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**HOUSE BILL NO. 1243****AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee for Courts of Justice  
on February 23, 1994)

(Patron Prior to Substitute—Delegate Jones, J.C.)

*A BILL to amend and reenact §§ 16.1-228 and 16.1-241, as they are currently effective and as they may become effective; § 16.1-249; §§ 16.1-270, 16.1-271, 16.1-275, 16.1-278.8, and 16.1-280, as they are currently effective and as they may become effective; § 16.1-285.1; § 16.1-299, as it is currently effective and as it may become effective; § 16.1-301; § 16.1-306 as it is currently effective and as it may become effective; § 18.2-308.2; § 19.2-240, as it is currently effective and as it may become effective; and §§ 19.2-311 and 53.1-20 of the Code of Virginia; to amend the Code of Virginia by adding in Article 7 of Chapter 11 of Title 16.1 sections numbered 16.1-269.1 through 16.1-269.6, twice, as they will become effective on July 1, 1994, and as they may become effective, and by adding sections numbered 16.1-285.2 and 66-25.2; and to repeal § 16.1-269 of the Code of Virginia, as it is currently effective and as it may become effective, relating to serious juvenile offenders; penalties.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 16.1-228 and 16.1-241, as they are currently effective and as they may become effective; § 16.1-249; §§ 16.1-270, 16.1-271, 16.1-275, 16.1-278.8, and 16.1-280, as they are currently effective and as they may become effective; § 16.1-285.1; § 16.1-299, as it is currently effective and as it may become effective; § 16.1-301; § 16.1-306 as it is currently effective and as it may become effective; § 18.2-308.2; § 19.2-240, as it is currently effective and as it may become effective; and §§ 19.2-311 and 53.1-20 of the Code of Virginia are amended and reenacted; and that the Code of Virginia is amended by adding in Article 7 of Chapter 11 of Title 16.1 sections numbered 16.1-269.1 through 16.1-269.6, as they will become effective on July 1, 1994, and by adding sections numbered 16.1-285.2 and 66-25.2, as follows:**

§ 16.1-228. (For effective date - See note) Definitions.

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

"Abused or neglected child" means any child:

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

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

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

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

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

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

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

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

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

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

However, to find that a child falls within these provisions, (i) the conduct complained of must

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60 present a clear and substantial danger to the child's life or health or (ii) the child or his family is in need  
61 of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court  
62 is essential to provide the treatment, rehabilitation or services needed by the child or his family.

63 "Child in need of supervision" means:

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

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

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

79 "Delinquent act" means (i) an act designated a crime under the law of this Commonwealth, or an  
80 ordinance of any city, county, town or service district, or under federal law, (ii) a violation of  
81 § 18.2-308.7 or (iii) a violation of a court order as provided for in § 16.1-292, but shall not include an  
82 act other than a violation of § 18.2-308.7, which is otherwise lawful, but is designated a crime only if  
83 committed by a child. For purposes of §§ 16.1-241 and 16.1-278.9, the term shall include a refusal to  
84 take a blood or breath test in violation of § 18.2-268.2 or a similar ordinance of any county, city or  
85 town.

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

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

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

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

104 "Foster care" or "temporary foster care" means the provision of services or substitute care and  
105 supervision, for a child identified as needing services to prevent or eliminate the need for foster care  
106 placement or who has been committed or entrusted to a local board of public welfare or child welfare  
107 agency or for whom the board or child welfare agency has accepted supervision, in a temporary living  
108 situation until the child can return to his family or be placed in a permanent foster care placement or in  
109 an adoptive home.

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

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

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

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

120 "Legal custody" means (i) a legal status created by court order which vests in a custodian the right to  
121 have physical custody of the child, to determine and redetermine where and with whom he shall live,

the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal status created by court order of joint custody as defined in § 20-107.2.

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

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

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

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

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

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

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

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

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

"Abused or neglected child" means any child:

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

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

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

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

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

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

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

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

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

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

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

"Child in need of supervision" means:

1. A child who, while subject to compulsory school attendance, is habitually and without justification

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

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

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

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

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

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

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

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

"Foster care" or "temporary foster care" means the provision of services or substitute care and supervision, for a child identified as needing services to prevent or eliminate the need for foster care placement or who has been committed or entrusted to a local board of public welfare or child welfare agency or for whom the board or child welfare agency has accepted supervision, in a temporary living situation until the child can return to his family or be placed in a permanent foster care placement or in an adoptive home.

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

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

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

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

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

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

residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

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

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

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

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

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

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

§ 16.1-241. (For effective date - See note) Jurisdiction.

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

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

1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent, *except where the jurisdiction of the juvenile court has been terminated under the provisions of § 16.1-269.6;*

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

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

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

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

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

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

The authority of the juvenile court to adjudicate matters involving the custody, visitation, support, control or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed at any time by any party with a legitimate interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. The authority of the juvenile court to consider a petition involving the custody of a child shall not be proscribed or limited where the child has previously been awarded to the custody of a local board of social services.

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

C. Except as provided in subsections D and H hereof, judicial consent to such activities as may require parental consent may be given for a child who has been separated from his parents, guardian, legal custodian or other person standing in loco parentis and is in the custody of the court when such consent is required by law.

D. Judicial consent for emergency surgical or medical treatment for a child who is neither married nor has ever been married, when the consent of his parent, guardian, legal custodian or other person standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person

standing in loco parentis (i) is not a resident of this Commonwealth, (ii) his whereabouts is unknown, (iii) he cannot be consulted with promptness, reasonable under the circumstances or (iv) fails to give such consent or provide such treatment when requested by the judge to do so.

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

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

1. Who has been abused or neglected;

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

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

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

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

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

J. All offenses in which one family or household member is charged with an offense in which another family or household member is the victim. In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. For purposes of this subsection, "family or household member," as defined in § 16.1-228, shall also be construed to include parent and child, stepparent and stepchild, brothers and sisters, and grandparent and grandchild, regardless of whether such persons reside in the same home.

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

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

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

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

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

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

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

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

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

§ 16.1-241. (Delayed effective date - See notes) Jurisdiction.

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

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

1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent, *except where the jurisdiction of the family court has been terminated under the*

provisions of § 16.1-269.6;

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

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

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

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

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

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

The authority of the family court to adjudicate matters involving the custody, visitation, support, control or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed at any time by any party with a legitimate interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. The authority of the family court to consider a petition involving the custody of a child shall not be proscribed or limited where the child has previously been awarded to the custody of a local board of social services.

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

C. Except as provided in subsections D and H hereof, judicial consent to such activities as may require parental consent may be given for a child who has been separated from his parents, guardian, legal custodian or other person standing in loco parentis and is in the custody of the court when such consent is required by law.

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

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

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

1. Who has been abused or neglected;

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

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

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

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

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

J. All offenses in which one family or household member is charged with an offense in which another family or household member is the victim. In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. For purposes of this subsection, "family or household member," as defined in § 16.1-228, shall also be construed to include parent and child, stepparent and stepchild, brothers and sisters, and grandparent and grandchild, regardless of whether such persons reside in the same home.

K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily

429 relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such  
430 parental rights. No such petition shall be accepted, however, after the child has been placed in the home  
431 of adoptive parents.

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

433 M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or  
434 § 16.1-279.1.

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

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

439 P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 13  
440 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if the orders were entered  
441 by a family court upon the filing of a certified copy of such order in the family court.

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

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

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

445 T. Suits for separate maintenance.

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

447 V. Petitions for adoption.

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

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

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

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

455 § 16.1-249. Places of confinement for juveniles.

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

458 1. An approved foster home or a home otherwise authorized by law to provide such care;

459 2. A facility operated by a licensed child welfare agency;

460 3. If a ~~child~~ *juvenile* is alleged to be delinquent, in a detention home or group home approved by the  
461 Department;

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

463 B. No ~~child~~ *juvenile* shall be detained or confined in any jail or other facility for the detention of  
464 adult offenders or persons charged with crime except as provided in subsection D, E, ~~E1~~, or F or G of  
465 this section.

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

470 D. When a case is transferred to the circuit court in accordance with the provisions of § ~~16.1-269~~  
471 ~~16.1-269.1~~ and an order is entered by the circuit court in accordance with § 16.1-269.6, or in  
472 accordance with the provisions of § 16.1-270 where the juvenile has waived the jurisdiction of the  
473 district court, the ~~child~~ *juvenile*, if in confinement, may be transferred to a jail or other facility for the  
474 detention of adults provided that (i) the detention is in a room or ward entirely separate and removed  
475 from adults, (ii) adequate supervision is provided, and (iii) the facility is approved by the State Board  
476 for detention of children and need no longer be entirely separate and removed from adults.

