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SENATE BILL NO. 1033

Offered January 17, 2020

A BILL to amend and reenact §§ 2.2-1837, 2.2-3007, 8.01-195.10, 9.1-801, 9.1-903, 16.1-249, 16.1-269.1, 16.1-285.1, 16.1-285.2, 16.1-309.4, 16.1-322.5, 16.1-322.6, 18.2-48.1, 18.2-431.1, 18.2-473, 18.2-473.1, 18.2-474, 18.2-474.1, 18.2-477.2, 22.1-209.1:2, 22.1-289, 29.1-317, 51.1-212, 66-3, 66-10, 66-13, 66-13.1, 66-18, 66-22.1, 66-25.1:1, 66-25.1:3, 66-25.2:1, 66-25.3, 66-25.4, 66-25.6, and 66-25.7 of the Code of Virginia, relating to juvenile community correctional centers and facilities; establishment; placement of juveniles.

Patrons—Locke, Boysko and McClellan

Unanimous consent to introduce

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1837, 2.2-3007, 8.01-195.10, 9.1-801, 9.1-903, 16.1-249, 16.1-269.1, 16.1-285.1, 16.1-285.2, 16.1-309.4, 16.1-322.5, 16.1-322.6, 18.2-48.1, 18.2-431.1, 18.2-473, 18.2-473.1, 18.2-474, 18.2-474.1, 18.2-477.2, 22.1-209.1:2, 22.1-289, 29.1-317, 51.1-212, 66-3, 66-10, 66-13, 66-13.1, 66-18, 66-22.1, 66-25.1:1, 66-25.1:3, 66-25.2:1, 66-25.3, 66-25.4, 66-25.6, and 66-25.7 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-1837. Risk management plan for public liability.

A. Subject to the approval of the Governor, the Division shall establish a risk management plan, which may be purchased insurance, self-insurance or a combination of self-insurance and purchased insurance to provide:

1. Protection against liability imposed by law for damages resulting from any claim:

a. Made against any state department, agency, institution, board, commission, officer, agent, or employee for acts or omissions of any nature while acting in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization;

b. Made against participants, other than professional counsel, in student disciplinary proceedings at public institutions of higher education for nonmalicious acts or omissions of any nature in the course and scope of participation in the proceedings; or

c. Resulting from an authorized indemnification agreement entered into by a public institution of higher education in the Commonwealth in accordance with this subsection.

A public institution of higher education in the Commonwealth may execute an indemnification agreement if the Governor (i) considers in advance of execution (a) the institution's analysis of the relevant public benefit and risk of liability, (b) the Division's charge to be assessed against the institution for providing insurance or self-insurance coverage for the claims resulting from the indemnification agreement, and (c) the Office of the Attorney General's comments and (ii) determines that execution is necessary to further the public's best interests.

The indemnification agreement shall limit the institution's total liability to a stated dollar amount and shall notify the contractor that the full faith and credit of the Commonwealth are not pledged or committed to payment of the institution's obligation under the agreement. However, no such institution shall be authorized to enter into an indemnification agreement in accordance with this subsection to indemnify any person or entity against damages arising from a sponsored project conducted by such institution. For the purposes of this section, a "sponsored project" is a research, instruction, or service project conducted at a public institution of higher education in the Commonwealth pursuant to a grant, cooperative agreement, or other contract;

2. Protection against tort liability and incidental medical payments arising out of the ownership, maintenance or use of buildings, grounds or properties owned or leased by the Commonwealth or used by state employees or other authorized persons in the course of their employment;

3. For the payment of attorney fees and expenses incurred in defending such persons and entities concerning any claim that (i) arises from their governmental employment or authorization, that (ii) arises from their participation in such student disciplinary proceedings, or (iii) is described in any such indemnification agreement, where the Division is informed by the Attorney General's office that it will not provide a defense due to a conflict or other appropriate reason; and

4. For the payment of attorney fees and expenses awarded to any individual or entity against the Commonwealth, or any department, agency, institution, board, commission, officer, agent, or employee of the Commonwealth for acts or omissions of any nature while acting in an authorized governmental or

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proprietary capacity, or in reliance upon any constitutional provision, or law of the Commonwealth. It is the obligation of the Division to provide for such indemnification regardless of whether there is a request for or an award of damages associated with the award of such fees and expenses.

a. As a condition of coverage for the payment of attorney fees and expenses, the department, agency, institution, board, commission, officer, agent, or employee of the Commonwealth shall (i) promptly notify the Division of the commencement of any claim, suit, action or other proceeding prior to its settlement, (ii) provide the Division with full nonprivileged information on the matter as requested, and (iii) permit the Division to participate in the investigation of such claim, suit, action or other proceeding. Failure to promptly notify the Division or to reasonably cooperate may, at the Division's discretion, result in no payment or a reduced payment being made.

b. The Division shall set the premium and administrative costs to be paid to it for providing payment of attorney fees and expenses awarded pursuant to this section. The premiums and administrative costs set by the Division shall be payable in the amounts, at the time and in the manner that the Division in its sole discretion requires. Premiums and administrative costs shall be set to best ensure the financial stability of the plan.

B. Any risk management plan established pursuant to this section shall provide for the establishment of a trust fund or contribution to the State Insurance Reserve Trust Fund for the payment of claims covered under the plan. The funds shall be invested as provided in § 2.2-1806 and interest shall be added to the fund as earned. The trust fund shall also provide for payment of administrative costs, contractual costs, and other expenses related to the administration of such plan.

C. The risk management plan for public liability shall be submitted to the Governor for approval prior to implementation.

D. The risk management plan established pursuant to this section shall provide protection against professional liability imposed by law as provided in § 24.2-121, resulting from any claim made against a local electoral board, any of its members, any general registrar, or any employee of or paid assistant to a registrar for acts or omissions of any nature while acting in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization, regardless of whether or not the civil action requests monetary damages, subject to the limitations of the risk management plan.

E. The risk management plan established pursuant to this section shall provide protection against any claim made against any soil and water conservation district, director, officer, agent or employee thereof, (i) arising out of the ownership, maintenance or use of buildings, grounds or properties owned, leased or maintained by any such district or used by district employees or other authorized persons in the course of their employment or (ii) arising out of acts or omissions of any nature while acting in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization.

F. The risk management plan established pursuant to this section shall provide protection against professional liability imposed by law for damages resulting from any claim made against a local school board selection commission or local school board selection commission members for acts or omissions of any nature while acting in an authorized governmental or proprietary capacity and in the course and scope of authorization, subject to the limitations of the risk management plan.

G. The risk management plan established pursuant to this section shall provide coverage for any matter that involves or could involve an action or proceeding against a judge, the nature of which is designed to determine whether discipline or other sanction of the judge for malfeasance or misfeasance is appropriate or to otherwise determine the fitness of the judge to hold office or to continue his employment. No coverage or indemnification shall be made pursuant to this subsection when the Supreme Court of Virginia finds that the judge should be censured or removed from office pursuant to Section 10 of Article VI of the Constitution of Virginia or statutes enacted pursuant thereto.

