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SENATE BILL NO. 44

Offered January 10, 1996

A BILL to amend and reenact §§ 16.1-227, 16.1-249, 16.1-269.3, 16.1-274.1, 16.1-296, and 53.1-66 of the Code of Virginia, to amend and reenact §§ 16.1-228, 16.1-241, 16.1-269.1, 16.1-269.2, and 16.1-269.3 of the Code of Virginia as they are currently effective and as they may become effective, to amend the Code of Virginia by adding sections numbered 16.1-269.7 and 53.1-63.1, and to repeal §§ 16.1-269.4 and 269.6 of the Code of Virginia and §§ 16.1-269.5 and 16.1-272.2 of the Code of Virginia as they are currently effective and as they may become effective, relating to trial of juveniles for criminal acts; penalty.

Patrons—Earley, Lambert, Benedetti, Bolling, Hanger, Newman, Potts, Quayle, Schrock, Stolle, Stosch and Wampler; Delegates: Albo, Howell, Katzen, McDonnell, O'Brien, Tata, Wardrup and Way

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§16.1-227, 16.1-249, 16.1-269.3, 16.1-274.1, 16.1-296, and 53.1-66 of the Code of Virginia and §§ 16.1-228, 16.1-241, 16.1-269.1, 16.1-269.2, and 16.1-269.3 of the Code of Virginia as they are currently effective and as they may become effective are amended and reenacted, and that the Code of Virginia amended by adding sections numbered 16.1-269.7 and 53.1-63.1 as follows:

§ 16.1-227. Purpose and intent.

This law shall be construed liberally and as remedial in character, ~~and the~~. The powers hereby conferred are intended to be general to effect the beneficial purposes herein set forth. It is the intention of this law that in all *civil* proceedings the welfare of the child and the family is the paramount concern of the Commonwealth and to the end that this humane purpose may be attained, the judge shall possess all necessary and incidental powers and authority, whether legal or equitable in their nature.

~~This~~ *In proceedings other than those in which a juvenile is alleged to be delinquent, this law shall be interpreted and construed so as to effectuate the following purposes:*

1. To divert from or within the juvenile justice system, to the extent possible, consistent with the protection of the public safety, those children who can be cared for or treated through alternative programs;

2. To provide judicial procedures through which the provisions of this law are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other rights are recognized and enforced;

3. To separate a child from such child's parents, guardian, legal custodian or other person standing in loco parentis only when the child's welfare is endangered or it is in the interest of public safety and then only after consideration of alternatives to out-of-home placement which afford effective protection to the child, his family, and the community; and

4. To protect the community against those acts of its citizens which are harmful to others and to reduce the incidence of delinquent behavior.

In all proceedings in which a juvenile is alleged to have committed an act which would constitute a violation of the criminal laws, proceedings shall be governed by the provisions of this title, particularly this chapter, and Title 19.2. In such proceedings, the paramount concerns of the court, consistent with due process, shall be to (i) provide for the safety of the public, (ii) hold the juvenile accountable for his or her actions and (iii) provide the juvenile with a realistic opportunity for rehabilitation.

§ 16.1-228. Definitions.

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

"Abused or neglected child" means any child:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental functions;

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

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

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

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

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

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

"Ancillary crime" means any delinquent act alleged to have been committed by a juvenile as a part of the same act or transaction as, or in two or more acts or transactions that are connected with or constitute parts of, a common scheme or plan with a violent offender crime, a chronic offender crime or a delinquent act which would be a felony if committed by an adult.

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

"Child welfare agency" means a child-placing agency, child-caring institution or independent foster home as defined in § 63.1-195.

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

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

"Child in need of supervision" means:

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

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

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

"Chronic offender" means a juvenile who is charged with or convicted of a delinquent act which would be a felony after attaining the age of fourteen years, and who has previously been convicted or adjudicated delinquent under the laws of this Commonwealth, any other state, the United States, any of its territories or the District of Columbia of three or more separate felonies or acts which would have been felonies if committed by an adult, provided the felony offenses were not part of a common act, transaction or scheme and that juvenile was at liberty as defined in § 53.1-151 between each such conviction or adjudication.

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

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

"Department" means the Department of Youth and Family Services and "Director" means the administrative head in charge thereof or such of his assistants and subordinates as are designated by him

to discharge the duties imposed upon him under this law.

"Family abuse" means any act of violence, including any forceful detention, which results in physical injury or places one in reasonable apprehension of serious bodily injury and which is committed by a person against such person's family or household member.

