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HOUSE BILL NO. 2284

Offered January 17, 1997

A BILL to amend and reenact §§ 16.1-255, 16.1-260, 16.1-269.1, 16.1-269.6 and 16.1-296 of the Code of Virginia, as they are currently effective and as they may become effective, and § 19.2-310.3 of the Code of Virginia, relating to juvenile justice reform

Patrons—Jones, J.C., Almand, Cantor, Cranwell, Darner, Davies, Deeds, Hamilton, Jackson and Mims;
Senators: Earley and Reasor

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-255, 16.1-260, 16.1-269.1, 16.1-269.6 and 16.1-296 of the Code of Virginia, as they are currently effective and as they may become effective, and § 19.2-310.3 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-255. Limitation on issuance of detention orders for juveniles.

No detention order shall be issued for any juvenile except when authorized by the judge or intake officer of a juvenile court or by a magistrate as provided in § 16.1-256.

In matters involving the issuance of detention orders ~~by the judge~~, each state or local court service unit shall ensure the capability of a prompt response by an intake officer who is either on duty or on call.

§ 16.1-255. (Delayed effective date) Limitation on issuance of detention orders for juveniles.

No detention order shall be issued for any juvenile except when authorized by the judge or intake officer of a family court or by a magistrate as provided in § 16.1-256.

In matters involving the issuance of detention orders ~~by the judge~~, each state or local court service unit shall ensure the capability of a prompt response by an intake officer who is either on duty or on call.

§ 16.1-260. Intake; petition; investigation.

A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of a petition, except as provided in subsection H of this section and in § 16.1-259. The form and content of the petition shall be as provided in § 16.1-262. No individual shall be required to obtain support services from the Department of Social Services prior to filing a petition seeking support for a child. Complaints, requests and the processing of petitions to initiate a case shall be the responsibility of the intake officer. However, (i) the attorney for the Commonwealth of the city or county may file a petition on his own motion with the clerk, (ii) 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. Complaints alleging abuse or neglect of a child shall be referred initially to the local department of public welfare or social services in accordance with the provisions of Chapter 12.1 (§ 63.1-248.1 et seq.) of Title 63.1. Motions and other subsequent pleadings in a case shall be filed directly with the clerk. The intake officer or clerk with whom the petition or motion is filed shall inquire whether the petitioner is receiving child support services or public assistance. No individual who is receiving support services or public assistance shall be denied the right to file a petition or motion to establish, modify or enforce an order for support of a child. If the petitioner is seeking or receiving child support services or public assistance, the clerk, upon issuance of process, shall forward a copy of the petition or motion together with notice of the court date to the Division of Child Support Enforcement.

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

1. When the court service unit of any court receives a complaint alleging facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241, the unit, through an intake officer, may proceed informally to make such adjustment as is practicable without the filing of a petition

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60 or may authorize a petition to be filed by any complainant having sufficient knowledge of the matter to
61 establish probable cause for the issuance of the petition.

62 However, an intake officer may proceed informally on a complaint alleging a child is in need of
63 services, in need of supervision or delinquent only if the juvenile (i) is not alleged to have committed a
64 violent juvenile felony and (ii) has not previously been adjudicated in need of supervision or delinquent.
65 A petition alleging that a juvenile committed a violent juvenile felony shall be filed with the court. A
66 petition alleging that a juvenile is in need of supervision or delinquent shall be filed with the court if
67 the juvenile had previously been adjudicated in need of supervision or delinquent.

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

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

87 D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall
88 be reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be
89 in need of supervision have utilized or attempted to utilize treatment and services available in the
90 community and have exhausted all appropriate nonjudicial remedies which are available to them. When
91 the intake officer determines that the parties have not attempted to utilize available treatment or services
92 or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer the
93 petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment facility
94 or individual to receive treatment or services, and a petition shall not be filed. Only after the intake
95 officer determines that the parties have made a reasonable effort to utilize available community
96 treatment or services, may he permit the petition to be filed.

