2004 General Assembly Session Juvenile Justice Legislative Handbook

This overview of legislation, as enacted by the 2004 General Assembly, relates to juvenile justice.

This handbook is intended only for use as a summary of those bills enacted during the 2004 General Assembly session relating to the juvenile justice system. If you are using an electronic copy of this document, many of the bill numbers and Virginia Code citations are hyperlinked. By clicking on the bill number or Virginia Code citation, you should be able to access the enacted bill language or statute.

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HB 1062 ENHANCING INFORMAL DIVERSION BY JUVENILE INTAKE OFFICERS
DELEGATE WARD L. ARMSTRONG – HENRY

HB 1062 amends Virginia Code § 16.1-260. Effective July 1, 2004.

HB 1062 amends Virginia Code § 16.1-260 to give an intake officer greater discretion to proceed informally against a juvenile who is alleged to have committed a misdemeanor or status offense. Under prior law, a juvenile could be informally diverted only once, no matter the offense.

1.00 Initiating Juvenile Court Action or Informal Diversion by Making Complaint Via Intake - Va. Code § 16.1-260

Generally, a person making a complaint to an intake officer initiates either formal action in the juvenile court or informal diversion through the intake officer. Virginia Code § 16.1-228 defines an intake officer as "a juvenile probation officer appointed as such" with the authorities provided in Chapter 11 of Title 16 (the Juvenile Code). Virginia Code § 16.1-260 provides the statutory process for making complaints, the filing of petitions, and informal diversion by a juvenile intake officer.

1.10 Formal Juvenile Court Action is Initiated by Petition: Va. Code § 16.1-260(A)

All proceedings in juvenile court are initiated by petition except as provided in subsection H[1] of Virginia Code §§ 16.1-260 and 16.1-259[2]. The intake officer is the primary person responsible for receiving complaints and processing petitions to initiate juvenile court action.

1.20 Petitions for Delinquency, CHINS and CHINSup Are Initiated by Complaints

Petitions alleging delinquency, child in need of services (CHINS), or a child in need of supervision (CHINSup) are initiated by complaints brought to the intake officer. Any person can bring a complaint alleging that a child is a delinquent, a child in need of services, or a child in need of supervision forward to the intake officer.

1.21 Definition of Delinquency: Va. Code § 16.1-228

A "delinquent act" means an act designated a crime under state law; an ordinance of any city, county, town, service district; or under federal law. A delinquent act does not include an act that is otherwise lawful but is designated a crime only if committed by a child. "Delinquent child" means a child who has committed a delinquent act or an adult who has committed a delinquent act prior to his 18th birthday, except where the jurisdiction of the juvenile court has been terminated under the provisions of Virginia Code § 16.1-269.6.

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[1] Subsection H of Virginia Code § 16.1-260 states that the filing of a petition is not necessary for violations of the traffic laws including offenses involving bicycles, hitchhiking and other pedestrian offenses, game and fish laws or a violation of the ordinance of any city regulating surfing or any ordinance establishing curfew, animal control, or littering violations.

[2] Virginia Code § 16.1-259 provides that proceedings in juvenile court involving adults may be instituted on petition by any interested party, on a warrant issued as provided by law, or upon the court's own motion.

1.22 Child in Need of Services (CHINS): Va. Code § 16.1-228

A "child in need of services" means a child whose behavior, conduct, or condition presents or results in a serious threat to the well-being and physical safety of the child.

1.23 Child in Need of Supervision (CHINSup): Va. Code § 16.1-228

A "child in need of supervision" means a child who is a truant or a runaway. "Truant" means a child who is subject to the compulsory school attendance law (i.e., child is under the age of 18) and is habitually and without justification absent from school.

2.00 Intake Officer Decides to Proceed Formally or Informally Against a Juvenile

At the time of the complaint, if the intake officer finds that the juvenile court has jurisdiction and there is probable cause that the act occurred, the intake officer must decide if he will act upon the complaint informally or initiate formal court action.

2.10 Alleged Violent Juvenile Felons Must Go to Court *(Not New)*

When the complaint alleges that a juvenile has committed a violent juvenile felony, the intake officer must file the petition and initiate formal court action.[3]

2.20 Discretion to Informally Divert Limited to One Time for Non-violent Felonies *(Not New)*

If a juvenile is alleged to have committed a non-violent felony, the intake officer may proceed informally only once. Upon the second petition alleging a non-violent juvenile felony, the intake officer must initiate formal court action.

2.30 Class 1 Misdemeanors and Lesser Offenses (Except Truants) - Intake Officer May Proceed Informally on More Than One Occasion *(New)*

The amendments to the third paragraph in subsection B of Virginia Code § 16.1-260 allow the intake officer to determine if the petition should be filed and formal court action initiated or that juvenile should be informally diverted for Class 1 misdemeanors and lesser offenses. Lesser offenses include all lower misdemeanors (Class 2, 3, and 4), CHINS, and CHINSup. Please note: Truants can only be diverted one time.

3.00 Truants Are Eligible for Informal Diversion Only One Time (2003 Change)

A juvenile who is the subject of a truancy complaint filed pursuant to Virginia Code § 22.1-258 is eligible for informal intake only once. During the 2003 General Assembly session, HB 1559 was enacted that allowed alleged truants to be diverted on one occasion. Prior to HB 1559, the intake officer was required to immediately initiate formal court action when a complaint made by a school

[3] Virginia Code § 16.1-228 defines a violent juvenile felony as any of the delinquent acts enumerated in subsection B or C of § 16.1-269.1 when committed by a juvenile 14 years of age or older.

system alleged that a juvenile was a truant. Essentially, a truant was treated the same as a violent juvenile felon prior to HB 1559.

4.00 Brief Overview of the 2003 General Assembly Amendments to the Truancy Provisions

As stated above, if an intake officer receives a complaint from a school alleging that a juvenile is a truant in accordance with Virginia Code § 22.1-258 and the attendance officer has provided documentation to the intake officer that the relevant school division has complied with the provisions of § 22.1-258, the intake officer must file a petition and initiate formal court action against that juvenile. However, under the provisions of HB 1559, a juvenile who is alleged to be a truant can be diverted from formal court action and proceeded against informally one time.

4.10 Truancy Complaints Can be Deferred for 90 Days

The intake officer may defer filing a truancy complaint for 90 days and proceed informally by developing a truancy plan.

4.11 90-Day Limit Same as Limit Upon All Informal Diversions

The 90-day limitation upon informal supervision for truancy cases is consistent with the timeframe limiting the supervision of all informal cases. Pursuant to 6 VAC 35-150-335, all informal supervision, in the absence of a court order, shall not exceed 90 days.

4.20 Eligibility Requirement: No Previous Action Against Alleged Truant

The intake officer may proceed informally against an alleged truant only if that juvenile has not previously been proceeded against informally or adjudicated in need of supervision for failure to comply with compulsory school attendance as provided in Virginia Code § 22.1-254.

4.30 Eligibility Requirement: Juvenile and Parental Agreement in Writing

The juvenile and his parent or parents, guardian, or other person standing in loco parentis must agree, in writing, to proceed informally and for the development of a truancy plan.

4.40 Development of Truancy Plan

A truancy plan must be developed. The truancy plan may include requirements that the juvenile and his parent or parents, guardian, or other person standing in loco parentis participate in such programs, cooperate in such treatment, or be subject to such conditions and limitations as necessary to ensure the juvenile's compliance with compulsory school attendance as provided in Virginia Code § 22.1-254.

4.41 Development of Truancy Plan Should be the Same as Any Informal Diversion

The development of a truancy plan should be consistent with the development of a supervision plan for any informal diversion.

4.50 Truancy Plan May be Developed by Interagency Interdisciplinary Team

The intake officer may refer the juvenile to the appropriate public agency for developing a truancy plan using an interagency interdisciplinary team approach. The team may include qualified personnel who are reasonably available from the appropriate department of social services, community services board, local school division, court service unit, and other appropriate and available public and private agencies and may be the family assessment and planning team established pursuant to Virginia Code § 2.2-5207.

4.60 Initiation of Court Action After 90-Day Period

If at the end of the 90-day period the juvenile has not successfully completed the truancy plan or the truancy program, the intake officer must file the petition.

5.00 Brief Overview of the Statutory Requirements for Informal Diversion (Not New)

Essentially, informal diversion is probation supervision without formal court action. With informal diversion, the intake officer's powers are commensurate with those that would be used by the judge for lesser offenses. The intake officer must develop a diversion plan that exhausts all community resources including restitution and community service. The juvenile and his parents must agree to the diversion plan. Informal supervision is limited to 90 days (6 VAC 35-150-335). Moreover, informal diversion is discretionary. In FY 2002, 81% of all intakes resulted in a petition being filed and the initiation of formal court action. Only 16% of all intakes were informally diverted or resolved.

5.01 Plan for Restitution and Community Service

To proceed informally, the intake officer must develop a plan for the juvenile. The plan may include restitution and the performance of community service based upon community resources and the circumstances that resulted in the complaint.

5.02 The Intake Officer Must Warn That Any Subsequent Offense Requires Court Action

The intake officer must advise the juvenile; the juvenile's parent, guardian, other person standing in loco parentis; and the complainant that any subsequent complaint alleging that the child is in need of supervision or delinquent will result in the filing of a petition with the court.

5.03 If Possible, CHINSup Allegations Must be Reviewed and Re-referred: Va. Code § 16.1-260(D)

If the intake officer receives a complaint alleging that a child is in need of supervision, the intake officer must review the matter and determine if the petitioner and the child alleged to be in need of supervision have utilized or attempted to utilize treatment and services available in the community and have exhausted all appropriate non-judicial remedies available to them.

6.00 Examples of Juveniles Who May be Deserving of Informal Diversion

- Young child, aged eight, comes in for shoplifting and five years later gets a trespassing charge.
- Juvenile with a shoplifting charge later gets a CHINS or visa versa.
- Children with mental health problems coming in with multiple CHINS.
- Cases when the victim does not wish to pursue court action and requests diversion, but the child has a second misdemeanor charge.
- Possession of alcohol in which the juvenile is already in treatment; his license was suspended for six months on a prior charge; he is showing improvement with no other problems at home or school and has good parental support.
- Young children come in for fighting at school. (We get them as young as six.) This child would be better served by another agency, or the school could do better interventions.

HB 653 & SB 577 INTAKE & DETAINING ADULTS IN JAIL FOR JUVENILE OFFENSES
DELEGATE ROBERT B. BELL – ABLEMARLE
SENATOR CHARLES J. COLGAN – PRINCE WILLIAM

SB 577 and HB 653 amend Virginia Code §§ 16.1-247 and 16.1-249. Effective July 1, 2004.

SB 577 and HB 653 are identical and amend Virginia Code §§ 16.1-247 and 16.1-249 to allow a juvenile intake officer or a magistrate to order the confinement of a person over the age of 18 in a jail rather than in a juvenile detention facility for an offense that occurred prior to the person obtaining the age of 18.

1.00 Virginia Juvenile Justice Association (VJJA) Legislative Initiative

The VJJA, a statewide organization of juvenile probation and parole officers, requested these bills. DJJ had an identical bill (HB 937 Del. Kilgore), which was rolled into HB 653.

2.00 Background: Intake Officer Assumes the Role of the Judge for Detention Orders

Court service units are mandated by Virginia Code § 16.1-255 to promptly respond to detention petitions. When the court is not in session and a juvenile is taken into custody for a delinquent offense pursuant to Virginia Code § 16.1-246, the intake officer assumes the role of the judge. The intake officer must determine if the juvenile should be detained or released in accordance with Virginia Code § 16.1-248.1. 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. A juvenile can be detained under subsection (A)(1) if there is probable cause to believe that he committed a felony or a Class 1 misdemeanor and the remaining requirements of § 16.1-248.1(A) are satisfied. If there is probable cause to believe that the juvenile violated his terms of probation or parole, the intake officer may look to the underlying offense to determine if the juvenile should be detained.

2.10 Jurisdiction of Juvenile Court Goes to Age 21

Pursuant to Virginia Code § 16.1-242, the juvenile court retains jurisdiction over a person for offenses committed while a juvenile until that person reaches 21 years of age.

2.20 Juvenile Court May Exercise Jurisdiction Over an Adult for Juvenile Offense

Virginia Code § 16.1-284 provides that the juvenile court may impose sentence upon an adult convicted of a juvenile offense committed by that adult before attaining the age of 18 in the same manner as an adult, not to exceed the punishment for a Class 1 misdemeanor. In the event that a person reaches the age of 21 and a prosecution has not been commenced, the person will be proceeded against as an adult, even if he was a juvenile when the offense was committed.

2.30 Role of the Magistrate

A magistrate will assume the role of the intake officer and may issue an arrest warrant for a juvenile when the court is not open and the judge and the intake officer of the juvenile and domestic relations district court are not reasonably available. (See Virginia Code § 16.1-256.) If a person over the age of 18 is arrested for an offense that was committed when that person was under the age of 18 and the arrest occurs when the court is not open but the intake officer is available, the magistrate cannot hear the case. It is not clear if the magistrate has the authority to order the detainment of a person over the age of 18 in jail rather than in a juvenile detention facility.

3.00 Problem Prior to These Bills: Intake Officers Could Not Place Adults in Jail

Prior to these bills, subsection H of Virginia Code § 16.1-249 required a judge to order the predispositional detention of persons 18 years of age or older in an adult facility. However, a juvenile intake officer had no such authority. Therefore, if a person over the age of 18 was arrested for an offense that occurred when the person was under the age of 18 and the arrest occurred when the court was not open, the intake officer had no option but to order the detainment of that person in a juvenile detention facility.