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

"Foster care services" means the provision of a full range of casework, treatment and community services for a planned period of time to a child who is abused or neglected as defined in § 63.1-248.2 or in need of services as defined in this section and his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between the local board of social services or a public agency designated by the community policy and management team and the parents or guardians where legal custody remains with the parents or guardians, (iii) has been committed or entrusted to a local board of social services or child welfare agency, or (iv) has been placed under the supervisory responsibility of the local board pursuant to § 16.1-293.

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

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

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

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

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

"Permanent foster care placement" means the place of residence in which a child resides and in which he has been placed pursuant to the provisions of §§ 63.1-56 and 63.1-206.1 with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or § 63.1-248.9. A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

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

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

"State Board" means the State Board of Youth and Family Services.

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

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

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

"Violent juvenile offender" means a juvenile who is charged with or convicted of a felony enumerated in § 19.2-297.1 committed after attaining the age of fourteen years.

§ 16.1-228. (Delayed effective date) Definitions.

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

183 "Abused or neglected child" means any child:

184 1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or
185 inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than
186 accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental
187 functions;

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

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

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

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

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

201 "Adult" means a person eighteen years of age or older.

202 *"Ancillary crime" means any delinquent act alleged to have been committed by a juvenile as a part
203 of the same act or transaction as, or in two or more acts or transactions that are connected with or
204 constitute parts of, a common scheme or plan with a violent offender crime, a chronic offender crime or
205 a delinquent act which would be a felony if committed by an adult.*

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

207 "Child welfare agency" means a child-placing agency, child-caring institution or independent foster
208 home as defined in § 63.1-195.

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

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

221 "Child in need of supervision" means:

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

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

235 "The court" or the "family court" means the family court of each county or city.

236 *"Chronic offender" means a juvenile who is charged with or convicted of a delinquent act which
237 would be a felony after attaining the age of fourteen years, and who has previously been convicted or
238 adjudicated delinquent under the laws of this Commonwealth, any other state, the United States, any of
239 its territories or the District of Columbia of three or more separate felonies or acts which would have
240 been felonies if committed by an adult, provided the felony offenses were not part of a common act,
241 transaction or scheme and that juvenile was at liberty as defined in § 53.1-151 between each such
242 conviction or adjudication*

243 "Delinquent act" means (i) an act designated a crime under the law of this Commonwealth, or an
244 ordinance of any city, county, town or service district, or under federal law, (ii) a violation of

§ 18.2-308.7 or (iii) a violation of a court order as provided for in § 16.1-292, but shall not include an act other than a violation of § 18.2-308.7, which is otherwise lawful, but is designated a crime only if committed by a child. *The term includes predicate offenses used to determine whether a juvenile is a chronic offender or violent juvenile offender.* For purposes of §§ 16.1-241 and 16.1-278.9, the term shall include a refusal to take a blood or breath test in violation of § 18.2-268.2 or a similar ordinance of any county, city or town.

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

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

"Family abuse" means any act of violence, including any forceful detention, which results in physical injury or places one in reasonable apprehension of serious bodily injury and which is committed by a person against such person's family or household member.

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

"Foster care services" means the provision of a full range of casework, treatment and community services for a planned period of time to a child who is abused or neglected as defined in § 63.1-248.2 or in need of services as defined in this section and his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between the local board of social services or a public agency designated by the community policy and management team and the parents or guardians where legal custody remains with the parents or guardians, (iii) has been committed or entrusted to a local board of social services or child welfare agency, or (iv) has been placed under the supervisory responsibility of the local board pursuant to § 16.1-293.

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

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

"The judge" means the judge or the substitute judge of the family court of each county or city.

"This law" or "the law" means the Family Court Law embraced in this chapter.

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

"Permanent foster care placement" means the place of residence in which a child resides and in which he has been placed pursuant to the provisions of §§ 63.1-56 and 63.1-206.1 with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or § 63.1-248.9. A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

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

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

"State Board" means the State Board of Youth and Family Services.

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

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

306 adult.

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

311 *"Violent juvenile offender" means a juvenile who is charged with or convicted of a felony*
312 *enumerated in § 19.2-297.1 committed after attaining the age of fourteen years.*

313 § 16.1-241. Jurisdiction.