477 E. If, in the judgment of the custodian as a result of placement of the child in a facility designated in  
478 subsection A hereof, a ~~child~~ *juvenile* fourteen years of age or older has demonstrated that he is a  
479 threat to the security or safety of the other ~~children~~ *juveniles* detained or the staff of the home or  
480 facility, the judge shall determine whether such ~~child~~ *juvenile* should be transferred to another juvenile  
481 facility including a jail or other place of detention for adults pursuant to the limitations of subdivisions  
482 D (i), (ii), and (iii) of this section provided that (i) the detention is in a room or ward entirely separate  
483 and removed from adults, (ii) adequate supervision is provided, and (iii) the facility is approved by the  
484 State Board of Youth and Family Services for detention of juveniles.

485 ~~E1~~. F. If, in the judgment of the custodian, it has been demonstrated that the presence of a ~~child~~  
486 ~~fifteen juvenile~~ *fourteen* years of age or older as a result of his placement in a facility designated in  
487 subsection A creates a threat to the security or safety of the other ~~children~~ *juveniles* detained or the staff  
488 of the home or facility, the custodian may transfer the ~~child~~ *juvenile* to another juvenile facility, or a jail  
489 or other place of detention for adults pursuant to the limitations of subdivision D clauses E (i), (ii) or  
490 and (iii) for a period not to exceed six hours.



F. G. If a ~~child fifteen~~ *juvenile fourteen* years of age or older is charged with an offense which, if committed by an adult, would be a felony or Class 1 misdemeanor, and the judge or intake officer determines that secure detention is needed for the safety of the ~~child juvenile~~ or the community, such ~~child juvenile~~ may be detained for a period no longer than six hours in a court holding cell incident to a court hearing, or in a temporary lock-up room or ward for juveniles while arrangements are completed to transfer the ~~child juvenile~~ to a juvenile facility. Such room, ward or cell may be located in a building which also contains a jail or other facility for the detention of adults, provided (i) such room, ward or cell is totally separate and removed from adults or juveniles transferred to the circuit court pursuant to § 16.1-269 Article 7 (§ 16.1-269.1 et seq.) of this chapter, (ii) constant supervision is provided, and (iii) the facility is approved by the State Board for the detention of ~~children juveniles~~. The State Board is authorized and directed to prescribe minimum standards for temporary lock-up rooms, wards and court holding cells based on the requirements set out in this subsection. The Department shall assist the localities or combinations thereof in implementing this section and ensuring compliance herewith.

G. H. A judge may order the predispositional detention of persons eighteen years of age or older in a juvenile facility or in an adult facility. However, a judge shall not confine any person eighteen years of age or older in a juvenile facility unless he finds from evidence that the presence of such a person in a juvenile facility is consistent with assuring the safety of the ~~children juveniles~~ confined in the facility and the staff of the facility. Such finding shall be in writing and be included in the order of detention.

§ 16.1-269.1. Conditions for transfer to circuit court.

A. If a juvenile fourteen years of age or older 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. Except as provided in subsection B, the court finds by a preponderance of the evidence that the juvenile is not a proper person to remain within the jurisdiction of the juvenile court. In determining whether a juvenile is a proper person to remain within the jurisdiction of the juvenile court, the court shall consider, but not be limited to, the following factors:

a. The juvenile's age;

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

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

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

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

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

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

h. The juvenile's school record and education;

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

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

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

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

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

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

564 *§ 16.1-269.2. Admissibility of statement; investigation and report; bail.*

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

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

577 *C. After the completion of the hearing, whether or not the juvenile court decides to retain*  
578 *jurisdiction over the juvenile or transfer such juvenile for criminal proceedings in the circuit court, the*  
579 *juvenile court shall set bail for the juvenile in accordance with Chapter 9 (§ 19.2-119 et seq.) of Title*  
580 *19.2, if bail has not already been set.*

581 *§ 16.1-269.3. Retention by juvenile court; appeal by Commonwealth.*

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

590 *§ 16.1-269.4. Transfer to circuit court; appeal by juvenile.*

591 *If the juvenile court transfers the case, the juvenile may, within ten days after the juvenile court's*  
592 *final decision, file a notice of appeal of the decision to the appropriate circuit court. A copy of the*  
593 *notice shall be furnished at the same time to the attorney for the Commonwealth.*

594 *§ 16.1-269.5. Placement of juvenile.*

595 *The juvenile court may order placement of the transferred juvenile in either a local correctional*  
596 *facility as approved by the State Board of Youth and Family Services pursuant to the limitations of*  
597 *§ 16.1-249 E or a juvenile detention facility.*

598 *§ 16.1-269.6. Circuit court hearing; jury; termination of juvenile court jurisdiction; objections and*  
599 *appeals.*

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

606 *B. The circuit court shall, within a reasonable time after receipt of the case from the juvenile court,*  
607 *(i) examine all such papers, reports and orders; (ii) if either the juvenile or the attorney for the*  
608 *Commonwealth has appealed the transfer decision, conduct a hearing to take further evidence on the*  
609 *issue of transfer, to determine if there has been substantial compliance with § 16.1-269.1, but without*  
610 *redetermining whether the juvenile court had sufficient evidence to find probable cause; and (iii) enter*  
611 *an order either remanding the case to the juvenile court or advising the attorney for the Commonwealth*  
612 *that he may seek an indictment. Upon advising the attorney for the Commonwealth that he may seek an*  
613 *indictment, the circuit court shall 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 clauses E (i), (ii), and (iii) of § 16.1-249.

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 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. Upon review of a decision by the juvenile court to transfer or retain a case or by the circuit court to retain a case which was transferred, an appellate court shall not redetermine whether the court gave due consideration to the factors specified in subdivision A 4 of § 16.1-269.1.

§ 16.1-270. (For effective date - See note) Waiver of jurisdiction of juvenile court in certain cases.

At any time prior to commencement of the adjudicatory hearing, a ~~child fifteen~~ juvenile fourteen years of age or older charged with an offense which if committed by an adult could be punishable by confinement in a state correctional facility, with the written consent of his counsel, may elect in writing to waive the jurisdiction of the juvenile court and have his case transferred to the appropriate circuit court, in which event his case shall thereafter be dealt with in the same manner as if he had been transferred pursuant to ~~§ 16.1-269~~ this article.

§ 16.1-270. (Delayed effective date - See notes) Waiver of jurisdiction of family court in certain cases.

At any time prior to commencement of the adjudicatory hearing, a ~~child fifteen~~ juvenile fourteen years of age or older charged with an offense which if committed by an adult could be punishable by confinement in a state correctional facility, with the written consent of his counsel, may elect in writing to waive the jurisdiction of the family court and have his case transferred to the appropriate circuit court, in which event his case shall thereafter be dealt with in the same manner as if he had been transferred pursuant to ~~§ 16.1-269~~ this article.

§ 16.1-271. (For effective date - See note) Subsequent offenses by juvenile.

The trial or treatment of a juvenile as an adult pursuant to the provisions of this chapter shall not preclude the juvenile court from taking jurisdiction of such juvenile for subsequent offenses committed by that juvenile.

~~However, any~~ Any juvenile who is tried and convicted in a circuit court as an adult under the provisions of §§ ~~16.1-269 and 16.1-272~~ and sentenced to confinement in a state correctional facility this article shall be considered and treated as an adult in a any criminal proceeding resulting from an offense alleged to have been committed while so incarcerated any alleged future criminal acts and any pending allegations of delinquency which have not been disposed of by the juvenile court at the time of the criminal conviction.

All procedures and dispositions applicable to adults charged with such a criminal offense shall apply in such cases, including, but not limited to, arrest; probable cause determination by a magistrate or grand jury; the use of a warrant, summons, or capias instead of a petition to initiate the case; adult bail; preliminary hearing and right to counsel provisions; trial in a court having jurisdiction over adults; and trial and sentencing as an adult. The provisions of ~~§ 16.1-269~~ this article regarding a transfer hearing shall not be applicable to such juveniles.

§ 16.1-271. (Delayed effective date - See notes) Subsequent offenses by juvenile.

The trial or treatment of a juvenile as an adult pursuant to the provisions of this chapter shall not preclude the family court from taking jurisdiction of such juvenile for subsequent offenses committed by that juvenile.

~~However, any~~ Any juvenile who is tried and convicted in a circuit court as an adult under the provisions of §§ ~~16.1-269 and 16.1-272~~ and sentenced to confinement in a state correctional facility this article shall be considered and treated as an adult in a any criminal proceeding resulting from an offense alleged to have been committed while so incarcerated any alleged future criminal acts and any pending allegations of delinquency which have not been disposed of by the family court at the time of the criminal conviction.

675 All procedures and dispositions applicable to adults charged with such a criminal offense shall apply  
676 in such cases, including, but not limited to, arrest; probable cause determination by a magistrate or  
677 grand jury; the use of a warrant, summons, or *capias* instead of a petition to initiate the case; adult bail;  
678 preliminary hearing and right to counsel provisions; trial in a court having jurisdiction over adults; and  
679 trial and sentencing as an adult. The provisions of § ~~16.1-269~~ *this article* regarding a transfer hearing  
680 shall not be applicable to such juveniles.

681 § 16.1-275. (For effective date - See note) Physical and mental examinations and treatment; nursing  
682 and medical care.