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

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

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

111 G. After a petition is filed alleging that a juvenile committed an act which would be a crime if
112 committed by an adult, the intake officer shall, as soon as practicable, provide notice by telephone of
113 the filing of the petition and the nature of the offense to the superintendent of the school division in
114 which the petitioner alleges the juvenile is or should be enrolled, provided the violation involves:

- 115 1. The unlawful purchase, possession or use of a weapon pursuant to Article 4 (§ 18.2-279 et seq.) of
116 Chapter 7 of Title 18.2;
- 117 2. Homicide, pursuant to Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;
- 118 3. Felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of
119 Title 18.2;
- 120 4. Criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;
- 121 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 and related offenses, pursuant to §§ 18.2-89 through 18.2-93.

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.

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

1. In the case of violations of the traffic laws, including offenses involving bicycles, hitchhiking and other pedestrian offenses, game and fish laws or a violation of the ordinance of any city regulating surfing or any ordinance establishing curfew violations 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 juvenile is released to the custody of a parent or legal guardian pending the initial court date. The officer releasing a juvenile to the custody of a parent or legal guardian shall issue a summons to the juvenile and shall also issue a summons requiring the parent or legal guardian to appear before the court with the juvenile. Disposition of the charge shall be in the manner provided in § 16.1-278.8 or § 16.1-278.9. If the juvenile so charged with a violation of § 18.2-266 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 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 a Class 3 or Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as provided by law for adults provided that notice of the summons to appear is mailed by the investigating officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

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

§ 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 H of this section and in § 16.1-259. The form and content of the petition shall be as provided in § 16.1-262. No individual shall be required to obtain support services from the Department of Social Services prior to filing a petition seeking support for a 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 hearing officer decisions shall be filed directly with the clerk. Complaints alleging abuse or neglect of a child shall be referred initially to the local department of public welfare or social services in accordance with the provisions of Chapter 12.1 (§ 63.1-248.1 et seq.) of Title 63.1. Motions and other subsequent pleadings in a case shall be filed directly with the clerk. The intake officer or clerk with whom the petition or motion is filed shall inquire whether the petitioner is receiving child support services or public assistance. No individual who is receiving support services or public assistance shall be denied the right to file a petition or motion to establish, modify or enforce an order for support of a child. If the petitioner is seeking or receiving child support services or public assistance, the clerk, upon issuance of process, shall forward a copy of the petition or motion together with notice of the court date to the

183 Division of Child Support Enforcement.

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

193 B1. 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 complaint alleging a child is in need of
199 services, in need of supervision or delinquent only if the juvenile (i) is not alleged to have committed a
200 violent juvenile felony and (ii) has not previously been adjudicated in need of supervision or delinquent.
201 A petition alleging that a juvenile committed a violent juvenile felony shall be filed with the court. A
202 petition alleging that a juvenile is in need of supervision or delinquent shall be filed with the court if
203 the juvenile had previously been adjudicated in need of supervision or delinquent.

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

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

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

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

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

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

G. After a petition is filed alleging that a juvenile committed an act which would be a crime if 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 and related offenses, pursuant to §§ 18.2-89 through 18.2-93.

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.

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

1. In the case of violations of the traffic laws, including offenses involving bicycles, hitchhiking and other pedestrian offenses, game and fish laws or a violation of the ordinance of any city regulating surfing or any ordinance establishing curfew violations 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 juvenile is released to the custody of a parent or legal guardian pending the initial court date. The officer releasing a juvenile to the custody of a parent or legal guardian shall issue a summons to the juvenile and shall also issue a summons requiring the parent or legal guardian to appear before the court with the juvenile. Disposition of the charge shall be in the manner provided in § 16.1-278.8 or § 16.1-278.9. If the juvenile so charged with a violation of § 18.2-266 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 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 a Class 3 or Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as provided by law for adults provided that notice of the summons to appear is mailed by the investigating officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

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

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

A. Except as provided in subsections B and C, if a juvenile 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 the attorney for the Commonwealth and prior to a hearing on the merits, hold a transfer hearing and may retain jurisdiction or transfer such juvenile for proper criminal proceedings to the appropriate circuit court having criminal jurisdiction of such offenses if committed by an adult. Any

transfer to the appropriate circuit court shall be subject to the following conditions:

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

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

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

4. The court finds by a preponderance of the evidence that the juvenile is not a proper person to remain within the jurisdiction of the juvenile court. In determining whether a juvenile is a proper person to remain within the jurisdiction of the juvenile court, the court shall consider, but not be limited to, the following factors:

a. The juvenile's age;

b. The seriousness and number of alleged offenses, including (i) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; (ii) whether the alleged offense was against persons or property, with greater weight being given to offenses against persons, especially if death or bodily injury resulted; (iii) whether the maximum punishment for such an offense is greater than 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 juvenile correctional centers, (iv) the number and nature of previous residential and community-based treatments, (v) whether previous adjudications and commitments were for delinquent acts that involved the infliction of serious bodily injury, and (vi) whether the alleged offense is part of a repetitive pattern of similar adjudicated offenses;

f. Whether the juvenile has previously absconded from the legal custody of a juvenile correctional entity in this or any other jurisdiction;

g. The extent, if any, of the juvenile's degree of 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 juvenile court shall conduct a preliminary hearing whenever a juvenile fourteen years of age or older is charged with murder in violation of §§ 18.2-31, 18.2-32 or § 18.2-40, or aggravated malicious wounding in violation of § 18.2-51.2.

C. The juvenile court shall conduct a preliminary hearing whenever a juvenile fourteen years of age or older is charged with murder in violation of § 18.2-33, felonious injury by mob in violation of § 18.2-41, abduction in violation of § 18.2-48, malicious wounding in violation of § 18.2-51, malicious wounding of a law-enforcement officer in violation of § 18.2-51.1, felonious poisoning in violation of § 18.2-54.1, adulteration of products in violation of § 18.2-54.1, robbery in violation of § 18.2-58 or carjacking in violation of § 18.2-58.1, rape in violation of § 18.2-61, forcible sodomy in violation of § 18.2-67.1 or object sexual penetration in violation of § 18.2-67.2, provided the attorney for the Commonwealth gives written notice of his intent to proceed pursuant to this subsection. *The notice shall be filed with the court and provided to counsel for the juvenile or, if the juvenile is not then represented by counsel, to the juvenile and a parent, guardian or other person standing in loco parentis with respect to the juvenile* at least seven days prior to the preliminary hearing. If the attorney for the Commonwealth elects not to give such notice, or if he elects to withdraw the notice prior to certification of the charge to the grand jury, he may proceed as provided in subsection A.

D. Upon a finding of probable cause pursuant to a preliminary hearing under subsection B or C, the juvenile court shall certify the charge, and all ancillary charges, to the grand jury. Such certification shall divest the juvenile court of jurisdiction *only* as to the charge and any ancillary charges *so certified*.

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

circuit court. If the petition or warrant is terminated by nolle prosequi in the juvenile court, the attorney for the Commonwealth may seek an indictment only after a preliminary hearing in juvenile court.

If the court finds that the juvenile was not 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 in the circuit court cures any error or defect in any proceeding held in the juvenile court except with respect to the juvenile's age. If an indictment is terminated by nolle prosequi, the Commonwealth may reinstate the proceeding by seeking a subsequent indictment.

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

A. Except as provided in subsections B and C, 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 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. 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 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 family or circuit courts, (ii) the number and nature of prior periods of probation, (iii) the number and nature of prior commitments to juvenile correctional centers, (iv) the number and nature of previous residential and community-based treatments, (v) whether previous adjudications and commitments were for delinquent acts that involved the infliction of serious bodily injury, and (vi) whether the alleged offense is part of a repetitive pattern of similar adjudicated offenses;

f. Whether the juvenile has previously absconded from the legal custody of a juvenile correctional entity in this or any other jurisdiction;

g. The extent, if any, of the juvenile's degree of 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 family court shall conduct a preliminary hearing whenever a juvenile fourteen years of age or older is charged with murder in violation of §§ 18.2-31, 18.2-32 or § 18.2-40 or aggravated malicious wounding in violation of § 18.2-51.2.

C. The family court shall conduct a preliminary hearing whenever a juvenile fourteen years of age or older is charged with murder in violation of § 18.2-33, felonious injury by mob in violation of § 18.2-41, abduction in violation of § 18.2-48, malicious wounding in violation of § 18.2-51, malicious wounding of a law-enforcement officer in violation of § 18.2-51.1, felonious poisoning in violation of

§ 18.2-54.1, adulteration of products in violation of § 18.2-54.1, robbery in violation of § 18.2-58 or carjacking in violation of § 18.2-58.1, rape in violation of § 18.2-61, forcible sodomy in violation of § 18.2-67.1 or object sexual penetration in violation of § 18.2-67.2 provided the attorney for the Commonwealth gives written notice of his intent to proceed pursuant to this subsection. *The notice shall be filed with the court and provided to counsel for the juvenile or, if the juvenile is not then represented by counsel, to the juvenile and a parent, guardian or other person standing in loco parentis with respect to the juvenile* at least seven days prior to the preliminary hearing. If the attorney for the Commonwealth elects not to give such notice, or if he elects to withdraw the notice prior to certification of the charge to the grand jury, he may proceed as provided in subsection A.

