

# **Legislative Overview**

## **2002 General Assembly Session**

### **Juvenile Justice Related Legislation**



**For questions concerning any of the legislation contained herein or any other matters relating to the General Assembly, please contact Deron M. Phipps at (804) 786-6407 or via email at [phippsdm@djj.state.va.us](mailto:phippsdm@djj.state.va.us).**

**Should you have any suggestions or recommendations for changes to the Virginia Code in relation to juvenile justice, please forward those suggestions via email to Deron M. Phipps at [phippsdm@djj.state.va.us](mailto:phippsdm@djj.state.va.us)**

**Thanks!**

**Virginia Department of Juvenile Justice  
2002 General Assembly Session  
Legislative Overview**

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## Part I Enacted Juvenile Justice Legislation

### A. Sentencing Juveniles Convicted as Adults

#### **SB 534 - Violent Juvenile Felonies – Senator Mims**

*An Act to amend and reenact §§ 16.1-272 and 16.1-285.2 of the Code of Virginia, relating to power of circuit court over juvenile offender; release and review hearing for serious offender.*

#### **1.00 Summary**

Senate Bill 534 amends Virginia Code §§ 16.1-272 and 16.1-285.2 to allow the circuit court to impose upon a juvenile convicted as an adult in circuit court an active juvenile sentence combined with an active adult sentence.

#### **2.00 Current Sentencing Option for Violent Juvenile Felons: Va. Code § 16.1-272**

Virginia Code § 16.1-272 provides the circuit court with the sentencing options for a juvenile who has been tried and convicted as an adult. For a juvenile convicted of a violent juvenile felony, the circuit court may impose an active adult sentence or suspend the adult sentence conditioned upon the juvenile's successful completion of a commitment to a juvenile correctional center.

#### **2.10 Current Law - No Option for a Combined Active Juvenile Commitment & an Active Adult Sentence**

There is no sentencing option allowing the circuit court to give an active adult sentence and a juvenile sentence together for one offense.

However, in some cases, circuit court judges have imposed an active adult sentence for one offense and a juvenile commitment for a separate offense. Given that each sentence is for a separate offense, there is no nexus between the commitment to the juvenile correctional center and the adult sentence.

Since the two sentences run separately, a committed juvenile *with adult time hanging over his head* has little or no incentive to participate in the program of the juvenile correctional center. In fact, a juvenile could shorten his overall sentence by acting out of control and, consequently, be sent directly to the Department of Corrections. Given no nexus between the sentences, there is no opportunity for the circuit court to modify the adult sentence based upon the satisfactory or unsatisfactory completion of the juvenile commitment.

#### **3.00 SB 534 Provides New Sentencing Option for Violent Juvenile Felons**

SB 534 gives the circuit court judge an additional dispositional alternative when sentencing a juvenile who has been tried as an adult and convicted of a violent juvenile felony, and who may benefit from the treatment and rehabilitative programs available through the Department of Juvenile Justice.

### **3.10 New Language for Sentencing Violent Juvenile Offenders: Va. Code § 16.1-272 (A)(1)**

As a result of SB 534, Virginia Code § 16.1-272 (A)(1) states,

*“If a juvenile is convicted of a violent juvenile felony, for that offense and for all ancillary crimes the court may order that (i) the juvenile serve a portion of the sentence as a serious juvenile offender under § 16.1-285.1 and the remainder of such sentence in the same manner as provided for adults; (ii) the juvenile serve the entire sentence in the same manner as provided for adults; or (iii) the portion of the sentence to be served in the same manner as provided for adults be suspended conditioned upon successful completion of such terms and conditions as may be imposed in a juvenile court upon disposition of a delinquency case including, but not limited to, commitment under subdivision 14 of § 16.1-278.8 or § 16.1-285.1.”*

The circuit court now has three sentencing options for a juvenile convicted as an adult of a violent juvenile felony.

#### **3.11 Option 1: Active Juvenile Sentence and Active Adult Sentence – New!**

The circuit court can impose an adult sentence, but allow a portion of that sentence to be served in a juvenile correctional center as a serious juvenile offender.

Under this option, the juvenile can only be committed as a serious offender under Virginia Code § 16.1-285.1. Therefore, the juvenile is given a determinate commitment.

#### **3.12 Option 2: Active Adult Sentence Only – Not New**

The circuit court may sentence a juvenile convicted as an adult of a violent juvenile felony as adult. The juvenile would receive a sentence in the same manner as an adult.

#### **3.13 Option 3: Juvenile Sentence with Suspended Adult Sentence – Not New**

The circuit court may sentence the juvenile as an adult, but suspend the adult sentence conditioned upon successful completion of a juvenile disposition including commitment under subdivision 14 of § 16.1-278.8 or § 16.1-285.1.

### **3.20 What is a Violent Juvenile Felony?**

Virginia Code § 16.1-228 defines a "violent juvenile felony" as meaning any of the delinquent acts enumerated in subsection B or C of § 16.1-269.1 when committed by a juvenile fourteen years of age or older.

The violent juvenile felonies defined by Virginia Code § 16.1-269.1(B) are:

- capital murder as defined in § 18.2-31,
- first and second degree murder as defined in § 18.2-32,
- lynching as defined in § 18.2-40, and
- aggravated malicious wounding as defined in § 18.2-51.2.

The violent juvenile felonies defined by Virginia Code § 16.1-269.1(C) are:

- felonious injury by mob in violation of § 18.2-41,
- abduction in violation of § 18.2-48,
- malicious wounding in violation of § 18.2-51,
- malicious wounding of a law-enforcement officer in violation of § 18.2-51.1,
- felonious poisoning in violation of § 18.2-54.1,
- adulteration of products in violation of § 18.2-54.1,
- robbery in violation of § 18.2-58,
- carjacking in violation of § 18.2-58.1,
- rape in violation of § 18.2-61,
- forcible sodomy in violation of § 18.2-67.1, or
- object sexual penetration in violation of § 18.2-67.2.

#### **4.00 Commitment as a Serious Offender: Va. Code § 16.1-285.1**

SB 534 requires the juvenile portion of the sentence to be commitment as a serious offender pursuant to Virginia Code § 16.1-285.1

#### **4.10 Circuit Court's Authority to Commit a Juvenile as a Serious Offender**

The circuit court has greater flexibility in committing a juvenile as a serious offender than the juvenile court. Any juvenile who has been transferred from a juvenile and domestic relations district court to a circuit court pursuant to § 16.1-269.1 qualifies for commitment as a serious offender.

#### **4.20 Commitment Length as a Serious Offender: 4 to 7 Years**

With a juvenile committed as a serious offender, the court determines the length of commitment to a juvenile correctional center. The court must specify a period of commitment not to exceed seven years or the juvenile's twenty-first birthday.

#### **5.00 Mandatory Review Hearing: Va. Code § 16.1-285.2**

The court retains jurisdiction of the case throughout the juvenile's commitment as a serious offender to the Department. Virginia Code § 16.1-285.2 mandates a periodic review hearing by the committing court of the juvenile committed as a serious offender.



## 5.10 Creation of Subsection E under Va. Code § 16.1-285.2

SB 534 created subsection E under Virginia Code § 16.1-285.2. Subsection E specifically provides the circuit court's options of modifying a sentence of a juvenile who has been committed as a serious offender under Virginia Code § 16.1-272:

*E. In the case of a juvenile convicted as an adult and committed as a serious offender under subdivision A 1 of § [16.1-272](#), at the conclusion of the review hearing, the circuit court shall order (i) the juvenile to begin serving any adult sentence in whole or in part that may include any remaining part of the original determinate period of commitment, or (ii) the suspension of the unserved portion of the adult sentence in whole or in part based upon the juvenile's successful completion of the commitment as a serious offender, or (iii) the 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 (iv) the release of the juvenile under such terms and conditions as the court may prescribe.*

## 5.20 Powers of the Court to Modify Sentence

At any time during the commitment, the circuit court may modify the juvenile sentence or the active adult sentence based upon the juvenile's progress at the juvenile correctional center.

- If the juvenile performs well, then the circuit court maintains the ability to suspend all or part of the adult sentence.
- If the juvenile is not amenable to the juvenile correctional setting, then the court may transfer the juvenile to an adult facility to finish his sentence. The remaining portion of the juvenile commitment, if any, can be added to the active adult sentence. The juvenile will not benefit from performing poorly in a juvenile correctional setting.

## 6.00 Affected Constituents

SB 534 provides circuit court judges with an additional sentencing option over a juvenile convicted as an adult of a violent juvenile felony. SB 534 will provide an incentive to a juvenile committed under this new provision to participate in the treatment and rehabilitative programs offered by the Department of Juvenile Justice. The knowledge that the court can modify both the adult sentence and the commitment order based on the juvenile's behavior while in the care of the Department should prove to be an incentive for the juvenile to perform well. SB 534 will enhance the safety of juveniles and staff in juvenile correctional centers. If a juvenile committed under the provisions of this legislation presents a risk or a threat to the safety or security of others in the juvenile correctional center, then the Department may petition the circuit court and request that the juvenile be transferred to the Department of Corrections to serve his remaining adult sentence.

## **B. Juvenile Detention Facilities**

### **HB 298 – Intake Jurisdiction Statewide – Delegate McDonnell**

*An Act to amend and reenact § 16.1-255 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 16.1-235.1, relating to juvenile court intake.*

#### **1.00 Summary**

HB 298 creates Virginia Code § 16.1-235.1 and amends Virginia Code § 16.1-255 to allow a chief judge from one judicial district to enter into an agreement with another chief judge for a replacement intake officer to ensure the capability of a prompt response during hours that the court is not open in matters involving detention orders under § 16.1-255 and intake petitions under § 16.1-260. The replacement intake officer will have all the authority and power of an intake officer of that district.

#### **2.00 Mandated After-Hours Coverage by CSU: Va. Code § 16.1-255.**

Court service units are mandated by Virginia Code § 16.1-255 to promptly respond to detention petitions when the juvenile court is not in session.

#### **3.00 Agreements Between Judicial Districts for After Hours Coverage -NEW**

HB 298 creates Virginia Code § 16.1-235.1. This legislation provides the statutory authority for the chief judge of one judicial district to enter into an agreement with another chief judge for the services of an intake officer to ensure the capability of filing detention orders and intake petitions during non-working hours. This legislation is discretionary and not mandatory. A court service unit may only provide intake services for another court service unit with the approval of the chief judges in affected localities.

#### **3.10 Arrangements for After-Hours Coverage for Detention Orders & Intake Petitions**

The chief judge may make arrangements for a replacement intake officer from another court service unit to ensure the capability of a prompt response in matters under § [16.1-255](#) or § [16.1-260](#) during hours the court is closed.

#### **3.20 Authority of the Replacement Intake Officer**

The replacement intake officer shall have all the authority and power of an intake officer of that district when authorized in writing by the appointing authority and by the chief judge of that district.

#### **3.30 Conformity with State Board Policy**

The State Board of Juvenile Justice must establish guidelines governing the arrangements for the use of replacement intake officers.

#### **4.00 Detention Hearing may Occur by Electronic Means: Va. Code § 16.1-255**

HB 298 also amends Virginia Code § [16.1-255](#) to allow a detention hearing to occur by electronic means.

#### **4.10 Hearing can be occur in Person or via Video and Audio**

In a detention proceeding,

*A child may appear before an intake officer either (i) by personal appearance before the intake officer or (ii) by the use of two-way electronic video and audio communication.*

In fact, subsection A of Virginia Code § 19.2-3.1 states that, if two-way electronic video and audio communication is used, a intake officer may exercise all powers conferred by law and all communications and proceedings will be conducted in the same manner as if the appearance were in person.

#### **4.20 Hearing via Video same as in Person**

*All communications and proceedings shall be conducted in the same manner and the intake officer shall have the same powers as if the appearance were in person.*

#### **4.30 Document can be sent Electronically**

Any documents filed may be transmitted by facsimile and will serve as original documents. Electronically sent documents will have the same force, effect, authority, and liability as an original document. All signatures will be treated as original signatures.