4.00 The Fix: Amendment Allows Intake Officer to Place Adults in Jail *(New)*

SB 577 and HB 653 amend subsection H of Virginia Code § 16.1-249 to allow an intake officer and a magistrate to order the predispositional detainment of a person over the age of 18 arrested for an offense committed when that person was a juvenile in jail rather than in a juvenile detention facility.

4.01 Parole Violations for Persons over 18

If a person over the age of 18 is arrested for a parole violation following the person's release from a juvenile correctional center, the judge, *intake officer, or magistrate* **<u>may</u>** order the pre-dispositional detention be in a juvenile facility. The addition of the intake officer and the magistrate to this line in the Virginia Code is new.

4.10 Amendments to Virginia Code § 16.1-247 Are Technical in Nature

Virginia Code § 16.1-247 provides the statutory responsibilities of a person who has taken a juvenile into custody. The amendments to § 16.1-247 are consistent with the substantive change made in § 16.1-249.

5.00 Rationale for Providing Intake Officers with this Authority

Without these amendments, circumstances occurred where adults were detained in juvenile detention facilities. This legislation ensures that such circumstances will not occur.

5.10 Amendment Clarifies Magistrate's Role

It was unclear if a magistrate could order a person over the age of 18 to be confined in an adult facility for an offense that occurred when that person was under the age of 18. Please note: Pursuant to Virginia Code § 16.1-256, a magistrate cannot issue an arrest warrant or a detention order unless the intake officer is unavailable. This legislation ensures that, if the intake officer was unavailable and the court was closed, the magistrate will have the authority to order a person over the age of 18 to be detained in jail for an offense that was committed when the person was a juvenile.

5.20 Proposed Amendment Consistent With 2002 General Assembly Session

During the 2002 session, the General Assembly enacted House Bill 1236 amending Virginia Code § 16.1-249(H) to address the ability of a juvenile and domestic relations court judge to order the predispositional detention of a person 18 years of age or older in an adult facility and not in a juvenile facility for an offense committed when that person was a juvenile. The previous language in the Code was ambiguous concerning this issue. HB 1236 clarified the intent of § 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. The intent of HB 1236 was to ensure that an adult is not placed in a juvenile detention facility for an offense committed when the adult was a juvenile.

This legislation is consistent with the intent of HB 1236 by ensuring that a person over the age of 18, who has avoided apprehension for an offense committed as a juvenile, may not be ordered by an intake officer or a magistrate to 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.

5.30 Licensing Issue: Most Juvenile Detention Facilities Are Not Licensed to Detain Adults

A survey of local detention facilities found the majority (70%) of local detention facilities are licensed to hold only juveniles up to the age of 18. Only 30% of the detention homes are licensed to hold persons over the age of 18. Therefore, if the only option the intake officer has is to detain an 18-year old in a juvenile detention facility and that facility is not licensed to house a person over the age of 18, that intake officer will be forcing that facility to be out of compliance with the terms of its license.

HB 1080 & SB 593 INTAKE & SCHOOL NOTIFICATION FOR GANG OFFENSES
DELEGATE HARRY J. PARRISH – MANASSAS
SENATOR CHARLES J. COLGAN – PRINCE WILLIAM
HB 1080 and SB 593 amend Virginia Code § 16.1-260. Effective July 1, 2004.

HB 1080 and SB 593 amend Virginia Code § 16.1-260 by expanding the list of offenses requiring an intake officer to provide notification to the school superintendent when a juvenile is alleged to have committed a certain delinquent offense to include gang-related offenses.

1.00 Making Reports to a School for Some Alleged Offenses

Virginia Code § 16.1-260 requires an intake officer to notify the school system when a juvenile has been arrested for certain serious offenses. Virginia Code § 16.1-305.1 requires the clerk of the court to notify the school system of an adjudication for a reportable offense.

1.10 Offenses Requiring School Notification

Prior to these bills, the below offenses were those for which the intake officer must notify the school superintendent with follow-up by the clerk's office:

- **Firearm offense** pursuant to Articles 4 (§ 18.2-279 et seq. - discharging firearms or missiles within or at building or dwelling house), 5 (§ 18.2-288 et seq., The Uniform Machine Gun Act), 6 (§ 18.2-299 et seq., "Sawed-off" Shotgun and "Sawed-off" Rifle Act) or 7 (§ 18.2-308 et seq., Concealed Weapons) of Chapter 7 of Title 18.2.
- **Homicide** pursuant to Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2. Such offenses include murder and manslaughter.
- **Felonious assault and bodily wounding** pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2. Such offenses may include malicious bodily injury, shooting, or stabbing with intent to kill or maim and aggravated malicious wounding.
- **Sexual assault** pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2. These offenses include rape, carnal knowledge of certain minors, and sexual battery.
- **Controlled substances** pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2. Such offenses include the manufacture, sale, gift, distribution, or possession of Schedule I or II controlled substances.
- **Marijuana distribution**, manufacture, or sale pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2. Article 1 covers marijuana offenses. The possession of marijuana is not a reportable offense.
- **Arson** or related offense pursuant to Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2. Such offenses include the burning of a dwelling house or building and making threats to bomb buildings.
- **Burglary** or related offenses pursuant to §§ 18.2-89 through 18.2-93. These offenses include entering a dwelling house with the intent to commit larceny, assault and battery, or a felony; breaking and entering a dwelling with the intent to commit a misdemeanor; entering a bank, armed, with the intent to commit larceny is reportable.
- **Robbery** pursuant to § 18.2-58.

2.00 Substantive Amendments by SB 593: Adding Gang Crimes

SB 593 amends Virginia Code § 16.1-260 by expanding the list of offenses requiring an intake officer to provide notification to the school superintendent when a juvenile is alleged to have committed a certain delinquent offense to include gang-related offenses. SB 593 adds prohibited criminal street gang activity pursuant to Virginia Code § 18.2-46.2.

3.00 Substantive Amendments by HB 1080: Adding Gang Crimes & Recruitment

In addition to adding prohibited criminal street gang activity pursuant to Virginia Code § 18.2-46.2, HB 1080 also adds the recruitment of juveniles into a criminal street gang pursuant to Virginia Code § 18.2-46.3 to the list of offenses triggering the requirement that the intake officer provide notice to a school superintendent.

3.10 To Recap: HB 1080 and SB 593 Differ Slightly

HB 1080 differs from SB 593 by adding the recruitment of juveniles for a criminal street gang pursuant to Virginia Code § 18.2-46.3 to those enumerated crimes triggering a requirement that the intake officer provide notice to a school superintendent that a petition has been filed alleging a juvenile committed an act that would be a crime if committed by an adult.

4.00 Impact of These Bills

Many of the crimes falling under the definition of a gang-related "predicate criminal act" already require school notification. Some of the new gang-related offenses requiring school notification include misdemeanor assault and battery, entering the property of another for purpose of damaging, trespassing upon church or school property, and entering or setting in motion vehicles. To require school notification, the alleged commission of one of the offenses must be committed in concert with a gang. In FY 2003, no more than 61 juvenile arrests (intake complaints) were recorded for the offenses that would be included under this bill (participation of a criminal act to benefit or at the direction of a gang). The bill requires notification for the newly created crime of a juvenile recruiting another juvenile into a gang. As the recruitment of a juvenile into a gang by another juvenile is a new crime, the anticipated impact of HB 1080 is difficult to quantify.

SB 633 ADULT STUDENTS; REPORT OF ARREST FOR CERTAIN CRIMINAL OFFENSES

SENATOR RICHARD L. SASLAW - FAIRFAX

SB 633 amends Virginia Code §§ 16.1-260, 19.2-83.1, and 22.1-279.3:1.
Effective July 1, 2004.

SB 633 requires that a public school student who is 18 or over and arrested for certain offenses be reported to the division superintendent. The offenses are the same as those for which a juvenile student would be reported (e.g., firearms, homicide, felonious assault, sexual assault, drug offenses, arson, burglary, robbery). The bill extends this list to include criminal street gang-related activity.

1.00 Amendments to Virginia Code § 16.1-260 Pertaining to Intake & Reportable Offenses

Virginia Code § 16.1-260 requires an intake officer to notify the school system when a juvenile has been arrested for certain serious offenses. SB 633 makes two changes to those reporting requirements.

1.10 Reporting Requirements Relating to Gang Activity Identical to HB 1080 & SB 593 *(New)*

HB 1080 and SB 593 amend Virginia Code § 16.1-260 by expanding the list of offenses requiring an intake officer to provide notification to the school superintendent when a juvenile is alleged to have committed a certain delinquent offense to include gang-related offenses. The additional offenses requiring reports to the school system made by SB 653 are identical to the additional offenses included in HB 1080 and SB 593.

1.20 No Notice by Telephone – Notice Only in Writing *(New!)*

Prior to SB 633, subsection G of Virginia Code § 16.1-260 required the intake officer to report the offense to the school superintendent in writing and by telephone. SB 633 strikes the telephone requirement.

1.30 The Requirement of Sending Letter by First Class Mail is Stricken (*New*)

SB 633 removes the requirement that the intake officer must "[p]romptly mail notice, by first-class mail, to the superintendent."

1.40 Intake Officer Must File a "Report" With the Division Superintendent (*New*)

SB 633 requires the intake officer to *file a report with the division superintendent of the school division in which any student who is the subject of* a petition alleging that the student committed a reportable offense. Contacting the division superintendent is not new. The use of "report" is new; however, there appears to be no substantive change as a result in the new terminology.

1.41 Report Must be Made No Matter Where the Offense Occurred

SB 633 does add new language requiring the intake officer to make the report no matter where the offense was committed. Again, this change does not appear to be substantive as it codifies common practice.

1.42 Contents of the Report: Notice of the Filing of the Petition & Nature of Offense

The report shall notify the division superintendent of the filing of the petition and the nature of the offense. This change is not substantive.

2.00 Mandated Reporting for Adult Student Offenses *(New)*

SB 633 amends Virginia Code § 19.2-83.1 to mirror the notification requirements in Virginia Code § 16.1-260 for adult students in public schools who commit reportable offenses. SB 633 creates subsection B in § 19.2-83.1 to require state agencies, sheriffs, and police officers to file a report, as

soon as practicable, with the division superintendent of the school division when a student 18 years of age or older is arrested for a reportable offense. The reportable offenses are identical to the reportable offenses listed in Virginia Code § 16.1-260.

3.00 School Personnel Must Make Incident Reports to School Principal: Va. Code § 22.1-279.3:1

Virginia Code § 22.1-279.3:1 (A) requires an incident report be made to the school principal when a juvenile has committed a certain act on a school bus, school property, or at a school-sponsored event. Under the provisions of § 22.1-279.3:1, school staff persons must report incidents committed by any person to the school principal.

3.10 Reports Must Now Go to Superintendent, Too (*New*)

SB 633 expands the notification requirement to include the superintendent in additional to the school principal.

3.20 Reportable Incidents Now Include Any Arrests on School Property or Functions

SB expands the reportable incidents requiring notification to include the arrest of any student occurring on a school bus, on school property, or at a school-sponsored activity.

SB 551 PROTECTIVE ORDERS & DISTRIBUTION OF INFORMATION BY INTAKE OFFICER
SENATOR JANET D. HOWELL - FAIRFAX

SB 551 amends Virginia Code § 16.1-260. Effective July 1, 2004.

SB 551 requires juvenile court intake officers to provide a written explanation of the conditions, procedures, and time limits applicable to the issuance of protective orders for family and household members to a person seeking a protective order.

1.00 Initiating Juvenile Court Action or Informal Diversion by Making Complaint Via Intake: Va. Code § 16.1-260

Generally, a person making a complaint to an intake officer initiates either formal action in the juvenile court or informal diversion through the intake officer. Virginia Code § 16.1-228 defines an intake officer as "a juvenile probation officer appointed as such" with the authorities provided in Chapter 11 of Title 16 (the Juvenile Code). Virginia Code § 16.1-260 provides the statutory process for making complaints, the filing of petitions, and informal diversion by a juvenile intake officer.

1.10 Petitions for Protective Orders in Cases of Family Abuse Must be Filed

Subsection C of Virginia Code § 16.1-260 requires the intake officer to file a petition if a person makes a complaint alleging that family abuse has occurred and a protective order is needed pursuant to Virginia Code §§ 16.1-253.1, 16.1-253.4, or 16.1-279.1. The intake officer has no discretion in determining whether or not there is probable cause to support the allegation. Therefore, the intake officer has no discretion to deny filing the petition.

1.20 When Protective Order is Sought, Intake Officer Must Provide Informational Document

SB 551 amends subsection C of Virginia Code § 16.1-260 to require the intake officer to provide a written explanation of the conditions, procedures, and time limits applicable to the issuance of protective orders pursuant to §§ 16.1-253.1, 16.1-253.4, or 16.1-279.1 to a person seeking an order.

1.21 Origins and Purpose of the Bill

SB 551 was a recommendation of the Family Violence Subcommittee of the Virginia Crime Commission. The purpose of this bill is to provide "notification requirement" in the Code to ensure that a victim of domestic violence understands the nature and purpose of a protective order. The Office of the Executive Secretary of the Supreme Court will work with DJJ to develop a standard written explanation of the specifically described issues related to protective orders, which will be distributed by the appropriate DJJ staff in the normal course of their duties.