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

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

322 1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status
323 offender, a chronic offender, a violent juvenile offender or delinquent, except where the jurisdiction of
324 the juvenile court has been terminated under the provisions of § 16.1-269.6 or where the juvenile is
325 directly indicted pursuant to subsection C of § 16.1-269.1;

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

328 2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated
329 as having abused or neglected another child in the care of the parent or custodian;

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

333 4. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204
334 or whose parent or parents for good cause desire to be relieved of his care and custody;

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

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

339 *In cases in which the juvenile is alleged to be a chronic or violent juvenile offender, and for all*
340 *charges ancillary thereto, the jurisdiction of the juvenile court shall be limited to conducting a*
341 *preliminary hearing to determine if probable cause exists to believe that the juvenile committed the act*
342 *alleged. If the juvenile is alleged to be a chronic offender, the court shall further make written findings*
343 *that, by a preponderance of the evidence it has been shown that the juvenile committed the requisite*
344 *number and type of predicate offenses to qualify him as a chronic offender. In all other cases involving*
345 *delinquent acts, except as otherwise provided in § 16.1-269.1, and in cases in which ancillary charges*
346 *remain after chronic or violent offender charges have been dismissed, terminated by nolle prosequi or*
347 *reduced to lesser offenses not constituting chronic or violent offender crimes, the jurisdiction of the*
348 *juvenile court shall be for trial and disposition.*

349 The authority of the juvenile court to adjudicate matters involving the custody, visitation, support,
350 control or disposition of a child shall not be limited to the consideration of petitions filed by a mother,
351 father or legal guardian but shall include petitions filed at any time by any party with a legitimate
352 interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not
353 be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. A party
354 with a legitimate interest shall not include any person (i) whose parental rights have been involuntarily
355 terminated by court order if the child subsequently has been legally adopted, or (ii) who has been
356 convicted of a violation of subsection A of § 18.2-61 or subsection B of § 18.2-366 when the child who
357 is the subject of the petition was conceived as a result of such violation. The authority of the juvenile
358 court to consider a petition involving the custody of a child shall not be proscribed or limited where the
359 child has previously been awarded to the custody of a local board of social services.

360 B. The admission of minors for inpatient treatment in a mental health facility in accordance with the
361 provisions of Article 16 (§ 16.1-335 et seq.) of this chapter and the commitment of a mentally ill person
362 or judicial certification of eligibility for admission to a treatment facility of a mentally retarded person
363 in accordance with the provisions of Chapters 1 (§ 37.1-1 et seq.) and 2 (§ 37.1-63 et seq.) of Title 37.1.
364 Jurisdiction of the commitment and certification of adults shall be concurrent with the general district
365 court.

366 C. Except as provided in subsections D and H hereof, judicial consent to such activities as may
367 require parental consent may be given for a child who has been separated from his parents, guardian,

legal custodian or other person standing in loco parentis and is in the custody of the court when such consent is required by law.

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

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

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

1. Who has been abused or neglected;

2. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204 or is otherwise before the court pursuant to subdivision A 4 of this section;

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

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

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

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

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

In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. Any objection based on jurisdiction under this subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial, before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for challenging directly or collaterally the jurisdiction of the court in which the case is tried. For purposes of this subsection, "family or household member," as defined in § 16.1-228, shall also be construed to include parent and child, stepparent and stepchild, brothers and sisters, and grandparent and grandchild, regardless of whether such persons reside in the same home.

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

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

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

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

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

P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 13 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if the orders were entered by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the juvenile and domestic relations district court.

Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20.

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

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

T. Petitions to enforce any request for information or subpoena that is not complied with or to

429 review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect
430 pursuant to § 63.1-248.6:1.

431 U. Petitions filed in connection with parental placement adoption consent hearings, pursuant to
432 § 63.1-220.3. Such proceedings shall be advanced on the docket so as to be heard by the court within
433 ten days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest
434 possible disposition.

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

437 Notwithstanding any other provision of law no fees shall be charged by a sheriff for the service of
438 any process in a proceeding pursuant to subdivision 3 of subsection A or subsections M or R of this
439 section.

440 § 16.1-241. (Delayed effective date) Jurisdiction.