#### **4.40 Video Conferencing Must Comply with Va. Code § 19.2-3.1(B).**

Any two-way electronic video and audio communication system used must comply with the provisions of subsection B of § 19.2-3.1. A two-way electronic video and audio communication system used for an appearance must meet the following standards:

1. The persons communicating must simultaneously see and speak to one another;
2. The signal transmission must be live, real time;
3. The signal transmission must be secure from interception through lawful means by anyone other than the persons communicating; and
4. Any other specifications as may be promulgated by the Chief Justice of the Supreme Court.

#### **5.00 HB 298 Builds upon DJJ Pilot**

The Department of Juvenile Justice is piloting a system in which the Fairfax Court Service Unit is providing after-hours intake services for the Abingdon and the Williamsburg Court Service Units. Consistent with Virginia Code § 16.1- 9.17, the Chief Judges in Williamsburg and Abingdon swore in the intake officers from Fairfax enabling them to serve as intake officers during hours in those communities when the courts were not open. The pilot has been well received.

This legislation gives the Department of Juvenile Justice the authority to build upon that pilot allowing the development of policy by which a court service unit can provide intake services for other court service units statewide during non-working hours.

## **6.00 HB 298 Facilitates Intake Uniformity Throughout the State**

Developing a statewide system for intake during hours in which courts are not open allows the Department to implement a uniform process for determining whether a juvenile should be detained or released.

### **HB 259 (Delegate McQuigg) & SB 467 (Senator Puller)**

#### **Criteria for Predispositional Detention**

*These Acts amend and reenact § 16.1-248.1 of the Code of Virginia, relating to criteria for detention or shelter care.*

## **1.00 Summary**

HB 259 and SB 467 are identical. These bills provide that a juvenile may be detained in a secure facility pursuant to a detention order or warrant when there is probable cause to believe that he violated the terms of his probation or parole and the charge for which he was originally placed on probation or parole would have been a felony or Class 1 misdemeanor if committed by an adult. This bill clarifies criteria for detention eligibility in light of the Virginia Court of Appeals decision in *Salvatierra v. City of Falls Church*.

## **2.00 Taking a Juvenile into Custody: Va. Code § 16.1-247 (Same)**

Virginia Code § 16.1-247 proscribes the duties and responsibilities of a person taking child into custody. A person taking a child into custody must, “with all practicable speed,” bring the child before a judge or intake officer.

### **2.10 If possible, a Juvenile Taken into Custody must be Released: Va. Code § 16.1-248.1(A)**

If possible, the first recourse for a juvenile taken into custody and appearing before a judge, intake officer or magistrate is to release the juvenile to the care, custody and control of the parent, guardian, custodian or other suitable person able and willing to provide supervision and care for such juvenile. The juvenile can be released on bail or recognizance pursuant to Chapter 9 (§ 19.2-119 et seq.) of Title 19.2.

## **3.00 Exceptions to Releasing the Juvenile – Placing the Juvenile in Detention: Va. Code § 16.1-248.1(A)**

Virginia Code § 16.1-248.1(A) provides the criteria that must be met if a juvenile is to be detained in a detention facility prior to disposition.

### **3.10 The Judge, Intake Officer or Magistrate will make the Determination**

The decision whether to detain a juvenile will be made by the judge, intake officer, or magistrate.

#### **4.00 Old Law - The Alleged Act Must be a Felony or Misdemeanor: Va. Code § 16.1-248.1(A)(1)**

Prior to SB 467 and HB 259, a juvenile could only be detained under subsection A 1 if there was probable cause to believe that he committed a felony or a Class 1 misdemeanor and the remaining requirements of § 16.1-248.1(A)(1) were satisfied.

#### **4.10 HB 259 & SB 467 Address Issue Raised by Court of Appeals**

In *Salvatierra v. City of Falls Church*, the Virginia Court of Appeals held that the charge of “Violation of Probation” is not a Class 1 misdemeanor (Record Number 1233-00-4, May 15, 2001). The decision in *Salvatierra* highlighted a problem with the language in Virginia Code § 16.1-248.1. Prior to SB 467 and HB 259, Virginia Code § 16.1-248.1(A)(1) stated that a juvenile taken into custody may be detained in a secure facility only upon a finding that there is probable cause to believe that the juvenile committed the *act alleged*. If the current act is not a Class 1 misdemeanor or a felony, then a strong argument could be made that the juvenile should not be detained regardless of the underlying offense. Historically, if a juvenile was in custody for a probation or parole violation, then the department would look to the underlying offense to determine whether the juvenile should be detained in detention. The Virginia Court of Appeals opinion in the *Salvatierra* case created confusion about whether it was permissible to detain a juvenile on a violation of probation or parole regardless of an underlying offense that is a felony or a Class 1 misdemeanor.

#### **5.00 The New Language – Intake Officer may look to the Underlying Offense: Va. Code § 16.1-248.1**

HB 259 and SB 467 were submitted in response to the Virginia Court of Appeals decision in *Salvatierra v. City of Falls Church*. HB 259 and SB 467 clarifies that the judge, intake officer or magistrate may look to the underlying offense when determining whether a juvenile should be detained in detention for a violation of probation or parole. The ability of the judge, intake officer or magistrate to look at the underlying offense is the only change made by this legislation.

#### **5.10 Alleged Act is Probation or Parole Violation – Then look to Underlying Offense (New)**

The new language in Virginia Code § 16.1-248.1 states that a juvenile may be detained in a secure facility if there is probable cause to believe that the juvenile is alleged to have *violated the terms of his probation or parole when the charge for which he was placed on probation or parole would have been a felony or Class 1 misdemeanor if committed by an adult*. If there is probable cause that the juvenile violated his terms of probation or parole, then the intake officer may look to the underlying offense to determine whether the juvenile should be detained.

#### **5.20 Alleged Act is a Felony or Class 1 Misdemeanor – Not New – Current Law**

If there is probable cause to believe that the juvenile committed an act which would be a felony or Class 1 misdemeanor if committed by an adult, then the judge, intake officer or magistrate may consider detaining the juvenile in a detention facility.

### **5.30 Additional Requirements that must be Satisfied prior to Detaining a Juvenile**

If a juvenile is alleged to have violated probation or parole and his underlying offense is a felony of Class 1 misdemeanor or the alleged act is a felony or Class 1 misdemeanor, then the judge, intake officer or magistrate must look to the criteria in subsections a, b and c under § 16.1-248.1(A)(1) before detaining a juvenile in detention. In addition to the offense or the underlying offense, if one of the below circumstances is met, then the juvenile can be placed in a detention facility.

#### **5.31 Clear and Substantial Threat to Others or to Property: Va. Code § 16.1-248.1(A)(1)(a)**

There is clear and convincing evidence that the release of the juvenile, constitutes a clear and substantial threat to the person or property of others. The judge, intake officer or magistrate should look to the seriousness of the current offense and also to past offenses, including other pending charges, the legal status of the juvenile and any aggravating and mitigating circumstances.

#### **5.32 Clear and Substantial Threat of Harm to Juvenile: Va. Code § 16.1-248.1(A)(1)(b)**

There is clear and convincing evidence that the release of the juvenile presents a clear and substantial threat of serious harm to the juvenile's own life or health.

#### **5.33 Or There is Clear and Substantial Threat of Absconding: Va. Code § 16.1-248.1(A)(1)(c)**

There is clear and convincing evidence that the juvenile has threatened to abscond from the court's jurisdiction or has a record of willful failure to appear at a court hearing within the immediately preceding twelve months.

### **6.00 Notice of Offense to Detention Facility: Va. Code § 16.1-248.1(A)**

Virginia Code § 16.1-248.1(A) requires notice to the detention facility of the offense for which the juvenile is being detained. The Code language states:

When a juvenile is placed in secure detention, the detention order shall state the offense for which the juvenile is being detained, and, to the extent practicable, other pending and previous charges.

The purpose of this notification is to ensure that the detention facility is aware why a juvenile is being detained in that facility.

### **6.10 Impact of New Legislation: Notification of Underlying Offense**

If a juvenile is placed in a detention facility under Virginia Code § 16.1-248.1(A)(1) for a probation or parole offense when there is an underlying offense that is a felony or a Class 1 misdemeanor, then the detention facility should be notified what the underlying offense is.

**HB 1236 Juvenile detention; adults.**

*An Act to amend and reenact § 16.1-249 of the Code of Virginia, relating to confinement for juveniles. Patron: Jones, J.C.*

**1.00 Summary**

HB 1236 amends Virginia Code § 16.1-249(H) to address the ability of a juvenile and domestic relations (J&DR) court judge to order the predispositional detention in an adult facility and not a juvenile facility of a person 18 years of age or older for an offense committed when that person was a juvenile. The language currently in the Virginia Code is ambiguous concerning this issue. HB 1236 clarifies the intent of Virginia Code § 16.1-249(H) by requiring a judge to detain a person 18 years of age or older prior to disposition in an adult facility. However, a judge may order the pre-dispositional detention (in a juvenile facility) of a person 18 years of age or older if that detention is ordered for violation of the terms and conditions of release from a juvenile correctional center.

**2.00 Places & Limitations of Confinement for Juveniles: Overview of Va. Code § 16.1-249**

If a juvenile is to be placed in a detention facility or in shelter care pursuant to Virginia Code § 16.1-248.1, then Virginia Code § 16.1-249 provides the places and limitations of confining a juvenile.

**3.00 Detaining an Adult for a Juvenile Offense: Va. Code § 16.1-249 (H) NEW!**

HB 1236 amends subsection H of Virginia Code § 16.1-249 as such:

*H. A judge may order the predispositional detention of persons eighteen years of age or older (i) in a juvenile facility only for a violation of the terms and conditions of release from a juvenile correctional center or (ii) in an adult facility. If a judge orders the predispositional detention of persons eighteen years of age or older, such detention shall be in an adult facility; however, if the predispositional detention is ordered for a violation of the terms and conditions of release from a juvenile correctional center, the judge may order such detention be in a juvenile facility.*

**4.00 Intent of HB 1236 is to Clarify Existing Law**

The intent of HB 1236 is to ensure that an adult is not placed into a juvenile detention facility for an offense committed when the adult was a juvenile. HB 1236 provides that a person over the age of 18, who has avoided apprehension for an offense committed as a juvenile, may not be detained in a juvenile detention facility. However, persons over the age of 18, but under the age of 21, may be detained, at the court's discretion, in a juvenile detention facility for a parole violation. HB 1236 clarifies the intent of existing law. The previous language in Virginia Code § 16.1-249(H) was confusing and HB 1236 eliminates the confusion.

**HB 1000 Detention homes.**

*An Act to amend and reenact the second enactment of Chapter 978 of the Acts of Assembly of 2000, relating to duties of the Department of Juvenile Justice. Patron: McDonnell*

**1.00 Summary**

HB 1000 amends the second reenactment clause contained in SB 66 (Chapter 978 of the 2000 Acts of Assembly) as passed by the General Assembly in 2000. The second reenactment clause in SB 66 required the Department of Juvenile Justice (DJJ) to establish guidelines for use by court service unit (CSU) personnel when making recommendations to the juvenile court regarding the secure detention of juveniles prior to disposition. However, no implementation date was given in SB 66. HB 1000 amends the second reenactment clause to require DJJ to establish a uniform risk assessment instrument for use when making detention decisions and recommendations at detention hearings for implementation by each CSU and for distribution to each juvenile court judge by October 1, 2002.

DJJ has been developing a risk assessment tool for use in making decisions and recommendations concerning the placement of eligible juveniles in secure detention. It is anticipated that the actual instrument will be finalized by Spring 2002. A number of issues have been identified concerning the actual implementation of this tool on a statewide basis. A primary concern is the insufficient availability (in some jurisdictions) of non-secure detention alternatives that provide more supervision than simply releasing the child to his/her parents or guardians. The risk assessment tool being developed requires such alternatives to be properly implemented.

**C. Juvenile Records and Confidentiality**

**HB 1205 Confidentiality of juvenile records.**

*An Act to amend and reenact §§ 16.1-300 and 16.1-305 of the Code of Virginia, relating to confidentiality of juvenile records. Patrons: Marrs and Hurt*

The bill amends Virginia Code §§ 16.1-300(A)(7) and 16.1-305(A)(4) with the intent of allowing Commonwealth's attorneys and adult probation officers preparing pre-sentence reports, risk assessment instruments, or discretionary sentencing guideline worksheets to have access to the records of the Department of Juvenile Justice (DJJ) and Juvenile and Domestic Relations District Courts without the necessity of obtaining a court order.