2.00 Standardized Document to be Developed by the Virginia State Crime Commission

The Virginia State Crime Commission, in conjunction with the Office of the Executive Secretary of the Supreme Court and DJJ, shall develop a written statement explaining the conditions, procedures, and time limits applicable to protective orders issued pursuant to Virginia Code §§ 16.1-253.1, 16.1-253.4, and 16.1-279.1.

2.10 The Executive Secretary of the Supreme Court Will Distribute the Document

The Executive Secretary of the Supreme Court shall make the written statement available to law enforcement and to each court service unit for distribution.

DETENTION CRITERIA & PLACEMENT

HB 1146 EXPEDITING APPEALS FROM JUVENILE COURT TO CIRCUIT COURT
DELEGATE ROBERT F. MCDONNELL – VIRGINIA BEACH

HB 1146 amends Virginia Code §§ 16.1-269.6 and 16.1-296. Effective July 1, 2004.

HB 1146 requires the circuit court, when practicable, to hold a hearing on the merits of any appeal of a finding of delinquency or the disposition within 45 days of its filing if the juvenile is in a secure facility pending appeal. If either the juvenile or the attorney for the Commonwealth has appealed a transfer decision, the circuit court must hear the appeal within 45 days after receipt of the case from the juvenile court.

1.00 Commonwealth's Attorney or the Juvenile May Appeal Transfer Decision

Virginia Code § 16.1-269.3 provides that the attorney for the Commonwealth may appeal a juvenile court's final decision not to transfer a juvenile in accordance with subsection A of § 16.1-269.1 within 10 days of that decision. Virginia Code § 16.1-269.4 allows a juvenile to appeal the juvenile court's decision to transfer the case pursuant to subsection A of § 16.1-269.1 within 10 days after the juvenile court's final decision.

1.01 Prior to HB 1146, No Timeframes Upon Circuit Court to Conduct the Appeal

Prior to HB 1146, Virginia Code § 16.1-269.6 only required the circuit court to conduct the appeal of a transfer decision within **a reasonable time** after receipt of the case from the juvenile court and did not specify a timeframe for conducting the appeal.

1.10 Substantive Change: 45-Day Timeframe When Practicable: Va. Code § 16.1-269.6(B)

HB 1146 amends subsection B of Virginia Code § 16.1-269.6 to require the circuit court, *when practicable*, to conduct the appeal hearing on the merits of the matter within *45 days* after receipt of the case from the juvenile court.

1.20 To Expedite Matters, Juvenile Court Clerk Must Notify Counsel for Both Parties

Subsection A of Virginia Code § 16.1-269.6 was amended to require the clerk of the juvenile court to forward copies of the order to the attorney for the Commonwealth and other counsel of record [w]*ithin seven days after receipt of notice of an appeal.*

2.00 Appeals of Juvenile Court's Adjudication or Disposition: Va. Code § 16.1-296

Virginia Code § 16.1-296(C) provides a juvenile with the right to appeal a juvenile court finding that he or she is delinquent and on a disposition imposed pursuant to § 16.1-278.8. The appeal of the juvenile court decision is made to the circuit court. Prior to HB 1146, no statutory timeframes existed for conducting the circuit court appeal of the juvenile court's decision.

2.01 Suspension of Juvenile Court's Decision Upon Appeal

Initiation of the appeal process, for all intents and purposes, suspends the juvenile court's decisions pending completion of the appeal. (See Virginia Code § 16.1-298.)

2.10 Substantive Change: 45-Day Timeframe When Practicable: Va. Code § 16.1-296(C2)

HB 1146 amends subsection C2 of Virginia Code § 16.1-296 to require the circuit court to conduct a hearing on the merits of an appeal within 45 days, when practicable, if the juvenile remains incarcerated in a secure facility pending the appeal.

2.11 Appeal Must be Based Upon Finding of Delinquency or Disposition

The appeal must be upon the finding of delinquency or a disposition pursuant to Virginia Code § 16.1-278.8.

2.12 Timeframes Only Apply to Incarcerated Juveniles

The 45-day timeframe only applies to a juvenile who remains incarcerated in a secure facility pending the appeal in circuit court.

2.13 Notice to Commonwealth's Attorney Within Seven Days

Upon receipt of the notice of appeal from the juvenile court, the circuit court shall provide a copy of the order and a copy of the notice of appeal to the attorney for the Commonwealth within seven days after receipt of notice of an appeal.

2.14 Timeframes Tolled During Escape

The time limitations shall be tolled during any period in which the juvenile has escaped from custody.

3.00 Substantive Change: Release Juvenile if Appeal is Not Conducted Within 45 Days

HB 1146 adds language in Virginia Code §§ 16.1-269.6 and 16.1-296 to require that a juvenile *held continuously in secure detention* must *be released from confinement if there is no hearing on the merits of his case within 45 days of the filing of the appeal.*

3.10 Circuit Court May Extend Time Limitations for Good Cause

The circuit court may extend the time limitations for a reasonable period based upon good cause shown, provided the basis for such extension is recorded in writing and filed among the papers of the proceedings.

3.20 The Ambiguities of "When Practicable"

The phrase "when practicable" is ambiguous. However, the House Courts of Justice Committee inserted language stating that a juvenile held continuously in secure detention "shall be released" from confinement if no hearing is held on his case within 45 days. Of course, the court can extend confinement for good cause. However, the question remains whether or not delaying the hearing because the court's docket is full will be considered "good cause." Regardless, it is incumbent upon the attorney for the juvenile to raise the issue on behalf of the juvenile when that juvenile remains incarcerated and the circuit court has yet to hear the appeal.

HB 1209 REVIEWING CRITERIA FOR PLACEMENT IN DETENTION
DELEGATE MAMYE E. BACOTE – NEWPORT NEWS

HB 1209 amends Virginia Code § 16.1-248.1. Effective July 1, 2004.

HB 1209 amends Virginia Code § 16.1-248.1 to allow a juvenile's probation officer to review a juvenile's placement in a local detention facility for the purpose of seeking a less restrictive alternative to confinement in that secure facility.

1.00 Brief Overview of Criteria for Placing a Juvenile in Detention: Va. Code § 16.1-250

Virginia Code § 16.1-248.1 provides the statutory criteria for placing a juvenile in shelter care, in a secure facility, or in a jail when that juvenile has been taken into custody. A "secure facility" or "detention home" means a local, regional, or state public or private locked residential facility that has

construction fixtures designed to prevent escape and to restrict the movement and activities of children held in lawful custody.

1.10 The Judge, Intake Officer, or Magistrate Will Make the Determination

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

1.11 Detention Hearing Should Occur Within 24 Hours; No Later Than 72 or 96 Hours: Va. Code § 16.1-250

If the intake officer or the magistrate makes the decision to detain a juvenile in detention because the court is not in session, a detention hearing before the judge must be held within a reasonable time, not to exceed 72 hours, after the juvenile has been taken into custody. If the 72 hour period expires on a Saturday, Sunday, or other legal holiday, the period shall be extended to the next day that is not a Saturday, Sunday, or legal holiday (no longer than 96 hours).

1.20 Alleged Offense Must be a Felony or Class 1 Misdemeanor: Va. Code § 16.1-248.1(A)(1)

A juvenile is eligible to be detained if there was probable cause to believe that he committed a felony or a Class 1 misdemeanor and the remaining requirements of Virginia Code § 16.1-248.1(A)(1) are satisfied.

1.21 If the Alleged Act is Probation or Parole Violation, Look to Underlying Offense

The 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, the intake officer must look to the underlying offense to determine whether the juvenile should be detained.

1.30 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, the judge, intake officer, or magistrate must look to the criteria in subsections a, b, and c under Virginia Code § 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, the juvenile can be placed in a detention facility. Below are summaries for the three most common circumstances.

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

If 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 juvenile can be detained. The judge,

intake officer, or magistrate should look to the seriousness of current and past offenses including other pending charges, the legal status of the juvenile, and any aggravating and mitigating circumstances.

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

If 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, the juvenile may be detained.

1.33 Or Clear and Substantial Threat of Absconding: Va. Code § 16.1-248.1(A)(1)(c)

If 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 12 months, the juvenile may be detained.

2.00 Substantive Change: Clear Authority to Review Detention Placement *(New)*

HB 1209 creates a new subsection C by inserting:

> *When a juvenile is detained in a secure facility, the juvenile's probation officer may review such placement for the purpose of seeking a less restrictive alternative to confinement in that secure facility.*

The new language simply allows a juvenile probation officer to review a juvenile's placement in a detention facility. The language is discretionary and not mandatory.

2.10 Provides Consistency Between the Virginia Code and the Virginia Administrative Code

Current regulations (6 VAC35-150-300) require that: "The case of each pre-dispositionally placed youth shall be reviewed at least every 10 days in accordance with approved procedures to determine whether there has been a material change sufficient to warrant recommending a change in placement." HB 1209 provides clear statutory authority for the requirements set out in the Virginia Administrative Code.

2.20 Makes Clear Policy Statement in the Virginia Code

HB 1209 ensures that it is the policy of the Commonwealth that, when a juvenile is incarcerated in a local detention facility prior to disposition, DJJ may seek a lesser restrictive alternative to detention. Detention alternatives can be any intervention that is used in place of keeping a juvenile in a secure facility but typically include:

- House arrest (with or without) electronic monitoring
- Outreach detention - surveillance (often daily) and support to a juvenile while in the community to ensure adherence to rules/appearance in court
- Less-secure detention – residential, but not locked, setting
- Shelter care - similar to above

- Day/evening reporting programs - highly structured services to keep juveniles occupied, learning new skills, and under adult supervision for significant periods during the day or early evening.

2.30 HB 1209 is Consistent With DJJ's Efforts to Limit the Inappropriate Use of Pre-D

This bill is consistent with DJJ's efforts to limit the use of secure detention to only those juveniles who represent an ongoing threat to public safety and to limit the duration of detention when appropriate, less restrictive alternatives can be identified and implemented. DJJ is developing a collaborative statewide effort to improve policies as well as to assist localities identify those "best practices" on pre-dispositional detention issues such as overcrowding, disproportionate minority confinement, need for data-driven planning and decision-making, and the reduced use of detention for juveniles across the state who do not represent a threat to public safety or the administration of justice. HB 1209 is a step in developing alternatives to pre-dispositional detention. DJJ believes these efforts will result in a more effective use of public resources, protection of community safety, and the fair and equitable administration of justice in Virginia.

COMMITMENT & JUVENILE CORRECTIONAL CENTERS LEGISLATION

HB 1274 NO CHINS DIAGNOSTIC EVALUATIONS RDC
DELEGATE BRIAN J. MORAN - ALEXANDRIA

HB 1274 amends Virginia Code § 16.1-275. Effective July 1, 2004.

HB 1274 amends Virginia Code §16.1-275 to remove children in need of services from those who may be placed in the temporary custody of DJJ for a 30-day diagnostic assessment at the Reception and Diagnostic Center (RDC) prior to final disposition of such cases.

1.00 Background: CHINS Cases at RDC?

Prior to HB 1274, Virginia Code § 16.1-275 allowed the juvenile court or the circuit court to place a juvenile who is "alleged" to be delinquent or a child in need of services (CHINS) in the temporary custody of DJJ for 30 days for a diagnostic assessment service evaluation. The diagnostic assessment would occur after the adjudicatory hearing and prior to final disposition of the juvenile's case.

The statutory language in § 16.1-275 was discretionary in one way by allowing DJJ to conduct pre-dispositional diagnostic assessment evaluations if the personnel, services, and space are available. Given a recent decline in ward population in the juvenile correctional centers, DJJ notified juvenile and domestic relations district court judges in December 2001 that it was "re-implement[ing]" pre-dispositional diagnostic assessment evaluations. DJJ limits the number of evaluations to 10 per month on a first-come first-serve basis. However, the type of offenders eligible for the 30-day evaluation was not within the discretion of DJJ. The Virginia Code clearly provided that a juvenile alleged to be delinquent or a child in need of services (CHINS) was eligible for placement at RDC.

2.00 Substantive Amendment #1: Limit RDC Evaluations to Juveniles Found to be Delinquent

Clearly, the intent of the current statutory provision allowing the placement of the juvenile in the temporary custody of DJJ for a diagnostic evaluation is to provide the court with information necessary

for an appropriate disposition. The information gathered during the 30-day evaluation will not go toward deciding if the juvenile committed the alleged act. The diagnostic evaluation will be used for dispositional purposes and not adjudicatory purposes. Therefore, the word "alleged" was removed from the statute and the word "found" inserted in its place.

3.00 Substantive Amendment #2: Only Juveniles With Committable Offenses Eligible for 30-Day RDC Evaluation

DJJ advocates limiting the availability of a pre-dispositional diagnostic evaluation to those juveniles alleged to have committed offenses that would make them eligible to be committed to DJJ. If a juvenile is going to be placed at RDC for 30 days for a pre-dispositional diagnostic evaluation and treated in the same manner as a juvenile who has been committed, it seems only appropriate that the juvenile should be adjudicated delinquent for an offense or offenses that would make him eligible for commitment to DJJ.

4.00 Rationale: Mixing Status Offenders with Delinquents – Wrong on Several Levels

A "delinquent act" means an act under the law of Virginia that would be a crime if committed by an adult. CHINS means "child in need of services." The definition of a "child in need of services" is "a child whose behavior, conduct, or condition presents or results in a serious threat to the well-being and physical safety of the child . . ." Therefore, the prior language in the Code allowed for the placement of a juvenile who was not alleged to have committed a delinquent act to be placed for up to 30 days in the custody of DJJ with juveniles who were found to have committed delinquent acts. To be committed to DJJ, a juvenile must have committed a felony offense or four Class 1 misdemeanor offenses.

