.2-308.2, and 18.2-308.2:2 of the Code of Virginia are amended and reenacted as follows:

**§ 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;

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; or

7. Who has been identified as a victim of sex trafficking or severe forms of trafficking as defined in the Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7102 et seq., and in the Justice for Victims of Trafficking Act of 2015, 42 U.S.C. § 5101 et seq.

If a civil proceeding under this chapter is based solely on the parent having left the child at a hospital or emergency medical services agency, 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 emergency medical services agency that employs emergency medical services personnel, 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,

INTRODUCED

HB419

59 education and rigid discipline, and no less than six months of intensive aftercare.

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

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

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

75 "Child in need of supervision" means:

76 1. A child who, while subject to compulsory school attendance, is habitually and without justification  
77 absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of  
78 any and all educational services and programs that are required to be provided by law and which meet  
79 the child's particular educational needs, (ii) the school system from which the child is absent or other  
80 appropriate agency has made a reasonable effort to effect the child's regular attendance without success,  
81 and (iii) the school system has provided documentation that it has complied with the provisions of  
82 § 22.1-258; or

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

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

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

94 "Delinquent act" means (i) an act designated a crime under the law of the Commonwealth, or an  
95 ordinance of any city, county, town, or service district, or under federal law, (ii) a violation of  
96 § 18.2-308.7, or (iii) a violation of a court order as provided for in § 16.1-292, but shall not include an  
97 act other than a violation of § 18.2-308.7, which is otherwise lawful, but is designated a crime only if  
98 committed by a child. For purposes of §§ 16.1-241 and 16.1-278.9, the term shall include a refusal to  
99 take a breath test in violation of § 18.2-268.2 or a similar ordinance of any county, city, or town.

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

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

106 "Family abuse" means any act involving violence, force, or threat that results in bodily injury or  
107 places one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by  
108 a person against such person's family or household member. Such act includes, but is not limited to, any  
109 forceful detention, stalking, criminal sexual assault in violation of Article 7 (§ 18.2-61 et seq.) of  
110 Chapter 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable  
111 apprehension of death, sexual assault, or bodily injury.

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

then residing in the same home with the person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Violent juvenile felony" means (i) any of the delinquent acts enumerated in subsection B or C of § 16.1-269.1 when committed by a juvenile 16 years of age or older or (ii) capital murder in violation of § 18.2-31 or murder in the first degree in violation of § 18.2-32 when committed by a juvenile 14 years of age or older.

**§ 16.1-241. Jurisdiction; consent for abortion.**

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

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

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

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

195 2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated  
196 as having abused or neglected another child in the care of the parent or custodian;

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

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

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

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

206 7. Who is alleged to have refused to take a blood test in violation of § 18.2-268.2.

207 In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated  
208 in subsection B of § 16.1-269.1, and for any charges ancillary thereto, the jurisdiction of the juvenile  
209 court shall be limited to conducting a preliminary hearing to determine if there is probable cause to  
210 believe that the juvenile committed the act alleged and that the juvenile was ~~14~~ 16 years of age or older  
211 at the time of the commission of the alleged offense *or 14 years of age or older if the alleged offense is*  
212 *capital murder in violation of § 18.2-31 or murder in the first degree in violation of § 18.2-32*, and any  
213 matters related thereto. In any case in which the juvenile is alleged to have committed a violent juvenile  
214 felony enumerated in subsection C of § 16.1-269.1, and for all charges ancillary thereto, if the attorney  
215 for the Commonwealth has given notice as provided in subsection C of § 16.1-269.1, the jurisdiction of  
216 the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable  
217 cause to believe that the juvenile committed the act alleged and that the juvenile was ~~14~~ 16 years of age  
218 or older at the time of the commission of the alleged offense, and any matters related thereto. A  
219 determination by the juvenile court following a preliminary hearing pursuant to subsection B or C of  
220 § 16.1-269.1 to certify a charge to the grand jury shall divest the juvenile court of jurisdiction over the  
221 charge and any ancillary charge. In any case in which a transfer hearing is held pursuant to subsection  
222 A of § 16.1-269.1, if the juvenile court determines to transfer the case, jurisdiction of the juvenile court  
223 over the case shall be divested as provided in § 16.1-269.6.

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

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

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

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

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

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

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

1. Who has been abused or neglected;
2. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817 or is otherwise before the court pursuant to subdivision A 4; or
3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court finds that such person has by overt act or omission induced, caused, encouraged or contributed to the conduct of the child complained of in the petition.

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

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

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

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

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

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

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

M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1, and all petitions filed for the purpose of obtaining an order of protection pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10 if either the alleged victim or the respondent is a juvenile.

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

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

P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 19

305 (§ 63.2-1900 et seq.) of Title 63.2, or by another state in the same manner as if the orders were entered  
306 by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the  
307 juvenile and domestic relations district court.

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

310 R. [Repealed.]

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

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

315 U. Petitions filed in connection with parental placement adoption consent hearings pursuant to  
316 § 63.2-1233. Such proceedings shall be advanced on the docket so as to be heard by the court within 10  
317 days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible  
318 disposition.

319 V. Petitions filed for the purpose of obtaining the court's assistance with the execution of consent to  
320 an adoption when the consent to an adoption is executed pursuant to the laws of another state and the  
321 laws of that state provide for the execution of consent to an adoption in the court of the  
322 Commonwealth.

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

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

330 If the judge authorizes an abortion based on the best interests of the minor, such order shall  
331 expressly state that such authorization is subject to the physician or his agent giving notice of intent to  
332 perform the abortion; however, no such notice shall be required if the judge finds that such notice would  
333 not be in the best interest of the minor. In determining whether notice is in the best interest of the  
334 minor, the judge shall consider the totality of the circumstances; however, he shall find that notice is not  
335 in the best interest of the minor if he finds that (i) one or more authorized persons with whom the  
336 minor regularly and customarily resides is abusive or neglectful, and (ii) every other authorized person,  
337 if any, is either abusive or neglectful or has refused to accept responsibility as parent, legal guardian,  
338 custodian or person standing in loco parentis.

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

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

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

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

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

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

360 A physician shall not knowingly perform an abortion upon an unemancipated minor unless consent  
361 has been obtained or the minor delivers to the physician a court order entered pursuant to this section  
362 and the physician or his agent provides such notice as such order may require. However, neither consent  
363 nor judicial authorization nor notice shall be required if the minor declares that she is abused or  
364 neglected and the attending physician has reason to suspect that the minor may be an abused or  
365 neglected child as defined in § 63.2-100 and reports the suspected abuse or neglect in accordance with  
366 § 63.2-1509; or if there is a medical emergency, in which case the attending physician shall certify the

facts justifying the exception in the minor's medical record.

For purposes of this subsection:

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

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

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

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

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

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

"Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid marriage, even though the marriage may have been terminated by dissolution; (ii) active duty with any of the Armed Forces of the United States; (iii) willingly living separate and apart from his or her parents or guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an order of emancipation pursuant to Article 15 (§ 16.1-331 et seq.).

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

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

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

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

#### **§ 16.1-249. Places of confinement for juveniles.**

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

1. An approved foster home or a home otherwise authorized by law to provide such care;
2. A facility operated by a licensed child welfare agency;
3. If a juvenile is alleged to be delinquent, in a detention home or group home approved by the Department;

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

5. To the extent permitted by federal law, a separate juvenile detention facility located upon the site of an adult regional jail facility established by any county, city or any combination thereof constructed after 1994, approved by the Department of Juvenile Justice and certified by the Board of Juvenile Justice for the holding and detention of juveniles.