D. Upon a finding of probable cause pursuant to a preliminary hearing under subsection B or C, the family court shall certify the charge, and all ancillary charges, to the grand jury. Such certification shall divest the family court of jurisdiction *only* as to the charge and any ancillary charges *so certified*.

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

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

§ 16.1-269.6. Circuit court hearing; jury; termination of juvenile court jurisdiction; objections and appeals.

A. Within seven days after receipt of notice of an appeal from the transfer decision pursuant to subsection A of § 16.1-269.1, by either the attorney for the Commonwealth or the juvenile, or if an appeal to such a decision to transfer is not noted, upon expiration of the time in which to note such an appeal, the clerk of the court shall forward to the circuit court all papers connected with the case, including any report required by subsection B of § 16.1-269.2, as well as a written court order setting forth the reasons for the juvenile court's decision. The clerk shall forward copies of the order to the attorney for the Commonwealth and other counsel of record.

B. The circuit court shall, within a reasonable time after receipt of the case from the juvenile court pursuant to subsection A of § 16.1-269.1, (i) if either the juvenile or the attorney for the Commonwealth has appealed the transfer decision, examine all such papers, reports and orders and conduct a hearing to take further evidence on the issue of transfer, to determine if there has been substantial compliance with subsection A of § 16.1-269.1, but without redetermining whether the juvenile court had sufficient evidence to find probable cause; and (ii) enter an order either remanding the case to the juvenile court or advising the attorney for the Commonwealth that he may seek an indictment. Upon advising the attorney for the Commonwealth that he may seek an indictment, the circuit court ~~shall~~ *may* issue an order transferring the juvenile from the juvenile detention facility to an appropriate local correctional facility where the juvenile need no longer be entirely separate and removed from adults, unless, upon motion of counsel, good cause is shown for placement of the juvenile pursuant to the limitations of subdivision E (i), (ii), and (iii) of § 16.1-249. However, in cases where a charge has been certified by the juvenile court to the grand jury pursuant to subsection B or C of § 16.1-269.1, the attorney for the Commonwealth may seek an indictment upon such charge and any ancillary charge without obtaining an order of the circuit court advising him that he may do so.

C. The circuit court order advising the attorney for the Commonwealth that he may seek an indictment shall divest the juvenile court of its jurisdiction over the case as well as the juvenile court's jurisdiction over any other allegations of delinquency arising from the same act, transaction or scheme giving rise to the charge for which the juvenile has been transferred. In addition, upon conviction of the juvenile following transfer or certification and trial as an adult, the circuit court shall issue an order terminating the juvenile court's jurisdiction over that juvenile with respect to any future criminal acts alleged to have been committed by such juvenile and with respect to any pending allegations of delinquency which have not been disposed of by the juvenile court at the time of the criminal conviction. Upon receipt of the order terminating the juvenile court's jurisdiction over the juvenile, the clerk of the juvenile court shall forward any pending petitions of delinquency for proceedings in the appropriate general district court.

D. The judge of the circuit court who reviewed the case after receipt from the juvenile court shall not, over the objection of any interested party, preside over the trial of such charge or charges.

E. Any objection to the jurisdiction of the circuit court pursuant to this article shall be waived if not made before arraignment.

F. The time period beginning with the filing of a notice of appeal pursuant to § 16.1-269.3 or § 16.1-269.4 and ending with the order of the circuit court disposing of the appeal shall not be included as applying to the provisions of § 19.2-243.

§ 16.1-269.6. (Delayed effective date) Circuit court hearing; termination of family court jurisdiction; objections and appeals.

A. Within seven days after receipt of notice of an appeal from the transfer decision pursuant to subsection A of § 16.1-269.1 by either the attorney for the Commonwealth or the juvenile, or if an appeal to such a decision to transfer is not noted, upon expiration of the time in which to note appeal, the clerk of the family court shall forward to the circuit court all papers connected with the case, including any report required by subsection B of § 16.1-269.2 as well as a written court order setting forth the reasons for the family court's decision. The clerk shall forward copies of the order to the attorney for the Commonwealth and other counsel of record.