The amendments made by HB 1205 to Virginia Code § 16.1-305 are identical to the amendments made by HB 310. Consistent with HB 310, this bill allows access of a juvenile's confidential juvenile court records by a local community-based probation agency for the purpose of preparing a pretrial investigation report, or of a pre-sentence or post-sentence report upon a finding of guilty in a circuit court. Any officer of a local pretrial services agency and any officer of a local community-based probation program operated pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) will have access to a person's records in juvenile court without a court order for the purpose of preparing the discretionary sentencing guidelines worksheets and related risk assessment instruments as directed by the circuit court. HB 1205 also provides access of a defendant's records in the juvenile court for the purpose of preparing the discretionary sentencing guidelines worksheets and related risk assessment instruments *without a court order*. The addition of *without a court order* does not appear to be a substantive change in the current law.



**HB 310 Access of juvenile record information.**

*An Act to amend and reenact §§ 16.1-305 and 19.2-389.1 of the Code of Virginia, relating to access of juvenile record information. Patron: Howell*

HB 310 allows access of a juvenile's confidential juvenile court records by a local community-based probation agency for the purpose of preparing a pretrial investigation report, or a pre-sentence or post-sentence report upon a finding of guilty in a circuit court. Any officer of a local pretrial services agency and any officer of a local community-based probation program operated pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) will have access to a person's records in juvenile court without a court order for the purpose of preparing the discretionary sentencing guidelines worksheets and related risk assessment instruments as directed by the circuit court. The purpose of the pretrial investigation report is intended to provide better information and services for use by judicial officers in determining the risk to public safety and the assurance of appearance of persons held in custody and charged with an offense, other than an offense punishable by death, who are pending trial or hearing in circuit court. This bill provides the necessary access to records that such persons are to use when completing these reports.

The second part of this bill provides access to juvenile court records without a court order by local adult probation officers for the purpose of a community-based probation program operated pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders. The purpose of the community-based corrections program is to provide the judicial system with sentencing alternatives for certain adult misdemeanants or persons convicted of nonviolent felonies for whom the court may impose a jail sentence and who may require less than institutional custody.

HB 310 also provides access of a defendant's records in the juvenile court for the purpose of preparing the discretionary sentencing guidelines worksheets and related risk assessment instruments *without a court order*. The addition of *without a court order* does not appear to be a substantive change in the current law. The amendments to Virginia Code § 16.1-305 made by HB 310 are consistent with the amendments made by HB 1205.

**HB 1344 Confidentiality of juvenile court records; exceptions.**

*An Act to amend and reenact § 16.1-305 of the Code of Virginia, relating to confidentiality of court records; exceptions. Patrons: Hurt and Marrs*

Virginia Code § 16.1-305 provides the statutory authority for the juvenile court to release a juvenile's confidential court record. HB 1344 amends Virginia Code § 16.1-305 by creating an exception to the confidentiality of juvenile court records. HB 1344 allows the attorney for the Commonwealth and the adult probation officer direct access to a defendant's juvenile court delinquency records maintained in an electronic format by the Supreme Court's data information system (CAIS) for the strictly limited purpose of preparing a pre-sentence report, discretionary sentencing guidelines, or for any transfer or sentencing hearing.

As a result of this legislation, Commonwealth's Attorneys and adult probation officers will be able to access a juvenile's court records electronically rather than obtaining a hard copy via the local clerk's office.

**HB 692 Reporting of certain acts to school authorities.**

*An Act to amend and reenact § 22.1-279.3:1 of the Code of Virginia, relating to reporting of certain acts to school authorities.*

**1.00 School Personnel Must Report Certain Incidents to Principal**

Virginia Code § 22.1-279.3:1 requires school personnel to make reports of certain acts to school authorities. Subsection A requires a report to be made to the principal of a school or his designee anytime there is an act involving:

- (i) the assault, assault and battery, sexual assault, death, shooting, stabbing, cutting, or wounding of any person on a school bus, on school property, or at a school-sponsored activity;
- (ii) any conduct involving alcohol, marijuana, a controlled substance, imitation controlled substance, or an anabolic steroid on a school bus, on school property, or at a school-sponsored activity, *including the theft or attempted theft of student prescription medications*;
- (iii) any threats against school personnel while on a school bus, on school property or at a school-sponsored activity;
- (iv) the illegal carrying of a firearm onto school property;
- (v) any illegal conduct involving firebombs, explosive materials or devices, or hoax explosive devices, as defined in § 18.2-85, or explosive or incendiary devices, as defined in § 18.2-433.1, or chemical bombs, as described in § 18.2-87.1, on a school bus, on school property, or at a school-sponsored activity; or
- (vi) any threats or false threats to bomb, as described in § 18.2-83, made against school personnel or involving school property or school buses.

**1.10 The New Reporting Requirement: Prescription Medications, i.e., Oxycontin**

HB 692 only makes one change to Virginia Code § 22.1-279.3:1 by adding to the reporting requirement in subsection A any theft or attempted theft of student prescription medications. The *theft or attempted theft of student prescription medications* must be reported by school staff to the school principal. In turn, the school principal must report the offense to the division superintendent for annual reporting to the Department of Education.

**2.00 Joint Subcommittee to Investigate the Improper Prescription and Illegal Use and Diversion of Ritalin and OxyContin**

This bill was a recommendation of the HJR 660 Joint Subcommittee to Investigate the Improper Prescription and Illegal Use and Diversion of Ritalin and OxyContin and to Study the Effects of Attention Deficit Disorder and Attention Deficit Hyperactivity Disorder on Student Performance.

**HB 308 Reporting of criminal justice record information.**

*An Act to amend the Code of Virginia by adding a section numbered 19.2-390.01, relating to criminal justice record information; codes required. Patrons: McDonnell; Senator: Stolle*

**1.00 Use of VCC Codes by Law-Enforcement, Public Safety and Judicial Agencies**

HB 308 creates Virginia Code § 19.2-390.01 to require criminal justice agencies, law-enforcement agencies and judicial branch agencies to use Virginia crime code references. All charging documents issued by magistrates, and all criminal warrants, criminal indictments, informations and presentments, criminal petitions, misdemeanor summonses, and the dispositional documents from criminal trials to include the Virginia crime code references for the particular offense or offenses covered. All reports to the Central Criminal Records Exchange and to any other criminal offense or offender database maintained by the Supreme Court of Virginia, the Department of Corrections, the Department of Juvenile Justice, the Virginia Parole Board, and the Department of Criminal Justice Services must include the Virginia crime code references for the particular offense or offenses covered. The Virginia crime code references will be maintained and administered by the Virginia Criminal Sentencing Commission.

**2.00 Interagency Workgroup to Study Implementation**

HB 308 creates an interagency workgroup to submit a written plan for accomplishing the requirements of HB 308 to the Crime Commission by December 1, 2002. The interagency workgroup consists of the Departments of Criminal Justice Services, State Police, Juvenile Justice, Corrections, and of the Compensation Board, Criminal Sentencing Commission, the Commonwealth's Attorneys' Services Council, the Virginia Association of Chiefs of Police, the Sheriffs' Association, and the Office of the Executive Secretary of the Virginia Supreme Court, shall meet, identify the necessary steps and submit a written plan for accomplishing the requirements of this act to the Virginia State Crime Commission by December 1, 2002. The Virginia State Crime Commission will coordinate the activities of this group.

**3.00 Reenactment Clause**

HB 308 will not become effective unless reenacted by the 2003 Session of the General Assembly.

**D. Truancy and Driving Privileges**

**HB 160 Denial of driver's license for truancy.**

*An Act to amend and reenact § 16.1-278.9 of the Code of Virginia, relating to revocation of driver's license for truancy.*

**1.00 Current Law - Suspension of Driver's License for Truancy Offenses: Va. Code § 16.1-278.9(A1) (The New Stuff)**

Subsection A1 of Virginia Code § 16.1-278.9 allows the court to suspend a juvenile's driver's license for an offense relating to truancy as defined in Virginia Code § 22.1-258. A juvenile between the years of age 13 and 15 who has violated a truancy offense will lose his license for at least thirty days when that juvenile attains the age of 16 and three months. A juvenile who is 16 years and three months of

age or older and has violated a truancy offense will lose his license for at least thirty days from the date of disposition.

## **2.00 Language: Enhanced Penalty for 2<sup>nd</sup> or Subsequent Truancy Violation**

HB 160 adds a new paragraph to subsection A1 that allows the court to suspend a juvenile's license for one year or up to the age of eighteen for a second or subsequent truancy offense. If the court finds a second or subsequent truancy offense, the court may order the denial of a driver's license for a period of one year or until the juvenile reaches the age of eighteen, whichever is longer. Or, the court may delay the child's ability to apply for a driver's license for one year following the date he reaches the age of sixteen and three months.

### **SB 655 Driving privileges.**

*An Act to amend and reenact §§ 16.1-278.9, 46.2-307, 46.2-308 and 46.2-309 of the Code of Virginia, relating to driving privileges.*

SB 655 ensures that Virginia Code §§ [16.1-278.9](#), [46.2-307](#), [46.2-308](#), and [46.2-309](#) are consistent with legislation enacted during the 2001 General Assembly Session that raised the legal age for acquiring a driver's license to *the age of 16 and three months*. Virginia Code § [16.1-278.9](#) provides the court with the dispositional option of suspending a juvenile's driver's license for offenses involving alcohol, firearm, drug offenses, and truancy. The denial of driving privileges will be for a period of six months unless the offense is committed by a child under the age of *16 years and three months*, in which case the child's ability to apply for a driver's license shall be delayed for a period of six months following *the date he reaches the age of 16 and three months*. This bill also ensures that the new age requirement for obtaining a driver's license applies to non-residents of Virginia.

## **E. Domestic Issues: Custody, Visitation, Protective Orders, Child Abuse**

### **HB 1001 Custody and visitation - testimony.**

*An Act to amend the Code of Virginia by creating a section numbered 20-124.3:1, relating to custody and visitation; confidentiality of mental health records Patron: McDonnell; Effective July 1, 2003.*

HB 1001 **creates** § [20-124.3:1](#) relating to the testimony of a mental health care provider in a custody or visitation controversy in a circuit court or a district court.

## **1.00 Therapy Records of a Mental Health Care Provider are Privileged Information**

HB 1001 ensures that the therapy records of a party to a custody or visitation proceeding remain privileged and confidential. New subsection A of § [20-124.3:1](#) provides that in cases involving custody or visitation of a minor child pursuant to § [20-124.2](#), whether in a circuit or district court, the records concerning a parent, kept by any licensed mental health care provider and any information obtained during or from therapy are privileged and confidential.

## **2.00 Mental Health Care Provider not Required to Testify**

Subsection B of § 20-124.3:1 states that a mental health care provider licensed in the Commonwealth is not be required to testify in a custody or visitation hearing on behalf of or against a parent or any of the parent's adult relatives.

### **2.10 Therapist may Testify with Written Consent of Parent**

A mental health care provider may only testify in a custody or visitation hearing with the advance written consent of the parent.

### **2.20 Testimony Limited to Custody and Visitation Issue**

If the mental health care provider testifies, that testimony must be limited to the custody or visitation case in question. The mental health care provider's records and notes regarding that parent are admissible in the court proceeding.

### **2.30 Testimony may Concern Alleged Child Abuse or Neglect**

The court may order a licensed mental health care provider to testify on matters specifically related and limited to suspicion of an abused or neglected child as defined in Virginia Code § 63.1-248.2.

## **3.00 Delayed Enactment Clause: July 1, 2003!**

HB 1001 does not become effective until July 1, 2003.

### **HB 1224 Child custody proceedings.**

*An Act to amend and reenact § 16.1-278.15 of the Code of Virginia, as it is currently effective and as it shall become effective, relating to custody and visitation. Patrons: Jones, J.C., Almand and Watts*

## **1.00 Summary**

Virginia Code § 16.1-278.15 provides the juvenile and domestic relations district court the authority to determine cases involving the custody, visitation, or support of a child commensurate with the powers of the circuit court. HB 1224 provides that the juvenile and domestic relations district court has the authority to order psychological or custody evaluations and/or drug testing of a parent, guardian, legal custodian, or person standing in loco parentis to the child.