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

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

D. When a case is transferred to the circuit court in accordance with the provisions of subsection A of § 16.1-269.1 and an order is entered by the circuit court in accordance with § 16.1-269.6, or in

428 accordance with the provisions of § 16.1-270 where the juvenile has waived the jurisdiction of the  
429 district court, or when the district court has certified a charge to the grand jury pursuant to subsection B  
430 or C of § 16.1-269.1, the juvenile, if in confinement, shall be placed in a juvenile secure facility, unless  
431 the court determines that the juvenile is a threat to the security or safety of the other juveniles detained  
432 or the staff of the facility, in which case the court may transfer the juvenile to a jail or other facility for  
433 the detention of adults and need no longer be entirely separate and removed from adults.

434 E. If, in the judgment of the custodian, a juvenile has demonstrated that he is a threat to the security  
435 or safety of the other juveniles detained or the staff of the home or facility, the judge shall determine  
436 whether such juvenile should be transferred to another juvenile facility or, if the ~~child~~ juvenile is 16  
437 years of age or older or 14 years of age or older if the juvenile is in detention for capital murder in  
438 violation of § 18.2-31 or murder in the first degree in violation of § 18.2-32, a jail or other facility for  
439 the detention of adults; provided, that (i) the detention is in a room or ward entirely separate and  
440 removed from adults, (ii) adequate supervision is provided, and (iii) the facility is approved by the State  
441 Board of Corrections for detention of juveniles.

442 F. If, in the judgment of the custodian, it has been demonstrated that the presence of a juvenile in a  
443 facility creates a threat to the security or safety of the other juveniles detained or the staff of the home  
444 or facility, the custodian may transfer the juvenile to another juvenile facility, or, if the ~~child~~ juvenile is  
445 16 years of age or older or 14 years of age or older if the juvenile is in detention for capital murder in  
446 violation of § 18.2-31 or murder in the first degree in violation of § 18.2-32, a jail or other facility for  
447 the detention of adults pursuant to the limitations of clauses (i), (ii) and (iii) of subsection E for a period  
448 not to exceed six hours prior to a court hearing and an additional six hours after the court hearing  
449 unless a longer period is ordered pursuant to subsection E.

450 G. If a juvenile 14 16 years of age or older is charged with an offense which, if committed by an  
451 adult, would be a felony or Class 1 misdemeanor or a minor 14 years of age or older is charged with  
452 capital murder in violation of § 18.2-31 or murder in the first degree in violation of § 18.2-32, and the  
453 judge or intake officer determines that secure detention is needed for the safety of the juvenile or the  
454 community, such juvenile may be detained for a period not to exceed six hours prior to a court hearing  
455 and six hours after the court hearing in a temporary lock-up room or ward for juveniles while  
456 arrangements are completed to transfer the juvenile to a juvenile facility. Such room or ward may be  
457 located in a building which also contains a jail or other facility for the detention of adults, provided (i)  
458 such room or ward is totally separate and removed from adults or juveniles transferred to the circuit  
459 court pursuant to Article 7 (§ 16.1-269.1 et seq.) of this chapter, (ii) constant supervision is provided,  
460 and (iii) the facility is approved by the State Board of Corrections for the detention of juveniles. The  
461 State Board of Corrections is authorized and directed to prescribe minimum standards for temporary  
462 lock-up rooms and wards based on the requirements set out in this subsection.

463 G1. Any juvenile who has been ordered detained in a secure detention facility pursuant to  
464 § 16.1-248.1 may be held incident to a court hearing (i) in a court holding cell for a period not to  
465 exceed six hours provided the juvenile is entirely separate and removed from detained adults or (ii) in a  
466 nonsecure area provided constant supervision is provided.

467 H. If a judge, intake officer or magistrate orders the predispositional detention of persons 18 years of  
468 age or older, such detention shall be in an adult facility; however, if the predispositional detention is  
469 ordered for a violation of the terms and conditions of release from a juvenile correctional center, the  
470 judge, intake officer or magistrate may order such detention be in a juvenile facility.

471 I. The Departments of Corrections, Juvenile Justice and Criminal Justice Services shall assist the  
472 localities or combinations thereof in implementing this section and ensuring compliance herewith.

473 **§ 16.1-269.1. Trial in circuit court; preliminary hearing; direct indictment; remand.**

474 A. Except as provided in subsections B and C, if a juvenile 14 16 years of age or older at the time  
475 of an alleged offense is charged with an offense which would be a felony if committed by an adult, the  
476 court shall, on motion of the attorney for the Commonwealth and prior to a hearing on the merits, hold  
477 a transfer hearing and may retain jurisdiction or transfer such juvenile for proper criminal proceedings to  
478 the appropriate circuit court having criminal jurisdiction of such offenses if committed by an adult. Any  
479 transfer to the appropriate circuit court shall be subject to the following conditions:

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

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

485 3. The juvenile is competent to stand trial. The juvenile is presumed to be competent and the burden  
486 is on the party alleging the juvenile is not competent to rebut the presumption by a preponderance of the  
487 evidence; and

488 4. The court finds by a preponderance of the evidence that the juvenile is not a proper person to  
489 remain within the jurisdiction of the juvenile court. In determining whether a juvenile is a proper person



to remain within the jurisdiction of the juvenile court, the court shall consider, but not be limited to, the following factors:

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

No transfer decision shall be precluded or reversed on the grounds that the court failed to consider any of the factors specified in subdivision 4.

B. The juvenile court shall conduct a preliminary hearing whenever a juvenile 14 years of age or older is charged with *capital murder* in violation of § 18.2-31; *or murder in the first degree* in violation of § 18.2-32 or *a juvenile 16 years of age or older is charged with murder in the second degree* in violation of § 18.2-32, *murder* in violation of § 18.2-40, or aggravated malicious wounding in violation of § 18.2-51.2.

C. The juvenile court shall conduct a preliminary hearing whenever a juvenile 14 16 years of age or older is charged with murder in violation of § 18.2-33; felonious injury by mob in violation of § 18.2-41; abduction in violation of § 18.2-48; malicious wounding in violation of § 18.2-51; malicious wounding of a law-enforcement officer in violation of § 18.2-51.1; felonious poisoning in violation of § 18.2-54.1; adulteration of products in violation of § 18.2-54.2; robbery in violation of § 18.2-58 or carjacking in violation of § 18.2-58.1; rape in violation of § 18.2-61; forcible sodomy in violation of § 18.2-67.1; object sexual penetration in violation of § 18.2-67.2; manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute a controlled substance or an imitation controlled substance in violation of § 18.2-248 if the juvenile has been previously adjudicated delinquent on two or more occasions of violating § 18.2-248 provided the adjudications occurred after the juvenile was at least 14 16 years of age; manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute methamphetamine in violation of § 18.2-248.03 if the juvenile has been previously adjudicated delinquent on two or more occasions of violating § 18.2-248.03 provided the adjudications occurred after the juvenile was at least 14 16 years of age; or felonious manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute anabolic steroids in violation of § 18.2-248.5 if the juvenile has been previously adjudicated delinquent on two or more occasions of violating § 18.2-248.5 provided the adjudications occurred after the juvenile was at least 14 16 years of age, provided the attorney for the Commonwealth gives written notice of his intent to proceed pursuant to this subsection. The notice shall be filed with the court and mailed or delivered to counsel for the juvenile or, if the juvenile is not then represented by counsel, to the juvenile and a parent, guardian or other person standing in loco parentis with respect to the juvenile at least seven days prior to the preliminary hearing. If the attorney for the Commonwealth elects not to give such notice, or if he elects to withdraw the notice prior to certification of the charge to the grand jury, he may proceed as provided in subsection A.