H. The risk management plan established pursuant to this section shall provide protection against claims made against chaplains by persons incarcerated in a state correctional facility, a juvenile *community* correctional center, or a facility operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.) arising out of services provided by the chaplains to such incarcerated persons, regardless of whether such services were provided on a volunteer basis or for compensation. For the purposes of this subsection, chaplains shall include only those persons, who, at the time any claim may arise, were acting pursuant to, and in compliance with, an agreement between the chaplain or an organization to which the chaplain belongs, and the Department of Corrections, the Department of Juvenile Justice, or an operator of a facility operated pursuant to the Corrections Private Management Act.

§ 2.2-3007. Certain employees of the Departments of Corrections and Juvenile Justice.

A. Employees of the Departments of Corrections and Juvenile Justice who work in institutions or juvenile *community* correctional centers or have client, inmate, or resident contact and who are terminated on the grounds of client, inmate, or resident abuse, criminal conviction, or as a result of being placed on probation under the provisions of § 18.2-251, may appeal their termination only through the Department of Human Resource Management applicable grievance procedures, which shall not

include successive grievance steps or the formal hearing provided in § 2.2-3005.

B. If no resolution is reached, the employee may advance the grievance to the circuit court of the jurisdiction in which the grievance occurred for a de novo hearing on the merits of the termination. In its discretion, the court may refer the matter to a commissioner in chancery to take such evidence as may be proper and to make a report to the court. Both the grievant and the respondent may call upon witnesses and be represented by legal counsel or other representatives before the court or the commissioner in chancery. Such representatives may examine, cross-examine, question and present evidence on behalf of the grievant or respondent before the court or commissioner in chancery without being in violation of the provisions of § 54.1-3904.

C. A termination shall be upheld unless shown to have been unwarranted by the facts or contrary to law or policy.

§ 8.01-195.10. Purpose; action by the General Assembly required; definitions.

A. The purpose of this article is to provide directions and guidelines for the compensation of persons who have been wrongfully incarcerated in the Commonwealth. Compensation for wrongful incarceration is governed by Article IV, Section 14 of the Constitution of Virginia, which prohibits the General Assembly from granting relief in cases in which the courts or other tribunals may have jurisdiction and any individual seeking payment of state funds for wrongful incarceration shall be deemed to have waived all other claims. The payment and receipt of any compensation for wrongful incarceration shall be contingent upon the General Assembly appropriating funds for that purpose. This article shall not provide an entitlement to compensation for persons wrongfully incarcerated or require the General Assembly to appropriate funds for the payment of such compensation. No estate of or personal representative for a decedent shall be entitled to seek a claim for compensation for wrongful incarceration.

B. As used in this article:

"Incarceration" or "incarcerated" means confinement in a local or regional correctional facility, juvenile *community* correctional center, state correctional facility, residential detention center, or facility operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.).

"Wrongful incarceration" or "wrongfully incarcerated" means incarceration for a felony conviction for which (i) the conviction has been vacated pursuant to Chapter 19.2 (§ 19.2-327.2 et seq.) or 19.3 (§ 19.2-327.10 et seq.) of Title 19.2, or the person incarcerated has been granted an absolute pardon for the commission of a crime that he did not commit, (ii) the person incarcerated must have entered a final plea of not guilty, or regardless of the plea, any person sentenced to death, or convicted of a Class 1 felony, a Class 2 felony, or any felony for which the maximum penalty is imprisonment for life, and (iii) the person incarcerated did not by any act or omission on his part intentionally contribute to his conviction for the felony for which he was incarcerated.

§ 9.1-801. Public safety officer defined.

As used in this chapter, the term "public safety officer" includes a law-enforcement officer of the Commonwealth or any of its political subdivisions; a correctional officer as defined in § 53.1-1; a correctional officer employed at a juvenile *community* correctional facility as the term is defined in § 66-25.3; a jail officer; a regional jail or jail farm superintendent; a member of any fire company or department or nonprofit or volunteer emergency medical services agency that has been recognized by an ordinance or resolution of the governing body of any county, city, or town of the Commonwealth as an integral part of the official safety program of such county, city, or town; an arson investigator; a member of the Virginia National Guard or the Virginia Defense Force while such a member is serving in the Virginia National Guard or the Virginia Defense Force on official state duty or federal duty under Title 32 of the United States Code; any special agent of the Virginia Alcoholic Beverage Control Authority; any police agent appointed under the provisions of § 56-353; any regular or special conservation police officer who receives compensation from a county, city, or town or from the Commonwealth appointed pursuant to § 29.1-200; any commissioned forest warden appointed pursuant to § 10.1-1135; any member or employee of the Virginia Marine Resources Commission granted the power to arrest pursuant to § 28.2-900; any Department of Emergency Management hazardous materials officer; any nonfirefighter regional hazardous materials emergency response team member; any investigator who is a full-time sworn member of the security division of the Virginia Lottery; any full-time sworn member of the enforcement division of the Department of Motor Vehicles meeting the Department of Criminal Justice Services qualifications, when fulfilling duties pursuant to § 46.2-217; any campus police officer appointed under the provisions of Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1; and any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115.

§ 9.1-903. Registration procedures.

A. Every person convicted, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, whether sentenced as an adult or juvenile, of an offense for which registration is required

and every juvenile found delinquent of an offense for which registration is required under subsection G of § 9.1-902 shall be required upon conviction to register and reregister with the Department of State Police. The court shall order the person to provide to the local law-enforcement agency of the county or city where he physically resides all information required by the State Police for inclusion in the Registry. The court shall immediately remand the person to the custody of the local law-enforcement agency for the purpose of obtaining the person's fingerprints and photographs of a type and kind specified by the State Police for inclusion in the Registry. Upon conviction, the local law-enforcement agency shall forthwith forward to the State Police all the necessary registration information.

B. Every person required to register shall register in person within three days of his release from confinement in a state~~,~~ *or* local *correctional facility* or juvenile *community* correctional facility, in a state civil commitment program for sexually violent predators or, if a sentence of confinement is not imposed, within three days of suspension of the sentence or in the case of a juvenile of disposition. A person required to register shall register, and as part of the registration shall submit to be photographed, submit to have a sample of his blood, saliva, or tissue taken for DNA (deoxyribonucleic acid) analysis and submission to the DNA databank to determine identification characteristics specific to the person, provide electronic mail address information, any instant message, chat or other Internet communication name or identity information that the person uses or intends to use, submit to have his fingerprints and palm prints taken, provide information regarding his place of employment, and provide motor vehicle, watercraft and aircraft registration information for all motor vehicles, watercraft and aircraft owned by him. The local law-enforcement agency shall obtain from the person who presents himself for registration or reregistration one set of fingerprints, electronic mail address information, any instant message, chat or other Internet communication name or identity information that the person uses or intends to use, one set of palm prints, place of employment information, motor vehicle, watercraft and aircraft registration information for all motor vehicles, watercraft and aircraft owned by the registrant, proof of residency and a photograph of a type and kind specified by the State Police for inclusion in the Registry and advise the person of his duties regarding reregistration. The local law-enforcement agency shall obtain from the person who presents himself for registration a sample of his blood, saliva or tissue taken for DNA (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person. If a sample has been previously taken from the person, as indicated by the Local Inmate Data System (LIDS), no additional sample shall be taken. The local law-enforcement agency shall forthwith forward to the State Police all necessary registration information.