B. The circuit court shall, within a reasonable time after receipt of the case from the family court pursuant to subsection A of § 16.1-269.1, (i) if either the juvenile or the attorney for the Commonwealth has appealed the transfer decision, examine all such papers, reports and orders and conduct a hearing to take further evidence on the issue of transfer, to determine if there has been substantial compliance with subsection A of § 16.1-269.1, but without redetermining whether the family court had sufficient evidence to find probable cause; and (ii) enter an order either remanding the case to the family court or advising the attorney for the Commonwealth that he may seek an indictment. Upon advising the attorney for the Commonwealth that he may seek an indictment, the circuit court ~~shall~~ *may* issue an order transferring the juvenile from the juvenile detention facility to an appropriate local correctional facility where the juvenile need no longer be entirely separate and removed from adults, unless, upon motion of counsel, good cause is shown for placement of the juvenile pursuant to the limitations of subdivision E (i), (ii), and (iii) of § 16.1-249. However, in cases where a charge has been certified by the family court to the grand jury pursuant to subsection B or C of § 16.1-269.1, the attorney for the Commonwealth may seek an indictment upon such charge and any ancillary charge without obtaining an order of the circuit court advising him that he may do so.

C. The circuit court order advising the attorney for the Commonwealth that he may seek an indictment shall divest the family court of its jurisdiction over the case as well as the family court's jurisdiction over any other allegations of delinquency arising from the same act, transaction or scheme giving rise to the charge for which the juvenile has been transferred. In addition, upon conviction of the juvenile following transfer and trial as an adult, the circuit court shall issue an order terminating the family court's jurisdiction over that juvenile with respect to any future criminal acts alleged to have been committed by such juvenile and with respect to any pending allegations of delinquency which have not been disposed of by the family court at the time of the criminal conviction. Upon receipt of the order terminating the family court's jurisdiction over the juvenile, the clerk of the family court shall forward any pending petitions of delinquency for proceedings in the appropriate general district court.

D. The judge of the circuit court who reviewed the case after receipt from the family court shall not, over the objection of any interested party, preside over the trial of such charge or charges.

E. Any objection to the jurisdiction of the circuit court pursuant to this article shall be waived if not made before arraignment.

F. The time period beginning with the filing of a notice of appeal pursuant to § 16.1-269.3 or § 16.1-269.4 and ending with the order of the circuit court disposing of the appeal shall not be included as applying to the provisions of § 19.2-243.

§ 16.1-296. Jurisdiction of appeals; procedure.

A. From any final order or judgment of the juvenile court affecting the rights or interests of any person coming within its jurisdiction, an appeal may be taken within ten days from the entry of a final judgment, order or conviction. However, in a case arising under the Uniform Interstate Family Support Act (§ 20-88.32 et seq.), a party may take an appeal pursuant to this section within thirty days from entry of a final order or judgment. A protective order issued pursuant to § 16.1-279.1 in a case of family abuse is a final order from which an appeal may be taken.

B. Upon receipt of notice of such appeal the juvenile court shall forthwith transmit to the attorney for the Commonwealth a report incorporating the results of any investigation conducted pursuant to § 16.1-273, which shall be confidential in nature and made available only to the court and the attorney for the defendant (i) after the guilt or innocence of the accused has been determined or (ii) after the court has made its findings on the issues subject to appeal. After final determination of the case, the report and all copies thereof shall be forthwith returned to such juvenile court.

C. Where an appeal is taken by a child on a finding that he or she is delinquent and on a disposition pursuant to § 16.1-278.8, trial by jury on the issue of guilt or innocence of the alleged delinquent act may be had on motion of the child, the attorney for the Commonwealth or the circuit court judge. If the alleged delinquent act is one which, if committed by an adult, would constitute a felony, the child shall

552 be entitled to a jury of twelve persons. In all other cases, the jury shall consist of seven persons. If the
553 jury in such a trial finds the child guilty, disposition shall be by the judge pursuant to the provisions of
554 § 16.1-278.8 after taking into consideration the report of any investigation made pursuant to § 16.1-237
555 or § 16.1-273.