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

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

449 1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status
450 offender, *a chronic offender, a violent juvenile offender* or delinquent, except where the jurisdiction of
451 the family court has been terminated under the provisions of § 16.1-269.6 *or where the juvenile is*
452 *directly indicted pursuant to subsection C of § 16.1-269.1;*

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

455 2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated
456 as having abused or neglected another child in the care of the parent or custodian;

457 3. Whose custody, visitation or support is a subject of controversy or requires determination;

458 4. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204
459 or whose parent or parents for good cause desire to be relieved of his care and custody;

460 5. Where the termination of residual parental rights and responsibilities is sought;

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

462 *In cases in which the juvenile is alleged to be a chronic or violent juvenile offender, and for all*
463 *charges ancillary thereto, the jurisdiction of the family court shall be limited to conducting a*
464 *preliminary hearing to determine if probable cause exists to believe that the juvenile committed the act*
465 *alleged. If the juvenile is alleged to be a chronic offender, the court shall further make written findings*
466 *that, by a preponderance of the evidence it has been shown that the juvenile committed the requisite*
467 *number and type of predicate offenses to qualify him as a chronic offender. In all other cases involving*
468 *delinquent acts, except as otherwise provided in § 16.1-269.1, and in cases in which ancillary charges*
469 *remain after chronic or violent offender charges have been dismissed, terminated by nolle prosequi or*
470 *reduced to lesser offenses not constituting chronic or violent offender crimes, the jurisdiction of the*
471 *family court shall be for trial and disposition..*

472 The authority of the family court to adjudicate matters involving the custody, visitation, support,
473 control or disposition of a child shall not be limited to the consideration of petitions filed by a mother,
474 father or legal guardian but shall include petitions filed at any time by any party with a legitimate
475 interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not
476 be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. A party
477 with a legitimate interest shall not include any person (i) whose parental rights have been involuntarily
478 terminated by court order if the child subsequently has been legally adopted, or (ii) who has been
479 convicted of a violation of subsection A of § 18.2-61 or subsection B of § 18.2-366 when the child who
480 is the subject of the petition was conceived as a result of such violation. The authority of the family
481 court to consider a petition involving the custody of a child shall not be proscribed or limited where the
482 child has previously been awarded to the custody of a local board of social services.

483 B. The admission of minors for inpatient treatment in a mental health facility in accordance with the
484 provisions of Article 16 (§ 16.1-335 et seq.) of this chapter and the commitment of a mentally ill person
485 or judicial certification of eligibility for admission to a treatment facility of a mentally retarded person
486 in accordance with the provisions of Chapters 1 (§ 37.1-1 et seq.) and 2 (§ 37.1-63 et seq.) of Title 37.1.
487 Jurisdiction of the commitment and certification of adults shall be concurrent with the general district
488 court.

489 C. Except as provided in subsections D and H hereof, judicial consent to such activities as may
490 require parental consent may be given for a child who has been separated from his parents, guardian,

legal custodian or other person standing in loco parentis and is in the custody of the court when such consent is required by law.

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

E. Any person charged with deserting, abandoning or failing to provide support for any person in violation of law pursuant to Chapter 5 (§ 20-61 et seq.) of Title 20.

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

1. Who has been abused or neglected;

2. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204 or is otherwise before the court pursuant to subdivision A 4 of this section;

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

G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services which are required by law to be provided for that child or such child's parent, guardian, legal custodian or other person standing in loco parentis.

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

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

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

In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. Any objection based on jurisdiction under this subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial, before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for challenging directly or collaterally the jurisdiction of the court in which the case is tried. For purposes of this subsection, "family or household member," as defined in § 16.1-228, shall also be construed to include parent and child, stepparent and stepchild, brothers and sisters, and grandparent and grandchild, regardless of whether such persons reside in the same home.

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

L. Any person who seeks spousal support after having separated from his spouse.

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

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

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

P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 13 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if the orders were entered by a family court upon the filing of a certified copy of such order in the family court.

Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20.

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

S. Suits for divorce and for annulling or affirming marriage in accordance with Title 20.

T. Suits for separate maintenance.

U. Suits for equitable distribution based on a foreign decree in accordance with § 20-107.3.

V. Petitions for adoption.

W. Petitions for change of name when incident to suits for annulling or affirming marriage, divorce, or adoption or when ancillary to any action within the jurisdiction of the family court.

552 X. Petitions regarding records of birth pursuant to Chapter 7 (§ 32.1-249 et seq.) of Title 32.1.

553 Y. Judicial review of school board actions pursuant to § 22.1-87 and of hearing officer decisions
554 pursuant to §§ 22.1-214 and 22.1-214.1.

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

556 AA. Petitions to enforce any request for information or subpoena that is not complied with or to
557 review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect
558 pursuant to § 63.1-248.6:1.