C. To establish proof of residence in Virginia, a person who has a permanent physical address shall present one photo-identification form issued by a governmental agency of the Commonwealth which contains the person's complete name, gender, date of birth and complete physical address. The local law-enforcement agency shall forthwith forward to the State Police a copy of the identification presented by the person required to register.

D. Any person required to register shall also reregister in person with the local law-enforcement agency following any change of name or any change of residence, whether within or without the Commonwealth. The person shall register in person with the local law-enforcement agency within three days following his change of name. If his new residence is within the Commonwealth, the person shall register in person with the local law-enforcement agency where his new residence is located within three days following his change in residence. If the new residence is located outside of the Commonwealth, the person shall register in person with the local law-enforcement agency where he previously registered within 10 days prior to his change of residence. If a probation or parole officer becomes aware of a change of name or residence for any of his probationers or parolees required to register, the probation or parole officer shall notify the State Police forthwith of learning of the change. Whenever a person subject to registration changes residence to another state, the State Police shall notify the designated law-enforcement agency of that state.

E. Any person required to register shall reregister in person with the local law-enforcement agency where his residence is located within three days following any change of the place of employment, whether within or without the Commonwealth. If a probation or parole officer becomes aware of a change of the place of employment for any of his probationers or parolees required to register, the probation or parole officer shall notify the State Police forthwith upon learning of the change of the person's place of employment. Whenever a person subject to registration changes his place of employment to another state, the State Police shall notify the designated law-enforcement agency of that state.

F. Any person required to register shall reregister in person with the local law-enforcement agency where his residence is located within three days following any change of owned motor vehicle, watercraft and aircraft registration information, whether within or without the Commonwealth. If a probation or parole officer becomes aware of a change of owned motor vehicle, watercraft and aircraft registration information for any of his probationers or parolees required to register, the probation or parole officer shall notify the State Police forthwith upon learning of the change of the person's owned

motor vehicle, watercraft and aircraft registration information. Whenever a person required to register changes his owned motor vehicle, watercraft and aircraft registration information to another state, the State Police shall notify the designated law-enforcement agency of that state.

G. Any person required to register shall reregister either in person or electronically with the local law-enforcement agency where his residence is located within 30 minutes following any change of the electronic mail address information, any instant message, chat or other Internet communication name or identity information that the person uses or intends to use, whether within or without the Commonwealth. If a probation or parole officer becomes aware of a change of the electronic mail address information, any instant message, chat or other Internet communication name or identity information for any of his probationers or parolees required to register, the probation or parole officer shall notify the State Police forthwith upon learning of the change.

H. The registration shall be maintained in the Registry and shall include the person's name, any former name if he has lawfully changed his name during the period for which he is required to register, all aliases that he has used or under which he may have been known, the date and locality of the conviction for which registration is required, his fingerprints and a photograph of a type and kind specified by the State Police, his date of birth, social security number, current physical and mailing address and a description of the offense or offenses for which he was convicted. The registration shall also include the locality of the conviction and a description of the offense or offenses for previous convictions for the offenses set forth in § 9.1-902.

I. The local law-enforcement agency shall forthwith forward to the State Police all necessary registration or reregistration information received by it. Upon receipt of registration or reregistration information the State Police shall forthwith notify the chief law-enforcement officer of the locality listed as the person's address on the registration and reregistration.

J. If a person required to register does not have a legal residence, such person shall designate a location that can be located with reasonable specificity where he resides or habitually locates himself. For the purposes of this section, "residence" shall include such a designated location. If the person wishes to change such designated location, he shall do it pursuant to the terms of this section.

§ 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.

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 accordance with the provisions of § 16.1-270 where the juvenile has waived the jurisdiction of the district court, or when the district court has certified a charge to the grand jury pursuant to subsection B or C of § 16.1-269.1, the juvenile, if in confinement, shall be placed in a juvenile secure facility, unless the court determines that the juvenile is a threat to the security or safety of the other juveniles detained or the staff of the facility, in which case the court may transfer the juvenile to a jail or other facility for the detention of adults, provided that the facility is approved by the State Board of Corrections for the detention of juveniles.

E. If, in the judgment of the custodian, a juvenile has demonstrated that he is a threat to the security or safety of the other juveniles detained or the staff of the home or facility, the judge shall determine whether such juvenile should be transferred to another juvenile facility or, if the child is 14 years of age or older, a jail or other facility for the detention of adults, provided that (i) the detention is in a room or ward entirely separate and removed from adults, (ii) adequate supervision is provided, and (iii) the facility is approved by the State Board of Corrections for detention of juveniles.

F. If, in the judgment of the custodian, it has been demonstrated that the presence of a juvenile in a

facility creates a threat to the security or safety of the other juveniles detained or the staff of the home or facility, the custodian may transfer the juvenile to another juvenile facility, or, if the child is 14 years of age or older, a jail or other facility for the detention of adults pursuant to the limitations of clauses (i), (ii) and (iii) of subsection E for a period not to exceed six hours prior to a court hearing and an additional six hours after the court hearing unless a longer period is ordered pursuant to subsection E.

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

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

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

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

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

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

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

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

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

4. The court finds by a preponderance of the evidence that the juvenile is not a proper person to 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 *community* 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 murder in violation of § 18.2-31, 18.2-32 or 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 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 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 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 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 years of age or older at the time of the alleged commission of the offense 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.

§ 16.1-285.1. Commitment of serious offenders.

A. In the case of a juvenile fourteen 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 *community* 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 *community* 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 *community* 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 *community* 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.

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

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

shall provide notice of the time and place of the hearing by first-class mail to the last known address of any victim of the offense for which the juvenile was committed if such victim has submitted a written request for notification to the attorney for the Commonwealth.

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

B1. The appearance of the juvenile before the court 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.

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

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

E. In the case of a juvenile convicted as an adult and committed as a serious offender under subdivision A 1 of § 16.1-272, at the conclusion of the review hearing, the circuit court shall order (i) the juvenile to begin serving any adult sentence in whole or in part that may include any remaining part of the original determinate period of commitment, or (ii) the suspension of the unserved portion of the adult sentence in whole or in part based upon the juvenile's successful completion of the commitment as a serious offender, or (iii) the continued commitment of the juvenile to the Department for completion of the original determinate period of commitment or such lesser time as the court may order, or (iv) the release of the juvenile under such terms and conditions as the court may prescribe.

§ 16.1-309.4. Statewide plan for juvenile services.