683 The juvenile court or the circuit court may cause any ~~child~~ *juvenile* within its jurisdiction under the  
684 provisions of this law to be physically examined and treated by a physician or to be examined and  
685 treated at a local mental health center. If no such appropriate facility is available locally, the court may  
686 order the ~~child~~ *juvenile* to be examined and treated by any physician or psychiatrist or examined by a  
687 clinical psychologist. The Commissioner of Mental Health, Mental Retardation and Substance Abuse  
688 Services shall provide for distribution a list of appropriate mental health centers available throughout the  
689 Commonwealth. Upon the written recommendation of the person examining the ~~child~~ *juvenile* that an  
690 adequate evaluation of the ~~child's~~ *juvenile's* treatment needs can only be performed in an inpatient  
691 hospital setting, the court shall have the power to send any such ~~child~~ *juvenile* to a state mental hospital  
692 for not more than ten days for the purpose of obtaining a recommendation for the treatment of the ~~child~~  
693 *juvenile*. No ~~child~~ *juvenile* sent to a state mental hospital pursuant to this provision shall be held or  
694 cared for in any maximum security unit where adults determined to be criminally insane reside; the  
695 ~~child~~ *juvenile* shall be kept separate and apart from such adults. However, the Commissioner of the  
696 Department of Mental Health, Mental Retardation and Substance Abuse Services may place a ~~child~~  
697 ~~fifteen years of age or older~~ *juvenile* who has been certified to the circuit court for trial as an adult  
698 pursuant to § ~~16.1-269~~ *16.1-269.6* or § 16.1-270 or who has been convicted as an adult of a felony in  
699 the circuit court in a unit appropriate for the care and treatment of persons under a criminal charge  
700 when, in his discretion, such placement is necessary to protect the security or safety of other patients,  
701 staff or the public.

702 Whenever the parent or other person responsible for the care and support of a ~~child~~ *juvenile* is  
703 determined by the court to be financially unable to pay the costs of such examination as ordered by the  
704 juvenile court or the circuit court, such costs may be paid according to standards, procedures and rates  
705 adopted by the State Board, from funds appropriated in the general appropriation act for the Department.

706 The juvenile court or the circuit court may cause any ~~child~~ *juvenile* within its jurisdiction who is  
707 alleged to be delinquent or in need of services to be placed in the temporary custody of the Department  
708 of Youth and Family Services for a period of time not to exceed thirty days for diagnostic assessment  
709 services after the adjudicatory hearing and prior to final disposition of his or her case. Prior to such a  
710 placement, the Department shall determine that the personnel, services and space are available in the  
711 appropriate correctional facility for the care, supervision and study of such ~~child~~ *juvenile* and that the  
712 ~~child's~~ *juvenile's* case is appropriate for referral for diagnostic services.

713 Whenever a ~~child~~ *juvenile* concerning whom a petition has been filed appears to be in need of  
714 nursing, medical or surgical care, the juvenile court or the circuit court may order the parent or other  
715 person responsible for the care and support of the ~~child~~ *juvenile* to provide such care in a hospital or  
716 otherwise and to pay the expenses thereof. If the parent or other person is unable or fails to provide  
717 such care, the juvenile court or the circuit court may refer the matter to the authority designated in  
718 accordance with law for the determination of eligibility for such services in the county or city in which  
719 such ~~child~~ *juvenile* or his parents have residence or legal domicile.

720 In any such case, if a parent who is able to do so fails or refuses to comply with the order, the  
721 juvenile court or the circuit court may proceed against him as for contempt or may proceed against him  
722 for nonsupport.

723 § 16.1-275. (Delayed effective date - See notes) Physical and mental examinations and treatment;  
724 nursing and medical care.

725 The family court or the circuit court may cause any ~~child~~ *juvenile* within its jurisdiction under the  
726 provisions of this law to be physically examined and treated by a physician or to be examined and  
727 treated at a local mental health center. If no such appropriate facility is available locally, the court may  
728 order the ~~child~~ *juvenile* to be examined and treated by any physician or psychiatrist or examined by a  
729 clinical psychologist. The Commissioner of Mental Health, Mental Retardation and Substance Abuse  
730 Services shall provide for distribution a list of appropriate mental health centers available throughout the  
731 Commonwealth. Upon the written recommendation of the person examining the ~~child~~ *juvenile* that an  
732 adequate evaluation of the ~~child's~~ *juvenile's* treatment needs can only be performed in an inpatient  
733 hospital setting, the court shall have the power to send any such ~~child~~ *juvenile* to a state mental hospital  
734 for not more than ten days for the purpose of obtaining a recommendation for the treatment of the ~~child~~  
735 *juvenile*. No ~~child~~ *juvenile* sent to a state mental hospital pursuant to this provision shall be held or  
736 cared for in any maximum security unit where adults determined to be criminally insane reside; the

~~child~~ *juvenile* shall be kept separate and apart from such adults. However, the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services may place a ~~child~~ *juvenile* ~~fifteen years of age or older~~ *juvenile* who has been certified to the circuit court for trial as an adult pursuant to § 16.1-269.6 or § 16.1-270 or who has been convicted as an adult of a felony in the circuit court in a unit appropriate for the care and treatment of persons under a criminal charge when, in his discretion, such placement is necessary to protect the security or safety of other patients, staff or the public.

Whenever the parent or other person responsible for the care and support of a ~~child~~ *juvenile* is determined by the court to be financially unable to pay the costs of such examination as ordered by the family court or the circuit court, such costs may be paid according to standards, procedures and rates adopted by the State Board, from funds appropriated in the general appropriation act for the Department.

The family court or the circuit court may cause any ~~child~~ *juvenile* within its jurisdiction who is alleged to be delinquent or in need of services to be placed in the temporary custody of the Department of Youth and Family Services for a period of time not to exceed thirty days for diagnostic assessment services after the adjudicatory hearing and prior to final disposition of his or her case. Prior to such a placement, the Department shall determine that the personnel, services and space are available in the appropriate correctional facility for the care, supervision and study of such ~~child~~ *juvenile* and that the ~~child's~~ *juvenile's* case is appropriate for referral for diagnostic services.

Whenever a ~~child~~ *juvenile* concerning whom a petition has been filed appears to be in need of nursing, medical or surgical care, the family court or the circuit court may order the parent or other person responsible for the care and support of the ~~child~~ *juvenile* to provide such care in a hospital or otherwise and to pay the expenses thereof. If the parent or other person is unable or fails to provide such care, the family court or the circuit court may refer the matter to the authority designated in accordance with law for the determination of eligibility for such services in the county or city in which such ~~child~~ *juvenile* or his parents have residence or legal domicile.

In any such case, if a parent who is able to do so fails or refuses to comply with the order, the family court or the circuit court may proceed against him as for contempt or may proceed against him for nonsupport.

§ 16.1-278.8. (For effective date - See note) Delinquent juveniles.

If a ~~child~~ *juvenile* is found to be delinquent, except where such finding involves a refusal to take a blood or breath test in violation of § 18.2-268.2 or a similar ordinance, the juvenile court or the circuit court may make any of the following orders of disposition for his supervision, care and rehabilitation:

1. Enter an order pursuant to the provisions of § 16.1-278;
2. Permit the ~~child~~ *juvenile* to remain with his parent, subject to such conditions and limitations as the court may order with respect to the ~~child~~ *juvenile* and his parent;
3. Order the parent of a ~~child~~ *juvenile* living with him to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the ~~child~~ *juvenile* and his parent;
4. Defer disposition for a period of time not to exceed twelve months, after which time the charge may be dismissed by the judge if the ~~child~~ *juvenile* exhibits good behavior during the period for which disposition is deferred;
5. Without entering a judgment of guilty and with the consent of the ~~child~~ *juvenile* and his attorney, defer disposition of the delinquency charge for a period not to exceed twelve months and place the ~~child~~ *juvenile* on probation under such conditions and limitations as the court may prescribe. Upon fulfillment of the terms and conditions, the court shall discharge the ~~child~~ *juvenile* and dismiss the proceedings against him. Discharge and dismissal under these provisions shall be without adjudication of guilt;
6. Order the parent of a ~~child~~ *juvenile* with whom the ~~child~~ *juvenile* does not reside to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the ~~child~~ *juvenile* where the court determines this participation to be in the best interest of the ~~child~~ *juvenile* and other parties concerned and where the court determines it reasonable to expect the parent to be able to comply with such order;
7. Place the ~~child~~ *juvenile* on probation under such conditions and limitations as the court may prescribe;
8. Impose a fine not to exceed \$500 upon such ~~child~~ *juvenile*;
9. Suspend the motor vehicle and driver's license of such ~~child~~ *juvenile* or impose a curfew on the ~~child~~ *juvenile* as to the hours during which he may operate a motor vehicle. Any ~~child~~ *juvenile* whose driver's license is suspended may be referred for an assessment and subsequent referral to appropriate services, upon such terms and conditions as the court may order. The court, in its discretion and upon a demonstration of hardship, may authorize the use of a restricted permit to operate a motor vehicle by any ~~child~~ *juvenile* who enters such program for any of the purposes set forth in subsection E of § 18.2-271.1 or for travel to and from school. The restricted permit shall be issued in accordance with

798 the provisions of such subsection. However, only an abstract of the court order which identifies the ~~child~~  
799 *juvenile* and the conditions under which the restricted license is to be issued shall be sent to the  
800 Department of Motor Vehicles.