556 D. When an appeal is taken in a case involving termination of parental rights brought under
557 § 16.1-283, the circuit court shall hold a hearing on the merits of the case within ninety days of the
558 perfecting of the appeal.

559 E. Where an appeal is taken by an adult on a finding of guilty of an offense within the jurisdiction
560 of the juvenile and domestic relations district court, the appeal shall be dealt with in all respects as is an
561 appeal from a general district court pursuant to §§ 16.1-132 through 16.1-137; however, where an appeal
562 is taken by any person on a charge of nonsupport, the procedure shall be as is provided for appeals in
563 prosecutions under Chapter 5 (§ 20-61 et seq.) of Title 20.

564 F. In all other cases on appeal, proceedings in the circuit court shall conform to the equity practice
565 where evidence is heard ore tenus; however, an issue out of chancery may be allowed, in the discretion
566 of the judge, upon the motion of any party. *If the juvenile court closed proceedings in the case pursuant*
567 *to subsection D of § 16.1-302, proceedings in the circuit court shall be closed on appeal and any*
568 *records or portions thereof ordered to remain confidential by the juvenile court shall remain*
569 *confidential in the circuit court.* An appeal from an order of protection issued pursuant to § 16.1-279.1
570 shall be given precedence on the docket of the court over other civil appeals taken to the circuit court
571 from the district courts, but shall otherwise be docketed and processed as other civil cases.

572 G. Costs, taxes and fees on appealed cases shall be assessed only in those cases in which a trial fee
573 could have been assessed in the juvenile and domestic relations court and shall be collected in the
574 circuit court.

575 H. No appeal bond shall be required of a party appealing from an order of a juvenile and domestic
576 relations district court except for that portion of any order or judgment establishing a support arrearage
577 or suspending payment of support during pendency of an appeal. In cases involving support, no appeal
578 shall be allowed until the party applying for the same or someone for him gives bond, in an amount and
579 with sufficient surety approved by the judge or by his clerk if there is one, to abide by such judgment
580 as may be rendered on appeal if the appeal is perfected or, if not perfected, then to satisfy the judgment
581 of the court in which it was rendered. An appeal will not be perfected unless such appeal bond as may
582 be required is filed within thirty days from the entry of the final judgment or order. However, no appeal
583 bond shall be required of the Commonwealth or when an appeal is proper to protect the estate of a
584 decedent, an infant, a convict or an insane person, or the interest of a county, city or town.

585 If bond is furnished by or on behalf of any party against whom judgment has been rendered for
586 money, the bond shall be conditioned for the performance and satisfaction of such judgment or order as
587 may be entered against the party on appeal, and for the payment of all damages which may be awarded
588 against him in the appellate court. If the appeal is by a party against whom there is no recovery, the
589 bond shall be conditioned for the payment of any damages as may be awarded against him on the
590 appeal.

591 This subsection shall not apply to release on bail pursuant to other subsections of this section or
592 § 16.1-298.

593 I. In all cases on appeal, the circuit court in the disposition of such cases shall have all the powers
594 and authority granted by the chapter to the juvenile and domestic relations district court. Unless
595 otherwise specifically provided by this Code, the circuit court judge shall have the authority to appoint
596 counsel for the parties and compensate such counsel in accordance with the provisions of Article 6
597 (§ 16.1-266 et seq.) of this chapter.

598 J. In any case which has been referred or transferred from a circuit court to a juvenile court and an
599 appeal is taken from an order or judgment of the juvenile court, the appeal shall be taken to the circuit
600 court in the same locality as the juvenile court to which the case had been referred or transferred.

601 § 16.1-296. (Delayed effective date) Appeals to circuit court.

602 A. From any final order, judgment or conviction of the family court, an appeal may be taken to the
603 circuit court within ten days from the entry of the final order, judgment or conviction in a case:

604 1. Involving an adult convicted of a violation of the criminal laws pursuant to subdivisions E, I, or J
605 of § 16.1-241;

606 2. Involving a juvenile found to be delinquent or found guilty of a traffic infraction;

607 3. Involving a juvenile found to be in need of services, in need of supervision, or to be a status
608 offender;

609 4. Involving a conviction pursuant to § 16.1-278 or a finding of criminal contempt;

610 5. Arising pursuant to subdivision B of § 16.1-241 involving persons alleged to be mentally ill or
611 mentally retarded; provided, however, the applicable period for the appeal of mental commitment orders
612 shall be as specified in §§ 16.1-344 and 37.1-67.6.