It shall be the duty of the Department of Juvenile Justice to devise, develop and promulgate a statewide plan for the establishment and maintenance of a range of institutional and community-based, diversion, predispositional and postdispositional services to be reasonably accessible to each court. The Department shall be responsible for the collection and dissemination of the required court data necessary for the development of the plan. The plan shall utilize the information provided by local plans submitted under § 16.1-309.3. The plan shall be submitted to the Board on or before July 1 in odd-numbered years. The plan shall include a biennial forecast with appropriate annual updates as may be required of future juvenile *community* correctional center and detention home needs.

§ 16.1-322.5. State Board may authorize private construction, operation, etc., of local or regional detention homes, etc.

A. The State Board of Juvenile Justice may authorize a county or city or any combination of counties, cities, or towns established pursuant to § 16.1-315 to contract with a private entity for the financing, site selection, acquisition, construction, maintenance, leasing, management or operation of a local or regional detention home or other secure facility, or any combination of those services. Any project authorized pursuant to this article shall be consistent with the statewide plan developed pursuant to § 16.1-309.4.

B. Any project the State Board authorizes pursuant to subsection A of this section shall be subject to the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and subject to the requirements and limitations set out below.

1. Contracts entered into under the terms of this article shall be with an entity submitting an acceptable response pursuant to a request for proposals. An acceptable response shall be one which

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meets all the requirements in the request for proposals. However, no such contract may be entered into unless the private contractor demonstrates that it has:

a. The qualifications, experience and management personnel necessary to carry out the terms of this contract;

b. The financial resources to provide indemnification for liability arising from detention home or other secure facility management projects;

c. Evidence of past performance of similar contracts; and

d. The ability to comply with all applicable federal and state constitutional standards; federal, state, and local laws; court orders; and standards for a detention home or other secure facility.

2. Contracts awarded under the provisions of this article, including contracts for the provision of juvenile *community* correctional facilities or programs or for the lease or use of public lands or buildings for use in the operation of facilities, may be entered into for a period of up to thirty years, subject to the requirements for expenditure of funds by the local governing body or bodies.

3. No contract for juvenile *community* correctional facilities or programs shall be entered into unless the following requirements are met:

a. The contractor provides audited financial statements for the previous five years or for each of the years the contractor has been in operation if fewer than five years, and provides other financial information as requested; and

b. The contractor provides an adequate plan of indemnification, specifically including indemnity for civil rights claims. The indemnification plan shall be adequate to protect the county or city or combination of counties, cities, or towns established pursuant to § 16.1-315 and public officials from all claims and losses incurred as a result of the contract. Nothing herein is intended to deprive a contractor or the county or city or combination of counties, cities, or towns established pursuant to § 16.1-315 of the benefits of any law limiting exposure to liability or setting a limit on damages.

4. No contract for correctional services shall be executed unless:

a. The proposed contract has been reviewed and approved by the State Board;

b. An appropriation for the services to be provided under the contract has been expressly approved as is otherwise provided by law;

c. The juvenile *community* correctional facilities or programs proposed by the contract are of at least the same quality as those routinely provided by a governmental agency to similarly situated children; and

d. An evaluation of the proposed contract demonstrates a cost benefit to the county or city or combination of counties, cities, or towns established pursuant to § 16.1-315 when compared to alternative means of providing the services through governmental agencies.

§ 16.1-322.6. Powers and duties not delegable to contractor.

No contract for juvenile *community* correctional facilities or programs shall authorize, allow, or imply a delegation of authority or responsibility to a juvenile *community* correctional facilities or programs contractor for any of the following:

1. Developing and implementing procedures for calculating a detainee's release date;

2. Classifying detainees or placing detainees in less restrictive custody or more restrictive custody;

3. Transferring a detainee; however, the contractor may make written recommendations regarding the transfer of a detainee or detainees;

4. Formulating rules of detainee behavior, violations of which may subject detainees to sanctions; however, the contractor may propose such rules for review and adoption, rejection, or modification as otherwise provided by law or regulation; and

5. Disciplining detainees in any manner which requires a discretionary application of rules of detainee behavior or a discretionary imposition of a sanction for violations of such rules.

§ 18.2-48.1. Abduction by prisoners or committed persons; penalty.

Any person confined in a state, local, or community correctional facility or committed to the Department of Juvenile Justice in any juvenile *community* correctional center, or in the custody of an employee thereof, or who has escaped from any such facility or from any person in charge of such prisoner or committed person, who abducts or takes any person hostage is guilty of a Class 3 felony.

§ 18.2-431.1. Illegal conveyance or possession of cellular telephone or other wireless telecommunications device by prisoner or committed person; penalty.

A. It is unlawful for any person without authorization to provide or cause to be provided a cellular telephone or other wireless telecommunications device to an incarcerated prisoner or person committed to the Department of Juvenile Justice in any juvenile *community* correctional center.

B. It is unlawful for an incarcerated prisoner or person committed to the Department of Juvenile Justice in any juvenile *community* correctional center without authorization to possess a cellular telephone or other wireless telecommunications device during the period of his incarceration.

C. Any violation of this section is a Class 6 felony.

§ 18.2-473. Persons aiding escape of prisoner or child.

When a person is lawfully detained as a prisoner in any jail or prison or held in custody, or when a child is placed in a local juvenile detention home, or committed to the Department of Juvenile Justice in any juvenile *community* correctional center, or Reception and Diagnostic Center for Children or held in custody, if any person: (1) conveys anything into the jail, prison, juvenile detention home, juvenile *community* correctional center or Reception and Diagnostic Center for Children with intent to facilitate a person's escape therefrom, (2) in any way aids such prisoner or child to escape, or in an attempt to escape, from such jail, prison, juvenile detention home, juvenile *community* correctional center, Reception and Diagnostic Center for Children or custody, or (3) forcibly takes, or attempts to take him therefrom, such person, if the taking or escape is effected, shall, if the prisoner or child was detained on conviction, commitment or charge of felony, be confined in a state correctional facility not less than one year nor more than five years. If the same is not effected, or if the prisoner or child was not detained on such conviction, commitment or charge, he shall be guilty of a Class 1 misdemeanor.

§ 18.2-473.1. Communication with prisoners or committed person; penalty.

It shall be unlawful for any person outside of any state or local correctional facility or any juvenile *community* correctional center, other than the jailers or custodial officers in charge of the prisoners or in charge of the persons committed to the Department of Juvenile Justice, to communicate without authority by word or sign with the intent to disrupt institutional operations with any prisoner confined within a state or local correctional facility or with any person committed to the Department of Juvenile Justice in any juvenile *community* correctional center. Any person violating this section is guilty of a Class 4 misdemeanor.

§ 18.2-474. Delivery of articles to prisoners or committed person.

No person shall willfully in any manner deliver, or attempt to deliver, to any prisoner confined under authority of the Commonwealth of Virginia, or of any political subdivision thereof, or to any person committed to the Department of Juvenile Justice in any juvenile *community* correctional center, any article of any nature whatsoever, without first securing the permission of the person in whose charge such prisoner or committed person is, and who may in his discretion grant or refuse permission. Any person violating this section is guilty of a Class 1 misdemeanor.