The purpose of the legislation is to codify powers already inherent within the juvenile court. Given that the bill codifies powers already inherent within the juvenile court, the impact upon the current process should be minimal. It should be noted that the language pertaining to the court's ability to order drug testing or a psychological evaluation is discretionary and not mandatory. The language providing the court with the authority to order a party to pay for the evaluation or drug test is also discretionary. The intent, however, is to make the parties to the proceeding responsible for the costs of the tests or evaluations.

Please note, there are two Virginia Code § 16.1-278.15. One section is in effect until July 1, 2003 and the second section takes effect on July 1, 2003.

## **2.00 Custody, Visitation, Child or Spousal Support Proceedings: Va. Code § 16.1-278.15**

Subsection A of Virginia Code § 16.1-278.15 gives the juvenile court the same powers as the circuit court in matters involving the custody, visitation or support of a child pursuant to subdivision A 3 of § 16.1-241 (jurisdiction of the juvenile court). The juvenile court may make any order of disposition to protect the welfare of the child and family as may be made by the circuit court.

## **3.00 Court Ordered Psychological Evaluations in Custody or Visitation Proceedings: Va. Code § 16.1-278.15(G) NEW!**

New subparagraph G states that, in a custody or visitation proceeding of a child, the court may order a custody or a psychological evaluation of any parent, guardian, legal custodian or person standing in loco parentis to the child if the psychological evaluation will assist in making a determination.

### **3.10 Payment for Evaluations by the Parties to the Proceedings - New**

Language in new subparagraph G states that, “The court may enter such orders as it deems appropriate for the payment of the costs of the evaluation by the parties.” Please note, payment for such evaluations is intended to be paid by the parties. The parties to the proceeding would be the persons contesting the custody or visitation.

## **4.00 Court Ordered Drug Testing in Custody or Visitation Proceedings: Va. Code § 16.1-278.15(H) NEW!**

New subparagraph H allows the juvenile court to order drug testing of any parent, guardian, legal custodian or person standing in loco parentis to the child if appropriate.

### **4.10 Payment for Evaluations by the Parties to the Proceedings - New**

Language in new subparagraph H states, “The court may enter such orders as it deems appropriate for the payment of the costs of the testing by the parties.” Please note, payment for such testing is intended to be paid by the parties. The parties to the proceeding would be the persons contesting the custody or visitation.

## **5.00 The Second Virginia Code § 16.1-278.15 (Effective July 1, 2003).**

As mentioned above, there are two Virginia Code § 16.1-278.15. The only substantive change from current Virginia Code § 16.1-278.15 (effective until July 1, 2003) to the second Virginia Code § 16.1-278.15 (effective July 1, 2003) is the removal of the requirement for court ordered educational seminars for the contesting parties in a custody or visitation proceeding.

## **5.10 HB 1178: Education for Parents of Effects of Divorce – 2000 G.A.**

During the 2000 General Assembly session, HB 1178 was enacted (2000 Va. Acts ch. 586). HB 1178 added the requirement that the court orders the parents involved in custody and visitation case to attend



an educational seminar on the effects of separation or divorce on children, parenting responsibilities, options for conflict resolution, and financial responsibility.

### **5.20 Delayed Enactment: July 1, 2001**

Although HB 1178 was enacted during the 2000 General Assembly session, the law did not take effect until July 1, 2001.

### **5.30 Sunset Clause for HB 1178: July 1, 2003**

HB 1178 was also given a sunset clause meaning that the provisions requiring the educational seminar will expire on July 1, 2003.

### **5.40 Study by the Office of the Executive Secretary of the Supreme Court**

HB 1178 also required the Office of the Executive Secretary of the Supreme Court of Virginia to report to the General Assembly by January 1, 2003, on the provisions requiring the educational seminar for parents involved in a custody or visitation proceeding. The report is to include the number and geographical availability of such seminars, the actual cost of providing such seminars as reported by the participating programs, and any feedback received from judges regarding the effect of mandating seminar participation by court order.

#### **HB 416 Violations of custody or visitation order.**

*An Act to amend and reenact § 18.2-49.1 of the Code of Virginia, relating to violation of a court order regarding custody and visitation. Patron: Reese*

### **1.00 Felony Offense for Violating Court Order by Removing Child from Virginia: Va. Code § 18.2-49.1(A).**

Subsection A of Virginia Code § 18.2-49.1 makes it a felony offense for a person who violates a court order regarding custody and visitation by taking the child outside of Virginia. A person who knowingly, wrongfully and intentionally withholds a child from the child's custodial parent in a clear and significant violation of a court order respecting the custody or visitation of such child, provided such child is withheld outside of the Commonwealth, is guilty of a Class 6 felony.

### **2.00 Misdemeanor Offense for Violating Court Ordered Visitation or Custody – In-State: Va. Code § 18.2-49.1(B).**

Subsection B of Virginia Code § 18.2-49.1 makes it a misdemeanor offense for a person who knowingly, wrongfully and intentionally engages in conduct constituting a clear and significant violation of a court order respecting the custody or visitation of a child.

### **2.10 HB 416 Increases Misdemeanor Penalties (New Amendments)**

HB 416 increases the penalty for any person who knowingly, wrongfully and intentionally engages in conduct that constitutes a clear violation of a custody or visitation court order from a Class 4 to a Class 3 misdemeanor. HB 416 increases the penalty for a person who commits a second violation of this section within twelve months of a first conviction from a Class 3 to a Class 2 misdemeanor. The

penalty for a third violation occurring within twenty-four months of the first conviction is increased from a Class 2 to a Class 1 misdemeanor.

**SB 485 Stalking protective orders; confidentiality of identity.**

*An Act to amend and reenact §§ 19.2-152.8, 19.2-152.9 and 19.2-152.10 of the Code of Virginia, relating to stalking protective orders. Patron - Janet D. Howell*

**In brief:** SB 485 provides that, except when necessary for conduct of the criminal proceeding, the address, telephone number and place of employment of an allegedly stalked person may not be disclosed. The bill also requires that protective order information be entered into the Virginia Criminal Information Network (VCIN) upon receipt.

**1.00 Emergency Protective Orders in Cases of Stalking: Va. Code § 19.2-152.8.**

Virginia Code § 19.2-152.8 allows a judge or a magistrate to issue a written or oral ex parte emergency protective order to protect the health or safety of any person. An emergency protective order is valid for seventy-two hours.

**2.00 Preliminary Protective Orders in Cases of Stalking: Va. Code § 19.2-152.9.**

A court may issue a preliminary protective order against the alleged stalker in order to protect the health and safety of the petitioner or any family or household member of the petitioner. A preliminary protective order may be issued ex parte upon good cause shown when the petition is supported by an affidavit or sworn testimony before the judge or intake officer. A preliminary protective order is valid for up to fifteen days.

**3.00 Protective Orders in Cases of Stalking: Va. Code § 19.2-152.10.**

The court may issue a protective order to protect the health and safety of the petitioner and family or household members. The protective order may be issued for a specified period; however, unless otherwise authorized by law, a protective order may not be issued under for a period longer than two years.

**4.00 New Subsections Prohibiting the Disclosure of Victim's Addresses: Va. Code § 19.2-152.10(G)**

For each of the Virginia Code sections for the stalking protective orders, a paragraph protecting the address of the victim was inserted. Each new subsection prohibits the law-enforcement agency, the attorney for the Commonwealth, the court and any employee from disclosing, except among themselves, *the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.*



**HB 294 Child abuse and neglect investigations.**

*An Act to amend and reenact §§ 16.1-241.3, 32.1-127.1:03, 63.1-248.3, 63.1-248.6:01 and 63.1-248.6:02 of the Code of Virginia, relating to child abuse and neglect investigations.*

HB 294 requires all mandatory reporters of child abuse and neglect who maintain a record on the alleged victim to make information, records and reports that are relevant to the investigation available to the child protective services (CPS) investigator. The bill adds immunity from civil or criminal prosecution for persons providing information or records in good faith. Both amendments parallel provisions already existing in the adult abuse reporting statute. The bill also clarifies that this information may be provided irrespective of the prohibition against disclosing communications between physicians and patients. Finally, the bill has technical amendments.

DJJ probation officers and juvenile correctional center (JCC) staff are mandated reporters pursuant to Virginia Code § 63.1-248.3. Virginia Code § 63.1-248.3 requires DJJ probation officers and JCC staff who have reason to suspect alleged abuse or neglect of a juvenile under the supervision or custody of DJJ to report the matter immediately to the Department of Social Services. Currently, the statute requires the mandated reporter to disclose all information that is the basis for the suspicion of abuse or neglect of the child. The mandated reporter must make available to the CPS investigator the records or reports documenting the basis for the report. HB 294 adds that any “*information*” about the alleged abuse and neglect must also be shared with the CPS investigator. This change will have minimal, if any, impact upon DJJ. Current practice is to share all relevant information and records about an allegation of abuse or neglect with the CPS investigator. This bill ensures civil and criminal immunity for DJJ staff who provide information about alleged abuse or neglect during a CPS investigation.

**F. Miscellaneous Juvenile Justice Related Legislation**

**SB 533 Court services units.**

*An Act to amend and reenact § 16.1-235 of the Code of Virginia, relating to court services units.  
Patron: Senator Mims.*

This bill creates paragraph C in § 16.1-235 of the Virginia Code to allow localities currently served by a state-operated court service unit (CSU) to convert from a state-operated unit to a locally operated CSU. The bill reverses the legislative policy taken in the mid-1970s authorizing the Department to operate court service units (CSUs) in localities that requested inclusion in a statewide system of CSUs. Originally, no provision was made for localities to revert from a state-operated CSU to a locally operated CSU. The General Assembly’s historical concerns with maintaining uniform statewide services are expressed in Virginia Code § 16.1-235 “that uniform services, insofar as is practical, will be available to juvenile and domestic relations district courts throughout the Commonwealth.” Virginia Code § 16.1-234 continues the mandate on the Director of the Department to establish and operate “an adequate and coordinated program of probation, parole and related services...”

Currently, there are three locally operated CSUs and 32 state-operated CSUs in the Commonwealth. The bill will affect potentially all localities currently served by state-operated CSUs, those units themselves, and their staffs. The bill would also affect the Department of Juvenile Justice, which currently operates those 32 CSUs and oversees their administration through regional management structures. Converting from a state-operated unit to a locally operated unit will have an impact on the

locality's budget as the locality would have to pay all, rather than one-half, of the unit's operating costs and could have implications for retirement and other benefits when employees of the state units become local employees.

**HB 540 Sheriffs; courthouse and courtroom security.**

*An Act to amend and reenact § 53.1-120 of the Code of Virginia, relating to courthouse and courtroom security. Patrons: Landes and Weatherholtz; Senator: Hanger*

HB 540 provides that each sheriff shall ensure that the courthouses and courtrooms within his jurisdiction are secure from violence and disruption and shall designate deputies for this purpose. This does not appear to be a substantive change in the law.

**HB 507 Risk Management-Legal Service for Chaplains.**

*An Act to amend and reenact § 2.2-1837 of the Code of Virginia, relating to legal services and risk management plan for chaplains. Patrons: Drake and Cosgrove*

**1.00 Risk Management Plan: Civil Liability protection: Va. Code § 2.2-1837**

Virginia Code § [2.2-1837](#) requires the Division of Risk Management to establish a risk management plan, which may be purchased insurance, self-insurance or a combination of self-insurance and purchased insurance to provide Protection against liability imposed by law for damages resulting from civil claims made against state agencies and entities. The risk management plan serves to protect state agencies and staff for acts or omissions of any nature while acting in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization.

**2.00 Civil Liability Protection for Chaplains in Correctional Facilities**

HB 507 creates subsection H under Virginia Code § 2.2-1837 by requiring that the risk management plan provide protection against claims made against chaplains by persons incarcerated in a state correctional facility, a juvenile correctional center, or a facility operated pursuant to the Corrections Private Management Act (§ [53.1-261](#) et seq.) arising out of volunteer services provided by the chaplains to such incarcerated persons.