559 BB. Petitions filed in connection with parental placement adoption consent hearings, pursuant to
560 § 63.1-220.3. Such proceedings shall be advanced on the docket so as to be heard by the court within
561 ten days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest
562 possible disposition.

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

565 Notwithstanding any other provision of law no fees shall be charged by a sheriff for the service of
566 any process in a proceeding pursuant to subdivision 3 of subsection A or subsections M or R of this
567 section.

568 § 16.1-249. Places of confinement for juveniles.

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

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

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

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

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

582 D. ~~When a case is transferred to the circuit court in accordance with the provisions of § 16.1-269.1~~
583 ~~and an order is entered by the circuit court in accordance with § 16.1-269.6, or in accordance with the~~
584 ~~provisions of § 16.1-270 where the juvenile has waived the jurisdiction of the district court, Following a~~
585 ~~probable cause hearing or transfer by a district court in a case involving a juvenile alleged to have~~
586 ~~committed a felony delinquent act or to be a chronic or violent offender or in a case in which the~~
587 ~~juvenile has waived jurisdiction of the district 27 court, the juvenile, if in confinement, may be~~
588 ~~transferred to confined in a jail juvenile detention facility or a local correctional facility or other facility~~
589 ~~for the detention of adults and need no longer be entirely separate and removed from adults.~~

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

596 F. If, in the judgment of the custodian, it has been demonstrated that the presence of a juvenile in a
597 facility creates a threat to the security or safety of the other juveniles detained or the staff of the home
598 or facility, the custodian may transfer the juvenile to another juvenile facility, or, if the child is fourteen
599 years of age or older, a jail or other facility for the detention of adults pursuant to the limitations of
600 subdivisions E (i), (ii) and (iii) for a period not to exceed six hours.

601 G. If a juvenile fourteen years of age or older is charged with an offense which, if committed by an
602 adult, would be a felony or Class 1 misdemeanor, and the judge or intake officer determines that secure
603 detention is needed for the safety of the juvenile or the community, such juvenile may be detained for a
604 period no longer than six hours in a temporary lock-up room or ward for juveniles while arrangements
605 are completed to transfer the juvenile to a juvenile facility. Such room or ward may be located in a
606 building which also contains a jail or other facility for the detention of adults, provided (i) such room or
607 ward is totally separate and removed from adults or juveniles transferred to the circuit court pursuant to
608 Article 7 (§ 16.1-269.1 et seq.) of this chapter, (ii) constant supervision is provided, and (iii) the facility
609 is approved by the State Board of Corrections for the detention of juveniles. The State Board of
610 Corrections is authorized and directed to prescribe minimum standards for temporary lock-up rooms and
611 wards based on the requirements set out in this subsection.

612 G.1. Any juvenile who has been ordered detained in a secure detention facility pursuant to
613 § 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 the juvenile is entirely separate and removed from detained adults or (ii) in a nonsecure area provided constant supervision is provided.

H. A judge may order the predispositional detention of persons eighteen years of age or older (i) in a juvenile facility only for a violation of the terms and conditions of release from a learning center or (ii) in an adult facility.

I. The Departments of Corrections, Youth and Family Services 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. If a juvenile fourteen 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 other than those in which the juvenile is alleged to be a chronic or violent juvenile offender,~~ 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. Except as provided in subsection B, 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 may issue a notice of intent to transfer the case and all ancillary charges to the circuit court for trial. If the notice is filed or issued, the jurisdiction of the juvenile court over the charges specified in the notice shall be limited to conducting a preliminary hearing to determine if probable cause exists to believe that the juvenile committed the act alleged.~~

B. In any case in which a juvenile court conducts a preliminary hearing in a case in which the person charged is a juvenile fourteen years of age or older and determines that probable cause exists to believe that the juvenile committed an act which would be a felony if committed by an adult, it shall certify the charge and all ancillary charges for which it also finds probable cause to the circuit court. If the juvenile is alleged to be a chronic offender, the court shall further make written specific findings that, by a preponderance of the evidence it has been shown that the juvenile committed the requisite number and type of predicate offenses to qualify him as a chronic offender. If found to be a chronic offender, the juvenile may, within ten days of the court's determination, file a notice of appeal of the decision to the appropriate circuit court. A copy of the notice shall be furnished at the same time to the attorney for the Commonwealth. The appeal shall be heard by the circuit court, without a jury, before trial of the charge.