4.10 RDC Not Designed to Segregate Alleged Status Offenders From Delinquents

The pre-dispositional diagnostic assessment evaluations are conducted at RDC, which is the intake point for all juveniles committed to DJJ. RDC provides secure confinement for all juveniles for approximately 30 days while they undergo medical, academic, psychological, behavioral, and sociological evaluations to determine treatment needs and appropriate institutional placements. From RDC the juveniles may be admitted into one of DJJ's juvenile correctional centers or assigned to alternative placements in private provider facilities. RDC has no separate facility or dormitory for juveniles placed there for the purpose of a pre-dispositional evaluation. A juvenile alleged to be a child in need of services and placed at RDC for a 30-day pre-dispositional evaluation was in daily contact with those juveniles committed to DJJ. A CHINS juvenile was required to conform to the same rules and conduct as those juveniles found delinquent. CHINS juveniles were subjected to the same orientation procedures applicable to committed juveniles. The same custody classification procedures used for committed juveniles were applied to CHINS juveniles.

4.20 Dispositions for CHINS Cases Include Neither Probation Nor Incarceration

A juvenile found to be delinquent can be placed on probation and may be eligible for commitment to a juvenile correctional center. However, a juvenile found to be a child in need of services cannot be placed on probation nor committed to the custody of DJJ.

4.30 CHINS Eligible, But CHINSup Not eligible

Under the prior law, a child in need of services (CHINS) can be placed at RDC but a child in need of supervision (CHINSup) cannot be placed at RDC for a 30-day evaluation. Essentially, the definition of CHINS includes abused and neglected juveniles, whereas the definition of CHINSup includes the "gateway to delinquency offenses" of truancy and runaway.

4.31 CHINS v. CHINSup Definitions

"Child in need of services" (CHINS) means a child whose behavior, conduct, or condition presents or results in a serious threat to the well-being and physical safety of that child. A child in need of services may include a child under the age of 14 whose behavior, conduct, or condition presents or results in a serious threat to the well-being and physical safety of another person. To meet the definition of CHINS, there must be a clear and substantial danger to the child's life or health or to the life or health of another person. Also, the intervention of the court must be essential in order to provide the treatment, rehabilitation, or services needed by the child or his family. (See Virginia Code § 16.1-228).

"Child in need of supervision" (CHINSup) means a child who habitually and without justification is absent from school despite opportunity and reasonable efforts to keep him in school or who habitually runs away from home or a residential care court placement. (See Virginia Code § 16.1-288.)

4.40 Prior Virginia Law Was in Conflict With Federal Law

The Juvenile Justice Delinquency Prevention Act of 2002 prohibits the incarceration of status offenders with those juveniles found to be delinquent. Placing a status offender at RDC under the current law is a violation of the Office of Juvenile Justice Delinquency Prevention's sight and sound separation requirements.

HB 1355 COMMITMENT CRITERIA FOR JUVENILES FOUND DELINQUENT

DELEGATE PHILLIP A. HAMILTON – NEWPORT NEWS

HB 1355 amends Virginia Code § 16.1-278.8. Effective July 1, 2004.

HB 1355 amends the statutes relating to committing a juvenile to the custody of DJJ for four Class 1 misdemeanors.

1.00 Overview of Statutory Requirements Necessary for a Juvenile to be Eligible for Commitment: Va. Code § 16.1-278.8

Subsection A 14 of Virginia Code § 16.1-278.8 provides the statutory requirements necessary to make a juvenile eligible for commitment to a juvenile correctional center.

1.10 Juvenile Must be Adjudicated Delinquent or Convicted

To be committed to DJJ and placed in a juvenile correctional center, a juvenile must first be adjudicated delinquent by a juvenile court or tried and convicted as an adult.

1.20 Age Criteria for Commitment

A juvenile must be 11 years of age or older to be committed to DJJ and placed in a juvenile correctional center.

1.30 Delinquent Offense Criteria for Commitment – Felonies and Prior Felonies *(No Change)*

Essentially, Virginia Code § 16.1-278.8(A)(14) provides three statutory categories for committing a juvenile who has been found to be delinquent to the custody of DJJ.

1.31 Category 1: Committing a Delinquent Juvenile for a Felony Offense *(No Change)*

A juvenile may be committed to a juvenile correctional center for an "offense which would be a felony if committed by an adult."-

1.32 Category 2: Committing a Delinquent Juvenile for a Class 1 Misdemeanor if there is a Prior Felony *(No Change)*

The second category states that a juvenile found to be delinquent can be committed to a juvenile correctional center for "an offense which would be a Class 1 misdemeanor if committed by an adult and the juvenile has previously been found to be delinquent based on an offense which would be a felony if committed by an adult."

2.00 HB 1355 Amends Category 3 Commitments: Class 1 Misdemeanants With Three Prior Class 1 Misdemeanors *(Substantive Change!)*

The third category involves a juvenile who is found delinquent for only misdemeanor offenses. HB 1355 amends this category of commitment.

2.10 Old Law – Previously Adjudicated Delinquent

Prior to HB 1355, a juvenile could be committed to a juvenile correctional center for an offense that would be a Class 1 misdemeanor if the juvenile had previously been adjudicated delinquent on three occasions for offenses constituting Class 1 misdemeanors. Essentially, a juvenile needed to have four Class 1 misdemeanors to be committed to the custody of DJJ. However, the language stating "previously been adjudicated delinquent on three occasions" was ambiguous.

2.11 2000 General Assembly Session Amendments Raised the Commitment Criteria

During the 2000 session the General Assembly enacted legislation providing that a juvenile can be committed only to a juvenile correctional facility for an offense that would be a Class 1 misdemeanor if the juvenile "has previously been adjudicated delinquent on three occasions" for offenses that would be Class 1 misdemeanors. Three bills in 2000 were enacted, and Delegate Hamilton was the patron of one of those bills.

2.12 Intent of "Previously Been Adjudicated Delinquent on Three Occasions"

The intent of the legislation in 2000 was to commit only those juveniles who had a significant criminal history so that juvenile correctional centers would house, treat, and rehabilitate only serious juvenile offenders. Juveniles with less significant misdemeanor histories were to be dealt with at the local level. However, the language added by the 2000 legislation was confusing and ambiguous. No statutory guidance or case law concerning the definition of "previously been adjudicated" existed. Courts could find a juvenile delinquent for multiple Class 1 misdemeanors during the same court proceeding. The language stating "on three occasions" is no less ambiguous. A juvenile may commit multiple Class 1 misdemeanor offenses during the same act or transaction.

3.00 The New Language is Modeled Upon "Three Strikes; You're Out"

HB 1355 attempts to provide some clarity concerning the "previously been adjudicated delinquent on three occasions" language. HB 1355 amends subsection A 14 of Virginia Code § 16.1-278.8 so that a juvenile is eligible for commitment upon adjudication for a Class 1 misdemeanor if that juvenile has been adjudicated delinquent on three or more offenses that would be Class 1 misdemeanors if "each such prior offense was not part of a common act, transaction, or scheme…" The language tracks the "Three Strikes; You're Out" language.

3.01 Intent of New Language

The intent of the new language is to commit a juvenile only found delinquent on a Class 1 misdemeanor who has a significant misdemeanant history (more than one act constituting multiple offenses and more than one court date). HB 1355 attempts to clarify the original intent of the 2000 language.

HB 234 ADDITIONAL DUTIES OF THE DIRECTOR & ILLEGAL ALIENS
DELEGATE M. KIRKLAND COX - CHESTERFIELD

HB 234 creates Virginia Code § 66-3.2. Effective July 1, 2004.

HB 234 amends the Virginia Code by adding a section numbered 66-3.2 that will give additional duties to the Director of DJJ. The bill requires the Director to coordinate with the Department of Corrections in the development and submission of requests for compensation from the United States Department of Justice State Criminal Alien Assistance Program for costs associated with incarcerating undocumented aliens.

1.00 The New Code Section: Va. Code § 66-3.2 - Additional Duties of the Director.

The new Code section states *"The Director shall coordinate with the Department of Corrections the development and submission of requests for compensation from the United States Department of Justice State Criminal Alien Assistance Program for costs associated with incarcerating undocumented aliens."*

2.00 What is the State Criminal Alien Assistance Program (SCAAP)

The Bureau of Justice Assistance (BJA) within the U.S. Department of Justice administers the State Criminal Alien Assistance Program (SCAAP) in conjunction with the Bureau of Immigration and Customs Enforcement (ICE) and the Department of Homeland Security (DHS). SCAAP provides federal payments to states and localities that incurred correctional officer salary costs for incarcerating undocumented criminal aliens with at least one felony or two misdemeanor convictions for violations of state or local law and were incarcerated for at least four consecutive days. SCAAP was created by the Immigration and Nationality Act of 1990, Section 241, as amended, 8 U.S.C. 1231(i), pursuant to Section 20301 of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322).

2.10 Eligible Illegal Alien Offenders

If a person in state or local custody is considered an undocumented (illegal) alien, convicted of at least one felony or two misdemeanors for violations of state or local law, and incarcerated for at least four consecutive days during the reporting period, applicant jurisdictions may count all inmate days attributed to this person during the reporting period including:

- Pretrial detention time served during the reporting period for a conviction of one felony or two misdemeanors.
- Pretrial detention time served during the reporting period on subsequent charges for persons with prior qualifying convictions regardless of the type or number of new criminal charges.
- Post-conviction, sentenced time served during the reporting period on a conviction of one felony or two misdemeanors.
- Post-conviction, sentenced time served during the reporting period on subsequent convictions for persons with prior qualifying convictions regardless of the type or number of new convictions.

2.20 Potential Fiscal Implications

HB 234 will require the Departments of Corrections and Juvenile Justice to request reimbursement from the Alien Assistance Program for the costs of incarcerating illegal aliens. If federal funds are available (FY 2004 funding has not been determined at this date), both Departments could receive monies to offset some of the costs associated with incarcerating illegal aliens.

JUVENILE COURT PROCEDURES & ADMINISTRATION

HB 600 APPOINTMENT & WAIVER OF COUNSEL FOR JUVENILE COURT HEARINGS
DELEGATE ALLEN W. DUDLEY – ROCKY MOUNT

HB 600 amends Virginia Code §§ 16.1-250, 16.1-266, and 16.1-267 and repeals § 16.1-250.1. Effective July 1, 2005.

1.00 Background Concerning the Evolution of HB 600

The American Bar Association (ABA) released a critique of the juvenile justice system in Virginia in October 2002, entitled "Virginia: An Assessment of Access to Counsel and Quality of Representation

in Delinquency Proceedings." The report criticized Virginia for failing to appoint counsel for a juvenile until after the initial hearing with the consequence that many juveniles are ordered detained at the detention hearing without having representation by an attorney. Not having counsel present at the initial hearing has adverse consequences on the juveniles. The report found that children who are detained at the initial hearings are far less likely than their counterparts to have favorable outcomes at adjudication or disposition. This action may have adverse fiscal consequences for the locality, which must confine juveniles who might otherwise be released to their parents or other authorities.

The report also found a high incidence of children waiving their right to counsel without prior consultation with a lawyer or trained advocate. The ABA report uncovered significant numbers of children waiving counsel who did not appear to understand the gravity or consequences of their actions. While no verifiable data was available to show overall how many children waived their right to counsel, interviewees in one jurisdiction estimated that more than 50% of the youth charged with misdemeanors waived counsel regardless of the seriousness of the offense. In most jurisdictions investigators were told that judges did not allow youth charged with felonies to waive their right to counsel. Under HB 600, a child who is not detained in a detention facility but is alleged to have committed an offense that could lead to commitment to a juvenile correctional center may waive his right to an attorney only after he consults with an attorney.

One of the report's observations bears directly on the role of DJJ. The report noted that DJJ "is a powerful executive branch agency that manages community programs and services, community supervision and case management, and custody and care of committed juveniles." State and local court service units bear enormous responsibility in juvenile court. They make decisions that affect children at every stage of the process and at times perform functions traditionally filled by judges and prosecutors, including diverting children from the system, authorizing detention, presenting detention cases to the court, advising youth of their rights, and presenting misdemeanor petitions to the court. The many roles can sometimes be confusing. HB 600 reduces at least part of this confusion by providing for the appointment of counsel on behalf of the child at the earliest stages of the child's encounter with the court system.

1.10 Previous Legislation: 2003 General Assembly and HB 2378

During the 2003 General Assembly session, Delegate Moran submitted HB 2378, which attempted to amend the Virginia Code requiring the appointment of counsel at the arraignment hearing and to permit the child to waive representation by counsel only after first conferring with counsel. However, HB 2378 failed to report from the House Committee for Courts of Justice. In addition to concerns about a potentially negative fiscal impact, concerns were raised about the logistics of ensuring that a juvenile was afforded the opportunity of having counsel present at the initial hearing. DJJ convened an advisory work group in early fall to address the issues highlighted in the ABA report and the concerns with House Bill 2378. The amendments during the 2004 session to HB 600 are, in part, due to the work completed by the advisory work group.

2.00 Substantive Changes to the Initial Detention Hearing: Va. Code § 16.1-250

Virginia Code § 16.1-250 provides the procedures for conducting a detention hearing when a child has been taken into immediate custody and not released as provided in §§ 16.1-247 or 16.1-248.1. Under such circumstances, a detention hearing before a judge for the child must occur on the next day that the

court is in session; not to exceed 72 hours (96 hours if the period expires on a Saturday, Sunday, or other legal holiday).