801 If a curfew is imposed, the ~~child~~ *juvenile* shall surrender his driver's license, which shall be held in  
802 the physical custody of the court during any period of curfew restriction. The court shall send an  
803 abstract of any order issued under the provisions of this section to the Department of Motor Vehicles,  
804 which shall preserve a record thereof. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.)  
805 of this chapter or the provisions of Title 46.2, this record shall be available only to all law-enforcement  
806 officers, attorneys for the Commonwealth and courts. A copy of the court order, upon which shall be  
807 noted all curfew restrictions, shall be provided to the ~~child~~ *juvenile* and shall contain such information  
808 regarding the ~~child~~ *juvenile* as is reasonably necessary to identify him. The ~~child~~ *juvenile* may operate a  
809 motor vehicle under the court order in accordance with its terms.

810 Any ~~child~~ *juvenile* who operates a motor vehicle in violation of any restrictions imposed pursuant to  
811 this section shall be guilty of a violation of § 46.2-301.

812 The Department of Motor Vehicles shall refuse to issue a driver's license to any ~~child~~ *juvenile* denied  
813 a driver's license until such time as is stipulated in the court order or until notification by the court of  
814 withdrawal of the order imposing the curfew;

815 10. Require the ~~child~~ *juvenile* to make restitution or reparation to the aggrieved party or parties for  
816 actual damages or loss caused by the offense for which the ~~child~~ *juvenile* was found to be delinquent;

817 11. Require the ~~child~~ *juvenile* to participate in a public service project under such conditions as the  
818 court prescribes;

819 12. In case of traffic violations, impose only those penalties which are authorized to be imposed on  
820 adults for such violations. However, for those violations punishable by confinement if committed by an  
821 adult, confinement shall be imposed only as authorized by this title;

822 13. Transfer legal custody to any of the following:

823 a. A relative or other individual who, after study, is found by the court to be qualified to receive and  
824 care for the ~~child~~ *juvenile*;

825 b. A child welfare agency, private organization or facility which is licensed or otherwise authorized  
826 by law to receive and provide care for such ~~child~~ *juvenile*. The court shall not transfer legal custody of  
827 a delinquent ~~child~~ *juvenile* to an agency, organization or facility outside of the Commonwealth without  
828 the approval of the Director; or

829 c. The local board of public welfare or social services of the county or city in which the court has  
830 jurisdiction or, at the discretion of the court, to the local board of the county or city in which the ~~child~~  
831 *juvenile* has residence if other than the county or city in which the court has jurisdiction. The board  
832 shall accept the ~~child~~ *juvenile* for care and custody, provided that it has been given reasonable notice of  
833 the pendency of the case and an opportunity to be heard. However, in an emergency in the county or  
834 city in which the court has jurisdiction, such local board may be required to temporarily accept a ~~child~~  
835 *juvenile* for a period not to exceed fourteen days without prior notice or an opportunity to be heard if  
836 the judge entering the placement order describes the emergency and the need for such temporary  
837 placement in the order. Nothing in this subdivision shall prohibit the commitment of a ~~child~~ *juvenile* to  
838 any local board of public welfare or social services in the Commonwealth when such local board  
839 consents to the commitment. The board to which the ~~child~~ *juvenile* is committed shall have the final  
840 authority to determine the appropriate placement for the ~~child~~ *juvenile*. Any order authorizing removal  
841 from the home and transferring legal custody of a ~~child~~ *juvenile* to a local board of public welfare or  
842 social services as provided in this subdivision shall be entered only upon a finding by the court that  
843 reasonable efforts have been made to prevent removal and that continued placement in the home would  
844 be contrary to the welfare of the ~~child~~ *juvenile*, and the order shall so state;

845 14. Commit the ~~child~~ *juvenile* to the Department of Youth and Family Services, but only if he is  
846 older than ten years of age and the current offense is (i) an offense which would be a felony if  
847 committed by an adult or (ii) an offense which would be a Class 1 misdemeanor if committed by an  
848 adult and the juvenile has previously been found to be delinquent based on an offense which would be  
849 either a felony or Class 1 misdemeanor if committed by an adult;

850 15. Impose the penalty authorized by § 16.1-284;

851 16. Impose the penalty authorized by § 16.1-284.1;

852 17. Impose the penalty authorized by § 16.1-285.1; or

853 18. Impose the penalty authorized by § 16.1-278.9.

854 § 16.1-278.8. (Delayed effective date - See notes) Delinquent juveniles.

855 If a ~~child~~ *juvenile* is found to be delinquent, except where such finding involves a refusal to take a  
856 blood or breath test in violation of § 18.2-268.2 or a similar ordinance, the family court or the circuit  
857 court may make any of the following orders of disposition for his supervision, care and rehabilitation:

858 1. Enter an order pursuant to the provisions of § 16.1-278;

859 2. Permit the ~~child~~ *juvenile* to remain with his parent, subject to such conditions and limitations as

the court may order with respect to the ~~child~~ *juvenile* and his parent;

3. Order the parent of a ~~child~~ *juvenile* living with him to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the ~~child~~ *juvenile* and his parent;

4. Defer disposition for a period of time not to exceed twelve months, after which time the charge may be dismissed by the judge if the ~~child~~ *juvenile* exhibits good behavior during the period for which disposition is deferred;

5. Without entering a judgment of guilty and with the consent of the ~~child~~ *juvenile* and his attorney, defer disposition of the delinquency charge for a period not to exceed twelve months and place the ~~child~~ *juvenile* on probation under such conditions and limitations as the court may prescribe. Upon fulfillment of the terms and conditions, the court shall discharge the ~~child~~ *juvenile* and dismiss the proceedings against him. Discharge and dismissal under these provisions shall be without adjudication of guilt;

6. Order the parent of a ~~child~~ *juvenile* with whom the ~~child~~ *juvenile* does not reside to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the ~~child~~ *juvenile* where the court determines this participation to be in the best interest of the ~~child~~ *juvenile* and other parties concerned and where the court determines it reasonable to expect the parent to be able to comply with such order;

7. Place the ~~child~~ *juvenile* on probation under such conditions and limitations as the court may prescribe;

8. Impose a fine not to exceed \$500 upon such ~~child~~ *juvenile*;

9. Suspend the motor vehicle and driver's license of such ~~child~~ *juvenile* or impose a curfew on the ~~child~~ *juvenile* as to the hours during which he may operate a motor vehicle. Any ~~child~~ *juvenile* whose driver's license is suspended may be referred for an assessment and subsequent referral to appropriate services, upon such terms and conditions as the court may order. The court, in its discretion and upon a demonstration of hardship, may authorize the use of a restricted permit to operate a motor vehicle by any ~~child~~ *juvenile* who enters such program for any of the purposes set forth in subsection E of § 18.2-271.1 or for travel to and from school. The restricted permit shall be issued in accordance with the provisions of such subsection. However, only an abstract of the court order which identifies the ~~child~~ *juvenile* and the conditions under which the restricted license is to be issued shall be sent to the Department of Motor Vehicles.

If a curfew is imposed, the ~~child~~ *juvenile* shall surrender his driver's license, which shall be held in the physical custody of the court during any period of curfew restriction. The court shall send an abstract of any order issued under the provisions of this section to the Department of Motor Vehicles, which shall preserve a record thereof. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter or the provisions of Title 46.2, this record shall be available only to all law-enforcement officers, attorneys for the Commonwealth and courts. A copy of the court order, upon which shall be noted all curfew restrictions, shall be provided to the ~~child~~ *juvenile* and shall contain such information regarding the ~~child~~ *juvenile* as is reasonably necessary to identify him. The ~~child~~ *juvenile* may operate a motor vehicle under the court order in accordance with its terms.

Any ~~child~~ *juvenile* who operates a motor vehicle in violation of any restrictions imposed pursuant to this section shall be guilty of a violation of § 46.2-301.