**2.10 Definition of Chaplain**

HB 507 defines chaplain. For the purposes of this section of the Code, chaplain means “only those persons, who, at the time any claim may arise, were acting pursuant to, and in compliance with, an agreement between the chaplain or an organization to which the chaplain belongs, and the Department of Corrections, the Department of Juvenile Justice, or an operator of a facility operated pursuant to the Corrections Private Management Act.”

## **PART II DJJ RELATED STUDIES**

### **HJ 142 & SJ 97 Study; treatment of offenders with mental illness or sub. abuse.**

*Continuing the study of certain mental health needs, training, and treatment issues, and requesting certain Secretaries and state agencies to provide information or commence specific action related to such issues.*

HJ 142 & SJ 97 are identical. HJ 142 and SJ 97 continue the study of certain mental health needs, training, and treatment issues. Last year, Senate Joint Resolution No. 440 (2001) directed the Joint Commission on Behavioral Health Care, in conjunction with the Virginia State Crime Commission and the Virginia Commission on Youth, to study treatment options for offenders with mental illness or substance abuse disorders. HJ 142 and SJ 97 continues the work of SJ 440. Sj 440 (2001) created the Committee Studying Treatment Options for Offenders with Mental Illness or Substance Abuse Disorders. HJ 142 and SJ 97 allows the Joint Commission on Behavioral Health Care and the Virginia Commission on Youth to continue the Committee Studying Treatment Options for Offenders with Mental Illness or Substance Abuse Disorders and to establish an interagency work group to provide assistance for the study.

#### **1.00 Interagency Work Group**

HJ 142 and SJ 97 create an interagency work group to assist the work of the Committee Studying Treatment Options for Offenders with Mental Illness or Substance Abuse Disorders. The interagency work group consists of representatives from: Department of Criminal Justice Services, Department of Corrections, Department of Juvenile Justice, Department of Mental Health, Mental Retardation and Substance Abuse Services, Department of Social Services, Virginia Association of Community Services Boards, Community Criminal Justice Boards, Virginia Sheriff's Association, Regional Jails Association, Office of Comprehensive Services Act, and the Virginia Council of Juvenile Detention Homes.

#### **2.00 Recommendations on how to Evaluate the Effectiveness of Treatment**

The Secretary of Public Safety, in conjunction with the Secretary of Health and Human Resources and the Secretary of Administration, must develop a plan for evaluating the effectiveness of treatment services. The report is due to the Committee Studying Treatment Options for Offenders with Mental Illness or Substance Abuse Disorders by September 30, 2002.

#### **3.00 Recommendations of Cross-Training Curriculum**

The Department of Mental Health, Mental Retardation and Substance Abuse Services, in conjunction with the Office of the Executive Secretary of the Virginia Supreme Court, the Department of Criminal Justice Services and the Department of Juvenile Justice must implement a curriculum for cross-training law-enforcement officers, judges, jail and detention home staff, and community mental health treatment staff in security and treatment services. A report by the agencies to the Committee Studying Treatment Options for Offenders with Mental Illness or Substance Abuse Disorders is due by September 30, 2002.

#### **4.00 Study on Management of Medications in DOC & DMHMRSAS**

The Department of Corrections and the Department of Mental Health, Mental Retardation and Substance Abuse Services must study the management of medications for offenders when they are released from state correctional facilities. The report is due to the Committee Studying Treatment Options for Offenders with Mental Illness or Substance Abuse Disorders by September 30, 2002.

#### **5.00 Model Court Order for Mental Health Services**

The Office of the Executive Secretary of the Supreme Court is requested to examine the feasibility of designing and implementing a model court order that addresses mental health services. The Departments of Criminal Justice Services, Corrections, and Mental Health, Mental Retardation and Substance Abuse Services and the Virginia Association of Community Services Boards, Community Criminal Justice Boards, the Virginia Sheriffs' Association, and the Regional Jails Association must provide assistance. The report is due to the Committee Studying Treatment Options for Offenders with Mental Illness or Substance Abuse Disorders by September 30, 2002.

#### **6.00 Communicating Innovative Treatment Practices**

The Department of Mental Health, Mental Retardation and Substance Abuse Services is requested to explore ways to communicate information about innovative practices among providers of mental health and substance abuse treatment services to offenders. The report is due to the Committee Studying Treatment Options for Offenders with Mental Illness or Substance Abuse Disorders by September 30, 2002.

#### **7.00 Study on Accessing Medicaid Benefits for Offenders**

The Department of Medical Assistance Services, in conjunction with the Department of Corrections and the Department of Juvenile Justice must study ways to access Medicaid benefits for offenders when they are released from prisons, jails, juvenile correctional centers or detention homes. The report is due to the Committee Studying Treatment Options for Offenders with Mental Illness or Substance Abuse Disorders by September 30, 2002.

#### **8.00 Uniform Mental Health Screening Tool**

The Department of Juvenile Justice must design and implement a uniform mental health screening instrument for juveniles admitted to secure detention facilities. A report concerning the feasibility of implementing a uniform screening tool is due to the Committee Studying Treatment Options for Offenders with Mental Illness or Substance Abuse Disorders by September 30, 2002.

#### **SJ 52 Comprehensive Services Act Fee Directory.**

*Requesting the State Executive Council of the Virginia Comprehensive Services Act for At-Risk Youth and Families to review the information available in the Comprehensive Services Act Fee Directory.*

Agreed to by the Senate, January 25, 2002

Agreed to by the House of Delegates, March 5, 2002

The State Executive Council of the Virginia Comprehensive Services Act for At-Risk Youth and Families must improve and revise the system through which provider information is placed in the

Directory, including the procedures by which the information is updated and verified. The updated directory of CSA services must be completed and available to the public by July 1, 2002.

**SJ 94 Study; hospital bed shortage for mental health treatment.**

*Directing the Joint Commission on Behavioral Health Care, in conjunction with the Joint Commission on Health Care, or their successors in interest, to study and recommend long-term solutions to the shortage of inpatient psychiatric beds and the adequacy of access to outpatient mental health treatment.*

Agreed to by the Senate, March 6, 2002

Agreed to by the House of Delegates, March 5, 2002

SJ 94 directs the Joint Commission on Behavioral Health Care, in conjunction with the Joint Commission on Health Care, to study and recommend long-term solutions to the shortage of inpatient psychiatric beds and the adequacy of access to outpatient mental health treatment.

The Commissions must submit their report to the Governor and the 2003 Session of the General Assembly.

**SJ 99 Study; treatment for children with mental illness.**

*Directing the Virginia Commission on Youth, or its successor in interest, to coordinate the collection and dissemination of empirically-based information on treatment modalities and practices recognized as effective for the treatment of children, including juvenile offenders, with mental health treatment needs, symptoms and disorders.*

Agreed to by the Senate, March 6, 2002

Agreed to by the House of Delegates, March 5, 2002

This initiative is a recommendation of the Virginia Commission on Youth's Study of Children and Youth with Serious Emotional Disturbance Requiring Out-of-Home Placement (HJ 119, 2000) and the Committee Studying Treatment Options for Offenders with Mental Illness or Substance Abuse Disorders (SJ 440, 2001). The resolution is identical to HJ 119 (Tata) and HJ 165 (Darner). HJR165 was incorporated into HJ 119. HJ 119 failed to make it out of House Rules.

SJ 99 requires the Virginia Commission on Youth to coordinate the collection and dissemination of empirically-based information on treatment modalities and practices recognized as effective for the treatment of children, including juvenile offenders, with mental health treatment needs, symptoms and disorders.

SJ 99 continues an advisory committee comprised of state and local representatives from the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services, Virginia Department of Social Services, Virginia Department of Medical Assistance Services, Virginia Department of Juvenile Justice, Virginia Department of Education, Virginia Department of Health, Virginia Office of Comprehensive Services, private providers and parent representatives. The Commission on Youth must report its findings to the General Assembly through the Senate Committee on Education and Health, the Senate Committee on Rehabilitation and Social Services, the House Committee on Health, Welfare and Institutions, and to the Division of Legislative Services, no later than November 30, 2002.

**SJ 102 Study; funding for children under Comprehensive Services Act.**

*Requesting the Secretary of Health and Human Resources to identify viable incentives to encourage localities to enhance or maintain levels of funding for children who are non-mandated under the Comprehensive Services Act.*

Agreed to by the Senate, February 12, 2002

Agreed to by the House of Delegates, March 5, 2002

SJ 102 requests the Secretary of Health and Human Resources to identify local revenue sources and funding for children who are non-mandated under the Comprehensive Services Act. A report is due to the General Assembly through the Senate Committee on Education and Health and the House Committee on Health, Welfare and Institutions, and to the Division of Legislative Services by November 30, 2002.

**HB 308 Crime code references.**

*An Act to amend the Code of Virginia by adding a section numbered 19.2-390.01, relating to criminal justice record information; codes required.*

**1.00 Use of VCC Codes by Law-Enforcement, Public Safety and Judicial Agencies**

HB 308 creates Virginia Code § [19.2-390.01](#) to require all charging documents issued by magistrates, and all criminal warrants, criminal indictments, informations and presentments, criminal petitions, misdemeanor summonses, and the dispositional documents from criminal trials to include the Virginia crime code references for the particular offense or offenses covered. All reports to the Central Criminal Records Exchange and to any other criminal offense or offender database maintained by the Supreme Court of Virginia, the Department of Corrections, the Department of Juvenile Justice, the Virginia Parole Board, and the Department of Criminal Justice Services must include the Virginia crime code references for the particular offense or offenses covered. The Virginia crime code references will be maintained and administered by the Virginia Criminal Sentencing Commission.

**2.00 Interagency Workgroup to Study Implementation**

HB 308 creates an interagency workgroup to submit a written plan for accomplishing the requirements of HB 308 to the Crime Commission by December 1, 2002. The interagency workgroup consists of the Departments of Criminal Justice Services, State Police, Juvenile Justice, Corrections, and of the Compensation Board, Criminal Sentencing Commission, the Commonwealth's Attorneys' Services Council, the Virginia Association of Chiefs of Police, the Sheriffs' Association, and the Office of the Executive Secretary of the Virginia Supreme Court, shall meet, identify the necessary steps and submit a written plan for accomplishing the requirements of this act to the Virginia State Crime Commission by December 1, 2002. The Virginia State Crime Commission will coordinate the activities of this group.

**3.00 Reenactment Clause**

HB 308 will not become effective unless reenacted by the 2003 Session of the General Assembly.

**HB 30 Budget Bill. Appropriations for 2002-04 biennium.**

“Current biennium” means the period from the first day of July two thousand two, through the thirtieth day of June two thousand four, inclusive.

**1.00 Appropriations Act, Item 401 A, Juvenile Offender Population Forecasts**

The Secretary of Public Safety must present revised state and local juvenile and state and local responsibility adult offender population forecasts to the Governor, the Chairmen of the House Appropriations and Senate Finance Committees, and the Chairmen of the House and Senate Courts of Justice Committees by October 15, 2002, for each fiscal year through FY 2007 and by October 15, 2003, for each fiscal year through FY 2008.

**2.00 Appropriations Act, Item 401 B, Culpeper JCC Plan**

The Secretary of Public Safety, in consultation with the Subcommittees on Public Safety of the House Appropriations and Senate Finance Committees, must develop a plan for the cost-effective utilization of the Culpeper Juvenile Correctional Center. Prior to the implementation of any plan to change the utilization of this facility, the Governor must approve and communicate the plan to the Chairmen of the House Appropriations and Senate Finance Committees.

**3.00 Appropriations Act, Item 443 E 3, VJCCCA Guidelines**

The Board of Juvenile Justice must establish guidelines for use in determining the types of programs for which VJCCCA funding may be expended. The Department must provide copies of the guidelines to the Chairmen of the House Appropriations and Senate Finance Committees no later than December 19, 2002.

The Department must establish a format to receive biennial or annual requests for funding from localities, based on these guidelines. For each program requested, the plan shall document the need for the program, goals, and measurable objectives, and a budget for the proposed expenditure of these funds and any other resources to be committed by localities.

**4.00 Appropriations Act, Item 443 F, VJCCCA Annual Report**

The Department must provide annual reports to the Chairmen of the House Appropriations and Senate Finance Committees on the progress of Virginia Juvenile Community Crime Control Act programs. The annual report must address the requirements of §16.1-309.3, Code of Virginia, as well as identifying the number of juveniles served, the average cost for residential and nonresidential services, the number of employees, and descriptions of the contracts entered into by localities, pursuant to §§16.1-309.2 through 16.1-309.10, Code of Virginia.