C. In any case involving charges of felony delinquent acts or allegations that the juvenile is a chronic or violent juvenile offender where the person charged is a juvenile fourteen years of age or older if the court does not find probable cause or if the case is terminated by nolle prosequi in the juvenile court, the attorney for the Commonwealth may seek a direct indictment in the circuit court.

In any case in which a juvenile who was fourteen years of age or older at the time of the commission of the alleged offense, is alleged to have committed a delinquent act which would be a felony, the attorney for the Commonwealth may seek a direct indictment in the circuit court as in the case of an adult defendant for the felony and any ancillary charges.

D. Whenever a juvenile other than a chronic or violent juvenile offender is indicted in the circuit court, within ten days after the indictment has been served upon him or, for good cause shown, at a later time prior to trial, the juvenile may move the circuit court to remand the case for trial and disposition in the juvenile court. The burden shall be upon the juvenile at the hearing to prove by a preponderance of the evidence that it would serve the public interest to try and dispose of the case in juvenile court. In determining whether a case should be tried in the circuit court or remanded for trial and disposition in the juvenile court, the circuit court shall give paramount consideration to (i) providing for the safety of the public, (ii) holding the juvenile accountable for his or her actions and (iii) providing the juvenile with a realistic opportunity for rehabilitation. 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 twenty 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 learning 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 mental retardation 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 A 4 of § 16.1-269.1.

B. The court may hold a transfer hearing and certify the juvenile for transfer to the appropriate circuit court without making the finding required by subdivision A 4 if a juvenile fourteen years of age or older is charged with:

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

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

If the court finds that the juvenile was not fourteen years of age or older at the time of the alleged commission of the offense or that the conditions specified in subdivision 1, 2, or 3 of subsection A have not been met, the case shall proceed as otherwise provided for by law.

E. An indictment by the circuit court waives any error or defect in any proceeding held in the juvenile court. If an indictment is terminated by nolle prosequi, the Commonwealth may reinstate the proceeding by seeking a subsequent indictment.

§ 16.1-269.1. (Delayed effective date) Trial in circuit court; preliminary hearing, direct indictment; remand.

A. If a juvenile fourteen 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, except those cases in which a juvenile is alleged to be a chronic or violent juvenile offender, 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 family 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. Except as provided in subsection B, the court finds by a preponderance of the evidence that the juvenile is not a proper person to remain within the jurisdiction of the family court. In determining whether a juvenile is a proper person to remain within the jurisdiction of the family court, the court may file or the court may issue a notice of intent to transfer the case and all ancillary charges to the circuit

court for trial. If the notice is filed or issued, the jurisdiction of the family court over the charges specified in the notice shall be limited to conducting a preliminary hearing to determine if probable cause exists to believe that the juvenile committed the act alleged.

B. In any case in which a family court conducts a preliminary hearing in a case in which the person charged is a juvenile fourteen years of age or older and determines that probable cause exists to believe that the juvenile committed an act which would be a felony if committed by adult, it shall certify the charge and all ancillary charges for which it also finds probable cause, to the circuit court. If the juvenile is alleged to be a chronic offender, the court shall further make specific findings of fact, on the record, that the juvenile committed the requisite number and type of predicate offenses to qualify him as a chronic offender or that he is a violent juvenile offender. If found to be a chronic offender, the juvenile may, within ten days of the court's determination, file a notice of appeal of the decision to the appropriate circuit court. A copy of the notice shall be furnished at the same time to the attorney for the Commonwealth. The appeal shall be heard by the circuit court, without a jury, before trial of the charge.

C. In any case involving charges of felony delinquent acts or allegations that the juvenile is a chronic or violent juvenile offender where the person charged in a juvenile is fourteen years of age or older if the court does not find probable cause or if the case is terminated by nolle prosequi in the family court, the attorney for the Commonwealth may seek a direct indictment in the circuit court.

In any case in which a juvenile who was fourteen years of age or older at the time of the commission of the alleged offense, is alleged to have committed a delinquent act which would be a felony, the attorney for the Commonwealth may seek a direct indictment in the circuit court as in the case of an adult defendant for the felony and any ancillary charges.