The Department of Motor Vehicles shall refuse to issue a driver's license to any ~~child~~ *juvenile* denied a driver's license until such time as is stipulated in the court order or until notification by the court of withdrawal of the order imposing the curfew;

10. Require the ~~child~~ *juvenile* to make restitution or reparation to the aggrieved party or parties for actual damages or loss caused by the offense for which the ~~child~~ *juvenile* was found to be delinquent;

11. Require the ~~child~~ *juvenile* to participate in a public service project under such conditions as the court prescribes;

12. In case of traffic violations, impose only those penalties which are authorized to be imposed on adults for such violations. However, for those violations punishable by confinement if committed by an adult, confinement shall be imposed only as authorized by this title;

13. Transfer legal custody to any of the following:

a. A relative or other individual who, after study, is found by the court to be qualified to receive and care for the ~~child~~ *juvenile*;

b. A child welfare agency, private organization or facility which is licensed or otherwise authorized by law to receive and provide care for such ~~child~~ *juvenile*. The court shall not transfer legal custody of a delinquent ~~child~~ *juvenile* to an agency, organization or facility outside of the Commonwealth without the approval of the Director; or

c. The local board of public welfare or social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the ~~child~~ *juvenile* has residence if other than the county or city in which the court has jurisdiction. The board

shall accept the ~~child~~ *juvenile* for care and custody, provided that it has been given reasonable notice of the pendency of the case and an opportunity to be heard. However, in an emergency in the county or city in which the court has jurisdiction, such local board may be required to temporarily accept a ~~child~~ *juvenile* for a period not to exceed fourteen days without prior notice or an opportunity to be heard if the judge entering the placement order describes the emergency and the need for such temporary placement in the order. Nothing in this subdivision shall prohibit the commitment of a ~~child~~ *juvenile* to any local board of public welfare or social services in the Commonwealth when such local board consents to the commitment. The board to which the ~~child~~ *juvenile* is committed shall have the final authority to determine the appropriate placement for the ~~child~~ *juvenile*. Any order authorizing removal from the home and transferring legal custody of a ~~child~~ *juvenile* to a local board of public welfare or social services as provided in this subdivision shall be entered only upon a finding by the court that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the ~~child~~ *juvenile*, and the order shall so state;

14. Commit the ~~child~~ *juvenile* to the Department of Youth and Family Services, but only if he is older than ten years of age *and the current offense is (i) an offense which would be a felony if committed by an adult or (ii) an offense which would be a Class 1 misdemeanor if committed by an adult and the juvenile has previously been found to be delinquent based on an offense which would be either a felony or Class 1 misdemeanor if committed by an adult;*

15. Impose the penalty authorized by § 16.1-284;

16. Impose the penalty authorized by § 16.1-284.1;

17. Impose the penalty authorized by § 16.1-285.1; or

18. Impose the penalty authorized by § 16.1-278.9.

§ 16.1-280. (For effective date - See note) Commitment of mentally ill or mentally retarded juveniles.

When any juvenile court has found a ~~child~~ *juvenile* to be in need of services or delinquent pursuant to the provisions of this law and reasonably believes such ~~child~~ *juvenile* is mentally ill or mentally retarded, the court may commit him to an appropriate hospital in accordance with the provisions of §§ 16.1-338 through 16.1-345 or admit him to a training center in accordance with the provisions of § 37.1-65.1 for observation as to his mental condition. No ~~child~~ *juvenile* shall be committed pursuant to this section or §§ 16.1-338 through 16.1-345 to a maximum security unit within any state hospital where adults determined to be criminally insane reside. However, the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services may place a ~~child~~ *fifteen years of age or older juvenile* who has been certified to the circuit court for trial as an adult pursuant to § ~~16.1-269~~ *16.1-269.6* or § 16.1-270 or who has been convicted as an adult of a felony in the circuit court in a unit appropriate for the care and treatment of persons under a criminal charge when, in his discretion, such placement is necessary to protect the security or safety of other patients, staff or public. The Commissioner shall notify the committing court of any placement in such unit. The committing court shall review the placement at thirty-day intervals.

§ 16.1-280. (Delayed effective date - See notes) Commitment of mentally ill or mentally retarded juveniles.

When any family court has found a ~~child~~ *juvenile* to be in need of services or delinquent pursuant to the provisions of this law and reasonably believes such ~~child~~ *juvenile* is mentally ill or mentally retarded, the court may commit him to an appropriate hospital in accordance with the provisions of §§ 16.1-338 through 16.1-345 or admit him to a training center in accordance with the provisions of § 37.1-65.1 for observation as to his mental condition. No ~~child~~ *juvenile* shall be committed pursuant to this section or §§ 16.1-338 through 16.1-345 to a maximum security unit within any state hospital where adults determined to be criminally insane reside. However, the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services may place a ~~child~~ *fifteen years of age or older juvenile* who has been certified to the circuit court for trial as an adult pursuant to § ~~16.1-269~~ *16.1-269.6* or § 16.1-270 or who has been convicted as an adult of a felony in the circuit court in a unit appropriate for the care and treatment of persons under a criminal charge when, in his discretion, such placement is necessary to protect the security or safety of other patients, staff or public. The Commissioner shall notify the committing court of any placement in such unit. The committing court shall review the placement at thirty-day intervals.

§ 16.1-285.1. Commitment of serious offenders.

A. In the case of a ~~child~~ *fifteen juvenile fourteen* years of age or older who has been found guilty of an offense which would be a felony if committed by an adult, and *either (i) the ~~child~~ juvenile is on parole for an offense which would be a felony if committed by an adult, or (ii) the juvenile was committed to the state for an offense which would be a felony if committed by an adult within the immediately preceding twelve months was a resident or inpatient of a group home or other treatment facility pursuant to an order of a court in a previous delinquency proceeding or (ii), (iii) where the felony offense constitutes murder, rape, armed robbery or the use of a firearm in the commission of a felony is punishable by a term of confinement of greater than twenty years if the felony was committed*



by an adult, and the court finds that commitment under this ~~subdivision~~ section is necessary to meet the rehabilitative needs of the ~~child~~ juvenile and would serve the best interests of the community, then the court may order the ~~child~~ juvenile committed to the Department of Youth and Family Services for a placement in a learning center for the period of time prescribed pursuant to this section.

B. Prior to committing any ~~child~~ juvenile pursuant to this section, the court shall consider the nature of the present offense, the nature of the child's prior delinquency record, the nature of the past treatment efforts and the child's response to them. :

1. The juvenile's age;

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

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

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

Such commitment order must be supported by a determination that the interests of the ~~child~~ juvenile and community require that the ~~child~~ juvenile be placed under legal restraint or discipline and that the ~~child~~ is not amenable to juvenile is not a proper person to receive treatment or rehabilitation through other juvenile programs or facilities.

C. In ordering commitment pursuant to this section, the court may shall specify a minimum period of commitment, not less than six nor more than twelve months not to exceed seven years or the juvenile's twenty-first birthday, whichever shall occur first.

D. Upon receipt of a ~~child~~ juvenile committed under the provisions of this section, the Department shall evaluate the ~~child~~ juvenile for the purpose of considering placement of the ~~child~~ juvenile in a an appropriate learning center or other residential program operated pursuant to such standards as may be established by the State Board, for an indeterminate period, not less than the time prescribed by the committing court. Such a placement decision shall be made based on the welfare of the ~~child~~ juvenile.

E. The court which commits the juvenile to the Department under this section shall have continuing jurisdiction over the juvenile throughout his commitment. The continuing jurisdiction of the court shall not prevent the Department from removing the juvenile from a learning center without prior court approval for the sole purposes of routine or emergency medical treatment, routine educational services, or family emergencies.

F. Any ~~child~~ juvenile committed under the provisions of this section shall not be released at a time earlier than that specified by the court as the minimum period of commitment, unless a petition for early release is approved by the committing court based upon good cause shown by the Department in its dispositional order except as provided for in § 16.1-285.2. The Department may petition the committing court for a hearing as provided for in § 16.1-285.2 for an earlier release of the juvenile when good cause exists for an earlier release. In addition, the Department shall petition the committing court for a determination as to the continued commitment of each juvenile sentenced under this section at least sixty days prior to the second anniversary of the juvenile's date of commitment and sixty days prior to each annual anniversary thereafter.

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

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

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

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

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

§ 16.1-299. (For effective date - See note) Fingerprints and photographs of juveniles.

A. Fingerprints of a ~~child fifteen~~ juvenile fourteen years of age or older who is charged with a delinquent act which would be a felony if committed by an adult shall be taken and filed with the juvenile court by law-enforcement officers on forms provided by the Central Criminal Records Exchange. Photographs may also be taken and filed by local law-enforcement officers. Fingerprints of a ~~child~~ juvenile thirteen years of age or older who is charged with bodily wounding as provided in § 18.2-51 or § 18.2-52, use of a firearm in committing a felony as provided in § 18.2-53.1, attempted poisoning as provided in § 18.2-54.1, extortion as provided in § 18.2-59, robbery, rape as provided in § 18.2-61, forcible sodomy as provided in § 18.2-67.1, inanimate object sexual penetration as provided in § 18.2-67.2, grand larceny as provided in § 18.2-95, burglary as provided in §§ 18.2-89 through 18.2-91, arson and related crimes as provided in §§ 18.2-77 through 18.2-88 or murder, or any attempt to commit the above mentioned felonies as provided in § 18.2-25 or § 18.2-26 shall be taken and filed with the juvenile court by law-enforcement officers on forms provided by the Central Criminal Records Exchange. Photographs may also be taken and filed by local law-enforcement officers.

B. A ~~child~~ juvenile may be fingerprinted and photographed regardless of age or offense if he has been taken into custody for and charged with a violation of law, and a law-enforcement officer has determined that there is probable cause to believe that latent fingerprints found during the investigation of an offense are those of such ~~child~~ juvenile.