D. Upon a finding of probable cause pursuant to a preliminary hearing under subsection B or C, the juvenile court shall certify the charge, and all ancillary charges, to the grand jury. Such certification shall divest the juvenile court of jurisdiction as to the charge and any ancillary charges. Nothing in this

subsection shall divest the juvenile court of jurisdiction over any matters unrelated to such charge and ancillary charges which may otherwise be properly within the jurisdiction of the juvenile court.

If the court does not find probable cause to believe that the juvenile has committed the violent juvenile felony as charged in the petition or warrant or if the petition or warrant is terminated by dismissal in the juvenile court, the attorney for the Commonwealth may seek a direct indictment in the circuit court. If the petition or warrant is terminated by nolle prosequi in the juvenile court, the attorney for the Commonwealth may seek an indictment only after a preliminary hearing in juvenile court.

If the court finds that the juvenile was not ~~14~~ 16 years of age or older at the time of the alleged commission of the offense *or 14 years of age or older at the time of the alleged commission of capital murder in violation of § 18.2-31 or murder in the first degree in violation of § 18.2-32* or that the conditions specified in subdivision A 1, 2, or 3 have not been met, the case shall proceed as otherwise provided for by law.

E. An indictment in the circuit court cures any error or defect in any proceeding held in the juvenile court except with respect to the juvenile's age. If an indictment is terminated by nolle prosequi, the Commonwealth may reinstate the proceeding by seeking a subsequent indictment.

**§ 16.1-269.3. Retention by juvenile court; appeal.**

If a case is not transferred following a transfer hearing or is not certified following a probable cause hearing, the judge who conducted the hearing shall not, over the objection of any interested party, preside at the adjudicatory hearing on the petition, but rather it shall be presided over by another judge of that court. If the attorney for the Commonwealth deems it to be in the public interest, and the juvenile is ~~fourteen~~ 16 years of age or older he may, within ~~ten~~ 10 days after the juvenile court's final decision to retain the case in accordance with subsection A of § 16.1-269.1, file a notice of appeal of the decision to the appropriate circuit court. A copy of such notice shall be furnished at the same time to the counsel for the juvenile.

**§ 16.1-270. Waiver of jurisdiction of juvenile court in certain cases.**

At any time prior to commencement of the adjudicatory hearing, a juvenile ~~fourteen~~ 16 years of age or older charged with an offense which if committed by an adult could be punishable by confinement in a state correctional facility *or a juvenile 14 years of age or older charged with capital murder in violation of § 18.2-31 or murder in the first degree in violation of § 18.2-32*, with the written consent of his counsel, may elect in writing to waive the jurisdiction of the juvenile court and have his case transferred to the appropriate circuit court, in which event his case shall thereafter be dealt with in the same manner as if he had been transferred pursuant to this article.

**§ 16.1-284.1. Placement in secure local facility.**

A. If a juvenile ~~14~~ 16 years of age or older is found to have committed an offense which if committed by an adult would be punishable by confinement in a state or local correctional facility as defined in § 53.1-1, and the court determines (i) that the juvenile has not previously been and is not currently adjudicated delinquent of a violent juvenile felony or found guilty of a violent juvenile felony, (ii) that the juvenile has not been released from the custody of the Department within the previous 18 months, (iii) that the interests of the juvenile and the community require that the juvenile be placed under legal restraint or discipline, and (iv) that other placements authorized by this title will not serve the best interests of the juvenile, then the court may order the juvenile confined in a detention home or other secure facility for juveniles for a period not to exceed six months from the date the order is entered, for a single offense or multiple offenses. However, if the single offense or multiple offenses, which if committed by an adult would be punishable as a felony or a Class 1 misdemeanor, caused the death of any person, then the court may order the juvenile confined in a detention home or other secure facility for juveniles for a period not to exceed 12 months from the date the order is entered.

The period of confinement ordered may exceed 30 calendar days if the juvenile has had an assessment completed by the secure facility to which he is ordered concerning the appropriateness of the placement.

B. If the period of confinement in a detention home or other secure facility for juveniles is to exceed 30 calendar days, and the juvenile is eligible for commitment pursuant to subdivision A 14 of § 16.1-278.8, then the court shall order the juvenile committed to the Department, but suspend such commitment. In suspending the commitment to the Department as provided for in this subsection, the court shall specify conditions for the juvenile's satisfactory completion of one or more community or facility based treatment programs as may be appropriate for the juvenile's rehabilitation.

C. During any period of confinement which exceeds 30 calendar days ordered pursuant to this section, the court shall conduct a mandatory review hearing at least once during each 30 days and at such other times upon the request of the juvenile's probation officer, for good cause shown. If it appears at such hearing that the purpose of the order of confinement has been achieved, the juvenile shall be released on probation for such period and under such conditions as the court may specify and remain subject to the order suspending commitment to the State Department of Juvenile Justice. If the juvenile's commitment to the Department has been suspended as provided in subsection B of this section, and if

the court determines at the first or any subsequent review hearing that the juvenile is consistently failing to comply with the conditions specified by the court or the policies and program requirements of the facility, then the court shall order that the juvenile be committed to the State Department of Juvenile Justice. If the court determines at the first or any subsequent review hearing that the juvenile is not actively involved in any community facility based treatment program through no fault of his own, then the court shall order that the juvenile be released under such conditions as the court may specify subject to the suspended commitment.

C1. The appearance of the juvenile before the court for a hearing pursuant to subsection C may be by (i) personal appearance before the judge or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, a judge may exercise all powers conferred by law and 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. A 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.

D. A juvenile may only be ordered confined pursuant to this section to a facility in compliance with standards established by the State Board for such placements. Standards for these facilities shall require juveniles placed pursuant to this section for a period which exceeds 30 calendar days be provided separate services for their rehabilitation, consistent with the intent of this section.

E. The Department of Juvenile Justice shall assist the localities or combinations thereof in implementing this section consistent with the statewide plan required by § 16.1-309.4 and pursuant to standards promulgated by the State Board, in order to ensure the availability and reasonable access of each court to the facilities the use of which is authorized by this section.

**§ 16.1-285.1. Commitment of serious offenders.**

A. In the case of a juvenile ~~fourteen~~ 16 years of age or older who has been found guilty of an offense which would be a felony if committed by an adult, and either (i) the juvenile is on parole for an offense which would be a felony if committed by an adult, (ii) the juvenile was committed to the state for an offense which would be a felony if committed by an adult within the immediately preceding twelve months, (iii) the felony offense is punishable by a term of confinement of greater than twenty years if the felony was committed by an adult, or (iv) the juvenile has been previously adjudicated delinquent for an offense which if committed by an adult would be a felony punishable by a term of confinement of twenty years or more, and the circuit court, or the juvenile or family court, as the case may be, finds that commitment under this section is necessary to meet the rehabilitative needs of the juvenile and would serve the best interests of the community, then the court may order the juvenile committed to the Department of Juvenile Justice for placement in a juvenile correctional center for the period of time prescribed pursuant to this section.

