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HOUSE BILL NO. 2284

House Amendments in [] — February 4, 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~~ or] (ii) has not previously been adjudicated in need of supervision or
65 delinquent. A petition alleging that a juvenile committed a violent juvenile felony shall be filed with the
66 court. A petition alleging that a juvenile is in need of supervision or delinquent shall be filed with the
67 court if 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,

122 pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

123 6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter
124 7 of Title 18.2;

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

126 8. Burglary and related offenses, pursuant to §§ 18.2-89 through 18.2-93.

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

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

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

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

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

142 3. In the case of a violation of § 18.2-266 or § 29.1-738, or the commission of any other
143 alcohol-related offense, provided the juvenile is released to the custody of a parent or legal guardian
144 pending the initial court date. The officer releasing a juvenile to the custody of a parent or legal
145 guardian shall issue a summons to the juvenile and shall also issue a summons requiring the parent or
146 legal guardian to appear before the court with the juvenile. Disposition of the charge shall be in the
147 manner provided in § 16.1-278.8 or § 16.1-278.9. If the juvenile so charged with a violation of
148 § 18.2-266 or § 29.1-738 refuses to provide a sample of blood or breath or samples of both blood and
149 breath for chemical analysis pursuant to §§ 18.2-268.1 through 18.2-268.12 or § 29.1-738.2, the
150 provisions of these sections shall be followed except that the magistrate shall authorize execution of the
151 warrant as a summons. The summons shall be served on a parent or legal guardian and the juvenile, and
152 a copy of the summons shall be forwarded to the court in which the violation of § 18.2-266 or
153 § 29.1-738 is to be tried.

154 4. In the case of offenses which, if committed by an adult would be punishable as a Class 3 or Class
155 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in
156 § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as
157 provided by law for adults provided that notice of the summons to appear is mailed by the investigating
158 officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

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

161 § 16.1-260. (Delayed effective date) Intake; petition; investigation.

162 A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of
163 a petition, except as provided in subsection H of this section and in § 16.1-259. The form and content of
164 the petition shall be as provided in § 16.1-262. No individual shall be required to obtain support services
165 from the Department of Social Services prior to filing a petition seeking support for a juvenile.
166 Complaints, requests and the processing of petitions to initiate a case shall be the responsibility of the
167 intake officer. However, (i) the attorney for the Commonwealth of the city or county may file a petition
168 on his own motion with the clerk, (ii) the Department of Social Services may file support petitions on
169 its own motion with the clerk, and (iii) any attorney may file petitions on behalf of his client with the
170 clerk except petitions alleging that the subject of the petition is a child alleged to be in need of services,
171 in need of supervision or delinquent. In addition, all cases for divorce, annulment or affirmation of
172 marriage, separate maintenance, equitable distribution based on a foreign decree, adoption, change of
173 name, amendment of a record of birth and judicial review of school board actions and of hearing officer
174 decisions shall be filed directly with the clerk. Complaints alleging abuse or neglect of a child shall be
175 referred initially to the local department of public welfare or social services in accordance with the
176 provisions of Chapter 12.1 (§ 63.1-248.1 et seq.) of Title 63.1. Motions and other subsequent pleadings
177 in a case shall be filed directly with the clerk. The intake officer or clerk with whom the petition or
178 motion is filed shall inquire whether the petitioner is receiving child support services or public
179 assistance. No individual who is receiving support services or public assistance shall be denied the right
180 to file a petition or motion to establish, modify or enforce an order for support of a child. If the
181 petitioner is seeking or receiving child support services or public assistance, the clerk, upon issuance of
182 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 or] (ii) has not previously been adjudicated in need of supervision or
201 delinquent. A petition alleging that a juvenile committed a violent juvenile felony shall be filed with the
202 court. A petition alleging that a juvenile is in need of supervision or delinquent shall be filed with the
203 court if the juvenile had previously been adjudicated in need of supervision or delinquent.

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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.

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

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

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

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

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

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

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

259 6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter
260 7 of Title 18.2;

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

262 8. Burglary and related offenses, pursuant to §§ 18.2-89 through 18.2-93.