C. The fingerprints and photographs authorized in subsections A and B shall be retained or disposed of as follows:

1. If a petition is not filed against a ~~child~~ juvenile whose fingerprints or photographs have been taken in connection with an alleged violation of law, the fingerprint card, all copies of the fingerprints and all photographs shall be destroyed sixty days after fingerprints were taken.

2. If the juvenile court or the circuit court, pursuant to a transfer, waiver or appeal, finds a ~~child~~ juvenile not guilty of a charge of delinquency, the fingerprint card, all copies of the fingerprints and all photographs shall be destroyed within sixty days of such finding. However, all fingerprints and photographs of a ~~child~~ juvenile who is less than thirteen years of age and who is found guilty of a delinquent act shall also be destroyed.

3. If the court finds that a ~~child~~ juvenile thirteen years of age or older has committed a delinquent act, the fingerprints and photographs may be retained in a local file pursuant to § 16.1-301 and the fingerprints may be entered into any police department's computer system by identification number or by any other method which insures the confidentiality of the juvenile's name.

4. If a ~~child fifteen~~ juvenile fourteen years of age or older is (i) certified to the circuit court pursuant to § ~~16.1-269~~ Article 7 (§ 16.1-269.1 et seq.) of this chapter and is adjudicated delinquent or found guilty as an adult of the offense charged or (ii) adjudicated delinquent or found guilty in juvenile court of any offense which would be a felony if committed by an adult, or if a ~~child~~ juvenile thirteen years of age or older is found guilty of any of the offenses specified in subsection A of this section or an attempt to commit any such offense in a juvenile court and is adjudicated delinquent, copies of his fingerprints and a report of the disposition shall be forwarded to the Central Criminal Records Exchange by the clerk of the court which heard the case.

§ 16.1-299. (Delayed effective date - See notes) Fingerprints and photographs of juveniles.

A. Fingerprints of a ~~child fifteen~~ juvenile fourteen years of age or older who is charged with a delinquent act which would be a felony if committed by an adult shall be taken and filed with the juvenile court by law-enforcement officers on forms provided by the Central Criminal Records Exchange. Photographs may also be taken and filed by local law-enforcement officers. Fingerprints of a ~~child~~ juvenile thirteen years of age or older who is charged with bodily wounding as provided in § 18.2-51 or § 18.2-52, use of a firearm in committing a felony as provided in § 18.2-53.1, attempted poisoning as provided in § 18.2-54.1, extortion as provided in § 18.2-59, robbery, rape as provided in § 18.2-61, forcible sodomy as provided in § 18.2-67.1, inanimate object sexual penetration as provided

in § 18.2-67.2, grand larceny as provided in § 18.2-95, burglary as provided in §§ 18.2-89 through 18.2-91, arson and related crimes as provided in §§ 18.2-77 through 18.2-88 or murder, or any attempt to commit the above mentioned felonies as provided in § 18.2-25 or § 18.2-26 shall be taken and filed with the juvenile court by law-enforcement officers on forms provided by the Central Criminal Records Exchange. Photographs may also be taken and filed by local law-enforcement officers.

B. A ~~child~~ *juvenile* may be fingerprinted and photographed regardless of age or offense if he has been taken into custody for and charged with a violation of law, and a law-enforcement officer has determined that there is probable cause to believe that latent fingerprints found during the investigation of an offense are those of such ~~child~~ *juvenile*.

C. The fingerprints and photographs authorized in subsections A and B shall be retained or disposed of as follows:

1. If a petition is not filed against a ~~child~~ *juvenile* whose fingerprints or photographs have been taken in connection with an alleged violation of law, the fingerprint card, all copies of the fingerprints and all photographs shall be destroyed sixty days after fingerprints were taken.

2. If the family court or the circuit court, pursuant to a transfer, waiver or appeal, finds a ~~child~~ *juvenile* not guilty of a charge of delinquency, the fingerprint card, all copies of the fingerprints and all photographs shall be destroyed within sixty days of such finding. However, all fingerprints and photographs of a ~~child~~ *juvenile* who is less than thirteen years of age and who is found guilty of a delinquent act shall also be destroyed.

3. If the court finds that a ~~child~~ *juvenile* thirteen years of age or older has committed a delinquent act, the fingerprints and photographs may be retained in a local file pursuant to § 16.1-301 and the fingerprints may be entered into any police department's computer system by identification number or by any other method which insures the confidentiality of the juvenile's name.

4. If a ~~child fifteen~~ *juvenile fourteen* years of age or older is (i) certified to the circuit court pursuant to § ~~16.1-269~~ *Article 7 (§ 16.1-269.1 et seq.) of this chapter* and is adjudicated delinquent or found guilty as an adult of the offense charged or (ii) adjudicated delinquent or found guilty in family court of any offense which would be a felony if committed by an adult, or if a ~~child~~ *juvenile* thirteen years of age or older is found guilty of any of the offenses specified in subsection A of this section or an attempt to commit any such offense in a juvenile court and is adjudicated delinquent, copies of his fingerprints and a report of the disposition shall be forwarded to the Central Criminal Records Exchange by the clerk of the court which heard the case.

§ 16.1-301. Confidentiality of law-enforcement records.

A. The court shall require all law-enforcement agencies to take special precautions to ensure that law-enforcement records concerning a ~~child~~ *juvenile* are protected against disclosure to any unauthorized person. The police departments of the cities of the Commonwealth, and the police departments or sheriffs of the counties, as the case may be, shall keep separate records as to violations of law other than violations of motor vehicle laws committed by juveniles. Unless a charge of delinquency is transferred for criminal prosecution ~~pursuant to § 16.1-269 in the circuit court~~ or the court otherwise orders disclosure in the interests of the ~~child~~ *juvenile* or of national security, such records with respect to such ~~child~~ *juvenile* shall not be open to public inspection nor their contents disclosed to the public.

B. Inspection of such records shall be permitted only by the following:

1. A court having the ~~child~~ *juvenile* currently before it in any proceeding;

2. The officers of public and nongovernmental institutions or agencies to which the ~~child~~ *juvenile* is currently committed, and those responsible for his supervision after release;

3. Any other person, agency, or institution, by order of the court, having a legitimate interest in the case or in the work of the law-enforcement agency;

4. Law-enforcement officers of other jurisdictions, by order of the court, when necessary for the discharge of their current official duties;

5. The probation and other professional staff of a court in which the ~~child~~ *juvenile* is subsequently convicted of a criminal offense for the purpose of a presentence report or other dispositional proceedings, or by officials of penal institutions and other penal facilities to which he is committed, or by a parole board in considering his parole or discharge or in exercising supervision over him;

6. The ~~child~~ *juvenile*, parent, guardian or other custodian and counsel for the ~~child~~ *juvenile* by order of the court; and

7. As provided in §§ 19.2-389.1 and 19.2-390.

C. The police department of the cities and towns and the police departments or sheriffs of the counties may release, upon request to one another and to state and federal law-enforcement agencies, current information on juvenile arrests. The information exchanged shall be limited to name, address, physical description, date of arrest, and the charge for which the arrest was made. The information shall be used by the receiving agency for current investigation purposes only and shall not result in the creation of new files or records on individual juveniles on the part of the receiving agency.

§ 16.1-306. (For effective date - See note) Expungement of court records.

A. Notwithstanding the provisions of § 16.1-69.55, the clerk of the juvenile and domestic relations district court shall, on January 2 of each year or on a date designated by the court, destroy its files, papers and records connected with any proceeding concerning a ~~child~~ *juvenile* in such court, if such ~~child~~ *juvenile* has attained the age of nineteen years and five years have elapsed since the date of the last hearing in any case of the juvenile which is subject to this section. However, if the ~~child~~ *juvenile* was found guilty of a delinquent act which would be a felony if committed by an adult, or an offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles, the records shall be destroyed when the ~~child~~ *juvenile* has attained the age of twenty-nine.

B. In all files in which the court records concerning a juvenile contain a finding of guilty of a delinquent act which would be a felony if committed by an adult or an offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles together with findings of not innocent of other acts, all of the records of such juvenile subject to this section shall be retained and available for inspection as provided in § 16.1-305.

C. Except in cases where a juvenile ~~fifteen~~ *fourteen* years of age or older at the time of the offense was found guilty of a delinquent act which would be a felony if committed by an adult, a person who has been the subject of a delinquency or traffic proceeding and whose records fall within the provisions of subsection B hereof may, after ten years since the date of the last hearing in any case of the juvenile which is subject to this section, file a motion requesting the destruction of all records pertaining to his case. Notice of such motion shall be given to the attorney for the Commonwealth. After a hearing on the matter, if the court grants the motion, copies of the order shall be sent to offices or agencies that are repositories of such records, and all such offices and agencies shall comply with the order.

D. A person who has been the subject of a delinquency or traffic proceeding and (i) has been found innocent thereof or (ii) such proceeding was otherwise dismissed, may file a motion requesting the destruction of all records pertaining to the charge of such an act of delinquency. Notice of such motion shall be given to the attorney for the Commonwealth. Unless good cause is shown why such records should not be destroyed, the court shall grant the motion, and shall send copies of the order to all officers or agencies that are repositories of such records, and all such officers and agencies shall comply with the order.