**5.00 Appropriations Act, Item 440, Land Conveyance at Beaumont**

The Department of Juvenile Justice must convey to the Department of Conservation and Recreation title to a minimum of 1,500 acres, to include river frontage, of property adjacent to the Beaumont Juvenile Correctional Center in Powhatan County for the development of a state park. The Department of Juvenile Justice and the Department of Conservation and Recreation must develop a plan to divide

the property in such a manner as to maximize recreational opportunities and public access to the park, while ensuring the security of the Correctional Center and an adequate buffer to limit access to the areas immediately adjacent to the Correctional Center. The plan must address the ability of the Department of Corrections to continue agribusiness operations on the property and also shall seek to maximize use of adult and juvenile inmate labor to develop the property into a park.

The plan is due to the Secretaries of Public Safety and Natural Resources and the Chairmen of the House Appropriations and Senate Finance Committees prior to conveyance of the property, but no later than October 1, 2002.

### **Part III CARRIED OVER LEGISLATION**

Pursuant to Section 7 of Article IV of the Constitution of Virginia, legislative continuity is hereby provided for between sessions occurring during the terms for which members of the House of Delegates are elected, in conformity with the Rules of the House of Delegates and the Rules of the Senate. The standing committees of the General Assembly must complete their consideration of all legislation continued by them from the 2002 Regular Session no later than midnight, Monday, December 9, 2002.

#### **HB 25 Juvenile not guilty by reason of insanity.**

*A BILL to amend and reenact §§ 2.2-5211 and 2.2-5212 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 11 of Title 16.1 an article numbered 8.1, containing sections numbered 16.1-277.2 through 16.1-277.8, relating to the finding of a juvenile not guilty by reason of insanity. Patrons: Darner and McDonnell; Senators: Mims and Trumbo, House: Continued to 2003 in Courts of Justice (22-Y 0-N)*

#### **1.00 In Brief**

HB25 recognizes the finding of "not responsible because of mental illness or mental retardation" for a child charged with a delinquent act in juvenile court proceedings. The bill closely parallels the adult statute on not guilty by reason of insanity. If the court finds a child not responsible, and the child poses an unreasonable risk to the community, the court may commit the child to the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) for treatment. If the child does not pose a risk, the court may refer the child as one in need of services to the local family assessment and planning team for services under the Comprehensive Services Act for At-Risk Youth and Families. The bill adds such children to the mandated service pool under the Act. This same legislation was introduced during the 2001 General Assembly (HB 2653), but failed to make it out of the Senate.

#### **2.00 Commonwealth v. Chapman: HB 25 in Response to Va. Supreme Court Decision**

The Virginia Supreme Court recently ruled that juveniles do not have a constitutional right to an insanity defense if not granted such a defense by Code. This bill is a recommendation of the Virginia Bar Association, which was requested by the General Assembly (see HJR 680, 1999) to review this area of the law. See also *Commonwealth v. Chapman*, 30 Va. App, 593, 601, 518 S.E.2d 847, 851 (1999) rev'd Virginia Supreme Court, November 3, 2000, Record No. 992706, where the Supreme Court held that the insanity defense is not available to juveniles absent specific statutory authority.



The Virginia Code is silent on the issue of whether a juvenile has a right to an “insanity” defense in J&DR courts. The recent Virginia Supreme Court ruling stated that juveniles do not have a constitutional right to an insanity defense and that without a legislative determination of such a right, the defense could not be raised in juvenile court. Adults have access to such a defense, and a recent multi-agency committee chaired by the Virginia Bar Association recommended legislation to create such a right. This bill is the result. The major impact would be on DMHMRSAS, who would be responsible for the treatment of these youth if the judge finds them to be dangerous to the community; and CSA, if they are found not dangerous, as they will be mandated for services.

### 3.00 Potentially Significant Fiscal Implications

This same legislation was introduced during the 2001 General Assembly (HB 2653). HB 2653 passed the House, but failed to make it out of Senate Finance, apparently due to the bill’s fiscal impact. DPB’s preliminary expenditure impact for HB 2653 was \$7,928,176. In the 2001 Fiscal Impact Statement completed by the Department of Planning and Budget, it was estimated that there would be 36 juveniles found not delinquent by reason on insanity. DPB estimated that 12 of these cases would be served through the Comprehensive Services Act and 24 through the Department of Mental Health, Mental Retardation, and Substance Abuse Services annually. The annual service cost was projected to be \$175,152 for each of the estimated 12 cases. Since HB 2653 did not require a local share, as with all other CSA services the state would pay the entire annual cost of **\$2,201,824 (GF)**. Given that there are no existing secure child/adolescent public facilities, acute psychiatric services would be purchased from private vendors in the community. An initial estimate based on annual cost for 24 clients at \$650/day in secure private setting, projects a need of **\$5,694,000 (GF)**. The cost of an insanity proceeding in JDR court was estimated at **\$32,352**.

**HB 424 Juveniles; duty of person taking child into custody.**

*A BILL to amend and reenact § 16.1-247 of the Code of Virginia, relating to duties of a person taking a child into custody Patron: McQuigg, House: Continued to 2003 in Courts of Justice (21-Y 0-N)*

HB 424 amends Virginia Code § 16.1-247, which provides the duties of a person who has taken a juvenile into custody pursuant to Virginia Code § 16.1-246. HB 424 requires that whenever a child, who is under 15 years of age, is taken into custody regarding the commission or alleged commission of certain acts and such child is deprived of his freedom, the person taking the child into custody shall,

- (i) advise the child of such deprivation of freedom;
- (ii) advise the child that he has the right to counsel and to have present his parent, guardian, legal custodian or other person standing in loco parentis;
- (iii) notify such counsel or parent, guardian, legal custodian or other person standing in loco parentis; and
- (iv) not interrogate the child until such parent, guardian, legal custodian or other person standing in loco parentis is present.

Pursuant to Virginia Code § 16.1-247, a juvenile probation officer has the powers of arrest consistent with that of a police officer when so specified by the judge. Therefore, this bill may affect juvenile probation officers, specifically intake officers, if they have been granted authority by the judge to perform the police function of taking a child into custody. In most circumstances, the child would be taken into custody by law enforcement personnel prior to coming before an intake officer or following

the intake process as a result of a detention order. This bill may have a significant impact upon an intake officer who is attempting to interview a juvenile who has been arrested but whose parent is not present or whose attorney cannot be contacted.

When a juvenile is taken into custody, a juvenile should be made clearly aware of the fact that he is in custody and that he has the right to counsel and to have his parent, guardian, legal custodian or other person standing in loco parentis present. In fact, an amendment removing the “under the age of fifteen years” requirement may be appropriate. However, the requirements in (iii) and (iv) may be problematic. Those two subsections significantly undermine the intake officer’s ability to proceed on an informal basis with diversion. In fact, this bill could be construed to be in conflict with Virginia Code § 16.1-261. That section of the Code prohibits any statements made by a child to the intake officer or probation officer during the intake process as admissible as evidence against the juvenile at any stage of the proceedings.

Moreover, under this bill, if a law enforcement officer brings a juvenile to an intake officer upon a complaint, the intake officer will not be allowed to act unless the parents of the child are present and the attorney of the child has been contacted. The parents may not be available or refuse to be available. If the complaint is filed in the middle of the night, the attorney may not be available. In such case, the juvenile may be held indefinitely until the parents arrive and the attorney has been contacted.

**HB 1246 Juvenile placement in a secure facility.**

*A BILL to amend and reenact § 16.1-284.1 of the Code of Virginia, relating to juvenile placement in secure local facilities; penalty. Patron: Darner, House: Continued to 2003 in Courts of Justice (22-Y 0-N)*

HB 1246 amends Virginia Code §16.1-284.1 concerning placing a juvenile in post-dispositional (Post-D) detention. Post-D detention is a dispositional alternative available to a judge for a juvenile who has been adjudicated (convicted) of a certain offense. There are two categories of post-D detention: (1) the judge may sentence a juvenile to a detention home for up to 30 days and (2) the judge may sentence a juvenile to a detention home for up to six months. If the court places a juvenile in post-D detention for up to six months under option (2), then the court must also specify conditions for the juvenile's participation in one or more community treatment programs as may be appropriate for the juvenile's rehabilitation. During the six-month post-dispositional detention, the court must conduct a mandatory review hearing at least once every 30 days and may release the juvenile on probation and under conditions as the court may specify.

Currently, a court can only place a juvenile in post-D detention if the juvenile is 14 years of age or older, but the court may commit a juvenile to the Department of Juvenile Justice if the juvenile is 11 years of age or older. This bill was apparently introduced to address this discrepancy. HB 1246 lowers the age requirement for post-D detention from 14 years of age or older to “older than ten years of age.”

The age provision in HB 1246 is identical to a provision contained in a bill this Department proposed in 2000 (Senate Bill 66, Patron – Senator Mims). SB 66 passed the Senate but ran into significant problems in the House of Delegates. House Courts of Justice Committee removed the provision pertaining to the “older than ten years of age” requirement for placing a juvenile in post-D detention. The House had concerns that local detention facilities were ill equipped and insufficiently funded to handle juveniles in post-D detention facilities who were younger than 14 years of age.

The issue remains with the inconsistency with the age at which a juvenile may be committed to the Department (11 years or older) and the age at which a juvenile may be placed in post-D detention facility (14 years or older). It is possible that some juveniles between the ages of 11 and 14 who were committed to a juvenile correctional center may have been placed in a detention facility if the committing court had that option. Currently, there are 22 local and regional detention facilities and one state-operated detention facility. Therefore, any increase localities may experience in detention population would be minimal.

**SB 408 Compulsory school attendance, truancy and chronic tardiness.**

*A BILL to amend and reenact §§ 16.1-228, 22.1-258, 22.1-259, 22.1-266, 22.1-267, and 22.1-279.3 of the Code of Virginia, relating to compulsory school attendance. Patrons: Rerras; Delegates: Drake, McDonnell and Sears, Senate: Continued to 2003 in Finance (15-Y 0-N)*

**1.00 In Brief**

SB 408 incorporates the concept of tardiness into the reporting, recordkeeping, and enforcement provisions of the compulsory school attendance law and other enforcement provisions relating to the welfare of children, including the law relating to juvenile and domestic courts and the parental responsibility law relating to public education and discipline.

**2.00 History**

As a result of a Commission on Youth study, the 1999 General Assembly strengthened the truancy laws to hold students more accountable for unexcused absences. The 1999 legislation amended the time frames necessitating action by the school and requiring juvenile court intervention.

**3.00 1999 Budget Amendments**

On behalf of the Commission on Youth, Delegates Jackson & Diamonstein and Senator Holland submitted budget amendments to provide \$1,003,941 and 27.00 FTE positions from the general fund to provide probation officers to 27 Court Services Units to act as court liaison officers in truancy cases. This was recommendation of the Commission on Youth.

As passed, the 1999 budget bill only provided \$125,000 and 3.00 FTE positions from the general fund to provide probation officers to three Court Services Units to provide court liaison officers for **truancy** cases.

**The 1999 truancy law took effect on July 1, 1999.**

**4.00 Current Law: Following Seventh Unexcused Absence – Mandated Juvenile Court Action**

Following the pupil's seventh absence without parental awareness and support, the attendance officer must initiate juvenile court proceedings.

The 1999 legislation **required** an intake officer **to file a petition** with the juvenile court when a juvenile is the subject of a complaint filed pursuant to §22.1-258 and the attendance officer has

provided documentation to the intake officer following the pupil's seventh absence without parental awareness and support.

### **5.00 CHINS Petition Growth Comparison Since July 1, 1999**

- The number of CHINS petitions involving a runaway complaint grew by 4% between July 1, 1998 and June 30, 2001.
- The number of CHINS petitions involving a domestic service complaint grew by 12% between July 1, 1998 and June 30, 2001.
- However, the number of CHINS petitions involving a truancy complaint grew by 46% between July 1, 1998 and June 30, 2001.
- The number of CHINS petitions involving a truancy complaint resulting in new probation cases grew by 44% between July 1, 1998 and June 30, 2001.