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

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

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

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

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

278 3. In the case of a violation of § 18.2-266 or § 29.1-738, or the commission of any other
279 alcohol-related offense, provided the juvenile is released to the custody of a parent or legal guardian
280 pending the initial court date. The officer releasing a juvenile to the custody of a parent or legal
281 guardian shall issue a summons to the juvenile and shall also issue a summons requiring the parent or
282 legal guardian to appear before the court with the juvenile. Disposition of the charge shall be in the
283 manner provided in § 16.1-278.8 or § 16.1-278.9. If the juvenile so charged with a violation of
284 § 18.2-266 or § 29.1-738 refuses to provide a sample of blood or breath or samples of both blood and
285 breath for chemical analysis pursuant to §§ 18.2-268.1 through 18.2-268.12 or § 29.1-738.2, the
286 provisions of these sections shall be followed except that the magistrate shall authorize execution of the
287 warrant as a summons. The summons shall be served on a parent or legal guardian and the juvenile, and
288 a copy of the summons shall be forwarded to the court in which the violation of § 18.2-266 or
289 § 29.1-738 is to be tried.

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

293 5. In the case of offenses which, if committed by an adult would be punishable as a Class 3 or Class
294 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in
295 § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as
296 provided by law for adults provided that notice of the summons to appear is mailed by the investigating
297 officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

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

300 § 16.1-269.1. Trial in circuit court; preliminary hearing; direct indictment; remand.

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

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

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

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

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

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

319 a. The juvenile's age;

320 b. The seriousness and number of alleged offenses, including (i) whether the alleged offense was
321 committed in an aggressive, violent, premeditated, or willful manner; (ii) whether the alleged offense
322 was against persons or property, with greater weight being given to offenses against persons, especially
323 if death or bodily injury resulted; (iii) whether the maximum punishment for such an offense is greater
324 than twenty years confinement if committed by an adult; (iv) whether the alleged offense involved the
325 use of a firearm or other dangerous weapon by brandishing, threatening, displaying or otherwise
326 employing such weapon; and (v) the nature of the juvenile's participation in the alleged offense;

327 c. Whether the juvenile can be retained in the juvenile justice system long enough for effective
328 treatment and rehabilitation;

329 d. The appropriateness and availability of the services and dispositional alternatives in both the
330 criminal justice and juvenile justice systems for dealing with the juvenile's problems;

331 e. The record and previous history of the juvenile in this or other jurisdictions, including (i) the
332 number and nature of previous contacts with juvenile or circuit courts, (ii) the number and nature of
333 prior periods of probation, (iii) the number and nature of prior commitments to juvenile correctional
334 centers, (iv) the number and nature of previous residential and community-based treatments, (v) whether
335 previous adjudications and commitments were for delinquent acts that involved the infliction of serious
336 bodily injury, and (vi) whether the alleged offense is part of a repetitive pattern of similar adjudicated
337 offenses;

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

340 g. The extent, if any, of the juvenile's degree of mental retardation or mental illness;

341 h. The juvenile's school record and education;

342 i. The juvenile's mental and emotional maturity; and

343 j. The juvenile's physical condition and physical maturity.

344 No transfer decision shall be precluded or reversed on the grounds that the court failed to consider
345 any of the factors specified in subdivision A 4 of § 16.1-269.1.

346 B. The juvenile court shall conduct a preliminary hearing whenever a juvenile fourteen years of age
347 or older is charged with murder in violation of §§ 18.2-31, 18.2-32 or § 18.2-40, or aggravated
348 malicious wounding in violation of § 18.2-51.2.