E. Each person shall be notified of his rights under subsections A, C and D of this section at the time of his dispositional hearing.

F. Upon destruction of the records of a proceeding as provided in subsections A, B, C and D, the violation of law shall be treated as if it never occurred. All index references shall be deleted and the court and law-enforcement officers and agencies shall reply and the person may reply to any inquiry that no record exists with respect to such person.

G. All docket sheets shall be destroyed in the sixth year after the last hearing date recorded on the docket sheet.

§ 16.1-306. (Delayed effective date - See notes) Expungement of court records.

A. Notwithstanding the provisions of § 16.1-69.55 and except for adoption records governed by § 63.1-235, the clerk of the family court shall, on January 2 of each year or on a date designated by the court, destroy its files, papers and records connected with any proceeding concerning a ~~child~~ *juvenile* in such court, if such ~~child~~ *juvenile* has attained the age of nineteen years and five years have elapsed since the date of the last hearing in any case of the juvenile which is subject to this section. However, if the ~~child~~ *juvenile* was found guilty of a delinquent act which would be a felony if committed by an adult, or an offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles, the records shall be destroyed when the ~~child~~ *juvenile* has attained the age of twenty-nine.

B. In all files in which the court records concerning a juvenile contain a finding of guilty of a delinquent act which would be a felony if committed by an adult or an offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles together with findings of not innocent of other acts, all of the records of such juvenile subject to this section shall be retained and available for inspection as provided in § 16.1-305.

C. Except in cases where a juvenile ~~fifteen~~ *fourteen* years of age or older at the time of the offense was found guilty of a delinquent act which would be a felony if committed by an adult, a person who has been the subject of a delinquency or traffic proceeding and whose records fall within the provisions of subsection B hereof may, after ten years since the date of the last hearing in any case of the juvenile which is subject to this section, file a motion requesting the destruction of all records pertaining to his case. Notice of such motion shall be given to the attorney for the Commonwealth. After a hearing on the matter, if the court grants the motion, copies of the order shall be sent to offices or agencies that are repositories of such records, and all such offices and agencies shall comply with the order.

D. A person who has been the subject of a delinquency or traffic proceeding and (i) has been found innocent thereof or (ii) such proceeding was otherwise dismissed, may file a motion requesting the

destruction of all records pertaining to the charge of such an act of delinquency. Notice of such motion shall be given to the attorney for the Commonwealth. Unless good cause is shown why such records should not be destroyed, the court shall grant the motion, and shall send copies of the order to all officers or agencies that are repositories of such records, and all such officers and agencies shall comply with the order.

E. Each person shall be notified of his rights under subsections A, C and D of this section at the time of his dispositional hearing.

F. Upon destruction of the records of a proceeding as provided in subsections A, B, C and D, the violation of law shall be treated as if it never occurred. All index references shall be deleted and the court and law-enforcement officers and agencies shall reply and the person may reply to any inquiry that no record exists with respect to such person.

G. All docket sheets shall be destroyed in the sixth year after the last hearing date recorded on the docket sheet.

§ 18.2-308.2. Possession or transportation of firearms or concealed weapons by convicted felons; penalties; petition for permit; when issued.

A. It shall be unlawful for (i) any person who has been convicted of a felony or (ii) any person under the age of twenty-nine who was found guilty as a juvenile ~~fifteen~~ fourteen years of age or older at the time of the offense of a delinquent act which would be a felony if committed by an adult, whether such conviction or adjudication occurred under the laws of this Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof, to knowingly and intentionally possess or transport any firearm or to knowingly and intentionally carry about his person, ~~hid~~ hidden from common observation, any weapon described in § 18.2-308 A. A violation of this section shall be punishable as a Class 6 felony. Any firearm or any concealed weapon possessed, transported or carried in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.

B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm or other weapon while carrying out his duties as a member of the armed forces of the United States or of the National Guard of Virginia or of any other state, (ii) any law-enforcement officer in the performance of his duties, or (iii) any person who has been pardoned or whose political disabilities have been removed pursuant to Article V, Section 12 of the Constitution of Virginia provided the Governor, in the document granting the pardon or removing the person's political disabilities, may expressly place conditions upon the reinstatement of the person's right to ship, transport, possess or receive firearms.

C. Any person prohibited from possessing, transporting or carrying a firearm under subsection A, may petition the circuit court of the jurisdiction in which he resides for a permit to possess or carry a firearm. The court may, in its discretion and for good cause shown, grant such petition and issue a permit. The provisions of this section shall not apply to any person who has been granted a permit pursuant to this subsection.

§ 19.2-240. (For effective date - See note) Clerks shall make out criminal docket.

Before every term of any court in which criminal cases are to be tried the clerk of the court shall make out a separate docket of criminal cases then pending, in the following order, numbering the same:

1. Felony cases;

2. Misdemeanor cases.

He shall docket all felony cases in the order in which the indictments are found and all misdemeanor cases in the order in which the presentments or indictments are found or informations are filed or appeals are allowed by magistrates and as soon as any presentments or indictments are made at a term of court he shall forthwith docket the same in the order required above.

Traffic infractions shall be docketed with misdemeanor cases.

Cases appealed from the juvenile and domestic relations district court shall not be placed on the criminal docket except for cases involving criminal offenses committed by adults as provided in § 16.1-302. Cases transferred to a circuit court from a juvenile and domestic relations district court pursuant to § ~~16.1-269~~ Article 7 (§ 16.1-269.1 et seq.) of Chapter 11 of Title 16.1 shall be docketed as provided in this section upon return of a true bill of indictment by the grand jury.

§ 19.2-240. (Delayed effective date - See notes) Clerks shall make out criminal docket.

Before every term of any court in which criminal cases are to be tried the clerk of the court shall make out a separate docket of criminal cases then pending, in the following order, numbering the same:

1. Felony cases;

2. Misdemeanor cases.

He shall docket all felony cases in the order in which the indictments are found and all misdemeanor cases in the order in which the presentments or indictments are found or informations are filed or appeals are allowed by magistrates and as soon as any presentments or indictments are made at a term of court he shall forthwith docket the same in the order required above.

1290 Traffic infractions shall be docketed with misdemeanor cases. Cases appealed from the family court  
1291 shall not be placed on the criminal docket except for cases involving criminal offenses committed by  
1292 adults as provided in § 16.1-302. Cases transferred to a circuit court from a family court pursuant to §  
1293 ~~46.1-269~~ *Article 7 (§ 16.1-269.1 et seq.) of Chapter 11 of Title 16.1* shall be docketed as provided in  
1294 this section upon return of a true bill of indictment by the grand jury.

1295 § 19.2-311. Indeterminate commitment to Department of Corrections in certain cases; duration and  
1296 character of commitment; concurrence by Department.

1297 A. The judge, after a finding of guilt, when fixing punishment in those cases specifically enumerated  
1298 in subsection B of this section, may, in his discretion, in lieu of imposing any other penalty provided by  
1299 law and, with consent of the person convicted, commit such person for a period of four years, which  
1300 commitment shall be indeterminate in character. Subject to the provisions of subsection C hereof, such  
1301 persons shall be committed to the Department of Corrections for initial confinement for a period not to  
1302 exceed three years. Such confinement shall be followed by at least one year of supervisory parole,  
1303 conditioned on good behavior, but such parole period shall not, in any case, continue beyond the  
1304 four-year period. The sentence of indeterminate commitment and eligibility for continuous evaluation  
1305 and parole under § 19.2-313 shall remain in effect but eligibility for use of programs and facilities  
1306 specified in § 53.1-64 shall lapse if such person (i) voluntarily withdraws from the youthful offender  
1307 program, (ii) exhibits intractable behavior as defined in § 53.1-66, or (iii) is convicted of a second  
1308 criminal offense which is a felony. A sentence imposed for any second criminal offense shall run  
1309 consecutively with the indeterminate sentence.

1310 B. The provisions of subsection A of this section shall be applicable to first convictions in which the  
1311 person convicted:

1312 1. Committed the offense of which convicted after becoming eighteen but before becoming  
1313 twenty-one years of age, or was a juvenile certified for trial as an adult under the provisions of  
1314 § ~~46.1-269~~ *16.1-269.6* or § 16.1-272;

1315 2. Was convicted of an offense which is either (i) a felony not punishable as a Class 1 felony, or (ii)  
1316 a misdemeanor involving injury to a person or damage to or destruction of property; and

1317 3. Is considered by the judge to be capable of returning to society as a productive citizen following a  
1318 reasonable amount of rehabilitation.

1319 C. Subsequent to a finding of guilt and prior to fixing punishment, the Department of Corrections  
1320 and the Parole Board shall, concurrently with the evaluation required by § 19.2-316, review all aspects  
1321 of the case to determine whether (i) such indeterminate sentence of commitment is in the best interest of  
1322 the Commonwealth and of the person convicted and (ii) facilities are available for the confinement of  
1323 such person. After the review such person shall be again brought before the court, which shall review  
1324 the findings of the Department and the Parole Board. The court may impose a sentence as authorized in  
1325 subsection A, or any other penalty provided by law.