Alternatively, in order to determine if a juvenile, transferred from a juvenile and domestic relations district court to a circuit court pursuant to § 16.1-269.1, appropriately qualifies for commitment pursuant to this section, notwithstanding the inapplicability of the qualification criteria set forth in clauses (i) through (iv), the circuit court may consider the commitment criteria set forth in subdivisions 1, 2, and 3 of subsection B as well as other components of the juvenile's life history and, if upon such consideration in the opinion of the court the needs of the juvenile and the interests of the community would clearly best be served by commitment hereunder, may so commit the juvenile.

B. Prior to committing any juvenile pursuant to this section, the court shall consider:

1. The juvenile's age;
2. The seriousness and number of the present offenses, including (i) whether the offense was committed in an aggressive, violent, premeditated, or willful manner; (ii) whether the offense was against persons or property, with greater weight being given to offenses against persons, especially if death or injury resulted; (iii) whether the offense involved the use of a firearm or other dangerous weapon by brandishing, displaying, threatening with or otherwise employing such weapon; and (iv) the nature of the juvenile's participation in the alleged offense;
3. The record and previous history of the juvenile in this or any other jurisdiction, including (i) the number and nature of previous contacts with courts, (ii) the number and nature of prior periods of probation, (iii) the number and nature of prior commitments to juvenile correctional centers, (iv) the number and nature of previous residential and community-based treatments, (v) whether previous adjudications and commitments were for delinquent acts that involved the infliction of serious bodily injury, and (vi) whether the offense is part of a repetitive pattern of similar adjudicated offenses; and
4. The Department's estimated length of stay.

Such commitment order must be supported by a determination that the interests of the juvenile and

community require that the juvenile be placed under legal restraint or discipline and that the juvenile is not a proper person to receive treatment or rehabilitation through other juvenile programs or facilities.

C. In ordering commitment pursuant to this section, the court shall specify a period of commitment not to exceed seven years or the juvenile's twenty-first birthday, whichever shall occur first. The court may also order a period of determinate or indeterminate parole supervision to follow the commitment but the total period of commitment and parole supervision shall not exceed seven years or the juvenile's twenty-first birthday, whichever occurs first.

D. Upon receipt of a juvenile committed under the provisions of this section, the Department shall evaluate the juvenile for the purpose of considering placement of the juvenile in an appropriate juvenile correctional center for the time prescribed by the committing court. Such a placement decision shall be made based on the availability of treatment programs at the facility; the level of security at the facility; the offense for which the juvenile has been committed; and the welfare, age and gender of the juvenile.

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

F. Any juvenile committed under the provisions of this section shall not be released at a time earlier than that specified by the court in its dispositional order except as provided for in § 16.1-285.2. The Department may petition the committing court for a hearing as provided for in § 16.1-285.2 for an earlier release of the juvenile when good cause exists for an earlier release. In addition, the Department shall petition the committing court for a determination as to the continued commitment of each juvenile sentenced under this section at least sixty days prior to the second anniversary of the juvenile's date of commitment and sixty days prior to each annual anniversary thereafter.

**§ 16.1-299.1. Sample required for DNA analysis upon conviction or adjudication of felony.**

A juvenile convicted of a felony or adjudicated delinquent on the basis of an act which would be a felony if committed by an adult shall have a sample of his blood, saliva or tissue taken for DNA analysis provided the juvenile was ~~14~~ 16 years of age or older at the time of the commission of the offense *or 14 years of age or older at the time of the commission of capital murder in violation of § 18.2-31 or murder in the first degree in violation of § 18.2-32.*

The provisions of Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2 shall apply to all persons and all DNA samples taken as required by this section, mutatis mutandis.

The Department of Juvenile Justice shall verify that a DNA sample required to be taken has been received by the Department of Forensic Science. In any case where a DNA sample has not been received, the Department of Juvenile Justice shall notify the court and the court shall require the person to submit a sample for DNA analysis.

**§ 16.1-301. Confidentiality of juvenile law-enforcement records; disclosures to school principal and others.**

A. The court shall require all law-enforcement agencies to take special precautions to ensure that law-enforcement records concerning a juvenile are protected against disclosure to any unauthorized person. The police departments of the cities of the Commonwealth, and the police departments or sheriffs of the counties, as the case may be, shall keep separate records as to violations of law other than violations of motor vehicle laws committed by juveniles. Such records with respect to such juvenile shall not be open to public inspection nor their contents disclosed to the public unless a juvenile ~~14~~ 16 years of age or older is charged with a violent juvenile felony as specified in subsections B and C of § 16.1-269.1 *or a juvenile 14 years of age or older is charged with capital murder in violation of § 18.2-31 or murder in the first degree in violation of § 18.2-32.*

B. Notwithstanding any other provision of law, the chief of police or sheriff of a jurisdiction or his designee may disclose, for the protection of the juvenile, his fellow students and school personnel, to the school principal that a juvenile is a suspect in or has been charged with (i) a violent juvenile felony, as specified in subsections B and C of § 16.1-269.1; (ii) a violation of any of the provisions of Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; or (iii) a violation of law involving any weapon as described in subsection A of § 18.2-308. If a chief of police, sheriff or a designee has disclosed to a school principal pursuant to this section that a juvenile is a suspect in or has been charged with a crime listed above, upon a court disposition of a proceeding regarding such crime in which a juvenile is adjudicated delinquent, convicted, found not guilty or the charges are reduced, the chief of police, sheriff or a designee shall, within 15 days of the expiration of the appeal period, if there is no notice of appeal, provide notice of the disposition ordered by the court to the school principal to whom disclosure was made. If the court defers disposition or if charges are withdrawn, dismissed or nolle prosequi, the chief of police, sheriff or a designee shall, within 15 days of such action provide notice of such action to the school principal to whom disclosure was made. 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. In addition to any other disclosure that is permitted by this subsection, the principal in his discretion may provide such information to a threat assessment team established by the local school division. No member of a threat assessment team shall (a) disclose any juvenile record information obtained pursuant to this section or (b) use such information for any purpose other than evaluating threats to students and school personnel. For the purposes of this subsection, "principal" also refers to the chief administrator of any private primary or secondary school.

C. Inspection of law-enforcement records concerning juveniles shall be permitted only by the following:

1. A court having the juvenile currently before it in any proceeding;
2. The officers of public and nongovernmental institutions or agencies to which the juvenile is currently committed, and those responsible for his supervision after release;
3. Any other person, agency, or institution, by order of the court, having a legitimate interest in the case or in the work of the law-enforcement agency;
4. Law-enforcement officers of other jurisdictions, by order of the court, when necessary for the discharge of their current official duties;
5. The probation and other professional staff of a court in which the juvenile is subsequently convicted of a criminal offense for the purpose of a presentence report or other dispositional proceedings, or by officials of penal institutions and other penal facilities to which he is committed, or by a parole board in considering his parole or discharge or in exercising supervision over him;
6. The juvenile, parent, guardian or other custodian and counsel for the juvenile by order of the court; and
7. As provided in §§ 19.2-389.1 and 19.2-390.