349 C. The juvenile court shall conduct a preliminary hearing whenever a juvenile fourteen years of age
350 or older is charged with murder in violation of § 18.2-33, felonious injury by mob in violation of
351 § 18.2-41, abduction in violation of § 18.2-48, malicious wounding in violation of § 18.2-51, malicious
352 wounding of a law-enforcement officer in violation of § 18.2-51.1, felonious poisoning in violation of
353 § 18.2-54.1, adulteration of products in violation of § 18.2-54.1, robbery in violation of § 18.2-58 or
354 carjacking in violation of § 18.2-58.1, rape in violation of § 18.2-61, forcible sodomy in violation of
355 § 18.2-67.1 or object sexual penetration in violation of § 18.2-67.2, provided the attorney for the
356 Commonwealth gives written notice of his intent to proceed pursuant to this subsection. *The notice shall*
357 *be filed with the court and [~~provided~~ mailed or delivered] to counsel for the juvenile or, if the*
358 *juvenile is not then represented by counsel, to the juvenile and a parent, guardian or other person*
359 *standing in loco parentis with respect to the juvenile at least seven days prior to the preliminary hearing.*

360 If the attorney for the Commonwealth elects not to give such notice, or if he elects to withdraw the
361 notice prior to certification of the charge to the grand jury, he may proceed as provided in subsection A.

362 D. Upon a finding of probable cause pursuant to a preliminary hearing under subsection B or C, the
363 juvenile court shall certify the charge, and all ancillary charges, to the grand jury. Such certification
364 shall divest the juvenile court of jurisdiction [~~only~~] as to the charge and any ancillary charges [~~so~~
365 ~~certified~~]. *Nothing in this subsection shall divest the juvenile court of jurisdiction over any matters*
366 *unrelated to such charge and ancillary charges which may otherwise be properly within the jurisdiction*
367 *of the juvenile court.]*

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

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

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

379 § 16.1-269.1. (Delayed effective date) Trial in circuit court; preliminary hearing, direct indictment;
 380 remand.

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

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

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

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

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

399 a. The juvenile's age;

400 b. The seriousness and number of alleged offenses, including (i) whether the alleged offense was
 401 committed in an aggressive, violent, premeditated, or willful manner; (ii) whether the alleged offense
 402 was against persons or property, with greater weight being given to offenses against persons, especially
 403 if death or bodily injury resulted; (iii) whether the maximum punishment for such an offense is greater
 404 than twenty years confinement if committed by an adult; (iv) whether the alleged offense involved the
 405 use of a firearm or other dangerous weapon by brandishing, threatening, displaying or otherwise
 406 employing such weapon; and (v) the nature of the juvenile's participation in the alleged offense;

407 c. Whether the juvenile can be retained in the juvenile justice system long enough for effective
 408 treatment and rehabilitation;

409 d. The appropriateness and availability of the services and dispositional alternatives in both the
 410 criminal justice and juvenile justice systems for dealing with the juvenile's problems;

411 e. The record and previous history of the juvenile in this or other jurisdictions, including (i) the
 412 number and nature of previous contacts with family or circuit courts, (ii) the number and nature of prior
 413 periods of probation, (iii) the number and nature of prior commitments to juvenile correctional centers,
 414 (iv) the number and nature of previous residential and community-based treatments, (v) whether previous
 415 adjudications and commitments were for delinquent acts that involved the infliction of serious bodily
 416 injury, and (vi) whether the alleged offense is part of a repetitive pattern of similar adjudicated offenses;

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

419 g. The extent, if any, of the juvenile's degree of mental retardation or mental illness;

420 h. The juvenile's school record and education;

421 i. The juvenile's mental and emotional physical maturity; and

422 j. The juvenile's physical condition and physical maturity.

423 No transfer decision shall be precluded or reversed on the grounds that the court failed to consider
 424 any of the factors specified in subdivision A 4 of § 16.1-269.1.

425 B. The family court shall conduct a preliminary hearing whenever a juvenile fourteen years of age or
 426 older is charged with murder in violation of §§ 18.2-31, 18.2-32 or § 18.2-40 or aggravated malicious
 427 wounding in violation of § 18.2-51.2.