1326 § 53.1-20. Commitment of convicted persons to custody of Director.

1327 A. Beginning July 1, 1996, every person convicted of a felony and sentenced to the Department for a  
1328 total period of more than two years shall be committed by the court to the custody of the Director of  
1329 the Department. The Director shall receive all such persons into the state corrections system within sixty  
1330 days of his receipt of the complete final order from the clerk of the committing court.

1331 B. Until July 1, 1996, persons convicted of felonies and sentenced to the Department shall be  
1332 committed to the custody of the Department and received by the Director into the state corrections  
1333 system within sixty days of his receipt of the complete final order from the clerk of the committing  
1334 court as follows:

1335 1. From July 1, 1991, through June 30, 1992, all persons sentenced for a total period of more than  
1336 six years.

1337 2. From July 1, 1992, through June 30, 1993, all persons sentenced for a total period of more than  
1338 five years.

1339 3. From July 1, 1993, through June 30, 1994, all persons sentenced for a total period of more than  
1340 four years.

1341 4. From July 1, 1994, through June 30, 1996, all persons sentenced for a total period of more than  
1342 three years.

1343 5. From July 1, 1996, and thereafter, all persons sentenced for a total period of more than two years.

1344 C. If the Governor finds that the number of prisoners in state facilities poses a threat to public safety,  
1345 it shall be within the discretion of the Director to determine the priority for receiving prisoners into the  
1346 state corrections system from local correctional facilities.

1347 D. All felons sentenced to a period of incarceration and not placed in a state correctional facility  
1348 pursuant to this section shall serve their sentences in local correctional facilities *which shall not include*  
1349 *a secure facility or detention home as defined in § 16.1-228.*

1350 E. Felons committed to the custody of the Department for a new felony offense shall be received by  
1351 the Director into the state corrections system in accordance with the provisions of this section without

any delay for resolution of (i) issues of alleged parole violations set for hearing before the Parole Board or (ii) any other pending parole-related administrative matter.

§ 66-25.2. *Notice to be given prior to release of serious offenders.*

*Prior to the release of any juvenile committed pursuant to § 16.1-285.1, the Department shall have notice of the release delivered by first class mail to the court which committed the juvenile, to the last known address of any victim of the offense for which the juvenile was committed if such victim has submitted a written request for notification to the Department, and to the sheriff, chief of police, and attorney for the Commonwealth of the jurisdiction (i) in which the offense occurred, (ii) in which the juvenile resided prior to commitment, and (iii) if different from (i) and (ii), in which the juvenile intends to reside subsequent to being released.*

**2. That the Code of Virginia is amended by adding in Article 7 of Chapter 11 of Title 16.1 sections numbered 16.1-269.1 through 16.1-269.6 as follows:**

§ 16.1-269.1. *Conditions for transfer to circuit court.*

*A. If a juvenile fourteen years of age or older 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. Except as provided in subsection B, the court finds by a preponderance of the evidence that the juvenile is not a proper person to remain within the jurisdiction of the family court. In determining whether a juvenile is a proper person to remain within the jurisdiction of the family court, the court shall consider, but not be limited to, the following factors:*

*a. The juvenile's age;*

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

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

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

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

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

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

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

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

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

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

*1. A Class 1 or 2 felony violation of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 or, if the juvenile is sixteen years of age or older, a Class 3 felony violation of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 for: (i) capital murder or first degree murder under Article 1; (ii) mob-related felony under Article 2;*

1413 (iii) kidnapping or abduction under Article 3; or (iv) assault or bodily wounding under Article 4; or

1414 2. Any unclassified felony violation of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 which carries a  
1415 maximum penalty of imprisonment for life if committed by an adult.

1416 If the court finds that the juvenile was not fourteen years of age or older at the time of the alleged  
1417 commission of the offense or that the conditions specified in subdivision 1, 2, or 3 of subsection A have  
1418 not been met, the case shall proceed as otherwise provided for by law.

1419 § 16.1-269.2. Admissibility of statement; investigation and report; bail.

1420 A. Statements made by the juvenile at the transfer hearing provided for under § 16.1-269.1 shall not  
1421 be admissible against him over objection in any criminal proceedings following the transfer, except for  
1422 purposes of impeachment.

1423 B. Prior to a transfer hearing pursuant to subsection A of § 16.2-269.1, a study and report to the  
1424 court, in writing, relevant to the factors set out in subdivision A 4 of § 16.1-269.1, shall be made by the  
1425 probation services or other qualified agency designated by the court. Counsel for the juvenile shall have  
1426 full access to the study and report and any other report or data concerning the juvenile which are  
1427 available to the court. The court shall not consider the report until a finding has been made concerning  
1428 probable cause. If the court so orders, the study and report may be expanded to include matters  
1429 provided for in § 16.1-273, whereupon it may also serve as the report required by this subsection, but  
1430 on the condition that it will not be submitted to the judge who will preside at any subsequent hearings  
1431 except as provided for by law.

1432 C. After the completion of the hearing, whether or not the family court decides to retain jurisdiction  
1433 over the juvenile or transfer such juvenile for criminal proceedings in the circuit court, the family court  
1434 shall set bail for the juvenile in accordance with Chapter 9 (§ 19.2-119 et seq.) of Title 19.2, if bail has  
1435 not already been set.

1436 § 16.1-269.3. Retention by family court; appeal by Commonwealth.

1437 If the case is not transferred, the judge who conducted the hearing shall not, over the objection of  
1438 any interested party, preside at the adjudicatory hearing on the petition, but rather it shall be presided  
1439 over by another judge of that court. If the attorney for the Commonwealth deems it to be in the public  
1440 interest, and the juvenile is fourteen years of age or older and is charged with an offense which, if  
1441 committed by an adult, would be punishable by death or confinement in a state correctional facility for  
1442 life or a maximum period of twenty years or more, he may, within ten days after the family court's final  
1443 decision to retain the case, file a notice of appeal of the decision to the appropriate circuit court. A  
1444 copy of such notice shall be furnished at the same time to the counsel for the juvenile.

1445 § 16.1-269.4. Transfer to circuit court; appeal by juvenile.

1446 If the family court transfers the case, the juvenile may, within ten days after the family court's final  
1447 decision, file a notice of appeal of the decision to the appropriate circuit court. A copy of the notice  
1448 shall be furnished at the same time to the attorney for the Commonwealth.

1449 § 16.1-269.5. Placement of juvenile.

1450 The family court may order placement of the transferred juvenile in either a local correctional  
1451 facility as approved by the State Board of Youth and Family Services pursuant to the limitations of  
1452 § 16.1-249 E or a juvenile detention facility.

1453 § 16.1-269.6. Circuit court hearing; termination of family court jurisdiction; objections and appeals.

1454 A. Within seven days after receipt of notice of an appeal from the transfer decision by either the  
1455 attorney for the Commonwealth or the juvenile, or if an appeal is not noted, upon expiration of the time  
1456 in which to note appeal, the clerk of the family court shall forward to the circuit court all papers  
1457 connected with the case, including any report required by subsection B of § 16.1-269.2 as well as a  
1458 written court order setting forth the reasons for the family court's decision. The clerk shall forward  
1459 copies of the order to the attorney for the Commonwealth and other counsel of record.

1460 B. The circuit court shall, within a reasonable time after receipt of the case from the family court, (i)  
1461 examine all such papers, reports and orders; (ii) if either the juvenile or the attorney for the  
1462 Commonwealth has appealed the transfer decision, conduct a hearing to take further evidence on the  
1463 issue of transfer, to determine if there has been substantial compliance with § 16.1-269.1, but without  
1464 redetermining whether the family court had sufficient evidence to find probable cause; and (iii) enter an  
1465 order either remanding the case to the family court or advising the attorney for the Commonwealth that  
1466 he may seek an indictment. Upon advising the attorney for the Commonwealth that he may seek an  
1467 indictment, the circuit court shall issue an order transferring the juvenile from the juvenile detention  
1468 facility to an appropriate local correctional facility where the juvenile need no longer be entirely  
1469 separate and removed from adults, unless, upon motion of counsel, good cause is shown for placement  
1470 of the juvenile pursuant to the limitations of clauses E (i), (ii), and (iii) of § 16.1-249.

1471 C. The circuit court order advising the attorney for the Commonwealth that he may seek an  
1472 indictment shall divest the family court of its jurisdiction over the case as well as the family court's  
1473 jurisdiction over any other allegations of delinquency arising from the same act, transaction or scheme  
1474 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. Upon review of a decision by the family court to transfer or retain a case or by the circuit court to retain a case which was transferred, an appellate court shall not redetermine whether the court gave due consideration to the factors specified in subdivision A 4 of § 16.1-269.1.

**3. That § 16.1-269, as it is currently effective and as it may become effective, of the Code of Virginia is repealed.**

**4. That the provisions of the second enactment clause of this act shall become effective on the same date as and subject to the provisions of the third enactment of Chapter 929 of the 1993 Acts of Assembly.**

**5. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$ 1,417,660.**