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SENATE BILL NO. 94

Offered January 10, 1996

A BILL to amend and reenact §§ 16.1-227, 16.1-285, 16.1-285.1, 16.1-285.2, 53.1-63, 53.1-66, 53.1-67, 66-10, and 66-13 of the Code of Virginia, and §§ 16.1-260, 16.1-272 and 16.1-302 of the Code of Virginia, as they are currently effective and as they may become effective, and to amend the Code of Virginia by adding sections numbered 16.1-248.2 and 16.1-302.1, relating to serious offenders; powers of the Department of Youth and Family Services; mental health screening for certain juveniles; duration of commitment; notice to victims; transfer to Department of Corrections; youthful offender program; penalty.

Patrons—Reasor, Colgan, Couric, Gartlan, Houck, Howell, Lambert, Lucas, Marsh, Maxwell, Ticer, Waddell, Walker and Whipple; Delegate: Jones, J.C.

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-227, 16.1-285, 16.1-285.1, 16.1-285.2, 53.1-63, 53.1-66, 53.1-67, 66-10, and 66-13 of the Code of Virginia and §§ 16.1-260, 16.1-272 and 16.1-302 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 is amended by adding sections numbered 16.1-248.2 and 16.1-302.1 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 proceedings the welfare of the child and the family is , the safety of the community and the protection of the rights of victims are the paramount concern concerns of the Commonwealth and to the end that this humane purpose these purposes may be attained, the judge shall possess all necessary and incidental powers and authority, whether legal or equitable in their nature.*

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, *both juveniles and adults*, which are harmful to others and to ~~reduce the incidence of delinquent behavior~~ *hold offenders accountable for their behaviors.*

§ 16.1-248.2. *Mental health screening for certain juveniles.*

Whenever a juvenile is placed in secure detention pursuant to § 16.1-248.1, staff of the facility shall gather such information from the juvenile and the probation officer as is reasonably available and deemed necessary by the facility staff. As part of the intake procedures at each such facility, staff shall ascertain the juvenile's need for a mental health assessment. If it is determined that the juvenile needs such an assessment, arrangements shall be made and the assessment shall take place within twenty-four hours.

§ 16.1-260. Intake; petition; investigation.

A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of a petition, except as provided in subsection FG of this section and in § 16.1-259. The form and content of the petition shall be as provided in § 16.1-262. No individual shall be required to obtain support services from the Department of Social Services prior to filing a petition seeking support for a child. Complaints, requests and the processing of petitions to initiate a case shall be the responsibility of the intake officer. However, (i) the attorney for the Commonwealth of the city or county may file a petition on his own motion with the clerk, (ii) the Department of Social Services may file support petitions on its own motion with the clerk, and (iii) any attorney may file petitions on behalf of his client with the clerk except petitions alleging that the subject of the petition is a child alleged to be in need of services,

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60 in need of supervision or delinquent. Complaints alleging abuse or neglect of a child shall be referred
61 initially to the local department of public welfare or social services in accordance with the provisions of
62 Chapter 12.1 (§ 63.1-248.1 et seq.) of Title 63.1. Motions and other subsequent pleadings in a case shall
63 be filed directly with the clerk. The intake officer or clerk with whom the petition or motion is filed
64 shall inquire whether the petitioner is receiving child support services or public assistance. No individual
65 who is receiving support services or public assistance shall be denied the right to file a petition or
66 motion to establish, modify or enforce an order for support of a child. If the petitioner is seeking or
67 receiving child support services or public assistance, the clerk, upon issuance of process, shall forward a
68 copy of the petition or motion together with notice of the court date to the Division of Child Support
69 Enforcement.