2.10 Notice of the Hearing or Rehearing Must be Given to the Child's Attorney *(New)*

HB 600 amends subsection C of Virginia Code § 16.1-250 to require that notice of the detention hearing *or any rehearing*, either oral or written, stating the time, place, and purpose of the hearing must be given *to the child's attorney.* Under prior law, notice of the initial detention hearing was only required to be given to the parent, guardian, legal custodian, or other person standing in loco parentis if he can be found, to the child if 12 years of age or older, and to the attorney for the Commonwealth.

2.20 Child's Attorney Must be Provided Opportunity to be Heard During Hearing *(New)*

Subsection D of Virginia Code § 16.1-250 is amended to require that the attorney for the child must be given the opportunity to be heard during the detention hearing. Under prior law, only the attorney for the Commonwealth was required to be given the opportunity to be heard.

2.30 Restrictions Upon Parents' Rights to Request a Detention Review Hearing *(New)*

Subsection H of Virginia Code § 16.1-250 was amended to limit the child's parents ability to request a review hearing when the child is ordered to be detained at the initial detention hearing. Under prior law, the child's parent (or other legally responsible person) could request a detention review hearing only if the child was not released and the parent was not present at the hearing because the parent was not notified about the hearing.

2.31 And the *New* Restrictions Are . . .

Under HB 600, the parent is now required to make the request in writing and must state that *such person is willing and available to supervise the child upon release from detention and to return the child to court for all scheduled proceedings on the pending charges.*

2.32 Brief Rationale

The limitations were placed upon the parents' rights to the detention review hearing because of the new requirements that an attorney must be present at the initial hearing.

3.00 Substantive Changes to the Timing of Appointment of Counsel: Va. Code § 16.1-266

Virginia Code § 16.1-266 provides the statutory procedures for appointing counsel in a juvenile court delinquency proceedings. This section of the Code also provides the juvenile court with the authority to appoint guardian ad litems.

3.10 Appointing Counsel Prior to the Initial Detention Hearing: Va. Code § 16.1-266(B) *(New)*

HB 600 amends subsection B of Virginia Code § 16.1-266 to require the juvenile court to appoint the child an attorney prior *to the detention hearing held pursuant to § 16.1-250.*

3.11 No Appointment Necessary if Child Has an Attorney

If an attorney has been retained and appears on behalf of the child, the juvenile court does not have to appoint an attorney.

3.12 Child is Presumed to be Indigent

For the purposes of appointment of counsel for the detention hearing held pursuant to Virginia Code § 16.1-250 only, a child's indigence will be presumed.

3.13 If Judge is Going to Release the Child, No Counsel is Necessary

Nothing prohibits a judge from releasing a child from detention prior to appointment of counsel. If the issue of releasing the child is not in dispute, and the judge intends to release the child, the judge is not required to appoint counsel for the child.

3.20 Appointment of Counsel When Child is Released: Va. Code § 16.1-266(C)

If a child is released and an attorney is not appointed under subsection B as summarized above, then the child must be provided the opportunity to obtain counsel or request that counsel be appointed prior to the adjudicatory or transfer hearing in any case involving a child alleged to be in need of services, in need of supervision, or delinquent. These changes appear to be technical in nature.

3.21 Child Must be Indigent

The child or the child's parent may request that the court appoint counsel, provided that before counsel is appointed or the court continues any appointment previously made pursuant to subsection B, the court determines that the child is indigent according to Virginia Code § 19.2-159.

3.22 Child's Parents Must Complete Indigency Forms and Financial Statement

The court must require the child's parent, guardian, legal custodian, or other person standing in loco parentis to complete a statement of indigence substantially in the form provided by Virginia Code § 19.2-159 and a financial statement.

3.23 Court Shall Appoint Counsel Upon Determination of Indigency

Upon determination of indigence, the court will appoint an attorney to represent the child.

3.30 The Right to Waive Counsel When Child is Released

If a child is released and an attorney is not appointed under subsection B as summarized above, the child may waive the right to have counsel. The right to waive counsel must be made in writing and such waiver must be ***consistent with*** the interests of the child.

3.31 Consulting with Attorney Prior to Waiver *(New and Substantive Change)*

If a child is alleged to *have committed an offense that may result in commitment pursuant to subsection 14 of Virginia Code § 16.1-278.8*, that child may waive the right to an attorney *only after he consults with an attorney and the court determines that his waiver is free and voluntary.*

3.32 Waiver Must be in Writing and Signed by Child and Attorney

The waiver shall be in writing, signed by both the child and the child's attorney, and shall be filed with the court records of the case.

4.00 Technical Amendments to Virginia Code § 16.1-267(B)

The amendments to Virginia Code § 16.1-267 concerning the parents' financial obligations when an attorney is appointed pursuant to *subsection B or C of* § 16.1-266 appear to be technical in nature. Briefly, after an investigation by the court services unit, if the court finds that the parents are financially able to pay for the attorney in whole or in part and refuse to do so, the court must assess costs, in whole or in part, for the legal services in the amount awarded the attorney by the court.

5.00 The Right to a Detention Review Hearing is Removed: Va. Code § 16.1-250.1 is Repealed

Virginia Code § 16.1-250.1 is abolished. There is no longer a "detention review hearing." Requiring counsel to be appointed and present at the initial detention hearing made this section obsolete.

6.00 Guidelines on Implementing HB 600 Must be Developed

The Office of the Executive Secretary of the Supreme Court, in conjunction with the Commonwealth's Attorneys' Service Council, the Public Defender Commission and DJJ, must develop written guidelines and procedures for implementing subsections B and C of Virginia Code § 16.1-266 as amended by this act.

6.10 Implementation Report to Chairs of Senate and House Courts of Justice Committees

The Executive Secretary shall submit a report of its findings and recommendations concerning the implementation of subsections B and C of Virginia Code § 16.1-266 to the Chairmen of the Senate Courts of Justice and House Courts of Justice Committees by December 1, 2004.

7.00 Delayed Effective Date: July 1, 2005

The provisions of HB 600 will not take effect until July 1, 2005.

SB 26 LITTERING; SUMMONS IN LIEU OF PETITION IN JUVENILE COURT
SENATOR HENRY L. MARSH, III - RICHMOND

SB 26 amends Virginia Code § 16.1-260. Effective July 1, 2004.

All proceedings in juvenile court are initiated by petition except as provided Virginia Code § 16.1-259 and subsection H of § 16.1-260. Subsection H of § 16.1-260 states that the filing of a petition is not necessary for violations of the traffic laws, including offenses involving bicycles; hitchhiking and other pedestrian offenses; game and fish laws; or a violation of the ordinance of any city regulating surfing; or any ordinance establishing curfew, animal control, or littering violations. Virginia Code § 16.1-259 provides that proceedings in juvenile court involving adults may be instituted on petition by any interested party, or on a warrant issued as provided by law, or upon the court's own motion.

SB 26 adds littering to the list of offenses for which a summons may be used to bring a proceeding in juvenile court in lieu of a petition.

HB 1056 & SB 330 CREATION OF THE INDIGENT DEFENSE COMMISSION
DELEGATE BRIAN J. MORAN – ALEXANDRIA
SENATOR KENNETH W. STOLLE – VIRGINIA BEACH

HB 1056 and SB 330 amend Virginia Code §§ 16.1-266, 19.2-159, 19.2-163.7, 19.2-163.8, and 53.1-124 and add in Chapter 10 of Title 19.2 an article numbered 3.1, consisting of sections numbered 19.2-163.01 through 19.2-163.04, and 19.2-163.4:1. HB 1056 and SB 330 repeal Virginia Code §§ 19.2-163.1, 19.2-163.2, and 19.2-163.6. Effective July 1, 2005. Virginia Code § 19.2-163.03 will become effective July 1, 2005, only if funds are appropriated by the General Assembly.

HB 1056 and SB 330 establish the Indigent Defense Commission, which will establish criteria for court-appointed lawyers as well as assume the duties of the existing Public Defender Commission, which is abolished by this bill. All of the existing public defender offices are retained and no new ones are added.

1.00 Appointing Counsel for Juvenile from List: Va. Code § 16.1-266

Virginia Code § 16.1-266 provides the statutory procedures for appointing counsel in a juvenile court delinquency proceedings. This section also provides the juvenile court with the authority to appoint guardian ad litems. When a child is found to be indigent, HB 1056 and SB 330 amend subsection B to require the juvenile court to appoint an attorney-at-law *from the list maintained by the Indigent Defense Commission pursuant to Virginia Code § 19.2-163.01* to represent him. Such appointment must occur prior to the detention review hearing or the adjudicatory or transfer hearing in any case involving a child who is alleged to be in need of services, in need of supervision, or delinquent.

2.00 Appointing Counsel for Indigent Adults from List: Va. Code § 19.2-159

Virginia Code § 19.2-159 provides the statutory procedures for determining indigency and the appointment of counsel for adults in criminal matters. Consistent with the appointment of counsel in juvenile court proceedings, counsel appointed by the court for representation of the accused must be from a list of attorneys *maintained by the Indigent Defense Commission pursuant to § 19.2-163.01*.

3.00 The Establishment of the Virginia Indigent Defense Commission: Va. Code § 19.2-163.01

HB 1056 and SB 330 create Article 3.1 in Title 19.2-163.01 to establish the Virginia Indigent Defense Commission (VIDC). The Commission will publicize and enforce the qualification standards for attorneys seeking eligibility to serve as court-appointed counsel for indigent defendants pursuant to Virginia Code § 19.2-159. VIDC will develop initial training courses for attorneys who wish to begin serving as court-appointed counsel and will maintain a list of attorneys admitted to practice law in Virginia who are qualified to serve as court-appointed counsel for indigent defendants.

3.10 Standards of Practice in Circuit and Juvenile Court

The Commission will establish official standards of practice for court-appointed counsel to follow in representing their clients and guidelines for the removal of an attorney from the official list of those qualified to receive court appointments. Such standards will apply to those attorneys appointed by the juvenile court.

4.00 Membership of VIDC: Va. Code § 19.2-163.02

The Commission will consist of 12 members, including the chairmen of the House and Senate Committees for Courts of Justice; the chairman of the Virginia State Crime Commission; the Executive Secretary of the Supreme Court or his designee; two attorneys officially designated by the Virginia State Bar; and two persons appointed by the Governor; the Speaker of the House of Delegates; and the Senate Committee on Privileges and Elections. Of the two appointments made by the Governor, the Speaker, and the Senate Committee on Privileges and Elections, at least one shall be an attorney in private practice with a demonstrated interest in indigent defense issues.

5.00 Qualifications for Court-Appointed Counsel: Va. Code § 19.2-163.03

HB 1056 and SB 330 establish the minimum qualifications for an attorney to be appointed to represent an indigent client.

5.10 Counsel Qualifications for Appointment in Juvenile Court

HB 1056 and SB 330 provide the qualifications necessary for an attorney to be appointed by the juvenile and domestic relations district court pursuant to subdivision B 2 of Virginia Code § 16.1-266. The attorney must (i) be a member in good standing of the Virginia State Bar; (ii) have completed the six hours of MCLE-approved continuing legal education developed by the Commission; (iii) have completed four additional hours of MCLE-approved continuing legal education on representing juveniles developed by the Commission; and (iv) certify that he has participated as either lead counsel or co-counsel in four cases involving juveniles in a juvenile and domestic relations district court.
If the attorney has been an active member of the Virginia State Bar for more than one year and certifies that he has, within the past year, been lead counsel in four cases involving juveniles in juvenile and domestic relations district court, the requirement to complete the 10 hours of continuing legal education shall be waived. If the attorney has been an active member of the Virginia State Bar for more than one year and certifies that he has participated within the past five years in five cases involving juveniles in a juvenile and domestic relations district court, the requirement to participate as either lead counsel or co-counsel in four juvenile cases shall be waived.

5.20 Qualifications Statute Effective Date Dependent Upon Funding

Virginia Code § 19.2-163.03 will become effective July 1, 2005, only if funds are appropriated by the General Assembly to carry out the purposes of that section.

HB 1430 DRUG TREATMENT COURT ACT; CREATED, BUT NOT FUNDED
DELEGATE TERRY G. KILGORE - LEE

HB 1430 amends Virginia Code §§ 16.1-69.48:1, 16.1-69.48:3, 17.1-275, 17.1-275.8, and 18.2-251.02 and creates a section numbered 18.2-254.1. Effective July 1, 2004.

HB 1430 establishes the Drug Treatment Court Act to allow the establishment of drug treatment courts as specialized court dockets within the existing structure of Virginia's court system.

1.00 Creation of the Drug Treatment Court Act: Va. Code § 18.2-254.1

HB 1430 states the purpose of the Drug Treatment Court Act is to "recognize the critical need . . . for effective treatment programs that reduce the incidence of drug use, drug addiction, family separation due to parental substance abuse, and drug-related crimes." The intent of the General Assembly as expressed by HB 1430 is "to enhance public safety by facilitating the creation of drug treatment court . . ." The goals of drug treatment courts include: (i) reducing drug addiction and drug dependency among offenders; (ii) reducing recidivism; (iii) reducing drug-related court workloads; (iv) increasing personal, familial, and societal accountability among offenders; and (v) promoting effective planning and use of resources among the criminal justice system and community agencies.

2.00 Specialized Court Dockets

HB 1430 provides that drug treatment courts are specialized court dockets within the existing structure of Virginia's court system offering judicial monitoring of intensive treatment and strict supervision of addicts in drug and drug-related cases.