D. The police departments of the cities and towns and the police departments or sheriffs of the counties may release, upon request to one another and to state and federal law-enforcement agencies, and to law-enforcement agencies in other states, current information on juvenile arrests. The information exchanged shall be used by the receiving agency for current investigation purposes only and shall not result in the creation of new files or records on individual juveniles on the part of the receiving agency.

E. Upon request, the police departments of the cities and towns and the police departments or sheriffs of the counties may release current information on juvenile arrests or juvenile victims to the Virginia Workers' Compensation Commission solely for purposes of determining whether to make an award to the victim of a crime, and such information shall not be disseminated or used by the Commission for any other purpose than provided in § 19.2-368.3.

F. Nothing in this section shall prohibit the exchange of other criminal investigative or intelligence information among law-enforcement agencies.

G. Nothing in this section shall prohibit the disclosure of law-enforcement records concerning a juvenile to a court services unit-authorized diversion program in accordance with this chapter, which includes programs authorized by subdivision 1 of § 16.1-227 and § 16.1-260. Such records shall not be further disclosed by the authorized diversion program or any participants therein. Law-enforcement officers may prohibit a disclosure to such a program to protect a criminal investigation or intelligence information.

**§ 16.1-302. Dockets, indices and order books; when hearings and records private; right to public hearing; presence of juvenile in court.**

A. Every juvenile court shall keep a separate docket of cases arising under this law.

B. Every circuit court shall keep a separate docket, index, and, for entry of its orders, a separate order book or file for cases on appeal from the juvenile court except: (i) cases involving support pursuant to § 20-61 or subdivisions A 3, F or L of § 16.1-241; (ii) cases involving criminal offenses committed by adults which are commenced on a warrant or a summons as described in Title 19.2; and (iii) cases involving civil commitments of adults pursuant to Title 37.2. Such cases shall be docketed on the appropriate docket and the orders in such cases shall be entered in the appropriate order book as used with similar cases commenced in circuit court.

C. The general public shall be excluded from all juvenile court hearings and only such persons admitted as the judge shall deem proper. However, proceedings in cases involving an adult charged with a crime and hearings held on a petition or warrant alleging that a juvenile ~~fourteen~~ 16 years of age or older committed an offense which would be a felony if committed by an adult *or a juvenile 14 years of age or older committed capital murder in violation of § 18.2-31 or murder in the first degree in violation of § 18.2-32* shall be open. Subject to the provisions of subsection D for good cause shown, the court may, sua sponte or on motion of the accused or the attorney for the Commonwealth close the proceedings. If the proceedings are closed, the court shall state in writing its reasons and the statement shall be made a part of the public record.

D. In any hearing held for the purpose of adjudicating an alleged violation of any criminal law, or

law defining a traffic infraction, the juvenile or adult so charged shall have a right to be present and shall have the right to a public hearing unless expressly waived by such person. The chief judge may provide by rule that any juvenile licensed to operate a motor vehicle who has been charged with a traffic infraction may waive court appearance and admit to the infraction or infractions charged if he or she and a parent, legal guardian, or person standing in loco parentis to the juvenile appear in person at the court or before a magistrate or sign and either mail or deliver to the court or magistrate a written form of appearance, plea and waiver, provided that the written form contains the notarized signature of the parent, legal guardian, or person standing in loco parentis to the juvenile. An emancipated juvenile charged with a traffic infraction shall have the opportunity to waive court appearance and admit to the infraction or infractions if he or she appears in person at the court or before a magistrate or signs and either mails or delivers to the court or magistrate a written form of appearance, plea, and waiver, provided that the written plea form containing the signature of the emancipated juvenile is accompanied by a notarized sworn statement which details the facts supporting the claim of emancipated status. Whenever the sole purpose of a proceeding is to determine the custody of a child of tender years, the presence of such juvenile in court may be waived by the judge at any stage thereof.

**§ 16.1-305. Confidentiality of court records.**

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

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

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

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

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

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

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

6. The Office of the Attorney General, for all criminal justice activities otherwise permitted and for purposes of performing duties required by Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

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

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

B1. If a juvenile 44 16 years of age or older at the time of the offense is adjudicated delinquent on the basis of an act which would be a felony if committed by an adult, all court records regarding that adjudication and any subsequent adjudication of delinquency, other than those records specified in subsection A, shall be open to the public. However, if a hearing was closed, the judge may order that

certain records or portions thereof remain confidential to the extent necessary to protect any juvenile victim or juvenile witness.

C. All other juvenile records, including the docket, petitions, motions and other papers filed with a case, transcripts of testimony, findings, verdicts, orders and decrees shall be open to inspection only by those persons and agencies designated in subsections A and B of this section. However, a licensed bail bondsman shall be entitled to know the status of a bond he has posted or provided surety on for a juvenile under § 16.1-258. This shall not authorize a bail bondsman to have access to or inspect any other portion of his principal's juvenile court records.

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

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

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

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

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

#### **§ 16.1-307. Circuit court records regarding juveniles.**

In proceedings against a juvenile in the circuit court in which the circuit court deals with the child in the same manner as a case in the juvenile court, the clerk of the court shall preserve all records connected with the proceedings in files separate from other files and records of the court as provided in § 16.1-302. Except as provided in §§ 19.2-389.1 and 19.2-390, such records shall be open for inspection only in accordance with the provisions of § 16.1-305 and shall be subject to expungement provisions of § 16.1-306. In proceedings in which a juvenile, ~~fourteen~~ 16 years of age or older at the time of the offense, was adjudicated delinquent in juvenile court on the basis of an act which would be a felony if committed by an adult, or was found guilty of a felony in the circuit court, *or a juvenile 14 years of age or older was found guilty of capital murder in violation of § 18.2-31 or murder in the first degree in violation of § 18.2-32 in the circuit court*, any court records, other than those specified in subsection A of § 16.1-305, regarding that adjudication or conviction and any subsequent adjudication of delinquency or conviction of a crime, shall be available and shall be treated in the same manner as adult criminal records.

#### **§ 16.1-309.1. Exception as to confidentiality.**

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

B. 1. a. At any time prior to disposition, if a juvenile charged with a delinquent act which would constitute a felony if committed by an adult, or held in custody by a law-enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from justice, the attorney for the Commonwealth or, upon notice to the Commonwealth's attorney, the Department of Juvenile Justice or a locally operated court services unit, may, with notice to the juvenile's attorney of record, petition the court having jurisdiction of the offense to authorize public release of the juvenile's name, age, physical

description and photograph, the charge for which he is sought or for which he was adjudicated and any other information which may expedite his apprehension. Upon a showing that the juvenile is a fugitive and for good cause, the court shall order release of this information to the public. If a juvenile charged with a delinquent act that would constitute a felony if committed by an adult, or held in custody by a law-enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from justice at a time when the court is not in session, the Commonwealth's attorney, the Department of Juvenile Justice, or a locally operated court services unit may, with notice to the juvenile's attorney of record, authorize the public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought, and any other information which may expedite his apprehension.

b. At any time prior to disposition, if a juvenile charged with a delinquent act which would constitute a misdemeanor if committed by an adult, or held in custody by a law-enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from justice, the attorney for the Commonwealth may, with notice to the juvenile's attorney of record, petition the court having jurisdiction of the offense to authorize public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought or for which he was adjudicated and any other information which may expedite his apprehension. Upon a showing that the juvenile is a fugitive and for good cause, the court shall order release of this information to the public. If a juvenile charged with a delinquent act that would constitute a misdemeanor if committed by an adult, or held in custody by a law-enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from justice at a time when the court is not in session, the attorney for the Commonwealth may, with notice to the juvenile's attorney of record, authorize the public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought, and any other information which may expedite his apprehension.