Nothing herein contained shall be construed to repeal or amend § 18.2-473.

§ 18.2-474.1. Delivery of drugs, firearms, explosives, etc., to prisoners or committed persons.

Notwithstanding the provisions of § 18.2-474, any person who shall willfully in any manner deliver, attempt to deliver, or conspire with another to deliver to any prisoner confined under authority of the Commonwealth of Virginia, or of any political subdivision thereof, or to any person committed to the Department of Juvenile Justice in any juvenile *community* correctional center, any drug which is a controlled substance regulated by the Drug Control Act in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 or marijuana is guilty of a Class 5 felony. Any person who shall willfully in any manner so deliver or attempt to deliver or conspire to deliver to any such prisoner or confined or committed person, firearms, ammunitions, or explosives of any nature is guilty of a Class 3 felony.

Nothing herein contained shall be construed to repeal or amend § 18.2-473.

§ 18.2-477.2. Punishment for certain offenses committed within a secure juvenile facility or detention home.

It shall be unlawful for a person committed to the Department of Juvenile Justice in any juvenile *community* correctional center or detained in a secure juvenile facility or detention home to commit any of the offenses enumerated in § 53.1-203. A violation of this section shall be punishable as a Class 6 felony, except that a violation of subdivision 6 of § 53.1-203 is a Class 5 felony.

§ 22.1-209.1:2. Regional alternative education programs for certain students.

A. With such funds as may be appropriated for this purpose, the Board of Education shall establish a program consisting of regional alternative education options for elementary, middle, and high school students in compliance with subdivision D 7 of § 22.1-253.13:1 who (i) have committed an offense in violation of school board policies relating to weapons, alcohol or drugs, or intentional injury to another person, or against whom a petition or warrant has been filed alleging such acts or school board charges alleging such policy violations are pending; (ii) have been expelled from school attendance or have received one suspension for an entire semester, or have received two or more long-term suspensions within one school year; or (iii) have been released from a juvenile *community* correctional center and have been identified by the Superintendent of the Department of Juvenile Justice's Division of Education and the relevant division superintendent as requiring a regional alternative education program. Based on available space, a student may also be administratively assigned to a regional alternative education program either at the request of the parent and with the consent of the division superintendent or by the division superintendent after written notice to the student and his parent. Such notice of the opportunity for the student and/or his parent to participate in a hearing conducted by the division superintendent or his designee regarding such placement shall be issued and the assignment shall be final unless altered by the school board, upon timely written petition, in accordance with regulations of the school board, by

the student or his parent, for a review of the record by the school board. However, no child shall be assigned to any regional alternative education program described in this section for more than one school year without an annual assessment of the placement to determine the appropriateness of transitioning the child into the school division's regular program.

B. Applications for grants shall include the following components:

1. An agreement executed by two or more school divisions and approval of their respective governing bodies to offer a regional alternative education option as provided in subsection A, and a plan for the apportionment of responsibilities for the administration, management, and support of the program, including, but not limited to, the facilities and location for the program, daily operation and oversight, staffing, instructional materials and resources, transportation, funding and in-kind services, and the program of instruction.

2. A procedure for obtaining the participation in or support for the program, as may be determined, of the parents, guardian or other person having charge or control of a child placed in the program.

3. An interagency agreement for cooperation executed by the local departments of health and social services or welfare; the juvenile and domestic relations district court; law-enforcement agencies; institutions of higher education and other postsecondary training programs; professional and community organizations; the business and religious communities; dropout prevention and substance abuse prevention programs; community services boards located in the applicants' respective jurisdictions; and the Department of Juvenile Justice.

4. A curriculum developed for intensive, accelerated instruction designed to establish high standards and academic achievement for participating students.

5. An emphasis on building self-esteem and the promotion of personal and social responsibility.

6. A low pupil/teacher ratio to promote a high level of interaction between the students and the teacher.

7. An extended day program, where appropriate, to facilitate remediation; tutoring; counseling; organized, age-appropriate, developmental education for elementary and middle school children; and opportunities that enhance acculturation and permit students to improve their social and interpersonal relationship skills.

8. Community outreach to build strong school, business, and community partnerships, and to promote parental involvement in the educational process of participating children.

9. Specific, measurable goals and objectives and an evaluation component to determine the program's effectiveness in reducing acts of crime and violence by students, the dropout rate, the number of youth committed to juvenile *community* correctional centers, and recidivism; and in increasing the academic achievement levels and rehabilitative success of participating students, admission to institutions of higher education and other postsecondary education and training programs, and improving staff retention rates.

10. The number of children who may be assigned to the regional alternative education program during the school year.

11. A plan for transitioning the enrolled students into the relevant school division's regular program.

12. A current program of staff development and training.

C. Beginning with the first year of program implementation, the Department of Education shall be entitled to deduct annually from the locality's share for the education of its students a sum equal to the actual local expenditure per pupil for the support of those students placed by the relevant school division in any such program. The amount of the actual transfers shall be based on data accumulated during the prior school year.

D. A school board shall require written notification to the pupil's parent, guardian, or other person having charge or control, when a pupil commits an offense in violation of school board policies, which school officials determine was committed without the willful intent to violate such policies, or when the offense did not endanger the health and safety of the individual or other persons, of the nature of the offense no later than two school days following its occurrence. A school board shall require the principal of the school where the child is in attendance or other appropriate school personnel to develop appropriate measures, in conjunction with the pupil's parent or guardian, for correcting such behavior.

E. For the purposes of this section, "regional alternative education program" means a program supported and implemented by two or more school divisions which are either geographically contiguous or have a community of interest.

F. For the purposes of this section, "one school year" means no more than 180 teaching days.

§ 22.1-289. Transfer and management of scholastic records; disclosure of information in court notices; penalty.

A. As used in this section:

"Scholastic record" means those records that are directly related to a student and are maintained by an educational agency or institution or by a party acting for the agency or institution. These include, but are not limited to, documentation pertinent to the educational growth and development of students as they progress through school, student disciplinary records, achievement and test data, cumulative health

records, reports of assessments for eligibility for special education services, and Individualized Education Programs. Such records may be recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

A notice of adjudication or conviction received by a superintendent relating to an incident which did not occur on school property or during a school-sponsored activity shall not be a part of a student's scholastic record.

The term "scholastic record" also shall not include records of instructional, supervisory, administrative, and ancillary educational personnel that are kept in the sole possession of the maker of the record and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.

B. Whenever a pupil transfers from one school division to another, the scholastic record or a copy of the scholastic record shall be transferred to the school division to which the pupil transfers upon request from such school division. Permission of the parent, guardian, or other person having control or charge of the student shall not be required for transfer of such scholastic record to another school or school division within or outside the Commonwealth.

C. Any notice of disposition received pursuant to § 16.1-305.1 shall not be retained after the student has been awarded a diploma or a certificate as provided in § 22.1-253.13:4.