3.00 Administrative Oversight by the Supreme Court

Administrative oversight for implementation of the Drug Treatment Court will be conducted by the Supreme Court of Virginia. The Supreme Court of Virginia shall be responsible for (i) providing oversight for the distribution of funds for drug treatment courts; (ii) providing technical assistance to drug treatment courts; (iii) providing training for judges who preside over drug treatment courts; (iv) providing training to the providers of administrative, case management, and treatment services to drug treatment courts; and (v) monitoring the completion of evaluations of the effectiveness and efficiency of drug treatment courts in the Commonwealth.

4.00 State Advisory Committee

A state drug treatment court advisory committee will be established. The purpose of the committee will be to:

> (i) evaluate and recommend standards for the planning and implementation of drug treatment courts;

(ii) assist in the evaluation of their effectiveness and efficiency; and
(iii) encourage and enhance cooperation among agencies that participate in their planning and implementation.

4.10 State Drug Treatment Court Advisory Committee Chair: Chief Justice

The state drug treatment court advisory committee will be chaired by the Chief Justice of the Supreme Court of Virginia or his designee.[4]

5.00 Local Drug Treatment Court Advisory Committee

Each jurisdiction or combination of jurisdictions that intends to establish a drug treatment court or continue the operation of an existing one shall establish a local drug treatment court advisory committee.[5] Jurisdictions with separate adult and juvenile drug treatment courts may establish an advisory committee for each such court.

5.10 Local Drug Treatment Court Advisory Committee Responsible for Eligibility Criteria

The local drug treatment court advisory committee will be responsible for establishing criteria for the eligibility and participation of offenders who have been determined to be addicted to or dependent upon drugs subject to the limitations as set forth in the Drug Treatment Court Act.

5.11 Commonwealth's Attorney Retains Discretion to Prosecute Criminal Offenses

The establishment of a drug treatment should not be construed as limiting the discretion of the attorney for the Commonwealth to prosecute any criminal case that he deems advisable to prosecute except to the extent the participating attorney for the Commonwealth agrees to do so.

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[4] The state drug treatment court advisory committee membership shall include a member of the Judicial Conference of Virginia who presides over a drug treatment court; a district court judge; the Executive Secretary or his designee; and the directors of the following executive branch agencies: Department of Corrections, Department of Criminal Justice Services, Department of Juvenile Justice, Department of Mental Health, Mental Retardation and Substance Abuse Services, Department of Social Services; a representative of the following entities: community corrections/pretrial services programs, the Commonwealth's Attorney's Association, the Public Defender Commission, the Circuit Court Clerk's Association, the Virginia Sheriff's Association, the Virginia Association of Chiefs of Police, the Commission on VASAP, and two representatives designated by the Virginia Drug Court Association.

[5] The local drug court advisory committee membership shall include, but shall not be limited to the following people or their designees: (i) the drug treatment court judge; (ii) the attorney for the Commonwealth, or, where applicable, the city or county attorney who has responsibility for the prosecution of misdemeanor offenses; (iii) the public defender or a member of the local criminal defense bar in jurisdictions in which there is no public defender; (iv) the clerk of the court in which the drug treatment court is located; (v) a representative of the Virginia Department of Corrections, or DJJ, or both, from the local office which serves the jurisdiction or combination of jurisdictions; (vi) a representative of community corrections/pretrial services; (vii) a local law-enforcement officer; (viii) a representative of the Department of Mental Health, Mental Retardation, and Substance Abuse Services or a representative of local drug treatment providers; (ix) the drug court administrator; (x) a representative of the Department of Social Services; (xi) county administrator or city manager; and (xii) any other people selected by the drug treatment court advisory committee.

5.12 Adults With Violent Criminal Convictions in Last 10 Years Are Not Eligible

Adult offenders convicted of a violent criminal offense as defined in Virginia Code §§ 17.1-805 or 19.2-297.1 within the preceding 10 years are not eligible for participation in a drug treatment court.

5.13 Juveniles With Violent Criminal Convictions in Last 10 Years Are Not Eligible

Juvenile offenders adjudicated delinquent of a violent criminal offense as defined in Virginia Code §§ 17.1-805 or 19.2-297.1 within the preceding 10 years are not eligible for participation in a drug treatment court.

5.14 Participation Must be Voluntary

Participation by an offender must be voluntary with a written agreement entered into by the offender and the Commonwealth with the concurrence of the court.

5.15 Participants Must Contribute to Cover Costs

Participating offenders must contribute to the cost of the substance abuse treatment while participating in a drug treatment court. Guidelines concerning such payments will be developed by the drug treatment court advisory committee.

6.00 Evaluation Reports

The Office of the Executive Secretary shall, with the assistance of the state drug treatment court advisory committee, develop a statewide evaluation model and conduct ongoing evaluations of the effectiveness and efficiency of all local drug treatment courts.

6.10 Yearly Reports

A report concerning the evaluations must be submitted to the General Assembly by December 1 of each year.

7.00 Moratorium on Establishing Drug Courts

No drug treatment court shall be established subsequent to March 1, 2004, unless the jurisdiction or jurisdictions intending or proposing to establish such court have been specifically granted permission under the Code of Virginia to establish such court. The moratorium does not apply to any drug treatment court established on or before March 1, 2004, and operational as of July 1, 2004.

HB 44 COURTS NOT OF RECORD: SETTLEMENT & INSTALLMENT ORDERS
DELEGATE GARY A. REESE – FAIRFAX

HB 44 amends Virginia Code § 16.1-94. Effective July 1, 2004.

HB 44 clarifies that judges in courts not of record may enter as a judgment order a discrete written installment or settlement order that has been endorsed by counsel. Under prior law, a judge could

enter a discrete written order in such cases as he deemed appropriate or enter the judgment on a pleading, note, or bond. A provision states that the bill is declaratory of existing law.

HB 45 ASSESSING TOTAL COSTS OF GAL TO PARENTS IN CIRCUIT COURT
DELEGATE GARY A. REESE – FAIRFAX
HB 45 amends Virginia Code § 16.1-267. Effective July 1, 2004.

HB 45 eliminates the statutory $100.00 cap on the amount of guardian ad litem compensation (in a circuit court) that may be recovered from parents who are financially able to pay. The bill permits the circuit court to assess as costs against the parents the maximum amount the court awards the attorney. The bill retains the statutory cap on compensation that may be assessed against parents in the juvenile court. The subject matter of this bill is addressed in Item 34, Paragraph G of the 2002 Appropriations Act.

HB 982 PROCESS & FEES FOR APPEALS TO CIRCUIT COURT
DELEGATE GARY A. REESE – FAIRFAX
HB 982 amends Virginia Code §§ 16.1-69.48:5, 16.1-107, and 16.1-112. Effective July 1, 2004.

HB 982 requires the district court clerks, in the case of an appeal filed pursuant to Virginia Code § 6.1-296, to collect fees for service of process of the notice of appeal in the circuit court before sending an appeal to the circuit court. The clerk is given the option to notify the appellee's attorney by regular mail that the appeal has been docketed.

CONFIDENTIALITY

HB 878 ACCESSING HEALTH RECORDS BY GUARDIANS AD LITEM & ATTORNEYS REPRESENTING MINORS & CERTAIN ADULTS
DELEGATE JOHN M. O'BANNON, III – HENRICO
HB 878 amends Virginia Code §§ 16.1-266, 16.1-343, 32.1-127.1:03, 37.1-67.3, 37.1-134.9, 37.1-134.12, and 37.1-134.21. Effective July 1, 2004.

HB 878 ensures that the Virginia Code is in compliance with federal regulations concerning protected health information promulgated pursuant to the Health Insurance Portability and Accountability Act (HIPPA). HB 878 provides access to health records and information for guardians ad litem and attorneys representing minors in juvenile and domestic court proceedings, proceedings to authorize treatment for patients incapable of providing consent to treatment, persons who are subject to petitions for involuntary commitment, and respondents who are the subjects of petitions to appoint guardians and/or conservators.

1.00 Amendments to the Juvenile Code (Chapter 11 of Title 16.1)

For the purpose of this legislative overview, summaries will be provided only for the changes to the juvenile code.

1.10 Providing Counsel Access to Any Records About a Child

Virginia Code § 16.1-266 provides the statutory procedures for appointing counsel in a juvenile court delinquency proceedings. This section also provides the juvenile court with the authority to appoint guardian ad litems. Prior to HB 878, subsection F of Virginia Code § 16.1-266 required that any state or local agency, department, authority, or institution and any school, hospital, physician, or other health or mental health care provider must permit a guardian ad litem to inspect and copy, without the consent of the child or his parents, any records relating to the child whom the guardian represents. The guardian ad litem must present the custodian of the records with a copy of the court order appointing him or a court order specifically allowing him such access. The guardian ad litem may request a mental health care provider to make himself available to conduct a review and interpretation of the child's treatment records that are specifically related to the investigation. The mental health care provider must be given at least 72 hours notice.

1.11 Counsel for Child Now Has Same Access as Guardian Ad Litem *(New)*

HB 878 amends subsection F of Virginia Code § 16.1-266 to provide the child's attorney with the same access to the same records under the same conditions as the guardian ad litem.

1.20 Involuntary Commitment Orders

Virginia Code § 16.1-340 provides the authority for the emergency admission of a minor by taking that minor into custody for inpatient treatment because probable cause exists to believe the minor is mentally ill and in need of hospitalization. The minor must present an imminent danger to himself or others as a result of the mental illness or is so seriously mentally ill as to be substantially unable to care for himself. In such a situation, a temporary detention order may be issued by a magistrate. If a temporary detention order is issued, the juvenile and domestic relations district court must conduct a hearing within 72 hours from the time of the issuance of the temporary detention order. Virginia Code § 16.1-341 requires the juvenile court to conduct a hearing within 72 hours when a person files a petition alleging that a minor needs to be involuntarily committed.

1.21 The Involuntary Commitment Hearing and Appointment of Counsel

Virginia Code § 16.1-344 provides the statutory structure for conducting an involuntary commitment hearing. Virginia Code § 16.1-341 requires the juvenile court to appoint counsel at least 24 hours before the involuntary commitment hearing unless the child has retained counsel. Virginia Code § 16.1-343 requires the attorney for the child to interview the child, the child's parent, the petitioner (the person requesting the involuntary commitment, and the qualified evaluator.

1.22 HB 878 Amendments: Allowing Counsel Access to Health and Mental Health Records

HB 878 amends Virginia Code § 16.1-343 to require a state or local agency, department, authority, or institution and any school, hospital, physician, or other health or mental health care provider to permit the attorney appointed to represent the child to inspect and copy any

records relating to the minor whom the attorney represents. The attorney does not need the consent of the minor or his parents.

HB 1096 JUVENILES' FINGERPRINTS & PHOTOGRAPHS REQUIRED IF CHARGED WITH CERTAIN DELINQUENT ACTS

DELEGATE BRIAN J. MORAN - ALEXANDRIA

HB 1096 amends Virginia Code § 16.1-299. Effective July 1, 2004.

HB 1096 attempts to address confusing language in Virginia Code § 16.1-299 pertaining to the taking of photographs and fingerprints of juveniles. Prior to HB 1096, § 16.1-299 allowed law-enforcement officers to take the fingerprints and photographs of a juvenile when that juvenile was arrested for a delinquent act that would be reportable to the Central Criminal Records Exchange (CCRE) pursuant to subsection A of § 19.2-390 (all felonies and most Class 1 and 2 misdemeanors except DUI, trespass, and disorderly conduct). Also prior to HB 1096, Virginia Code § 16.1-299 required law-enforcement officers to take the fingerprints and photographs of a juvenile when that juvenile was arrested for a violent juvenile felony.

Under HB 1096, law-enforcement officers must take the fingerprints and photographs of a juvenile when that juvenile is arrested for a delinquent act that would be reportable to CCRE. If a juvenile is adjudicated delinquent or found guilty for a felony, copies of his fingerprints and a report of the disposition will be sent to CCRE. If a petition or warrant is not filed against a juvenile, the fingerprint card, copies of the fingerprints, and photographs must be destroyed 60 days after fingerprints were taken. The fingerprint card, copies of the fingerprints, and photographs do not need to be destroyed if the juvenile is found not guilty for a violent juvenile felony or any other felony. HB 1096 removes the 14 years of age barrier.

HB 869 SCHOOL NOTIFICATION TO LAW ENFORCEMENT FOR GUN OFFENSES

DELEGATE KATHY J. BYRON – CAMPBELL

HB 869 amends Virginia Code § 22.1-279.3:1. Effective July 1, 2004.

HB 869 expands the enumerated activities requiring school principals to report to local law enforcement by including offenses involving "firearms" as defined by Virginia Code § 22.1-277.07. Previously, "firearm" was not defined.

1.00 School Personnel Must Make Incident Reports to School Principal: Va. Code § 22.1-279.3:1

Virginia Code § 22.1-279.3:1 (A) requires an incident report be made to the school principal when a juvenile has committed a certain act on a school bus, school property, or at a school-sponsored event. Reports are required for incidents occurring on a school bus, on school property, or at a school-sponsored activity involving:

- the assault or assault and battery, without bodily injury;
- the assault and battery that results in bodily injury, sexual assault, death, shooting, stabbing, cutting, or wounding;

- any conduct involving alcohol, marijuana, a controlled substance, imitation controlled substance, or an anabolic steroid, including the theft or attempted theft of student prescription medications;
- any threats against school personnel;
- the illegal carrying of a firearm (defined in § 22.1-277.07);
- any illegal conduct involving firebombs, explosive materials or devices, or hoax explosive devices (defined in § 18.2-85), or explosive or incendiary devices (defined in § 18.2-433.1), or chemical bombs (described in § 18.2-87.1); or
- any threats or false threats to bomb (described in § 18.2-83), made against school personnel or involving school property or school buses.