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

C. Whenever a juvenile 14 16 years of age or older is charged with a delinquent act that would be a criminal violation of Article 2 (§ 18.2-38 et seq.) of Chapter 4 of Title 18.2, a felony involving a weapon, a felony violation of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or an "act of violence" as defined in subsection A of § 19.2-297.1 if committed by an adult *or a juvenile 14 years of age or older is charged with capital murder in violation of § 18.2-31 or murder in the first degree in violation of § 18.2-32*, the judge may, where consideration of the public interest requires, make the juvenile's name and address available to the public.

D. Upon the request of a victim of a delinquent act that would be a felony or that would be a misdemeanor violation of § 16.1-253.2, 18.2-57, 18.2-57.2, 18.2-60.3, 18.2-60.4, 18.2-67.4, or 18.2-67.5 if committed by an adult, the court may order that such victim be informed of the charge or charges brought, the findings of the court, and the disposition of the case. For purposes of this section, "victim" shall be defined as in § 19.2-11.01.

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

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

G. Notwithstanding any other provision of law, where consideration of public safety requires, the Department and locally operated court service unit shall release information relating to a juvenile's criminal street gang involvement, if any, and the criminal street gang-related activity and membership of others, as criminal street gang is defined in § 18.2-46.1, obtained from an investigation or supervision of a juvenile and shall include the identity or identifying information of the juvenile; however, the Department and local court service unit shall not release the identifying information of a juvenile not affiliated with or involved in a criminal street gang unless that information relates to a specific criminal act. Such information shall be released to any State Police, local police department, sheriff's office, or



law-enforcement task force that is a part of or administered by the Commonwealth or any political subdivision thereof, and that is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth. The exchange of information shall be for the purpose of an investigation into criminal street gang activity.

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

**§ 18.2-308.2. Possession or transportation of firearms, firearms ammunition, stun weapons, explosives or concealed weapons by convicted felons; penalties; petition for permit; when issued.**

A. It shall be unlawful for (i) any person who has been convicted of a felony; (ii) any person adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of *capital* murder in violation of § 18.2-31 or *murder in the first degree in violation of § 18.2-32, or any person adjudicated delinquent as a juvenile 16 years of age or older at the time of the offense of murder in the second degree in violation of § 18.2-32*, kidnapping in violation of § 18.2-47, robbery by the threat or presentation of firearms in violation of § 18.2-58, or rape in violation of § 18.2-61; or (iii) any person under the age of 29 who was adjudicated delinquent as a juvenile 14 16 years of age or older at the time of the offense of a delinquent act which would be a felony if committed by an adult, other than those felonies set forth in clause (ii), whether such conviction or adjudication occurred under the laws of the Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof, to knowingly and intentionally possess or transport any firearm or ammunition for a firearm, any stun weapon as defined by § 18.2-308.1, or any explosive material, or to knowingly and intentionally carry about his person, hidden from common observation, any weapon described in subsection A of § 18.2-308. However, such person may possess in his residence or the curtilage thereof a stun weapon as defined by § 18.2-308.1. Any person who violates this section shall be guilty of a Class 6 felony. However, any person who violates this section by knowingly and intentionally possessing or transporting any firearm and who was previously convicted of a violent felony as defined in § 17.1-805 shall be sentenced to a mandatory minimum term of imprisonment of five years. Any person who violates this section by knowingly and intentionally possessing or transporting any firearm and who was previously convicted of any other felony within the prior 10 years shall be sentenced to a mandatory minimum term of imprisonment of two years. The mandatory minimum terms of imprisonment prescribed for violations of this section shall be served consecutively with any other sentence.

B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm, ammunition for a firearm, explosive material or other weapon while carrying out his duties as a member of the Armed Forces of the United States or of the National Guard of Virginia or of any other state, (ii) any law-enforcement officer in the performance of his duties, (iii) any person who has been pardoned or whose political disabilities have been removed pursuant to Article V, Section 12 of the Constitution of Virginia provided the Governor, in the document granting the pardon or removing the person's political disabilities, may expressly place conditions upon the reinstatement of the person's right to ship, transport, possess or receive firearms, (iv) any person whose right to possess firearms or ammunition has been restored under the law of another state subject to conditions placed upon the reinstatement of the person's right to ship, transport, possess, or receive firearms by such state, or (v) any person adjudicated delinquent as a juvenile who has completed a term of service of no less than two years in the Armed Forces of the United States and, if such person has been discharged from the Armed Forces of the United States, received an honorable discharge and who is not otherwise prohibited under clause (i) or (ii) of subsection A.

C. Any person prohibited from possessing, transporting, or carrying a firearm, ammunition for a firearm, or a stun weapon under subsection A may petition the circuit court of the jurisdiction in which he resides or, if the person is not a resident of the Commonwealth, the circuit court of any county or city where such person was last convicted of a felony or adjudicated delinquent of a disqualifying offense pursuant to subsection A, for a permit to possess or carry a firearm, ammunition for a firearm, or a stun weapon; however, no person who has been convicted of a felony shall be qualified to petition for such a permit unless his civil rights have been restored by the Governor or other appropriate authority. A copy of the petition shall be mailed or delivered to the attorney for the Commonwealth for the jurisdiction where the petition was filed who shall be entitled to respond and represent the interests of the Commonwealth. The court shall conduct a hearing if requested by either party. The court may, in its discretion and for good cause shown, grant such petition and issue a permit. The provisions of this section relating to firearms, ammunition for a firearm, and stun weapons shall not apply to any person who has been granted a permit pursuant to this subsection.

1043 C1. Any person who was prohibited from possessing, transporting or carrying explosive material  
1044 under subsection A may possess, transport or carry such explosive material if his right to possess,  
1045 transport or carry explosive material has been restored pursuant to federal law.

1046 C2. The prohibitions of subsection A shall not prohibit any person other than a person convicted of  
1047 an act of violence as defined in § 19.2-297.1 or a violent felony as defined in subsection C of  
1048 § 17.1-805 from possessing, transporting, or carrying (i) antique firearms or (ii) black powder in a  
1049 quantity not exceeding five pounds if it is intended to be used solely for sporting, recreational, or  
1050 cultural purposes in antique firearms. For the purposes of this subsection, "antique firearms" means any  
1051 firearm described in subdivision 3 of the definition of "antique firearm" in subsection G of  
1052 § 18.2-308.2:2.

1053 D. For the purpose of this section:

1054 "Ammunition for a firearm" means the combination of a cartridge, projectile, primer, or propellant  
1055 designed for use in a firearm other than an antique firearm as defined in § 18.2-308.2:2.

1056 "Explosive material" means any chemical compound mixture, or device, the primary or common  
1057 purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and  
1058 other high explosives, black powder, pellet powder, smokeless gun powder, detonators, blasting caps and  
1059 detonating cord but shall not include fireworks or permissible fireworks as defined in § 27-95.