613 Upon receipt of notice of such appeal the family court shall forthwith transmit to the attorney for the

Commonwealth a report incorporating the results of any investigation conducted pursuant to § 16.1-273, which shall be confidential in nature and made available only to the court and the attorney for the defendant (i) after the guilt or innocence of the accused has been determined or (ii) after the court has made its findings on the issues subject to appeal. After final determination of the case, the report and all copies thereof shall be forthwith returned to such family court.

B. Where an appeal is taken by a child on a finding that he or she is delinquent and on a disposition pursuant to § 16.1-278.8, trial by jury on the issue of guilt or innocence of the alleged delinquent act may be had on motion of the child, the attorney for the Commonwealth or the circuit court judge. If the alleged delinquent act is one which, if committed by an adult, would constitute a felony, the child shall be entitled to a jury of twelve persons. In all other cases, the jury shall consist of seven persons. If the jury in such a trial finds the child guilty, disposition shall be by the judge pursuant to the provisions of § 16.1-278.8 after taking into consideration the report of any investigation made pursuant to § 16.1-237 or § 16.1-273.

C. Where an appeal is taken by an adult on a finding of guilty of an offense within the jurisdiction of the family court, the appeal shall be dealt with in all respects as is an appeal from a general district court pursuant to §§ 16.1-132 through 16.1-137; however, where an appeal is taken by any person on a charge of nonsupport, the procedure shall be as is provided for appeals in prosecutions under Chapter 5 (§ 20-61 et seq.) of Title 20.

D. In all cases other than those specified in subsections B and C on appeal to the circuit court, proceedings in the circuit court shall conform to the equity practice where evidence is heard ore tenus; however, an issue out of chancery may be allowed, in the discretion of the judge, upon the motion of any party. *If the family court closed proceedings in the case pursuant to subsection D of § 16.1-302, proceedings in the circuit court shall be closed on appeal and any records or portions thereof ordered to remain confidential by the family court shall remain confidential in the circuit court.*

E. Costs, taxes and fees on appealed cases shall be assessed only in those cases in which a trial fee could have been assessed in the family court and shall be collected in the circuit court.

F. No bond shall be required of a party applying for an appeal from an order of the family court except as may be required for appeals on a charge of nonsupport in Chapter 5 (§ 20-61 et seq.) of Title 20. Nothing contained in this subsection shall apply to release on bail in the cases specified in subsections B and C of this section.

G. In all cases on appeal to the circuit court, the circuit court in the disposition of such cases shall have all the powers and authority granted by this chapter to the family court. Unless otherwise specifically provided by this Code, the circuit court judge shall have the authority to appoint counsel for the parties and compensate such counsel in accordance with the provisions of Article 6 (§ 16.1-266 et seq.) of this chapter.

§ 19.2-310.3. Procedures for withdrawal of blood sample for DNA analysis.

Each sample required pursuant to § 19.2-310.2 from persons who are to be incarcerated shall be withdrawn at the receiving unit or at such other place as is designated by the Department of Corrections or, in the case of a juvenile, the Department of Juvenile Justice. The required samples from persons who are not sentenced to a term of confinement shall be withdrawn at a time and place specified by the sentencing court. Only a correctional health nurse technician or a physician, registered professional nurse, licensed practical nurse, graduate laboratory technician, or phlebotomist shall withdraw any sample to be submitted for analysis. No civil liability shall attach to any person authorized to withdraw blood as provided herein as a result of the act of withdrawing blood from any person submitting thereto, provided the blood was withdrawn according to recognized medical procedures. However, no person shall be relieved from liability for negligence in the withdrawing of any blood sample.

Chemically clean sterile disposable needles and vacuum draw tubes shall be used for all samples. The tube shall be sealed and labelled with the subject's name, social security number, date of birth, race and gender, the name of the person collecting the sample, the date and place of collection. The tubes shall be secured to prevent tampering with the contents. The steps herein set forth relating to the taking, handling, identification, and disposition of blood samples are procedural and not substantive. Substantial compliance therewith shall be deemed to be sufficient. The samples shall be transported to the Division of Forensic Science not more than fifteen days following withdrawal and shall be analyzed and stored in the DNA data bank in accordance with §§ 19.2-310.4 and 19.2-310.5.