1.10 The Change Made by HB 869: Reports Involving Guns

The carrying of an illegal firearm on a school bus, on school property, or at a school-sponsored activity is already a reportable offense. HB 869 amends subsection A to define a "firearm" according to Virginia Code § 22.1-277.07 as "any weapon prohibited on school property or at a school-sponsored activity pursuant to § 18.2-308.1, or (i) any weapon, including a starter gun, that will, or is designed or may readily be converted to, expel single or multiple projectiles by the action of an explosion of a combustible material; (ii) the frame or receiver of any such weapon; (iii) any firearm muffler or firearm silencer; or (iv) any destructive device." "Firearm" shall not include any weapon in which ammunition may be discharged by pneumatic pressure.

1.11 Definition of Weapon According to Virginia Code § 18.2-308.1

Virginia Code § 18.2-308.1 defines weapon as including a stun weapon or taser, a knife, except a pocket knife having a folding metal blade of less than three inches, and any weapon designated in subsection A of § 18.2-308.[6]

1.12 Illegal Possession of a Weapon is Reportable to Law Enforcement

As the illegal possession of a gun by a juvenile on school property is a Class 6 felony, the principal must notify law enforcement when he receives a report of such possession.

2.00 School Principal Must Make Reports to Law Enforcement

When a principal receives a report, Virginia Code § 22.1-279.3:1 (D) requires him to notify law enforcement of certain types of incidents. When the principal receives a report about any of the conduct listed in subsection A, he is required to make a report to local law-enforcement if the conduct was a criminal act. However, if the incident involves assault and assault and battery, the report to local law enforcement is discretionary.

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[6] Virginia Code § 18.1-308 is the concealed weapon law. Subsection A includes such weapons as (i) any pistol, revolver, or other weapon designed or intended to propel a missile of any kind by action of an explosion of any combustible material; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, razor, slingshot, spring stick, metal knucks, or blackjack; (iii) any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain; (iv) any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and may be known as a throwing star or oriental dart.

3.00 Law Enforcement Reports to School Principal

Subsection B allows local law-enforcement authorities to make a report to the principal or his designee when a student commits an offense that would be a felony or a violation of the Drug Control Act (§ 54.1-3400 et seq.) and occurred on a school bus, on school property, or at a school-sponsored activity, or would be a misdemeanor involving any incidents described in clauses (i) through (v) of subsection A.

HB 787 OBTAINING JUVENILE COURT RECORDS FOR USE IN CRIMINAL PROSECUTION
DELEGATE ROBERT HURT - HENRY

HB 787 amends Virginia Code § 16.1-305. Effective July 1, 2004.

HB 787 amends Virginia Code § 16.1-305 to allow bail bondsmen and Commonwealth Attorneys additional access to confidential juvenile court records.

1.00 In Illegal Gun Possession Cases, Commonwealth's Attorney May Access Old Felony Records

HB 787 ensures that the Commonwealth's Attorney may access juvenile court records when prosecuting an adult for the illegal possession of a weapon under Virginia Code § 18.2-308.2. HB 787 adds a new paragraph in subsection D1 of Virginia Code § 16.1-305 that allows the Commonwealth's Attorney to access a juvenile's confidential court records involving an adjudication for a felony offense when such access is for the prosecution for a violation of § 18.2-308.2 [possession or transportation of firearms, stun weapons, tasers or concealed weapons by a convicted felon]. The records can be used only to establish the prior adjudication.

1.10 What is a Violation of Virginia Code § 18.2-308.2?

Virginia Code § 18.2-308.2 makes it unlawful for a person under the age of 29 to possess a weapon if that person was found guilty of a felony as a juvenile 14 years of age or older at the time of the offense. Virginia Code § 16.1-305 does not currently make records of the prior adjudication available to the attorney for the Commonwealth prosecuting a violation of § 18.2-308.2. This bill gives the attorney for the Commonwealth access to juvenile court records showing that a person was adjudicated delinquent in order to show that the person is now guilty of violating § 18.2-308.2.

2.00 Access to Case Status by Bail Bondsmen

HB 787 amends paragraph C of Virginia Code § 16.1-305 to allow a licensed bail bondsman to know the status of a bond he has posted or provided surety on for a juvenile under § 16.1-258. This amendment does not authorize a bail bondsman to have access to or inspect any other portion of his principal's juvenile court records.

GANG BILLS

During the 2000 session, the General Assembly enacted SB 143 thereby creating specific statutes, such as Virginia Code § 18.2-46.2, to address gang-related crimes. According to § 18.2-46.2, any person who actively participates in or is a member of a criminal street gang and participates in a predicate

criminal act could be convicted of a Class 5 felony. If such participant in or member of a criminal street gang is 18 years of age or older and knows or has reason to know that the criminal street gang includes a juvenile member or participant, that adult will be guilty of a Class 4 felony. SB 143 also created a new section of the Virginia Code that prohibited the recruitment of a juvenile into a criminal street gang. An adult gang member who recruited a juvenile to be in a criminal street gang was guilty of a Class 6 felony. SB 143 was initiated as a result of studies by the Attorney General's Office and the Commission on Youth. Those studies indicated a substantial rise in street gang activity in the Commonwealth. In fact, both studies indicated "franchising" of street gangs from the west coast to Virginia. The primary purpose of SB 143 was to provide additional tools to combat street gang violence.

In May 2003, Attorney General Jerry Kilgore convened an Anti-Gangs Task Force composed of General Assembly members, law-enforcement officials, community leaders, etc. The Task Force presented recommendations to the Attorney General for inclusion in his anti-gang legislative package for the 2004 General Assembly. Many of the bills below resulted from the recommendations of that task force.

HB 569 & SB 321 OMNIBUS GANG BILL
DELEGATE DAVID B. ALBO - FAIRFAX
SENATOR KENNETH W. STOLLE – VIRGINIA BEACH

HB 569 and SB 321 amend Virginia Code §§ 18.2-46.1, 18.2-46.3, 18.2-460, and 19.2-215.1 and create in Article 2.1 of Chapter 4 of Title 18.2 sections numbered 18.2-46.3:1 and 18.2-46.3:2. Effective July 1, 2004.

1.00 The Definition of a Criminal Street Gang

HB 569 and SB 321 amend Virginia Code to incorporate the definition of "pattern of criminal gang behavior" into the definition of a "criminal street gang." Virginia Code § 18.2-46.1 provides the statutory definition of a "criminal street gang" as meaning any ongoing organization, association, or group of three or more persons, whether formal or informal,

> (i) which has as one of its primary objectives or activities the commission of one or more criminal *activities;*
> (ii) which has an identifiable name or identifying sign or symbol; and
> (iii) whose members individually or collectively have engaged in *the commission of, attempt to commit, conspiracy to commit, or solicitation of two or more predicate criminal acts*[7]*, at least one of which is an act of violence, provided such acts were not part of a common act or transaction.*

The new italicized language is the definition of "pattern of criminal gang behavior."

[7] "Predicate criminal act" means *(i)* an act of violence; *(ii)* any violation of §§ 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or § 18.2-147; or *(iii)* any violation of a local ordinance adopted pursuant to § 18.2-138.1.

2.00 Recruitment of Any Person Into a Criminal Street Gang (Class 1 Misdemeanor) *(New)*

Virginia Code § 18.2-46.3 prohibits the recruitment of juveniles into criminal street gangs. Prior to HB 569 and SB 321, § 18.2-46.3 only made it a Class 6 felony for an adult to recruit a juvenile into a gang. HB 569 and SB 321 amend § 18.2-46.3 to make it a Class 1 misdemeanor for any person to recruit any other person into a criminal street gang.

3.00 Recruitment of Juveniles Into a Criminal Street Gang (Class 6 Felony) *(Not New)*

If a person over the age of 18 attempts to recruit a juvenile into a criminal street gang, that person is guilty of a Class 6 felony. "Attempts to recruit" means "*solicits, invites, recruits, encourages or otherwise causes or attempts to cause"* a person "*to actively participate in or become a member of what he knows to be a criminal street gang."*

4.00 Using Force to Recruit Into a Criminal Street Gang (Class 6 Felony) *(New)*

HB 569 and SB 321 add subsection B of Virginia Code § 18.2-46.3 to make it a Class 6 felony for any person to use force or the threat of force against an individual or a member of his family in order to encourage that individual to join a criminal street gang, remain in a criminal street gang, or to participate in a gang activity.

5.00 Enhanced Penalty for Third Criminal Gang Conviction *(New)*

HB 569 and SB 321 create Virginia Code § 18.2-46.3:1 that raises a third conviction within 10 years for a criminal gang crime under §§ 18.2-46.2 or 18.2-46.3 to a Class 3 felony. Each offense must occur on different dates.

6.00 Property Forfeiture for Criminal Gang Activity *(New)*

HB 569 and SB 321 create Virginia Code § 18.2-46.3:2 pertaining to the forfeiture of property when used in criminal gang-related activity. Any property, used in "*substantial connection with, intended for use in the course of, derived from, traceable to, or realized through, including any profit or interest derived from"* any conduct of criminal gang activity or gang recruitment is subject to civil forfeiture to the Commonwealth.

7.00 Obstructing Justice and Criminal Gang Activity (Class 5 Felony) *(New)*

HB 569 and SB 321 amend Virginia Code § 18.2-460 to make it a Class 5 felony for a person to use threats of bodily harm or force to intimidate or impede a judge, magistrate, justice, juror, witness, or any law-enforcement officer or impede the administration of justice in any court relating to a violation the criminal gang laws (§§ 18.2-46.2 or 18.2-46.3).

8.00 Multi-jurisdiction Grand Juries and Criminal Gang Activity *(New)*

HB 569 and SB 321 amend Virginia Code § 19.2-215.1 to broaden the functions of a multi-jurisdiction grand jury to include investigations involving criminal violations of Article 2.1 (§ 18.2-46.1 et seq., Criminal Gang Activities).

SB 617 GANG-RELATED FELONY OFFENSES & QUALIFICATION FOR SHOCAP
SENATOR JAY O'BRIEN – FAIRFAX

SB 617 amends Virginia Code § 16.1-330.1. Effective July 1, 2004.

1.00 What is SHOCAP (Serious or Habitual Offender Comprehensive Action Program)?

SHOCAP is a multi-disciplinary interagency case management and information sharing system. The purpose is to enable the juvenile and criminal justice system, schools, and social service agencies to make more informed decisions regarding juveniles who repeatedly commit serious criminal and delinquent acts. Each SHOCAP supervises serious or habitual juvenile offenders in the community as well as those under probation or parole supervision. The goal is to enhance current conduct control, supervision, and treatment efforts to provide a more coordinated public safety approach to serious juvenile crime; increase the opportunity for success with juvenile offenders, and assist in the development of early intervention strategies.

Under the previous law, a serious or habitual juvenile offender is a minor who has been (i) adjudicated delinquent or convicted of murder or attempted murder, armed robbery, any felony sexual assault, or malicious wounding; or (ii) convicted at least three times for offenses that would be felonies or Class 1 misdemeanors if committed by an adult. A juvenile offender under SHOCAP supervision at the time of his 18th birthday who has been committed to state care pursuant to Virginia Code §§ 16.1-278.8 (14) or 16.1-285.1 may continue to be supervised by SHOCAP until his 21st birthday.

2.00 Substantive Amendments: SB 617 Adds Gang Crimes to SHOCAP

SB 617 amends Virginia Code § 16.1-330.1 pertaining SHOCAP. SB 617 provides that a juvenile who has been convicted of a felony violation of a gang-related crime pursuant to Article 2.1 (§ 18.2-46.1 et seq.) of Chapter 4 of Title 18.2 qualifies for SHOCAP. Under the previous law, a juvenile must have been convicted of three felonies or misdemeanors to qualify unless the felonies were murder, attempted murder, armed robbery, or malicious wounding. SHOCAP is a program that provides control, supervision, and treatment for serious or habitual juvenile offenders.

3.00 Rationale: Strengthening Community Coordination in Addressing Gang Activity

SB 617 provides that a juvenile who has been convicted of one criminal street gang felony qualifies for SHOCAP. Localities are struggling to address increasing gang activity involving acts of violence with firearms or other weapons and drugs. This bill will provide a locality another tool to combat gang problems in that community by allowing a multi-disciplinary approach to supervising juveniles who have been involved in gang-related criminal acts.

HB 1012 & SB 492 PRESUMPTION AGAINST BAIL FOR GANG-RELATED CRIMES
DELEGATE THOMAS D. RUST – HERNDON
SENATOR WILLIAM C. MIMS - LOUDON

HB 1012 and SB 492 amend Virginia Code §§ 19.2-120 and 19.2-299. Effective July 1, 2004.

HB 1012 and SB 492 create a rebuttable presumption against bail for any person who is held in custody when such person is charged with participating in a criminal street gang or the soliciting of a

juvenile to participate in a criminal street gang. These bills add the participation in and the recruitment for a criminal street gang to the list of felonies for which a pre-sentence report must be prepared unless waived by the court, defendant, and the attorney for the Commonwealth. These bills specify information regarding gang membership that may be included in the pre-sentence report.[8]

HB 1149 EXPANDS LIST OF PREDICATE CRIMINAL ACTS THAT DEFINE A PATTERN OF CRIMINAL GANG ACTIVITY
DELEGATE ROBERT F. MCDONNELL – VIRGINIA BEACH
HB 1149 amends Virginia Code § 18.2-46.1. Effective July 1, 2004.