1060 **§ 18.2-308.2:2. Criminal history record information check required for the transfer of certain**  
1061 **firearms.**

1062 A. Any person purchasing from a dealer a firearm as herein defined shall consent in writing, on a  
1063 form to be provided by the Department of State Police, to have the dealer obtain criminal history record  
1064 information. Such form shall include only the written consent; the name, birth date, gender, race,  
1065 citizenship, and social security number and/or any other identification number; the number of firearms  
1066 by category intended to be sold, rented, traded, or transferred; and answers by the applicant to the  
1067 following questions: (i) has the applicant been convicted of a felony offense or found guilty or  
1068 adjudicated delinquent as a juvenile ~~14~~ 16 years of age or older at the time of the offense of a  
1069 delinquent act that would be a felony if committed by an adult *or adjudicated delinquent as a juvenile*  
1070 *14 years of age or older at the time of the offense of capital murder in violation of § 18.2-31 or murder*  
1071 *in the first degree in violation of § 18.2-32*; (ii) is the applicant subject to a court order restraining the  
1072 applicant from harassing, stalking, or threatening the applicant's child or intimate partner, or a child of  
1073 such partner, or is the applicant subject to a protective order; and (iii) has the applicant ever been  
1074 acquitted by reason of insanity and prohibited from purchasing, possessing or transporting a firearm  
1075 pursuant to § 18.2-308.1:1 or any substantially similar law of any other jurisdiction, been adjudicated  
1076 legally incompetent, mentally incapacitated or adjudicated an incapacitated person and prohibited from  
1077 purchasing a firearm pursuant to § 18.2-308.1:2 or any substantially similar law of any other jurisdiction,  
1078 or been involuntarily admitted to an inpatient facility or involuntarily ordered to outpatient mental health  
1079 treatment and prohibited from purchasing a firearm pursuant to § 18.2-308.1:3 or any substantially  
1080 similar law of any other jurisdiction.

1081 B. 1. No dealer shall sell, rent, trade or transfer from his inventory any such firearm to any other  
1082 person who is a resident of Virginia until he has (i) obtained written consent and the other information  
1083 on the consent form specified in subsection A, and provided the Department of State Police with the  
1084 name, birth date, gender, race, citizenship, and social security and/or any other identification number and  
1085 the number of firearms by category intended to be sold, rented, traded or transferred and (ii) requested  
1086 criminal history record information by a telephone call to or other communication authorized by the  
1087 State Police and is authorized by subdivision 2 to complete the sale or other such transfer. To establish  
1088 personal identification and residence in Virginia for purposes of this section, a dealer must require any  
1089 prospective purchaser to present one photo-identification form issued by a governmental agency of the  
1090 Commonwealth or by the United States Department of Defense that demonstrates that the prospective  
1091 purchaser resides in Virginia. For the purposes of this section and establishment of residency for firearm  
1092 purchase, residency of a member of the armed forces shall include both the state in which the member's  
1093 permanent duty post is located and any nearby state in which the member resides and from which he  
1094 commutes to the permanent duty post. A member of the armed forces whose photo identification issued  
1095 by the Department of Defense does not have a Virginia address may establish his Virginia residency  
1096 with such photo identification and either permanent orders assigning the purchaser to a duty post,  
1097 including the Pentagon, in Virginia or the purchaser's Leave and Earnings Statement. When the photo  
1098 identification presented to a dealer by the prospective purchaser is a driver's license or other photo  
1099 identification issued by the Department of Motor Vehicles, and such identification form contains a date  
1100 of issue, the dealer shall not, except for a renewed driver's license or other photo identification issued by  
1101 the Department of Motor Vehicles, sell or otherwise transfer a firearm to the prospective purchaser until  
1102 30 days after the date of issue of an original or duplicate driver's license unless the prospective  
1103 purchaser also presents a copy of his Virginia Department of Motor Vehicles driver's record showing  
1104 that the original date of issue of the driver's license was more than 30 days prior to the attempted

purchase.

In addition, no dealer shall sell, rent, trade, or transfer from his inventory any assault firearm to any person who is not a citizen of the United States or who is not a person lawfully admitted for permanent residence.

Upon receipt of the request for a criminal history record information check, the State Police shall (a) review its criminal history record information to determine if the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law, (b) inform the dealer if its record indicates that the buyer or transferee is so prohibited, and (c) provide the dealer with a unique reference number for that inquiry.

2. The State Police shall provide its response to the requesting dealer during the dealer's request, or by return call without delay. If the criminal history record information check indicates the prospective purchaser or transferee has a disqualifying criminal record or has been acquitted by reason of insanity and committed to the custody of the Commissioner of Behavioral Health and Developmental Services, the State Police shall have until the end of the dealer's next business day to advise the dealer if its records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law. If not so advised by the end of the dealer's next business day, a dealer who has fulfilled the requirements of subdivision 1 may immediately complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer. In case of electronic failure or other circumstances beyond the control of the State Police, the dealer shall be advised immediately of the reason for such delay and be given an estimate of the length of such delay. After such notification, the State Police shall, as soon as possible but in no event later than the end of the dealer's next business day, inform the requesting dealer if its records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law. A dealer who fulfills the requirements of subdivision 1 and is told by the State Police that a response will not be available by the end of the dealer's next business day may immediately complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer.

3. Except as required by subsection D of § 9.1-132, the State Police shall not maintain records longer than 30 days, except for multiple handgun transactions for which records shall be maintained for 12 months, from any dealer's request for a criminal history record information check pertaining to a buyer or transferee who is not found to be prohibited from possessing and transporting a firearm under state or federal law. However, the log on requests made may be maintained for a period of 12 months, and such log shall consist of the name of the purchaser, the dealer identification number, the unique approval number and the transaction date.

4. On the last day of the week following the sale or transfer of any firearm, the dealer shall mail or deliver the written consent form required by subsection A to the Department of State Police. The State Police shall immediately initiate a search of all available criminal history record information to determine if the purchaser is prohibited from possessing or transporting a firearm under state or federal law. If the search discloses information indicating that the buyer or transferee is so prohibited from possessing or transporting a firearm, the State Police shall inform the chief law-enforcement officer in the jurisdiction where the sale or transfer occurred and the dealer without delay.

5. Notwithstanding any other provisions of this section, rifles and shotguns may be purchased by persons who are citizens of the United States or persons lawfully admitted for permanent residence but residents of other states under the terms of subsections A and B upon furnishing the dealer with one photo-identification form issued by a governmental agency of the person's state of residence and one other form of identification determined to be acceptable by the Department of Criminal Justice Services.

6. For the purposes of this subsection, the phrase "dealer's next business day" shall not include December 25.

C. No dealer shall sell, rent, trade or transfer from his inventory any firearm, except when the transaction involves a rifle or a shotgun and can be accomplished pursuant to the provisions of subdivision B 5 to any person who is not a resident of Virginia unless he has first obtained from the Department of State Police a report indicating that a search of all available criminal history record information has not disclosed that the person is prohibited from possessing or transporting a firearm under state or federal law. The dealer shall obtain the required report by mailing or delivering the written consent form required under subsection A to the State Police within 24 hours of its execution. If the dealer has complied with the provisions of this subsection and has not received the required report from the State Police within 10 days from the date the written consent form was mailed to the Department of State Police, he shall not be deemed in violation of this section for thereafter completing the sale or transfer.