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

75 *However, an intake officer may proceed informally on a petition alleging a juvenile is in need of*
76 *services, in need of supervision or delinquent only if the juvenile has not before been the subject of a*
77 *petition alleging that he is in need of supervision or delinquent. Subsequent petitions alleging that the*
78 *child is in need of supervision or delinquent shall be filed with the court.*

79 *Whenever informal action is taken as provided in this subsection on a petition alleging that a child*
80 *is in need of services or supervision or is delinquent, the intake officer shall (i) develop a plan for the*
81 *juvenile to make restitution or perform community service based upon community resources and the*
82 *nature of the event which resulted in the filing of the petition, (ii) create a official record of the action*
83 *taken which shall be filed in the juvenile's case file and (iii) advise the juvenile, the juvenile's parent,*
84 *guardian or other person standing in loco parentis and the petitioner that any subsequent petition*
85 *alleging that the child is in need of supervision or delinquent will be filed with the court.*

86 C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody,
87 visitation or support of a child is the subject of controversy or requires determination, (ii) a person has
88 deserted, abandoned or failed to provide support for any person in violation of law, or (iii) a child or
89 such child's parent, guardian, legal custodian or other person standing in loco parentis is entitled to
90 treatment, rehabilitation or other services which are required by law. If any such complainant does not
91 file a petition, the intake officer may file it. In cases in which a child is alleged to be abused, neglected,
92 in need of services, in need of supervision or delinquent, if the intake officer believes that probable
93 cause does not exist, or that the authorization of a petition will not be in the best interest of the family
94 or child or that the matter may be effectively dealt with by some agency other than the court, he may
95 refuse to authorize the filing of a petition.

96 CD. Prior to the filing of any petition alleging that a juvenile is in need of supervision, the matter
97 shall be reviewed by an intake officer who shall determine whether the petitioner and the juvenile
98 alleged to be in need of supervision have utilized or attempted to utilize treatment and services available
99 in the community and have exhausted all appropriate nonjudicial remedies which are available to them.
100 When the intake officer determines that the parties have not attempted to utilize available treatment or
101 services or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer
102 the petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment
103 facility or individual to receive treatment or services, and a petition shall not be filed. Only after the
104 intake officer determines that the parties have made a reasonable effort to utilize available community
105 treatment or services, may he permit the petition to be filed.

106 DE. If the intake officer refuses to authorize a petition relating to an offense that if committed by an
107 adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified in
108 writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate
109 determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic
110 relations district court. The warrant shall be delivered forthwith to the juvenile court, and the intake
111 officer shall accept and file a petition founded upon the warrant. If the court is closed and the magistrate
112 finds that the criteria for detention or shelter care set forth in § 16.1-248.1 have been satisfied, the child
113 may be detained pursuant to the warrant issued in accordance with this subsection. If the intake officer
114 refuses to authorize a petition relating to a child in need of services or in need of supervision, a status
115 offense, or a misdemeanor other than Class 1, his decision is final.

116 Upon delivery to the juvenile court of a warrant issued pursuant to subdivision 3 of § 16.1-256, the
117 intake officer shall accept and file a petition founded upon the warrant.

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

120 EG. After a petition is filed alleging that a juvenile committed an act which would be a crime if
121 committed by an adult, the intake officer shall, as soon as practicable, provide notice by telephone of

the filing of the petition and the nature of the offense to the superintendent of the school division in which the petitioner alleges the juvenile is or should be enrolled, provided the violation involves:

1. The unlawful purchase, possession or use of a weapon pursuant to Article 4 (§ 18.2-279 et seq.) of Chapter 7 of Title 18.2;

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

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

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

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

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

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

8. Burglary, pursuant to § 18.2-89.

Promptly after filing a petition the intake officer shall also mail notice, by first class mail, to the superintendent. The failure to provide information regarding the school in which the juvenile who is the subject of the petition may be enrolled shall not be grounds for refusing to file a petition.

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

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

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

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

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

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

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

§ 16.1-260. (Delayed effective date) Intake; petition; investigation.