D. Every student's scholastic record shall be available to the student and his parent, guardian, or other person having control or charge of the student for inspection during the regular school day. Permission of the parent, guardian, or other person having control or charge of the student, or of a student who is 18 years of age or older, shall not be required for transfer of such scholastic record to another school or school division within or without this Commonwealth.

Consistent with federal law and regulation, each school shall annually notify parents of students currently enrolled and in attendance of their rights under the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and related regulations.

A school responding to a request for the transfer of the scholastic record from another school division need not provide written notice of the transfer of the record, including the identity of the requester, to the parent, guardian, or other person having control or charge of the student, or to a student who is 18 years of age or older, if the school has previously included in the annual notice required by this subsection a statement that it forwards such records to such requesting school divisions.

E. Whenever the division superintendent is notified by the Department of Juvenile Justice, pursuant to § 16.1-287, or by a school division employee responsible for education programs in a local jail or a detention center, that a pupil who last attended a school within the school division is a pupil in a school of a juvenile *community* correctional center of the Department of Juvenile Justice, or a pupil in an educational program in a local jail or detention center, the school division superintendent or his designee shall transfer the scholastic record of such pupil to the designated juvenile *community* correctional center or local jail or a detention center, as the case may be, within five work days. The Department of Juvenile Justice shall transfer the scholastic record of a student who has been discharged from a juvenile *community* correctional center to the relevant school division within five work days of the student's discharge.

The Board of Education shall adopt regulations concerning the transfer and management of scholastic records from one school division to another, to the learning centers of the Department of Juvenile Justice, and to educational programs in local jails and detention centers.

Upon receiving notice of a foster care placement of a student across jurisdictional lines, the sending school division and the receiving school division, as such school divisions are defined in subsection D of § 22.1-3.4, shall expedite the transfer of the scholastic record of the student.

F. The division superintendent or his designee shall notify the local police or sheriff's department for investigation as a possible missing child of any enrolled pupil whose scholastic record he is unable to obtain within 60 days or sooner, if the division superintendent or his designee has reason to suspect that the pupil is a missing child.

G. Superintendents and their designees shall be immune from any civil or criminal liability in connection with any notice to a police or sheriff's department of a pupil lacking a scholastic record or failure to give such notice as required by this section.

H. Except as provided in §§ 16.1-309 and 22.1-287 and this section, a superintendent or his designee, or other school personnel who unlawfully discloses information obtained pursuant to § 16.1-305.1 shall be guilty of a Class 3 misdemeanor.

§ 29.1-317. Special fishing permits for certain juveniles.

A. Upon application from the superintendent of any juvenile *community* correctional center maintained and operated by the Department of Juvenile Justice, the Director may issue a permit to allow the residents of such juvenile *community* correctional center to fish under supervision without licenses in public waters open to fishing. The permits shall not be issued for use in designated waters stocked with

trout or in waters where a daily fishing fee has been imposed pursuant to § 29.1-318.

B. The application for the permit shall state the name and description of the group, the period of time during which it will be used, the general area in which it will be used, and the name of the person who will be responsible for the group.

§ 51.1-212. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Employee" means any (i) member of the Capitol Police Force as described in § 30-34.2:1, (ii) campus police officer appointed under the provisions of Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1, (iii) conservation police officer in the Department of Game and Inland Fisheries appointed under the provisions of Chapter 2 (§ 29.1-200 et seq.) of Title 29.1, (iv) special agent of the Virginia Alcoholic Beverage Control Authority appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1, (v) law-enforcement officer employed by the Virginia Marine Resources Commission as described in § 9.1-101, (vi) correctional officer as the term is defined in § 53.1-1, and including correctional officers employed at a juvenile *community* correction facility as the term is defined in § 66-25.3, (vii) any parole officer appointed pursuant to § 53.1-143, and (viii) any commercial vehicle enforcement officer employed by the Department of State Police.

"Member" means any person included in the membership of the Retirement System as provided in this chapter.

"Normal retirement date" means a member's sixtieth birthday.

"Retirement System" means the Virginia Law Officers' Retirement System.

§ 66-3. Powers of the Director.

A. The Director of the Department shall have the following general powers:

1. To employ such personnel as may be required to carry out the purposes of this title.

2. To make and enter into all contracts and agreements necessary or incidental to the performance of his duties and the execution of his powers under this title, including, but not limited to, contracts and agreements with the United States, other states, and agencies and governmental subdivisions of the Commonwealth.

3. With the prior approval of the Governor, to enter into agreements with a public or private entity to operate a work program for children committed to the Department.

4. With the prior approval of the Governor, to acquire real property, by purchase or gift, needed for new or existing state juvenile *community* correctional facilities and for administrative and other facilities necessary to the operations of the Department, pursuant to regulations promulgated by the Board to ensure adequate public notice and local hearing.

5. To establish and maintain schools of the appropriate grades, levels, and types in the institutions for persons committed to juvenile *community* correctional centers.

6. To enter into such agreements with private entities, nonprofit civic organizations, school divisions, and public and private two-year and four-year institutions of higher education as it may deem necessary to provide age-appropriate educational programs and training, including career and technical education; career development opportunities; public service projects; restricted Internet access to online courses of institutions of higher education and approved or accredited online secondary education or adult education and literacy programs leading to a diploma or achieving a passing score on a high school equivalency examination approved by the Board of Education; access to postsecondary education that includes college credit, certification through an accredited vocational training program, or other accredited continuing education program using videoconferencing technology; and other learning experiences in the furtherance of its duties and responsibilities under this chapter for persons committed to the institutions comprising the Department.

7. To designate employees of the Department with internal investigations authority to have the same power as a sheriff or a law-enforcement officer in the investigation of allegations of criminal behavior affecting the operations of the Department. Such employees shall be subject to any minimum training standards established by the Department of Criminal Justice Services under § 9.1-102 for law-enforcement officers prior to exercising any law-enforcement power granted under this subdivision. Nothing in this section shall be construed to grant the Department any authority over the operation and security of detention homes not specified in any other provision of law. The Department shall investigate allegations of criminal behavior in accordance with a written agreement entered into with the Department of State Police. The Department shall not investigate any action falling within the authority vested in the Office of the State Inspector General pursuant to Chapter 3.2 (§ 2.2-307 et seq.) of Title 2.2 unless specifically authorized by the Office of the State Inspector General.

8. To do all acts necessary or convenient to carry out the purposes of this title.

B. The Director shall comply with and require all school facilities within the Department to comply with applicable regulations and statutes, both state and federal.

§ 66-10. Powers and duties of Board.

The Board shall have the following powers and duties:

1. To establish and monitor policies for the programs and facilities for which the Department is responsible under this law.

2. To ensure the development of a long-range youth services policy.

3. To monitor the activities of the Department and its effectiveness in implementing the policies developed by the Board.

4. To advise the Governor and Director on matters relating to youth services.

5. To promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth.

6. To ensure the development of programs to educate citizens and elicit public support for the activities of the Department.

7. To establish length-of-stay guidelines for juveniles indeterminately committed to the Department and to make such guidelines available for public comment.