D. Nothing herein shall prevent a resident of the Commonwealth, at his option, from buying, renting or receiving a firearm from a dealer in Virginia by obtaining a criminal history record information check through the dealer as provided in subsection C.

1166 E. If any buyer or transferee is denied the right to purchase a firearm under this section, he may  
1167 exercise his right of access to and review and correction of criminal history record information under  
1168 § 9.1-132 or institute a civil action as provided in § 9.1-135, provided any such action is initiated within  
1169 30 days of such denial.

1170 F. Any dealer who willfully and intentionally requests, obtains, or seeks to obtain criminal history  
1171 record information under false pretenses, or who willfully and intentionally disseminates or seeks to  
1172 disseminate criminal history record information except as authorized in this section shall be guilty of a  
1173 Class 2 misdemeanor.

1174 G. For purposes of this section:

1175 "Actual buyer" means a person who executes the consent form required in subsection B or C, or  
1176 other such firearm transaction records as may be required by federal law.

1177 "Antique firearm" means:

1178 1. Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of  
1179 ignition system) manufactured in or before 1898;

1180 2. Any replica of any firearm described in subdivision 1 of this definition if such replica (i) is not  
1181 designed or redesigned for using rimfire or conventional centerfire fixed ammunition or (ii) uses rimfire  
1182 or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that  
1183 is not readily available in the ordinary channels of commercial trade;

1184 3. Any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol that is designed to use  
1185 black powder, or a black powder substitute, and that cannot use fixed ammunition. For purposes of this  
1186 subdivision, the term "antique firearm" shall not include any weapon that incorporates a firearm frame  
1187 or receiver, any firearm that is converted into a muzzle-loading weapon, or any muzzle-loading weapon  
1188 that can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breech-block, or any  
1189 combination thereof; or

1190 4. Any curio or relic as defined in this subsection.

1191 "Assault firearm" means any semi-automatic center-fire rifle or pistol which expels single or multiple  
1192 projectiles by action of an explosion of a combustible material and is equipped at the time of the  
1193 offense with a magazine which will hold more than 20 rounds of ammunition or designed by the  
1194 manufacturer to accommodate a silencer or equipped with a folding stock.

1195 "Curios or relics" means firearms that are of special interest to collectors by reason of some quality  
1196 other than is associated with firearms intended for sporting use or as offensive or defensive weapons. To  
1197 be recognized as curios or relics, firearms must fall within one of the following categories:

1198 1. Firearms that were manufactured at least 50 years prior to the current date, which use rimfire or  
1199 conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is  
1200 not readily available in the ordinary channels of commercial trade, but not including replicas thereof;

1201 2. Firearms that are certified by the curator of a municipal, state, or federal museum that exhibits  
1202 firearms to be curios or relics of museum interest; and

1203 3. Any other firearms that derive a substantial part of their monetary value from the fact that they  
1204 are novel, rare, bizarre, or because of their association with some historical figure, period, or event.  
1205 Proof of qualification of a particular firearm under this category may be established by evidence of  
1206 present value and evidence that like firearms are not available except as collectors' items, or that the  
1207 value of like firearms available in ordinary commercial channels is substantially less.

1208 "Dealer" means any person licensed as a dealer pursuant to 18 U.S.C. § 921 et seq.

1209 "Firearm" means any handgun, shotgun, or rifle that will or is designed to or may readily be  
1210 converted to expel single or multiple projectiles by action of an explosion of a combustible material.

1211 "Handgun" means any pistol or revolver or other firearm originally designed, made and intended to  
1212 fire single or multiple projectiles by means of an explosion of a combustible material from one or more  
1213 barrels when held in one hand.

1214 "Lawfully admitted for permanent residence" means the status of having been lawfully accorded the  
1215 privilege of residing permanently in the United States as an immigrant in accordance with the  
1216 immigration laws, such status not having changed.

1217 H. The Department of Criminal Justice Services shall promulgate regulations to ensure the identity,  
1218 confidentiality and security of all records and data provided by the Department of State Police pursuant  
1219 to this section.

1220 I. The provisions of this section shall not apply to (i) transactions between persons who are licensed  
1221 as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et seq.; (ii)  
1222 purchases by or sales to any law-enforcement officer or agent of the United States, the Commonwealth  
1223 or any local government, or any campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of  
1224 Chapter 8 of Title 23.1; or (iii) antique firearms, curios or relics.

1225 J. The provisions of this section shall not apply to restrict purchase, trade or transfer of firearms by a  
1226 resident of Virginia when the resident of Virginia makes such purchase, trade or transfer in another  
1227 state, in which case the laws and regulations of that state and the United States governing the purchase,

trade or transfer of firearms shall apply. A National Instant Criminal Background Check System (NICS) check shall be performed prior to such purchase, trade or transfer of firearms.

J1. All licensed firearms dealers shall collect a fee of \$2 for every transaction for which a criminal history record information check is required pursuant to this section, except that a fee of \$5 shall be collected for every transaction involving an out-of-state resident. Such fee shall be transmitted to the Department of State Police by the last day of the month following the sale for deposit in a special fund for use by the State Police to offset the cost of conducting criminal history record information checks under the provisions of this section.

K. Any person willfully and intentionally making a materially false statement on the consent form required in subsection B or C or on such firearm transaction records as may be required by federal law, shall be guilty of a Class 5 felony.

L. Except as provided in § 18.2-308.2:1, any dealer who willfully and intentionally sells, rents, trades or transfers a firearm in violation of this section shall be guilty of a Class 6 felony.

L1. Any person who attempts to solicit, persuade, encourage, or entice any dealer to transfer or otherwise convey a firearm other than to the actual buyer, as well as any other person who willfully and intentionally aids or abets such person, shall be guilty of a Class 6 felony. This subsection shall not apply to a federal law-enforcement officer or a law-enforcement officer as defined in § 9.1-101, in the performance of his official duties, or other person under his direct supervision.

M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the Commonwealth to be resold or otherwise provided to another person who the transferor knows is ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 4 felony and sentenced to a mandatory minimum term of imprisonment of one year. However, if the violation of this subsection involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory minimum term of imprisonment of five years. The prohibitions of this subsection shall not apply to the purchase of a firearm by a person for the lawful use, possession, or transport thereof, pursuant to § 18.2-308.7, by his child, grandchild, or individual for whom he is the legal guardian if such child, grandchild, or individual is ineligible, solely because of his age, to purchase a firearm.

N. Any person who is ineligible to purchase or otherwise receive or possess a firearm in the Commonwealth who solicits, employs or assists any person in violating subsection M shall be guilty of a Class 4 felony and shall be sentenced to a mandatory minimum term of imprisonment of five years.

O. Any mandatory minimum sentence imposed under this section shall be served consecutively with any other sentence.

P. All driver's licenses issued on or after July 1, 1994, shall carry a letter designation indicating whether the driver's license is an original, duplicate or renewed driver's license.

Q. Prior to selling, renting, trading, or transferring any firearm owned by the dealer but not in his inventory to any other person, a dealer may require such other person to consent to have the dealer obtain criminal history record information to determine if such other person is prohibited from possessing or transporting a firearm by state or federal law. The Department of State Police shall establish policies and procedures in accordance with 28 C.F.R. § 25.6 to permit such determinations to be made by the Department of State Police, and the processes established for making such determinations shall conform to the provisions of this section.