CHINS petitions involving truancy complaints grew at a significantly greater rate than runaway complaints or domestic service complaints since enactment of the 1999 changes to the truancy laws.

### **6.00 2002 Amendments: SB 408 Raises Tardiness to the Same Level that the 1999 Legislation Raised Truancy**

SB 408 redefines "child in need of supervision" (CHINS) in Va. Code § 16.1-228 to include a juvenile who is habitually and without justification absent from school *for an entire school day or any part thereof*.

### **7.00 Mandated CHINS petition for Tardiness**

SB 408 amends § 22.1-258 so that, upon the seventh absence *or any part thereof* by a student without the student's parent aware of and supporting the absence *or any part thereof*, the attendance officer or the division superintendent **must** file a complaint with the juvenile and domestic relations court alleging the pupil is a child in need of supervision as defined in Virginia Code § 16.1-228.

### **8.00 2002 Estimated Fiscal Impact**

In attempting to estimate the fiscal impact of SB 408, the Department looked at the impact of the 1999 truancy legislation and assumed that there may be a commensurate number of tardiness cases as there were truancy cases in FY 2001.

Given the number of intakes and probation cases that may result from this legislation, and taking into consideration the results of a recent probation workload analysis by the National Council on Crime and Delinquency, we estimate that the workload would require the full-time focus of fifteen probation staff. *This is a minimum estimate*, because it does not take into consideration other duties of the probation staff. (Please note, the Commission on Youth recommended 27 full time probation officers to accommodate the 1999 truancy law changes.)

An additional fifteen probation staff would cost \$707,535, annually. This impact applies to the Department of Juvenile Justice only. It does not consider the potential impact to the judiciary or the local school systems.

**SB 641 Protective orders; family abuse.**

*A BILL to amend the Code of Virginia by adding sections numbered 16.1-93.2 and 16.1-253.5, relating to protective orders in cases of dating violence. Patron: Watkins, House: Continued to 2003 in Courts of Justice (17-Y 5-N)*

**1.00 Summary**

SB 641 creates a provision for issuing protective orders to persons in a dating relationship. A dating relationship is defined as a romantic relationship between individuals that exists or has existed for a reasonably continuous period of time. Jurisdiction is in the general district court unless the respondent is a minor, in which case jurisdiction is in the juvenile and domestic relations district court.

**2.00 Original Bill as Introduced**

As introduced, SB 641 amended the definition of "family or household member" in Virginia Code § 16.1-228 to include any individual who is currently or was formerly involved in a substantive, intimate dating relationship with the person; the existence of such a substantive relationship shall be determined based on the following considerations: (a) the length of the relationship, (b) the nature of the relationship and (c) the frequency of interaction between the persons involved in the relationship. A casual relationship or ordinary fraternization in a business or social context does not constitute a dating relationship.

**3.00 Amendment in Nature of Substitute**

The amendment in the nature of a substitute creates definitions in Virginia Code § 16.1-228 for "dating relationship" and "dating violence." Dating relationship means a relationship between two individuals who have had a relationship of a romantic or sexual nature. Dating violence involves violence, force, or threat, including any forceful detention resulting in physical injury or places one in reasonable apprehension of bodily injury. The amendment in the nature of a substitute amends the venue and jurisdictional statutes in Chapter 11 of Title 16 to allow the juvenile and domestic relations district court to hear order of protection proceedings involving dating violence between parties who have had a dating relationship.

Virginia Code § 16.1-260 would be amended to require a juvenile probation intake officer to file a petition in the court when it is alleged that dating violence has occurred and a protective order is being sought. The amendment in the nature of a substitute allows the court to issue an emergency protective order, a preliminary protective order, or a protective order in cases involving dating violence. Violation of a protective order issued by the court constitutes a Class 1 misdemeanor.

**HB 678 Involuntary temporary detention; medical screenings.**

HB 678 amends and reenacts § 37.1-67.1 of the Code of Virginia, relating to involuntary temporary detention; medical screenings. *Patron:* Watts, Continued to 2003 in H. W. I. (22-Y 0-N)

**1.00 Summary**

Virginia Code § 37.1-67.1 provides the authority to issue an involuntary temporary detention order (also referred to as TDO) for a person who is allegedly mentally ill. As introduced, HB 678 requires a medical certificate immediately prior or immediately following the issuance of an involuntary temporary detention order for a person who is allegedly mentally ill.

**2.00 Signed Medical Certificate**

HB 678 would require that each order for involuntary temporary detention of a person (i) include a medical certificate signed by a psychiatrist or physician within the previous 72 hours documenting that a medical examination was performed and the results thereof, including any significant or life-threatening medical conditions that require immediate treatment, or (ii) shall require that the person receive an emergency medical evaluation by a psychiatrist or physician within 4 hours and, as may be necessary, receive treatment of any significant or life-threatening medical conditions that require immediate treatment.

**3.00 New Requirements for Magistrate**

The bill permits a magistrate to issue an order of temporary detention without a prior in-person evaluation only if (a) the person was examined within the previous 72 hours by both an employee or designee of the local community services board (CSB) and by a psychiatrist or physician or (b) there is a significant risk associated with conducting such examinations.

**4.00 TDO Must Identify the Facility or Temporary Detention**

The facility of temporary detention must be identified by the employee or designee of the local CSB on the prescreening report and temporary detention order, unless the results of the emergency medical evaluation performed within four hours of temporary detention require admission to a medical facility prior to placement.

**5.00 Potential Impact Upon DJJ**

This bill would require the Department of Juvenile Justice (DJJ) to conduct a medical evaluation, denoting any life threatening or significant medical conditions, 72 hours prior or within four hours of an order for involuntary detention of a juvenile in a local facility.

**5.10 Current DJJ Practice**

DJJ, as part of the initial intake process, routinely conducts a medical evaluation of each juvenile. Thereafter, juveniles are monitored and provided medical services in accordance with DJJ protocol. Currently, when DJJ initiates requirements to obtain a temporary detention order (TDO) for a juvenile, it works with the local CSB staff or serves as a CSB designee in requesting a petition through the court or Magistrate. Once a petition is issued, then DJJ coordinates in the transport of the juvenile to an

appropriate mental health facility. As a matter of practice, DJJ provides routine medical information to the receiving facility.

## **6.00 Fiscal Impact upon Department of Mental Health, Mental Retardation and Substance Abuse Services**

Most involuntary civil commitment admissions are preceded by a TDO. The Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) has data only on those patients who were directly admitted to state facilities on a TDO, and patients who were involuntarily committed subsequent to a TDO from a private hospital.

According to DMHMRSAS, there were 1,058 adult and geriatric (aged 18 and above) TDO admissions to state hospitals for FY2001, including TDOs from jails. The estimated cost of a medical assessment in each of these cases is \$375. The agency estimated that medical assessments for TDO admissions to state hospitals to be \$396,750 (GF) for the first year. To determine the cost for FY 2004, DMHMRSAS used the medical assessment cost increased by 10 percent (\$412) to arrive at an estimate of \$435,896 (GF).

DMHMRSAS cautions that its estimates significantly understate the total cost of all medical assessments that would be performed under the proposed law, but the magnitude of this underestimation is unknown at this time. In addition, other related factors will ultimately have an impact on the estimated cost including the availability of physicians and emergency rooms for the medical evaluations throughout the state and the likely increased transportation burden by sheriffs and police. Emergency rooms and physicians who could be available to conduct the medical assessments are very limited in some areas of the state, and medical services and psychiatric facilities are often a significant distance from each other. This would increase travel by police and sheriffs to access physicians at other facilities or clinics capable of performing the medical evaluations. However, DMHMRSAS says that data is not available to estimate this cost.

### **SB 288 Appointment of counsel; compensation.**

*A BILL to amend and reenact §§ 16.1-267 and 19.2-163 of the Code of Virginia, relating to appointment of counsel; compensation. Patrons: Norment, Howell and Stolle; Delegates: Albo, Kilgore and Moran, Continued to 2003 in Finance (16-Y 0-N)*

## **1.00 Bill Summary**

SB 288 amends Virginia Code §§ 16.1-266, 16.1-267 and 19.2-159 and adds a section (§ 19.2-163.9), relating to appointment of counsel; compensation; and standards for guardians ad litem. The bill allows a court-appointed attorney representing a juvenile on a felony charge the same fee as if representing an adult on a felony charge and requires the court, when appointing counsel in an indigent case, to appoint an attorney who has been deemed qualified pursuant to established standards. The bill also repeats in Title 19.2 those provisions from Title 16.1 governing standards for guardians ad litem.

An attorney representing an adult in circuit court receives compensation based upon whether the offense is a misdemeanor or a felony. Currently, a court-appointed attorney for a juvenile receives the same fee in juvenile court whether the charge is a misdemeanor or a felony. SB 288 benefits court-appointed attorneys by ensuring that a court-appointed attorney is compensated the same for defending a client on a felony offense regardless of whether the case is in juvenile or circuit courts. As a result of

the enhanced compensation, a juvenile before the juvenile court on a felony offense should receive better legal representation in the juvenile court.

This bill also ensures that a court-appointed attorney is qualified to the same degree as guardian ad litem.

## 2.00 Estimated Fiscal Impact

According to the Supreme Court, the difference between the average compensation per charge for court appointed counsel representing a juvenile in a delinquency matter and court appointed counsel representing an adult on a felony charge is \$155. In fiscal year 2000 there were 17,000 delinquency petitions for acts which would have been felonies if committed by adults. Although there is not enough information to predict the amount of cases that will require court appointed counsel, the fiscal impact could be significant. If 25% of the total delinquency petitions were appointed counsel, the fiscal impact would be \$658,750 per fiscal year.

### **SB 591 Drug Treatment Court; established, reports by Exe. Sec. of S.C.**

*A BILL to amend the Code of Virginia by adding a section numbered 18.2-254.1, relating to drug treatment court programs. Patrons: Houck, Deeds, Edwards and Williams, Continued to 2003 in House Courts of Justice (11-Y 10-N)*

As passed by the Senate and carried over by the House, SB 591 provides the Department of Criminal Justice Services with administrative oversight for the establishment and operation of drug treatment courts with the assistance of a state drug treatment court advisory committee. The bill requires the establishment of local drug treatment advisory committees in jurisdictions that operate drug courts. Anyone convicted of a violent felony within ten years would not be eligible for participation in a drug treatment court. There are provisions to evaluate the effectiveness of the court.

### **SB 653 Juvenile fingerprints and DNA.**

*A BILL to amend and reenact § 16.1-299 of the Code of Virginia, relating to juvenile fingerprints. Patron: Mims, Continued to 2003 in House Courts of Justice (22-Y 0-N)*

The bill amends Virginia Code §§ 16.1-299, 16.1-299.1, and 19.2-310.2 expanding the conditions under which fingerprints and photographs taken of juveniles will be forwarded to the Central Criminal Records Exchange (CCRE). Currently, the fingerprints and photographs are forwarded only when the juvenile is adjudicated delinquent or found guilty of a felony offense. The amendment to § 16.1-299B would allow the fingerprints and photographs to be forwarded to CCRE when the juvenile is found guilty of a misdemeanor or has a charge dismissed pursuant to a deferred disposition if the offense the juvenile was originally charged with was a felony. The amendment to § 16.1-299.1 would require a juvenile to have a blood, saliva, or tissue sample taken for DNA analysis under the same circumstances cited above. Presently samples are taken only when a juvenile is convicted of a felony or adjudicated delinquent based on an act that would be a felony if committed by an adult.



**HB 1068 Criminal history record information; youth mentoring programs.**

*A BILL to amend and reenact §§ 19.2-389, 46.2-208 and 63.1-248.8 of the Code of Virginia, relating to youth mentoring programs; criminal history record information. Patrons: Van Landingham, Bland, Brink, Callahan, Christian, Darner, Ingram, Miles, Moran, Plum, Scott and Van Yahres; Senator: Lambert, Continued to 2003 in H. W. I. (22-Y 0-N)*

HB 1068 allows any mentoring program that matches volunteers with young people to receive the required criminal history records checks free of charge.