8. To adopt all necessary regulations for the management and operation of the schools in the Department except that the regulations adopted hereunder shall not conflict with regulations relating to security of the institutions in which the juveniles are committed.

9. To establish compulsory minimum entry-level, in-service, and advanced training standards, as well as the time required for completion of such training, for persons employed as juvenile correctional officers employed at a juvenile *community* correctional facility as defined in § 66-25.3.

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

A. The Department is authorized and empowered to receive juveniles committed to it by the courts of the Commonwealth. The Department shall establish, staff and maintain facilities for the rehabilitation, education, training and confinement of such juveniles. The Department may make arrangements with satisfactory persons, institutions or agencies, or with cities or counties maintaining places of detention for juveniles, for the temporary care of such juveniles. *Any juvenile community correctional center established after July 1, 2020, shall (i) be located within a locality in which at least five percent of all juvenile commitments occur statewide, using an average of the rate of commitments of the three most recent consecutive years, and (ii) be designed to confine 30 juveniles or fewer.*

B. In accordance with the Juvenile Corrections Private Management Act, Chapter 2.1 (§ 66-25.3 et seq.), the Department may establish, or contract with private entities, political subdivisions or commissions to establish, juvenile boot camps. The Board shall prescribe standards for the development, implementation and operation of the boot camps with highly structured components including, but not limited to, military style drill and ceremony, physical labor, education and rigid discipline and no less than six months of intensive aftercare. The Department of Juvenile Justice's Division of Education shall establish, staff, and maintain educational programs for such juveniles in accordance with § 66-13. A contract to expend state funds to establish a facility for a juvenile boot camp shall not be executed by the Department unless an appropriation has been expressly approved as is otherwise provided by law.

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

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

§ 66-13.1. Division of Education; employment of Superintendent; powers and duties.

A. To assist in the performance of the duties imposed by § 66-13 the Department shall develop and maintain a Division of Education (Division), which shall be composed of all the educational facilities of all institutions operated by the Department. The Division shall be designated as a local education agency (LEA) but shall not be eligible to receive state funds appropriated for direct aid to public education.

B. The Department shall employ a Superintendent of the Division, who shall meet the minimum standards for division superintendents set by the Board of Education. The Superintendent shall supervise the administration of the Division. The Department shall employ teachers and place them in appropriate schools. Other powers and duties of the Superintendent shall be fixed by the Board of Education in accordance with law.

C. When the Department employs a teacher licensed by the Board of Education to provide

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instruction in the schools of the juvenile *community* correctional centers, the Department of Human Resource Management shall establish salary schedules for the teachers which endeavor to be competitive with those in effect for the school division in which the *community* correctional center is located.

§ 66-18. Examination and placing of such children.

The Department shall make a careful physical and mental examination of every child committed to it by the courts, investigate the personal and family history of the child and his environment, and place such children at ~~such facilities as are available~~ *the juvenile community correctional center located closest to their primary residence and within one hour of such residence via motor vehicle and within one and one-half hours of such residence via public transportation. If such placement is not available, the Department shall use an alternative placement that is closest to the juvenile's primary residence, such as a local juvenile detention center*. Any children committed to the Department and afterwards found to be eligible for commitment by proper proceedings to any state hospital or admission to a training center for individuals with intellectual disability shall take precedence as to admission over all others and shall in all cases be received into the state hospital or training center within 45 days.

§ 66-22.1. Establishment of stores in juvenile community correctional facilities.

The Director is hereby authorized to provide for the establishment and operation of stores or commissaries in state juvenile *community* correctional facilities to deal in such articles as he deems proper. The profits from the operation of such stores shall be used for educational, recreational, or other purposes beneficial to the juveniles committed to the Department as may be prescribed by the Director.

§ 66-25.1:1. Juvenile academic and career training.

The Director or his designee shall assess, in accordance with criteria established pursuant to § 66-25.1:3, whether a juvenile committed to the Department is an appropriate candidate for participation in a work release program, apprenticeship program, job enterprise program, or any other work experience opportunity located at or through the juvenile *community* correctional center where the juvenile is placed.

§ 66-25.1:3. Extending limits of confinement of state wards for work and educational programs; disposition of wages; penalties for violations.

A. The Director is authorized to establish work release programs, subject to such rules and regulations as the Board may prescribe, whereby (i) a juvenile who is proficient in any trade or occupation and who meets the work release criteria established by the Director, may be approved for employment by private individuals, corporations, or state agencies at places of business, or (ii) a juvenile who the Director is satisfied meets the work release criteria and is capable of receiving substantial benefit from educational and other related community activity programs that are not available within a juvenile *community* correctional center may attend such programs outside of the juvenile *community* correctional facility.

B. The Director may contract with the superintendent of a local detention facility or home for the temporary placement of a committed juvenile who is deemed appropriate for participation in the programs or services provided by or through a certified post-dispositional program in that local detention facility or home. A juvenile who the Director is satisfied meets the work release criteria and is capable of receiving substantial benefit from educational programs, employment or other related community activity programs available at or through the local detention facility or home is eligible for placement in such local detention facility or home.

C. The compensation for such employment shall be arranged by the Director and shall be the same as that of regular employees in similar occupations. Any wages earned shall be paid to the Director. The Director shall, in accordance with regulations promulgated by the Board, deduct from such wages, in the following order of priority, an amount to:

1. Meet the obligation of any judicial or administrative order to provide support, and such funds shall be disbursed according to the terms of such order;

2. Pay any fines, restitution, or costs as ordered by the court; and

3. Pay travel and other such expenses made necessary by his work release employment or participation in an educational or rehabilitative program.

The balance shall be credited to the juvenile's account or sent to his family in an amount the juvenile chooses.

D. Any juvenile who has been placed in any of the programs authorized herein shall, while outside the juvenile *community* correctional center or juvenile detention facility to which he is assigned, be deemed to be in custody whether or not he is under the supervision of a juvenile correctional officer. If the juvenile, without proper authority or without just cause, leaves the area in which he has been directed to work or to attend educational or community activity programs, or the vehicle or route involved in his traveling to or from such place or program, he may be found guilty of escape as provided for in § 18.2-477 as though he had left the secure facility as defined in § 16.1-228; or, if there are mitigating circumstances or the culpability of the juvenile is minimal, he may be found guilty of a Class 2 misdemeanor.

E. The Director and any superintendent or other administrative head of any local detention facility are authorized to enter into agreements whereby persons committed to the Department, whether such persons are housed in a juvenile *community* correctional center or a local detention facility, and who meet the Department's standards for such release, may participate in local work release programs or in educational or other rehabilitative programs operating pursuant to this section. Any person so placed shall be governed by the rules and regulations applicable to local work release programs.

F. In the event that the juvenile is committed to the Department as a serious offender pursuant to § 16.1-285.1, the juvenile shall not be approved for placement in a work release program located outside of the juvenile *community* correctional facility without written approval of the committing court.