A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of a petition, except as provided in subsection *FH* of this section and in § 16.1-259. The form and content of the petition shall be as provided in § 16.1-262. No individual shall be required to obtain support services from the Department of Social Services prior to filing a petition seeking support for a ~~child~~ juvenile. Complaints, requests and the processing of petitions to initiate a case shall be the responsibility of the intake officer. However, (i) the attorney for the Commonwealth of the city or county may file a petition on his own motion with the clerk, (ii) the Department of Social Services may file support petitions on its own motion with the clerk, and (iii) any attorney may file petitions on behalf of his client with the clerk except petitions alleging that the subject of the petition is a child alleged to be in need of services, in need of supervision or delinquent. In addition, all cases for divorce, annulment or affirmation of marriage, separate maintenance, equitable distribution based on a foreign decree, adoption, change of name, amendment of a record of birth and judicial review of school board actions and of

183 hearing officer decisions shall be filed directly with the clerk. Complaints alleging abuse or neglect of a
184 child shall be referred initially to the local department of public welfare or social services in accordance
185 with the provisions of Chapter 12.1 (§ 63.1-248.1 et seq.) of Title 63.1. Motions and other subsequent
186 pleadings in a case shall be filed directly with the clerk. The intake officer or clerk with whom the
187 petition or motion is filed shall inquire whether the petitioner is receiving child support services or
188 public assistance. No individual who is receiving support services or public assistance shall be denied
189 the right to file a petition or motion to establish, modify or enforce an order for support of a child. If
190 the petitioner is seeking or receiving child support services or public assistance, the clerk, upon issuance
191 of process, shall forward a copy of the petition or motion together with notice of the court date to the
192 Division of Child Support Enforcement.

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

198 *However, an intake officer may proceed informally on a petition alleging a juvenile is in need of*
199 *services, in need of supervision or delinquent only if the juvenile has not before been the subject of a*
200 *petition alleging that he is in need of supervision or delinquent. Subsequent petitions alleging that the*
201 *child is in need of supervision or delinquent shall be filed with the court.*

202 *Whenever informal action is taken as provided in this subsection on a petition alleging that a child*
203 *is in need of services or supervision or is delinquent, the intake officer shall (i) develop a plan for the*
204 *juvenile to make restitution or perform community service based upon community resources and the*
205 *nature of the event which resulted in the filing of the petition, (ii) create a official record of the action*
206 *taken which shall be filed in the juvenile's case file and (iii) advise the juvenile, the juvenile's parent,*
207 *guardian or other person standing in loco parentis and the petitioner that any subsequent petition*
208 *alleging that the child is in need of supervision or delinquent will be filed with the court.*

209 C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody,
210 visitation or support of a child is the subject of controversy or requires determination, (ii) a person has
211 deserted, abandoned or failed to provide support or separate maintenance for any person in violation of
212 law, or (iii) a ~~child~~ juvenile or such ~~child's~~ juvenile's parent, guardian, legal custodian or other person
213 standing in loco parentis is entitled to treatment, rehabilitation or other services which are required by
214 law. If any such complainant does not file a petition, the intake officer may file it. In cases in which a
215 child is alleged to be abused, neglected, in need of services, in need of supervision or delinquent, if the
216 intake officer believes that probable cause does not exist, or that the authorization of a petition will not
217 be in the best interest of the family or ~~child~~ juvenile or that the matter may be effectively dealt with by
218 some agency other than the court, he may refuse to authorize the filing of a petition.

219 CD. Prior to the filing of any petition alleging that a juvenile is in need of supervision, the matter
220 shall be reviewed by an intake officer who shall determine whether the petitioner and the juvenile
221 alleged to be in need of supervision have utilized or attempted to utilize treatment and services available
222 in the community and have exhausted all appropriate nonjudicial remedies which are available to them.
223 When the intake officer determines that the parties have not attempted to utilize available treatment or
224 services or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer
225 the petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment
226 facility or individual to receive treatment or services, and a petition shall not be filed. Only after the
227 intake officer determines that the parties have made a reasonable effort to utilize available community
228 treatment or services, may he permit the petition to be filed.

229 DE. If the intake officer refuses to authorize a petition relating to an offense which if committed by
230 an adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified
231 in writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate
232 determines that probable cause exists, he shall issue a warrant returnable to the family court. The
233 warrant shall be delivered forthwith to the family court, and the intake officer shall accept and file a
234 petition founded upon the warrant. If the court is closed and the magistrate finds that the criteria for
235 detention or shelter care set forth in § 16.1-248.1 have been satisfied, the ~~child~~ juvenile may be detained
236 pursuant to the warrant issued in accordance with this subsection. If the intake officer refuses to
237 authorize a petition relating to a child in need of services or in need of supervision, a status offense, or
238 a misdemeanor other than Class 1, his decision is final.