**SB 57 Mental health courts; pilot program, study requirements.**

*Patron: Edwards, Continued to 2003 in Courts of Justice (15-Y 0-N)*

SB 57 would require the Office of the Executive Secretary of the Supreme Court to establish at least two and no more than five mental health courts in the Commonwealth, to commence operation by January 1, 2003. The mental health courts would be established and administered so as to be eligible for federal funding under "America's Law Enforcement and Mental Health Project." The Office of the Executive Secretary of the Supreme Court would be required to apply for any federal grants or other funding available to establish such courts. The Executive Secretary would report to the General Assembly on the effectiveness and utilization of the mental health courts by January 1, 2005.

**SB 84 Civil immunity for litter pick-up by probationers.**

*A BILL to amend the Code of Virginia by adding a section numbered 8.01-226.8, relating to civil immunity for certain officials. Patron: Wampler, Continued to 2003 in Courts of Justice (20-Y 2-N)*

As passed by the Senate and carried over by the House, SB 84 provides immunity against any liability for civil damages for probation officers, court personnel, county, city and town personnel and any other public officials who participate in a program where persons on probation are ordered as a condition of probation to pick up litter along a section of public roadway or waterway. Such public officials would not be liable to a probationer or his property for acts or omissions resulting from such participation, unless such act or omission is the result of the public official's willful misconduct. The new provisions do not grant any immunity to a motorist who, by his negligence, may injure such probationer.

**HB 311 Number of juvenile judges.**

*A BILL to amend and reenact § 16.1-69.6:1 of the Code of Virginia, relating to number of judges. Patron: Howell, Continued to 2003 in Appropriations (25-Y 0-N)*

As introduced, HB 311 amends and reenacts Virginia Code § 16.1-69.6:1 to increase the number of Juvenile and Domestic Relations (J&DR) District Court judges in the 15<sup>th</sup> Judicial District (City of Fredericksburg and counties of Caroline, Essex, Hanover, King George, Lancaster, Northumberland, Richmond, Spotsylvania, Stafford and Westmoreland) from six to seven and in the 27<sup>th</sup> Judicial District (Cities of Galax and Radford and counties of Bland, Carroll, Floyd, Giles, Grayson, Montgomery, Pulaski, Wythe) from three to four. The two additional judgeship positions will cost a total of \$380,482, or 190,241 a judgeship, with an additional start up cost of \$2,500 for each judgeship in the first fiscal year. The total fiscal impact for the biennium is \$765,964.

## **PART IV FAILED LEGISLATION OF INTEREST**

### **HB 830 Juvenile and domestic relations district court; jurisdiction.**

*Summary as introduced* HB 830 amends Va. Code § 16.1-241. Va. Code § 16.1-241 states the type of cases falling within the jurisdiction of the juvenile and domestic relations district court (JDR). HB 830 adds a preface to the jurisdictional statute of the JDR court that reads "after giving due regard to the primacy of the parent-child relationship and upon a showing by clear and convincing evidence that the best interests of the child would be served in protecting the child's health or welfare, the State has a compelling interest to act."

HB 830 would have had a far-reaching impact. Cases heard before the JDR court that would have been impacted by HB 830 include: custody, visitation, support, control or disposition of a child cases; alleged abuse, neglect, in need of services, in need of supervision, status offender, or delinquent cases; abandonment by parent or other custodian or because of the absence or physical or mental incapacity of the parents cases; cases of children who are 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 cases; entrustment agreement cases, including cases where the parent or parents for good cause desire to be relieved of the child's care and custody; termination of residual parental rights cases; admission of minors for inpatient treatment in a mental health facility cases; emancipation of a minor cases; emergency protective order cases; and parental placement adoption consent hearings.

*Patrons:* Nixon, Janis and Weatherholtz  
01/28/02 House: Stricken from docket by C. J. (22-Y 0-N)

### **HB 964 Local court service units; compensation of probation officers.**

*Summary as introduced:* Requires the State to pay the compensation of local court service unit personnel. Currently, the state share is one-half in certain localities that have chosen to retain a local court service staff.

*Patrons:* Almand, Brink and Darner; Senators: Ticer and Whipple  
02/08/02 House: Passed by indefinitely in App. (25-Y 0-N)

### **HB 1142 Authority to hire court services staff and directors.**

*Summary as introduced:* Clarifies the roles of the Director of the Department of Juvenile Justice and the juvenile and domestic relations district court judges to hire, transfer and terminate probation officers and supervisors in state-operated court service units and clarifies the juvenile court's authority to appoint a court services unit director for each locally operated court services unit. This bill passed during the 2001 General Assembly Session with a second enacting clause that provided that it must be reenacted by the 2002 Session of the General Assembly to become effective.

*Patron:* Dillard  
02/08/02 House: Failed to report (defeated) in C. J. (7-Y 15-N)

### **HJ 72 Study; confidentiality of juvenile records.**

*Summary as introduced:* HJ 72 directs the Virginia Commission on Youth to study the need for consistency in state laws governing the collection, dissemination, and disclosure of confidential juvenile records. In conducting its study, the Commission shall (i) identify and review current mandatory state and federal privacy, confidentiality, and disclosure laws; (ii) determine the circumstances under which disclosure laws supercede confidentiality laws; (iii) identify inconsistencies

in state laws governing privacy, collection, dissemination, and disclosure of confidential juvenile records information; (iv) recommend appropriate and feasible changes to the Code of Virginia to clarify conflicts in state laws while maintaining compliance with federal laws and regulations governing such areas; and (v) evaluate the need for standardized guidelines that protect the confidentiality of juvenile records during information sharing while facilitating access to juvenile records by authorized persons and state and local agencies. The Virginia Commission on Youth must submit its written report to the Governor and the 2003 Session of the General Assembly.

The Department of Criminal Justice Services (DCJS), in conjunction with the University of Virginia's Institute of Law, Psychiatry and Public Policy, convened a work group last year to develop a training manual designed to assist professionals in coping with the complexities of disclosure and confidentiality laws. The Department of Juvenile Justice (DJJ) participated in the work group. While producing the training manual, the work group identified inconsistencies within the Code of Virginia concerning the collection, dissemination, and disclosure of confidential juvenile records information. Many of these inconsistencies and conflicts in statute cannot be resolved without deliberate study; careful consideration of underlying juvenile justice, education, child welfare, medical care, and mental health treatment public policies; and appropriate legislation.

Given the complexity of and changes to state and federal laws governing the collection, dissemination, and disclosure of confidential juvenile records information, a comprehensive review of state and federal laws and practices is necessary to provide consistency while facilitating treatment, service, public safety, and confidentiality.

*Patron:* Hamilton  
02/10/02 House: Passed by indefinitely in Rules (17-Y 0-N)

**HB 129 Violation of court order regarding custody and visitation; penalty.**

*Summary as introduced:* Raises the penalties for clear and significant violations of court ordered custody and visitation from a Class 4 to a Class 1 misdemeanor. Second or subsequent violations within 24 months are raised to a Class 6 felony.

*Patron:* Jones, J.C.  
01/21/02 House: Stricken at request of Patron in C. J. (22-Y 0-N)

**HB 261 Incomplete appeal of a district court case.**

*Summary as passed House:* Provides that if a child or adult withdraws his appeal from any district court before final adjudication by the circuit court, the circuit court shall remand the person to the jurisdiction of the juvenile and domestic relations district court for its supervision, under the terms of its original order or judgment.

*Patrons:* McQuigg and Bell  
02/13/02 Senate: Stricken at the request of Patron in C. J.

**HB 277 Juveniles; fingerprinting in marijuana cases.**

*Summary as introduced:* Allows police to fingerprint juveniles issued a summons for possession of marijuana.

*Patrons:* Broman and Bell  
01/23/02 House: Stricken from House calendar

**HB 312 Confidentiality of pretrial records.**

*Summary as introduced:* Exempts any pretrial investigation report prepared by a local pretrial services officer or agency from the Virginia Freedom of Information Act.

*Patron:* Howell

01/18/02 House: Stricken at request of Patron in C. J. (22-Y 0-N)

**HB 417 Child custody and visitation; determining best interests of child.**

*Summary as introduced:* Adds several additional factors including consideration of (i) parental alienation syndrome (a disturbance in which a child is obsessed with deprecation and criticism of a parent and denigration that is unjustified or exaggerated); (ii) whether one parent has alienated the child's respect, confidence, affection and attachment for the other parent resulting in hostile or indifferent behavior; and (iii) any parenting action plan submitted by both or each parent that sets forth parental decision-making, parenting time, financial responsibilities, and residential arrangements for the child. The bill also requires the court, in its written order, to articulate the factors considered including an explanation of why frequent and continuing contact with both parents is not appropriate.

*Patron:* Reese

01/28/02 House: Tabled in Courts of Justice (18-Y 4-N)

**HB 472 Notification to parents and guardians of certain minors.**

*Summary as introduced:* Provides for notification of the parents or guardians of minors who are arrested or issued summonses or citations for driving while intoxicated or motor vehicle code violations. Similar notification is provided for convictions of such offenses and for suspensions, revocations, or cancellations of driver's licenses and learner's permits.

*Patrons:* Suit, Byron, Cosgrove, Cox, Devolites, Johnson, Lingamfelter, McDonnell, Morgan, Rapp, Rust, Sears and Welch

01/22/02 House: Tabled in Transportation (22-Y 0-N)

**HB 788 Deferred disposition; costs.**

*Summary as introduced:* Requires the court to impose costs upon a defendant when the court defers further proceedings, does not enter a judgment of guilt and places the defendant on probation. This bill is a recommendation of the Committee on District Courts.

*Patron:* Armstrong

01/28/02 House: Failed to report (defeated) in C. J. (9-Y 11-N)

**HB 831 Child custody and visitation.**

*Summary as introduced:* Establishes a rebuttable presumption that both parents shall share equitably in child-rearing responsibilities. The bill also provides that time with the child may be supervised if a parent is found guilty of child abuse or neglect.

*Patrons:* Nixon, Albo, Hargrove, Janis and Weatherholtz

01/28/02 House: Tabled in Courts of Justice (22-Y 0-N)

**HB 917 Drug Treatment Court; established, reports by Exe. Sec. of S.C.**

*Summary as introduced:* Allows for each jurisdiction to establish drug treatment courts.

*Patrons:* Griffith, Crittenden and Van Yahres

02/08/02 House: Failed to report (defeated) in C. J. (9-Y 13-N)

**HB 1207 Appeal bonds.**

*Summary as introduced:* Provides that no appeal bond is necessary upon appeal for a finding of civil contempt in the juvenile and domestic relations district court.

*Patron:* Melvin

01/25/02 House: Stricken at request of Patron in C. J. (21-Y 0-N)

**HB 1218 Runaway juveniles; criteria for detention.**

*Summary as introduced:* Provides that a juvenile who has run away from home on a previous occasion may be placed in shelter care until the initial court appearance.

*Patrons:* Carrico and Keister

02/04/02 House: Passed by indefinitely in C. J. (22-Y 0-N)

**HB 1345 Fingerprinting and criminal records checks.**

*Summary as introduced:* Excludes from the crimes included in the criminal records checks for private school employees any first offense drug possession or distribution convictions occurring five years or more before the date of the report of the Central Criminal Records Exchange.

*Patron:* Hall

02/06/02 House: Stricken from House calendar

**HJ 74 Study; needs of youth.**

*Summary as introduced:* Requests the Virginia Commission on Youth to identify all current state-funded initiatives that attempt to address the needs of our youth to enable them to become productive citizens and provide guidance on how to facilitate the coordination of existing services and programs, analyze the effectiveness of current efforts, and promote identification and implementation of successful initiatives.

*Patron:* McQuigg

02/10/02 House: Passed by indefinitely in Rules (17-Y 0-N)

**SB 381 Compensation of local probation officers, court service staff, etc.**

*Summary as introduced:* Requires the State to pay the compensation of local court service unit personnel. Currently, the state share is one-half in certain localities that have chosen to retain a local court service staff.

*Patrons:* Whipple and Ticer; *Delegates:* Almand, Brink and Darner

02/13/02 Senate: Left in Finance

**SB 491 Law Officers' Retirement System; membership.**

*Summary as introduced:* Adds as members in VaLORS probation and parole officers of the Department of Juvenile Justice and security or investigative officers of the State Lottery Department.

*Patron:* Newman

02/13/02 Senate: Left in Finance