D. Whenever a juvenile other than a chronic or violent juvenile offender is indicted in the circuit court, within ten days after the indictment has been served upon him or, for good cause shown, at a later time prior to trial, the juvenile may move the circuit court to remand the case for trial and disposition in the family court. The burden shall be upon the juvenile at the hearing to prove by a preponderance of the evidence that it would serve the public interest to try and dispose of the case in juvenile court. In determining whether a case should be tried in the circuit court or remanded for trial and disposition in the family court, the circuit court shall give paramount consideration to (i) providing for the safety of the public, (ii) holding the juvenile accountable for his or her actions and (iii) providing the juvenile with a realistic opportunity for rehabilitation. 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 twenty 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 jurisdiction, including (i) the number and nature of previous contacts with family or circuit courts, (ii) the number and nature of prior periods of probation, (iii) the number and nature of prior commitments to learning 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 mental retardation or mental illness;

h. The juvenile's school record and education;

i. The juvenile's mental and emotional physical 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 A 4 of §16.1-269.1.

B. The court may hold a transfer hearing and certify the juvenile for transfer to the appropriate circuit court without making the finding required by subdivision A 4 if a juvenile fourteen years of age or older is charged with:

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

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

If the court finds that the juvenile was not fourteen years of age or older at the time of the alleged commission of the offense or that the conditions specified in subdivision 1, 2, or 3 of subsection A have not been met, the case shall proceed as otherwise provided for by law.

E. An indictment by the circuit court waives any error or defect in any proceeding held in the family court. If an indictment is terminated by nolle prosequi, the Commonwealth may reinstate the proceeding by seeking a subsequent indictment.

§ 16.1-269.2. Admissibility of statement; investigation and report; bail.

A. Statements made by the juvenile at the ~~transfer~~ *a hearing on his motion to remand* provided for under § 16.1-269.1 shall not be admissible against him over objection in any *subsequent* criminal proceedings ~~following the transfer~~, except for purposes of impeachment.

B. Prior to a ~~transfer remand~~ hearing pursuant to subsection A of § 16.1-269.1, a study and report to the court, in writing, ~~relevant to the factors set out in subdivision A 4 of § 16.1-269.1~~, shall be made by the probation ~~services and parole officer~~ or other qualified agency designated by the court. Counsel for the juvenile and the attorney for the Commonwealth shall have full access to the study and report and any other report or data concerning the juvenile which are available to the court. ~~The court shall not consider the report until a finding has been made concerning probable cause.~~ If the court so orders, the study and report may be expanded to include matters provided for in *subsection A of § 16.1-273*, whereupon it may also serve as the report required by this subsection, but on the condition that it will not be submitted to the judge who will preside at any subsequent hearings except as provided for by law.

C. After the completion of the *remand* hearing, whether or not the ~~juvenile circuit~~ court decides to retain jurisdiction over the juvenile or ~~transfer such remand the juvenile for criminal proceedings in the circuit juvenile court~~, the *juvenile circuit* court shall set bail for the juvenile in accordance with Chapter 9 (§ 19.2-119 et seq.) of Title 19.2, if bail has not already been set.

§ 16.1-269.2. (Delayed effective date) Admissibility of statement; investigation and report; bail.

A. Statements made by the juvenile at the ~~transfer remand~~ hearing provided for under § 16.1-269.1 shall not be admissible against him over objection in any *subsequent* criminal proceedings ~~following the transfer~~, except for purposes of impeachment.

B. Prior to a ~~transfer remand~~ hearing pursuant to subsection A of § 16.2-269.1, a study and report to the court, in writing, ~~relevant to the factors set out in subdivision A 4 of § 16.1-269.1~~, shall be made by the probation ~~services and parole officer~~ or other qualified agency designated by the court. Counsel for the juvenile and the attorney for the Commonwealth shall have full access to the study and report and any other report or data concerning the juvenile which are available to the court. ~~The court shall not consider the report until a finding has been made concerning probable cause.~~ If the court so orders, the study and report may be expanded to include matters provided for in *subsection A of § 16.1-273*, whereupon it may also serve as the report required by this subsection, but on the condition that it will not be submitted to the judge who will preside at any subsequent hearings except as provided for by law.

C. After the completion of the *remand* hearing, whether or not the family court decides to retain jurisdiction over the juvenile or ~~transfer such remand the juvenile for criminal proceedings in the circuit family court~~, the *family circuit* court shall set bail for the juvenile in accordance with Chapter 9 (§ 19.2-119 et seq.) of Title 19.2, if bail has not already been set.

§ 16.1-269.3. Retention by circuit court; appeal by Commonwealth.