428 C. The family court shall conduct a preliminary hearing whenever a juvenile fourteen years of age or

429 older is charged with murder in violation of § 18.2-33, felonious injury by mob in violation of
430 § 18.2-41, abduction in violation of § 18.2-48, malicious wounding in violation of § 18.2-51, malicious
431 wounding of a law-enforcement officer in violation of § 18.2-51.1, felonious poisoning in violation of
432 § 18.2-54.1, adulteration of products in violation of § 18.2-54.1, robbery in violation of § 18.2-58 or
433 carjacking in violation of § 18.2-58.1, rape in violation of § 18.2-61, forcible sodomy in violation of
434 § 18.2-67.1 or object sexual penetration in violation of § 18.2-67.2 provided the attorney for the
435 Commonwealth gives written notice of his intent to proceed pursuant to this subsection. *The notice shall*
436 *be filed with the court and [~~provided~~ mailed or delivered] to counsel for the juvenile or, if the*
437 *juvenile is not then represented by counsel, to the juvenile and a parent, guardian or other person*
438 *standing in loco parentis with respect to the juvenile at least seven days prior to the preliminary hearing.*
439 If the attorney for the Commonwealth elects not to give such notice, or if he elects to withdraw the
440 notice prior to certification of the charge to the grand jury, he may proceed as provided in subsection A.

441 D. Upon a finding of probable cause pursuant to a preliminary hearing under subsection B or C, the
442 family court shall certify the charge, and all ancillary charges, to the grand jury. Such certification shall
443 divest the family court of jurisdiction [*only*] as to the charge and any ancillary charges [*so certified*.
444 . *Nothing in this subsection shall divest the juvenile court of jurisdiction over any matters unrelated to*
445 *such charge and ancillary charges which may otherwise be properly within the jurisdiction of the*
446 *juvenile court.*]

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

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

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

458 § 16.1-269.6. Circuit court hearing; jury; termination of juvenile court jurisdiction; objections and
459 appeals.

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

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

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

491 clerk of the juvenile court shall forward any pending petitions of delinquency for proceedings in the
492 appropriate general district court.

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

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

497 F. The time period beginning with the filing of a notice of appeal pursuant to § 16.1-269.3 or
498 § 16.1-269.4 and ending with the order of the circuit court disposing of the appeal shall not be included
499 as applying to the provisions of § 19.2-243.

500 § 16.1-269.6. (Delayed effective date) Circuit court hearing; termination of family court jurisdiction;
501 objections and appeals.

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

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

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

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

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

538 F. The time period beginning with the filing of a notice of appeal pursuant to § 16.1-269.3 or
539 § 16.1-269.4 and ending with the order of the circuit court disposing of the appeal shall not be included
540 as applying to the provisions of § 19.2-243.

541 § 16.1-296. Jurisdiction of appeals; procedure.

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

548 B. Upon receipt of notice of such appeal the juvenile court shall forthwith transmit to the attorney
549 for the Commonwealth a report incorporating the results of any investigation conducted pursuant to
550 § 16.1-273, which shall be confidential in nature and made available only to the court and the attorney
551 for the defendant (i) after the guilt or innocence of the accused has been determined or (ii) after the

552 court has made its findings on the issues subject to appeal. After final determination of the case, the
553 report and all copies thereof shall be forthwith returned to such juvenile court.

554 C. Where an appeal is taken by a child on a finding that he or she is delinquent and on a disposition
555 pursuant to § 16.1-278.8, trial by jury on the issue of guilt or innocence of the alleged delinquent act
556 may be had on motion of the child, the attorney for the Commonwealth or the circuit court judge. If the
557 alleged delinquent act is one which, if committed by an adult, would constitute a felony, the child shall
558 be entitled to a jury of twelve persons. In all other cases, the jury shall consist of seven persons. If the
559 jury in such a trial finds the child guilty, disposition shall be by the judge pursuant to the provisions of
560 § 16.1-278.8 after taking into consideration the report of any investigation made pursuant to § 16.1-237
561 or § 16.1-273.