239 Upon delivery to the family court of a warrant issued pursuant to subdivision 3 of § 16.1-256, the
240 intake officer shall accept and file a petition founded upon the warrant.

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

243 EG. After a petition is filed alleging that a juvenile committed an act which would be a crime if
244 committed by an adult, the intake officer shall, as soon as practicable, provide notice by telephone of

the filing of the petition and the nature of the offense to the superintendent of the school division in which the petitioner alleges the juvenile is or should be enrolled, provided the violation involves:

1. The unlawful purchase, possession or use of a weapon pursuant to Article 4 (§ 18.2-279 et seq.) of Chapter 7 of Title 18.2;

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

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

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

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

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

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

8. Burglary, pursuant to § 18.2-89.

Promptly after filing a petition the intake officer shall also mail notice, by first class mail, to the superintendent. The failure to provide information regarding the school in which the juvenile who is the subject of the petition may be enrolled shall not be grounds for refusing to file a petition.

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

~~EH~~. The filing of a petition shall not be necessary:

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

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

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

4. In cases of divorce, annulment or affirmation of marriage, separate maintenance, equitable distribution based on a foreign decree, and judicial review of school board actions and of hearing officer decisions.

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

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

§ 16.1-272. Power of circuit court over juvenile offender.

A. In the hearing and disposition of felony cases properly before a circuit court having criminal jurisdiction of such offenses if committed by an adult, the court, after giving the juvenile the right to a trial by jury on the issue of guilt or innocence and upon a finding of guilty, may sentence or commit the juvenile offender in accordance with the criminal laws of this Commonwealth or may in its discretion deal with the juvenile in the manner prescribed in this ~~law~~ chapter for the hearing and disposition of cases in the juvenile court, *including, but not limited to, commitment under § 16.1-285.1*.

B. If the circuit court decides to deal with the juvenile in the same manner as a case in the juvenile court and places the ~~child~~ juvenile on probation, the ~~child~~ juvenile may be supervised by a juvenile probation officer.

306 C. Whether the court sentences and commits the ~~child~~ *juvenile* as a juvenile under this chapter or
307 under the criminal law, in cases where the juvenile is convicted of a felony in violation of §§ 18.2-61,
308 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
309 victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10,
310 subsection B of § 18.2-361 or subsection B of § 18.2-366, the clerk shall make the report required by
311 § 19.2-390 to the Sex Offender Registry established pursuant to § 19.2-390.1.

312 § 16.1-272. (Delayed effective date) Power of circuit court over juvenile offender.

313 A. In the hearing and disposition of felony cases properly before a circuit court having criminal
314 jurisdiction of such offenses if committed by an adult, the court, after giving the juvenile the right to a
315 trial by jury on the issue of guilt or innocence and upon a finding of guilty, may sentence or commit
316 the juvenile offender in accordance with the criminal laws of this Commonwealth or may in its
317 discretion deal with the juvenile in the manner prescribed in this ~~law~~ *chapter* for the hearing and
318 disposition of cases in the family court, *including, but not limited to, commitment under § 16.1-285.1.*

319 B. If the circuit court decides to deal with the juvenile in the same manner as a case in the family
320 court and places the ~~child~~ *juvenile* on probation, the ~~child~~ *juvenile* may be supervised by a juvenile
321 probation officer of the family court.

322 C. Whether the court sentences and commits the ~~child~~ *juvenile* as a juvenile under this chapter or
323 under the criminal law, in cases where the juvenile is convicted of a felony in violation of §§ 18.2-61,
324 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
325 victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10,
326 subsection B of § 18.2-361 or subsection B of § 18.2-366, the clerk shall make the report required by
327 § 19.2-390 to the Sex Offender Registry established pursuant to § 19.2-390.1.

328 § 16.1-285. Duration of commitments.