If the case is not ~~transferred remanded~~, the judge who conducted the hearing shall not, over the objection of any interested party, preside at the adjudicatory hearing on the ~~petition charge~~, but rather it shall be presided over by another judge of that court. If the attorney for the Commonwealth deems it to be in the public interest, and the juvenile is fourteen years of age or older and is charged with an offense which, if committed by an adult, would be punishable by death or confinement in a state correctional facility for life or a maximum period of twenty years or more, he may, within ten days after the juvenile court's final decision to retain the case, file a notice of appeal of the decision to the appropriate circuit court. A copy of such notice shall be furnished at the same time to the counsel for the juvenile.

§ 16.1-269.3. (Delayed effective date) Retention by circuit.

If the case is not ~~transferred remanded~~, the judge who conducted the hearing shall not, over the objection of any interested party, preside at the adjudicatory hearing on the ~~petition charge~~, but rather it

shall be presided over by another judge of that court. If the attorney for the Commonwealth deems it to be in the public interest, and the juvenile is fourteen years of age or older and is charged with an offense which, if committed by an adult, would be punishable by death or confinement in a state correctional facility for life or a maximum period of twenty years or more, he may, within ten days after the family court's final decision to retain the case, file a notice of appeal of the decision to the appropriate circuit court. A copy of such notice shall be furnished at the same time to the counsel for the juvenile.

§ 16.1-269.7. Trial and sentencing in circuit court.

In any case in which a juvenile is indicted and the matter is to be tried in the circuit court, the indicted offense and all ancillary charges shall be tried in the same manner as provided by law for the trial of adults, except as provided in this section with regard to sentencing.

If the juvenile is convicted of a violent offender crime, the sentence for that crime and for all ancillary offenses shall be fixed in the same manner as provided for adults.

If a juvenile is convicted of a felony and has been found to be a chronic offender, the sentence for the chronic offender felony and for all ancillary offenses shall be fixed in the same manner as provided for adults.

In all other cases in which a juvenile is tried and convicted of a felony, the circuit court shall fix the sentence without the intervention of a jury. The circuit court may impose any sentence which it could lawfully impose upon an adult or, if the defendant is a juvenile at the time of sentencing, commit the defendant to the Department of Youth and Family Services for evaluation by the Department to determine if the Department has any program which would be beneficial to the defendant. If the Department notifies the court that it has determined that the defendant would benefit from one of its programs, the court may commit the defendant to the Department or require the defendant to successfully complete the specified program as a condition of a suspended sentence. The court, when suspending sentence, may impose such other conditions as it deems appropriate.

If the juvenile is not convicted of a felony, but is convicted of a misdemeanor, the court shall deal with the juvenile in the manner prescribed by law for the disposition of delinquency cases in the juvenile or family court.

In cases where the juvenile is convicted of a felony in violation of §§ 18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, 18.2-370 or § 18.2-370.1 or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection B of § 18.2-361 or subsection B of § 18.2-366, the clerk shall make the report required by § 19.2-390 to the Sex Offender Registry established pursuant to § 19.2-390.1.

§ 16.1-274.1. Admission of evidence of juvenile's age.

In any delinquency proceeding in a district court or circuit court where a juvenile is alleged to have committed a delinquent act, the Commonwealth shall be permitted to introduce evidence establishing the age of the juvenile who is the subject of the delinquency petition at any time prior to adjudication of the case.

§ 53.1-63.1. Department to establish facilities for juveniles sentenced as adults.

The Department shall establish, staff and maintain, at any state correction facilities designated by the Board, programs and housing for the rehabilitation, training, education and confinement of juveniles sentenced by the circuit courts as adults and committed to the Department pursuant to § 16.1-269.7. These programs shall ensure that juveniles are kept separate and apart from adult inmates.

§ 53.1-66. Transfer of prisoners to other facilities.

Any person confined by the Department in a facility established by this chapter may be transferred from such facility to other facilities in the state corrections system for the remainder of the period of commitment under § 16.1-269.7 or Article 2 (§ 19.2-311 et seq.) of Chapter 18 of Title 19.2, upon a written finding by the Department submitted to the sentencing court that the person has exhibited intractable behavior or, in the case of persons committed under § 19.2-311, otherwise becomes ineligible to use such facilities pursuant to § 19.2-311.

"Intractable behavior" means behavior which (i) indicates an inmate's unwillingness or inability to conform his behavior to that necessary to his successful completion of the program or (ii) is so disruptive as to threaten the successful completion of the program by other participants.

2. That §§ 16.1-269.4 and 16.1-269.6 of the Code of Virginia and §§ 16.1-269.5 and 16.1-272 of the Code of Virginia as they are currently effective and as they may become effective, are repealed.