§ 66-25.2:1. Director; notice to school superintendent prior to release of certain offenders.

The Director or designee shall notify the school division superintendent in the jurisdiction in which the juvenile will be enrolled upon release from a juvenile *community* correctional center if the Director reasonably believes that the juvenile poses any credible danger of serious bodily injury or death to one or more students, school personnel, or others on school property. Such information shall include the nature of the danger. The information provided to a school division superintendent pursuant to this section may be disclosed only as provided in § 16.1-305.2.

§ 66-25.3. Definitions.

As used in this chapter unless the context requires otherwise or it is otherwise provided:

"Correctional services" means the following functions, services and activities when provided within a juvenile correctional facility or otherwise:

1. Operation of facilities, including management, custody of juveniles and provision of security;

2. Food services, commissary, medical services, transportation, sanitation or other ancillary services;

3. Development and implementation assistance for classification, management information systems or other information systems or services;

4. Education, training and employment programs;

5. Recreational, religious and other activities; and

6. Counseling, special treatment programs, or other programs for special needs.

"Juvenile *community* correction facility" or "center" or "facility" means any institution operated by or under the authority of the Department and shall include, whether obtained by purchase, lease, lease/purchase, construction, reconstruction, restoration, improvement, alteration, repair or other means, any physical betterment or improvement related to the housing of juveniles or any preliminary plans, studies or surveys relative thereto; land or rights to land; and any furnishings, machines, vehicles, apparatus, or equipment for use in connection with any juvenile correctional facility.

"Contractor" means any entity entering into or offering or proposing to enter into a contractual agreement to provide any juvenile correctional facility for or correctional services to juveniles under the custody of the Commonwealth.

§ 66-25.4. State juvenile community correctional facilities; private contracts.

The Director, subject to any applicable regulations which may be promulgated by the Board pursuant to § 66-10, is hereby authorized to enter into contracts for the financing, site selection, design, acquisition, construction, maintenance, leasing, leasing/purchasing, management or operation of juvenile *community* correctional facilities or any combination of those services subject to the requirements and limitations set out below.

1. Contracts entered into under the terms of this chapter shall be with an entity submitting an acceptable response pursuant to a request for proposals. An acceptable response shall be one which meets all the requirements in the request for proposals. However, no contract for juvenile *community* correctional facilities or correctional services may be entered into unless the private contractor demonstrates to the satisfaction of the Director that it has:

a. The qualifications, experience and management personnel necessary to carry out the terms of this contract;

b. The financial resources to provide indemnification for liability arising from the management of juvenile correctional projects;

c. Evidence of past performance of similar contracts; and

d. The ability to comply with all applicable federal and state constitutional standards; federal, state, and local laws; court orders; and juvenile correctional standards.

2. Contracts awarded under the provisions of this chapter, including contracts for the provision of juvenile correctional services, the construction of juvenile *community* correctional facilities, or for the lease, lease/purchase or use of public or private lands or buildings for use in the operation of facilities, may be entered into for a period of up to 30 years, subject to the requirements for annual appropriation of funds by the Commonwealth.

3. Contracts awarded under the provisions of this chapter shall, at a minimum, comply with the following:

a. Provide for appropriate security to protect the public, employees and committed juveniles;

b. Provide juveniles with work or training opportunities while incarcerated; however, the contractor shall not benefit financially from the labor of committed juveniles;

c. Impose discipline on committed juveniles only in accordance with applicable regulations; and

d. Provide proper food, clothing, housing and medical care for juveniles.

4. No contract for juvenile *community* correctional facilities or juvenile correctional services shall be entered into unless the following requirements are met:

a. The contractor provides audited financial statements for the previous five years or for each of the years the contractor has been in operation, if fewer than five years, and provides other financial information as requested; and

b. The contractor provides an adequate plan of indemnification, specifically including indemnity for civil rights claims. The indemnification plan shall be adequate to protect the Commonwealth and public officials from all claims and losses incurred as a result of the contract. Nothing herein is intended to deprive a contractor or the Commonwealth of the benefits of any law limiting exposure to liability or setting a limit on damages.

5. No contract for juvenile *community* correctional facilities or correctional services shall be executed by the Director nor shall any funds be expended for the contract unless:

a. The proposed contract complies with any applicable regulations which may be promulgated by the Board pursuant to § 66-10;

b. An appropriation for the facilities or the services to be provided under the contract has been expressly approved as is otherwise provided by law;

c. The juvenile *community* correctional facilities or the correctional services proposed by the contract are of at least the same quality as those routinely provided by the Department to similar types of committed juveniles;

d. An evaluation of the proposed contract demonstrates a cost benefit to the Commonwealth when compared to alternative means of providing the facilities or the services through governmental agencies;

e. If a contract for acquiring facilities requires or otherwise contemplates that the Commonwealth, whether subject to appropriation or not, will make payments beyond the current biennium that are expected to pay debt service on any bonds or other obligations issued to finance such facilities, regardless of the issuer thereof, then (i) the Treasury Board shall approve the terms and structure of such bonds or other obligations and (ii) the appropriation for such facilities acknowledges that payments for the acquisition of such facilities are expected to be made beyond the current biennium under a capital lease, lease/purchase, or similar arrangement. Any contract that is for two years or less, or is cancelable by the Commonwealth without cause after such a period, shall not be deemed a contract as described herein; and

f. Nothing herein shall be construed to constitute a waiver for the Department or contractor from complying with the provisions of subdivision 4 of § 66-3.

§ 66-25.6. Board shall promulgate regulations; local school board exemption.

A. The Board shall make, adopt and promulgate regulations governing the following aspects of private management and operation of juvenile *community* correctional facilities:

1. Contingency plans for state operation of a contractor-operated facility in the event of a termination of the contract;

2. Use of physical force and mechanical restraint by the contractors' security personnel;

3. Methods of monitoring a contractor-operated facility by the Department or the Board;

4. Public access to a contractor-operated facility; and

5. Such other regulations as may be necessary to carry out the provisions of this chapter.

B. Nothing in this chapter shall be construed to require local school boards to provide educational services to juveniles while committed to a state juvenile *community* correctional facility.

§ 66-25.7. Fixed-price or not-to-exceed-price design-build-operate and related contracts authorized.

Notwithstanding any other provisions of law to the contrary, but in accordance with the procedures consistent with those described in the Virginia Public Procurement Act (§ 2.2-4300 et seq.) for procurement of nonprofessional services through competitive negotiation, the Director may enter into design-build-operate contracts for juvenile *community* correctional facilities on a fixed-price or not-to-exceed-price basis, including related leases, lease/purchase contracts, agreements relating to the sale of securities to finance such facilities, and similar financing agreements and agreements for correctional services. For the purposes of this section, "design-build-operate contract" means a contract between the Commonwealth and another party in which the party contracting with the Commonwealth agrees to (i) design, build and operate the juvenile *community* correctional facility or (ii) design and build the juvenile *community* correctional facility where the facility is to be operated by a third party.

The Director shall maintain adequate records to allow post-project evaluation.