329 Except as provided in § 16.1-285.1, all commitments under this ~~law~~ *chapter* shall be for an
330 indeterminate period having regard to the welfare of the ~~child~~ *juvenile* and interests of the public, but
331 no ~~child~~ *juvenile* committed hereunder *for an act other than one constituting murder or manslaughter*
332 *shall be held or detained longer than thirty-six continuous months or after such* ~~child~~ *juvenile* has
333 attained the age of twenty-one years; ~~however~~ . *However*, any ~~child~~ *juvenile* who is committed under
334 this law as an abused or neglected child or a child in need of services shall have the right upon request
335 to be released from such commitment at the age of eighteen years. The Department shall have the
336 authority to discharge any ~~child~~ *juvenile* from its custody in accordance with policies and procedures
337 established by the State Board and with other provisions of law.

338 § 16.1-285.1. Commitment of serious offenders.

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

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

352 1. The juvenile's age;

353 2. The seriousness and number of the present offenses, including (i) whether the offense was
354 committed in an aggressive, violent, premeditated, or willful manner; (ii) whether the offense was
355 against persons or property, with greater weight being given to offenses against persons, especially if
356 death or injury resulted; (iii) whether the offense involved the use of a firearm or other dangerous
357 weapon by brandishing, displaying, threatening with or otherwise employing such weapon; and (iv) the
358 nature of the juvenile's participation in the alleged offense;

359 3. The record and previous history of the juvenile in this or any other jurisdiction, including (i) the
360 number and nature of previous contacts with courts, (ii) the number and nature of prior periods of
361 probation, (iii) the number and nature of prior commitments to ~~learning centers~~ *juvenile correctional*
362 *facilities*, (iv) the number and nature of previous residential and community-based treatments, (v)
363 whether previous adjudications and commitments were for delinquent acts that involved the infliction of
364 serious bodily injury, and (vi) whether the offense is part of a repetitive pattern of similar adjudicated
365 offenses; and

366 4. The Department's recommended length of stay based on treatment goals enumerated in the social
367 history report.

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~~ *twenty-fifth* birthday, whichever shall occur 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 ~~learning center~~ *juvenile correctional facility* 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 ~~learning center~~ *juvenile correctional facility* 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 Youth and Family Services 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 court.*

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.

C. At the hearing the court shall consider the progress report. The court may also consider additional evidence from (i) probation officers, the ~~learning center~~ *juvenile correctional facility*, 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. *However, if the juvenile has attained age eighteen years at the time of the hearing, the court may order the transfer of the person to the Department of Corrections for confinement in a youthful offender facility established pursuant to Article 4 (§ 53.1-63 et seq.) of Chapter 2 of Title 53.1 for completion of the original determinate period of commitment. Once such person is transferred to the Department of Corrections, no further annual or other review hearing shall be conducted by the juvenile or family court. The court shall order any person so transferred to be placed under post-release supervision upon release from the youthful offender facility. The period of supervision shall be established by the committing court at the time of transfer; however, such period shall not be less than six months nor more than three years. Post-release supervision shall be conducted in the same manner as provided under § 19.2-295.2.* 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

429 factors the court deems relevant. The order of the court shall be final and not subject to appeal.

430 § 16.1-302. Dockets, indices and order books; when hearings and records private; right to public
431 hearing; presence of juvenile in court.

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

433 Every circuit court shall keep a separate docket, index, and, for entry of its orders, a separate order
434 book or file for cases on appeal from the juvenile court except: (i) cases involving support pursuant to
435 § 20-61 or subdivisions A 3, F or L of § 16.1-241; (ii) cases involving criminal offenses committed by
436 adults which are commenced on a warrant or a summons as described in Title 19.2; and (iii) cases
437 involving civil commitments of adults pursuant to Title 37.1. Such cases shall be docketed on the
438 appropriate docket and the orders in such cases shall be entered in the appropriate order book as used
439 with similar cases commenced in circuit court.