562 [*C1. In any hearing held upon an appeal taken by a child on a finding that he is delinquent and on*
563 *a disposition pursuant to § 16.1-278.8, the child shall have a right to be present and a right to a public*
564 *hearing unless expressly waived by such child. The proceedings in the circuit court may be closed,*
565 *provided the child expressly waives his right to a public hearing. If proceedings in the circuit court are*
566 *closed pursuant to this subsection, any records or portions thereof relating to such closed proceedings*
567 *shall remain confidential.]*

568 D. When an appeal is taken in a case involving termination of parental rights brought under
569 § 16.1-283, the circuit court shall hold a hearing on the merits of the case within ninety days of the
570 perfecting of the appeal.

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

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

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

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

597 If bond is furnished by or on behalf of any party against whom judgment has been rendered for
598 money, the bond shall be conditioned for the performance and satisfaction of such judgment or order as
599 may be entered against the party on appeal, and for the payment of all damages which may be awarded
600 against him in the appellate court. If the appeal is by a party against whom there is no recovery, the
601 bond shall be conditioned for the payment of any damages as may be awarded against him on the
602 appeal.

603 This subsection shall not apply to release on bail pursuant to other subsections of this section or
604 § 16.1-298.

605 I. In all cases on appeal, the circuit court in the disposition of such cases shall have all the powers
606 and authority granted by the chapter to the juvenile and domestic relations district court. Unless
607 otherwise specifically provided by this Code, the circuit court judge shall have the authority to appoint
608 counsel for the parties and compensate such counsel in accordance with the provisions of Article 6
609 (§ 16.1-266 et seq.) of this chapter.

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

613 § 16.1-296. (Delayed effective date) Appeals to circuit court.

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

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

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

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

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

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

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

631 B. Where an appeal is taken by a child on a finding that he or she is delinquent and on a disposition
632 pursuant to § 16.1-278.8, trial by jury on the issue of guilt or innocence of the alleged delinquent act
633 may be had on motion of the child, the attorney for the Commonwealth or the circuit court judge. If the
634 alleged delinquent act is one which, if committed by an adult, would constitute a felony, the child shall
635 be entitled to a jury of twelve persons. In all other cases, the jury shall consist of seven persons. If the
636 jury in such a trial finds the child guilty, disposition shall be by the judge pursuant to the provisions of
637 § 16.1-278.8 after taking into consideration the report of any investigation made pursuant to § 16.1-237
638 or § 16.1-273.

639 C. Where an appeal is taken by an adult on a finding of guilty of an offense within the jurisdiction
640 of the family court, the appeal shall be dealt with in all respects as is an appeal from a general district
641 court pursuant to §§ 16.1-132 through 16.1-137; however, where an appeal is taken by any person on a
642 charge of nonsupport, the procedure shall be as is provided for appeals in prosecutions under Chapter 5
643 (§ 20-61 et seq.) of Title 20.

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

650 *D1. In any hearing held upon an appeal taken by a child on a finding that he is delinquent and on a*
651 *disposition pursuant to § 16.1-278.8, the child shall have a right to be present and a right to a public*
652 *hearing unless expressly waived by such child. The proceedings in the circuit court may be closed,*
653 *provided the child expressly waives his right to a public hearing. If proceedings in the circuit court are*
654 *closed pursuant to this subsection, any records or portions thereof relating to such closed proceedings*
655 *shall remain confidential.]*

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

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

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

667 § 19.2-310.3. Procedures for withdrawal of blood sample for DNA analysis.

668 Each sample required pursuant to § 19.2-310.2 from persons who are to be incarcerated shall be
669 withdrawn at the receiving unit or at such other place as is designated by the Department of Corrections
670 or, in the case of a juvenile, the Department of Juvenile Justice. The required samples from persons
671 who are not sentenced to a term of confinement shall be withdrawn at a time and place specified by the
672 sentencing court. Only a correctional health nurse technician or a physician, registered professional
673 nurse, licensed practical nurse, graduate laboratory technician, or phlebotomist shall withdraw any
674 sample to be submitted for analysis. No civil liability shall attach to any person authorized to withdraw

675 blood as provided herein as a result of the act of withdrawing blood from any person submitting thereto,
676 provided the blood was withdrawn according to recognized medical procedures. However, no person
677 shall be relieved from liability for negligence in the withdrawing of any blood sample.

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