440 The general public shall be excluded from all juvenile court hearings and only such persons admitted
441 as the judge shall deem proper, except that in *All juvenile and domestic relations court hearings held*
442 *on a petition alleging that a juvenile fourteen years of age or older committed an offense specified in*
443 *subsection B of § 16.1-269.1 shall be open except that the court, sua sponte or on motion of the juvenile*
444 *or the attorney for the Commonwealth, may for good cause shown close the proceedings.*

445 In any other hearing held for the purpose of adjudicating ~~the an~~ alleged violation of any criminal
446 law, or law defining a traffic infraction, the ~~child juvenile~~ or adult so charged shall have a right to be
447 present and shall have the right to a public hearing unless expressly waived by such person. The chief
448 judge may provide by rule that any juvenile licensed to operate a motor vehicle who has been charged
449 with a traffic infraction may waive court appearance and admit to the infraction or infractions charged if
450 he or she and a parent, legal guardian, or person standing in loco parentis to the juvenile appear in
451 person at the court or before a magistrate or sign and either mail or deliver to the court or magistrate a
452 written form of appearance, plea and waiver, provided that the written form contains the notarized
453 signature of the parent, legal guardian, or person standing in loco parentis to the juvenile. An
454 emancipated juvenile charged with a traffic infraction shall have the opportunity to waive court
455 appearance and admit to the infraction or infractions if he or she appears in person at the court or before
456 a magistrate or signs and either mails or delivers to the court or magistrate a written form of
457 appearance, plea, and waiver, provided that the written plea form containing the signature of the
458 emancipated juvenile is accompanied by a notarized sworn statement which details the facts supporting
459 the claim of emancipated status. Whenever the sole purpose of a proceeding is to determine the custody
460 of a child of tender years, the presence of such ~~child juvenile~~ in court may be waived by the judge at
461 any stage thereof.

462 § 16.1-302. (Delayed effective date) Dockets, indices and order books; hearings and records private;
463 right to public hearing; presence of juvenile in court.

464 Every family court shall keep a separate docket of cases arising under this law.

465 Every circuit court shall keep a separate docket, index, and, for entry of its orders, a separate order
466 book or file for cases on appeal from the family court except: (i) cases involving support pursuant to
467 § 20-61; (ii) cases involving criminal offenses committed by adults which are commenced on a warrant
468 or a summons as described in Title 19.2; and (iii) cases involving civil commitments of adults pursuant
469 to Title 37.1. Such cases shall be docketed on the appropriate docket and the orders in such cases shall
470 be entered in the appropriate order book as used with similar cases commenced in circuit court.

471 The general public shall be excluded from all family court hearings and only such persons admitted
472 as the judge shall deem proper, except that ~~(i) this provision shall not apply to cases for~~ *All*
473 *proceedings in the family court shall be open to the public in cases involving (i) divorce, annulment or*
474 *affirmation of marriage, separate maintenance, equitable distribution based on a foreign decree, change*
475 *of name, amendment of a birth certificate, or judicial review of school board actions or of hearing*
476 *officer decisions; and (ii) in any hearing held for the purpose of adjudicating the alleged violation of*
477 *any criminal law, or law defining a traffic infraction, the child or adult so charged shall have a right to*
478 *be present and shall have the right to a public hearing unless expressly waived by such person unless,*
479 *for good cause shown; and on motion of the Commonwealth, the juvenile or sua sponte, the court orders*
480 *the proceedings closed, petitions alleging that a juvenile fourteen years of age or older committed an*
481 *offense specified in subsection B of § 16.1-269.1.*

482 In all other cases, the public shall be excluded and only such persons admitted as the court deems
483 proper.

484 In any hearing held for the purpose of adjudicating an alleged violation of any criminal law, or law
485 defining a traffic infraction, a juvenile or adult so charged shall have a right to be present.

486 The chief judge may provide by rule that any juvenile licensed to operate a motor vehicle who has
487 been charged with a traffic infraction may waive court appearance and admit to the infraction or
488 infractions charged if he or she and a parent, legal guardian, or person standing in loco parentis to the
489 juvenile appear in person at the court or before a magistrate or sign and either mail or deliver to the
490 court or magistrate a written form of appearance, plea and waiver, provided that the written form

contains the notarized signature of the parent, legal guardian, or person standing in loco parentis to the juvenile. An emancipated juvenile charged with a traffic infraction shall have the opportunity to waive court appearance and admit to the infraction or infractions if he or she appears in person at the court or before a magistrate or signs and either mails or delivers to the court or magistrate a written form of appearance, plea, and waiver, provided that the written plea form containing the signature of the emancipated juvenile is accompanied by a notarized sworn statement which details the facts supporting the claim of emancipated status. Whenever the sole purpose of a proceeding is to determine the custody of a child of tender years, the presence of such ~~child~~ juvenile in court may be waived by the judge at any stage thereof.

§ 16.1-302.1. *Right of victim or representative to attend certain proceedings.*

During proceedings involving petitions alleging that a juvenile is delinquent, including proceedings on appeal, any victim as defined in § 19.2-11.01 may remain in the courtroom. In any such case involving a minor victim, the court may permit an adult chosen by the minor victim to be present in the courtroom during the proceedings in addition to or in lieu of the minor's parent or guardian.

However, if either the attorney for the Commonwealth or any defendant represents to the court that he intends to call as a material witness any victim as defined in § 19.2-11.01, the court shall exclude that person from the trial or proceedings.

The attorney for the Commonwealth shall give prior notice of any such proceedings and changes in the scheduling thereof to any known victim and to any known adult chosen in accordance with this section by a minor victim at the address or telephone number, or both, provided in writing by such person.

§ 53.1-63. Department to establish facilities for persons committed under § 19.2-311 et seq.

The Department shall establish, staff and maintain, at any state correctional facility designated by the Board, programs and housing for the rehabilitation, training and confinement of persons committed to the Department under the provisions of § 16.1-285.2 or Article 2 (§ 19.2-311 et seq.) of Chapter 18 of Title 19.2. Persons admitted to these facilities shall be determined by the Department to have the potential for rehabilitation through confinement and treatment therein.

§ 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 § 16.1-285.2 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 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.

§ 53.1-67. Admission to facility; good conduct allowance restricted.

In no case shall a person previously confined in a youthful offender facility, whether for a different or the same offense, be confined again in such a facility, except for the purposes of study, testing and diagnosis.

The provisions of §§ 53.1-191, 53.1-196, and 53.1-198 through 53.1-201 relating to good conduct credits and allowances and extraordinary service and the provisions of § 53.1-187 relating to credit for time served in a correctional facility or juvenile detention facility shall not apply to persons (i) sentenced to an indeterminate sentence under § 19.2-311 for a crime committed on or after July 1, 1983, or (ii) committed under the provisions of § 16.1-285.2. Acts performed by such persons which would earn credit for them under § 53.1-191, if it were applicable, shall be noted on their record by the authorities of the facility.

§ 66-10. Powers and duties of Board.

The Board shall have the following powers and duties:

1. To develop and establish programmatic and fiscal policies governing the operation of programs and facilities for which the Department is responsible under this law.

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

3. To review and comment on all budgets and requests for appropriations for the Department prior to their submission to the Governor and on all applications for federal funds.

4. To monitor the activities of the Department and its effectiveness in implementing the policies of the Board.

5. To advise the Governor, Director and the General Assembly on matters relating to youth services.

6. To promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Director or the Department. The Board of Youth and Family Services may adopt such Board of Corrections' regulations and standards as it may deem appropriate. If regulations and standards so adopted are not amended substantively by the Board of

552 Youth and Family Services, such Board need not comply with the provisions of Article 2 (§ 9-6.14:7.1
553 et seq.) of Chapter 1.1:1 of Title 9.

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

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

558 § 66-13. Authority of Department as to juveniles committed to it; establishment of facilities;
559 arrangements for temporary care.

560 The Department is authorized and empowered to receive ~~children~~ juveniles committed to it by the
561 courts of the Commonwealth pursuant to § ~~16.1-278.8~~. The Department shall establish, staff and
562 maintain facilities for the rehabilitation, training and confinement of such ~~children~~ juveniles. The
563 Department may make arrangements with satisfactory persons, institutions or agencies, or with cities or
564 counties maintaining places of detention for ~~children~~ juveniles, for the temporary care of such ~~children~~
565 juveniles.

566 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**
567 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
568 **is**