HB 1149 expands the list of predicate criminal acts that define a pattern of criminal activity and a criminal street gang to include certain drug sale, distribution, transportation, possession, and manufacturing crimes and recruitment of a juvenile into a street gang.[9]

HB 1123 & SB 320 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT
DELEGATE ROBERT F. MCDONNELL – VIRGINIA BEACH
SENATOR KENNETH W. STOLLE – VIRGINIA BEACH
HB 1123 and SB 320 amend Virginia Code §§ 2.2-511, 19.2-10.1, and 58.1-1017 and create sections numbered 18.2-511 through 18.2-516 in Title 18.2, chapter 13. Effective July 1, 2004.

HB 1123 and SB 320 create a RICO act for Virginia under which various violations of the criminal law become racketeering. The Attorney General is authorized to conduct criminal prosecutions of RICO with the concurrence of the local attorney for the Commonwealth. Racketeering activity is defined as committing, attempting or conspiring to commit, soliciting, coercing, or intimidating another person to commit two or more offenses involving gang crimes, terrorism, obstruction of justice, waste management, murder, voluntary manslaughter, kidnapping, certain woundings, robbery, arson, burglary, grand larceny, embezzlement, forgery, obtaining money by false pretenses, false statements to obtain property or credit, credit card offenses, money laundering, drug offenses, certain firearm offenses, illegal gambling, prostitution, abuse and neglect of incapacitated adults, producing child pornography, unlawful paramilitary activity, perjury, bribery, government fraud, Medicaid applications, or possession of unstamped cigarettes. Using or investing an aggregate of $10,000.00 or more of racketeering proceeds to acquire real property or to establish a criminal enterprise is a felony punishable by five to 40 years of confinement and a fine of not more than $1 million for a first offense and a Class 2 felony and a fine of not more than $2 million for a second or subsequent offense. Money transmission of proceeds from a racketeering activity is a Class 6 felony. The sale, purchase, transport, receipt or possession of 3,000 or more packages of unstamped cigarettes for the purpose of evading taxes is a Class 6 felony. Subpoena duces tecum provisions are amended to include money transmitters and commercial businesses providing credit histories and reports.[10]

[8] Bill summary taken from Legislative Information Services (http://leg1.state.va.us/041/bil.htm).
[9] Id.
[10] Id.

COMPREHENSIVE SERVICES ACT (CSA)

HB 598 NON-MANDATED CSA FUNDING FOR POST-D
DELEGATE ALLEN W. DUDLEY – ROCKY MOUNT
HB 598 amends Virginia Code § 2.2-5211. Effective July 1, 2004.

HB 598 provides that when a juvenile court places a juvenile in a community or facility-based treatment program in accordance with the requirements of subsection B or C of Virginia Code § 16.1-248.1, the costs of that placement may be funded out of the state pool of funds for community policy and management teams.

1.00 State Pool of Funds for Community Policy and Management Teams

Chapter 52 of Title 2.2 of the Code of Virginia establishes the Comprehensive Services Act (CSA). Virginia Code § 2.2-5211 establishes a pool of funds for community policy and management teams for the purpose of providing services through that Act. The state pool fund will be used to purchase residential and non-residential services for statutorily identified categories of children. Briefly, the target group includes:

1. Children with special education needs;
2. Children with disabilities placed by local social services agencies or DJJ in private state or out-of-state residential facilities;
3. Children for whom foster care services, as defined by Virginia Code § 63.2-905, are being provided to prevent foster care placements and children in out-of-home placements as authorized by § 63.2-900;
4. Children placed by a juvenile and domestic relations district court in private or locally operated public facility or non-residential program pursuant to Virginia Code § 16.1-286, *or in a community or facility-based treatment program in accordance with the provisions of subsections B or C of Virginia Code § 16.1-284.1*; and
5. Children committed to DJJ and placed by it in a private home or in a public or private facility in accordance with § 66-14.

2.00 Sum Sufficient Services for Mandated Children

Subsection C of Virginia Code § 2.2-5211 requires the state and each locality to appropriate the sums of money sufficient to provide special education services and foster care services for children with special education needs, children with disabilities needing placement, and children in foster care. Services for these children are mandated. The remaining two categories of children (those children placed pursuant to Virginia Code §§ 16.1-286, *16.1-284.1*, or 66-14) are not considered mandated.

3.00 HB 598 Adds Post-D Children to Those Eligible to Receive Non-Mandated Funding

HB 598 amends number 4 of subsection B to allow the state pool fund to be used to purchase residential and non-residential services for children placed *in a community or facility-based treatment program in accordance with the provisions of subsections B or C of Virginia Code § 16.1-284.1*. In net effect, HB 598 allows localities to fund post-disposition for non-mandated juveniles through CSA, but does not require it, per se.

3.01 Substantive Change or Clarification?

It is arguable that CSA funding can be used to place a juvenile in a 1post-dispositional program under the current provisions in Virginia Code §§ 2.2-5211 and 16.1-286.

3.10 What is Subsection B or C of Virginia Code § 16.1-284.1?

Virginia Code § 16.1-284.1 allows judges to use detention as a sentencing option and specifies the criteria for its use. The Code allows the court to place a juvenile in a post-dispositional program for either up to 30 days or up to six months. If a juvenile is placed in post-dispositional detention for over 30 days pursuant to subsection B and C of § 16.1-284.1, the Code requires "separate services for their rehabilitation." These services come in many forms. Some detention homes choose to coordinate services in the community for post-dispositional juveniles while other detention homes prefer to provide services in the facility. HB 598 applies only to the dispositional option of placing a juvenile in a post-dispositional program for over 30 days and up to six months.

3.11 How Many Localities Have Post-D Programs?

Currently, 12 out of 23 local and regional detention homes have established post-dispositional programs (for juveniles serving up to 180 days in detention): Lynchburg, Fairfax, Northern Virginia, Northwestern, Merrimac, Norfolk, Highlands, James River, Loudoun, New River Valley, Prince William, Roanoke, and WW Moore.

4.00 Assessment and Recommendation by CPMT and FAPT

Pursuant to subsection E of Virginia Code § 2.2-5211, for a juvenile for whom the court wants to access the state CSA non-mandated pool funds for placement in a post-dispositional detention program, the court must refer the matter to the community policy and management team for assessment by a local family assessment and planning team (FAPT). FAPT would then determine the recommended level of treatment and services needed by the child and family. The court would then "consider the recommendations." Under this bill, FAPT would be able to recommend to the court that a juvenile be placed in a post-dispositional detention program and that non-mandated CSA funds be used to cover the costs of such placement. However, the court is not bound to the FAPT recommendation and may enter the disposition it wants.

4.01 CSA Non-Mandated Funds Underutilized

Please note: The state CSA non-mandated pool funds were underutilized by localities last year because such funds require a local match. For many communities that local match proved to be cost prohibitive.

HB 527 CSA; EXPANDING MEMBERSHIP OF SLAT & SEC

DELEGATE CLARKE N. HOGAN – HALIFAX

HB 527 amends Virginia Code §§ 2.2-2648 and 2.2-5201. Effective July 1, 2004.

HB 527 adds the chairman of the state and local advisory team (SLAT) to the State Executive Council (SEC) for Comprehensive Services for At-Risk Youth and Families. In addition, the bill adds a

representative from the Department of Medical Assistance Services (DMAS) to the state and local advisory team.

The SEC is a supervisory council composed of agency heads from the primary agencies that serve youth and families, local government representatives, a private provider, and a parent representative. The SLAT advises the SEC by managing cooperative efforts at the state level and supporting community efforts. SLAT is composed of representatives from the primary agencies that serve youth and families, a parent representative, a private provider, and local representatives. Adding the chairperson of the SLAT to the SEC would improve communication between the two entities. The DMAS has expanded its role in serving children and families through the child health insurance initiative. Having a DMAS representative on the SLAT would improve the coordination of services, particularly in the area of child health.

INVOLUNTARY MENTAL COMMITMENTS – TDOs

HB 580 JURISDICTION OVER INVOLUNTARY COMMITMENT ORDER HEARINGS
DELEGATE PHILLIP A. HAMILTON – NEWPORT NEWS

HB 580 amends Virginia Code §§ 16.1-340 and 16.1-341. Effective July 1, 2004.

HB 580 provides that the juvenile and domestic relations court serving the jurisdiction in which the minor is located is responsible for scheduling the involuntary commitment hearing. For emergency admissions, the same shall be scheduled where the juvenile is located or resides.

1.00 Temporary Detention Orders; Emergency Admission of a Minor for Inpatient Mental Health Treatment: Va. Code § 16.1-340

Virginia Code § 16.1-340 provides the authority for the emergency admission of a minor by taking that minor into custody for inpatient treatment because probable cause exists to believe the minor is mentally ill and in need of hospitalization.

1.10 Procedures for Taking a Minor Into Custody for Treatment

The procedures for taking a minor into custody and admitting him for inpatient treatment can be found in Virginia Code §§ 37.1-67.01 or 37.1-67.1. Briefly, the minor must present an imminent danger to himself or others as a result of the mental illness or is so seriously mentally ill as to be substantially unable to care for himself. In such a situation, a temporary detention order may be issued by a magistrate.

1.20 Temporary Detention Order Hearing Within 72 Hours

If a temporary detention order is issued, the juvenile and domestic relations district court must conduct a hearing within 72 hours from the time of the issuance of the temporary detention order. (See Virginia Code § 16.1-341.)

1.30 Juvenile Court Jurisdiction Over Temporary Detention Order Hearing; Where the Minor is Located or Resides *(New)*

Prior to HB 580, the Virginia Code did not specify which juvenile court had jurisdiction to hear the temporary detention order hearing. HB 580 *attempts* to clarify that the juvenile court serving the jurisdiction in which the minor is located or resides shall have jurisdiction to conduct the emergency temporary detention order hearing. The juvenile court serving the jurisdiction in which the minor is located shall have jurisdiction to conduct the involuntary commitment hearing.

1.31 Rationale

This problem occurred in the past for DJJ when a ward in a juvenile correctional center in Chesterfield (i.e., RDC or Bon Air) was sent to the Commonwealth Center in Staunton via a temporary detaining order. Because the jurisdiction of the court to conduct the hearing was not specified in the Virginia Code, DJJ was required to retrieve the ward from Staunton and return him to Chesterfield for the commitment hearing. This situation arose because there was confusion concerning which juvenile court (Staunton or Chesterfield) had jurisdiction to hear the case. This bill clarifies that the court where the youth is housed (e.g., Commonwealth Center) is responsible for conducting the hearing.

2.00 Petitioning and Hearing Concerning the Involuntary Commitment of a Minor: Va. Code § 16.1-341

Virginia Code § 16.1-341 provides the statutory procedures for a parent (or other responsible person if the parent is unavailable or refuses) to file a petition in juvenile court for the involuntary commitment of a minor.

2.10 Jurisdiction Over the Involuntary Commitment Hearing (*New*)

HB 580 amends Virginia Code § 16.1-341 to clarify that the juvenile court "*serving the jurisdiction in which the minor is located"* is the court of jurisdiction. When a petition is filed, the juvenile court serving the jurisdiction in which the minor is located will schedule the hearing to occur no sooner than 24 hours and no later than 72 hours.

HB 589 TRANSPORTATION UNDER EMERGENCY CUSTODY & TEMPORARY DETENTION ORDERS

DELEGATE WILLIAM R. JANIS – HENRICO

HB 589 amends Virginia Code §§ 37.1-67.01, 37.1-67.1, and 37.1-71. Effective July 1, 2004.

1.00 Emergency Custody Orders: Va. Code § 37.1-67.01

Virginia Code § 37.1-67.01 provides the procedures for taking a minor into custody and admitted for inpatient treatment. Briefly, the minor must present an imminent danger to himself or others as a result of the mental illness or is so seriously mentally ill as to be substantially unable to care for himself. In such a situation, a temporary detention order may be issued by a magistrate. The minor must be transported to a convenient location to be evaluated by a person designated by the community services

board (CSB) who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by DJJ in order to assess the need for hospitalization.

1.10 Emergency Custody Order Must Specify Transportation Responsibilities: Va. Code § 37.1-67.01 *(New)*

HB 589 creates subsection B under Virginia Code § 37.1-67.01 pertaining to the transportation of a minor when an emergency custody order has been issued by a magistrate. According to the new subsection, when a magistrate issues an emergency custody order, the order must "*specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation.*"

1.11 Primary Law-Enforcement for CSB Responsible for Transportation

The primary law-enforcement agency from the jurisdiction served by the CSB that designated the person to perform the mental health evaluation must execute the order and provide transportation.

1.12 If CSB Serves Multiple Jurisdictions, Primary Law Enforcement Where the Person Was Taken Into Custody is Responsible

If the CSB serves more than one jurisdiction, the magistrate will designate the primary law-enforcement agency from the jurisdiction where the person who is the subject of the emergency custody order was taken into custody. If the person has not yet been taken into custody, the primary law-enforcement agency from the jurisdiction where the person is presently located to execute the order and provide transportation.

1.13 Transportation to Medical Facilities as Necessary Included

The primary law-enforcement agency will be responsible for transporting to any medical facility as may be necessary to obtain emergency medical evaluation or treatment.

2.00 Involuntary Temporary Detention Orders: Va. Code § 37.1-67.1.

Virginia Code § 37.1-67.1 provides the statutory criteria for the magistrate, based upon an in-person evaluation, to issue an order of temporary detention if it appears from the evidence that the person is mentally ill and in need of hospitalization. The person must be an imminent danger to self or others as a result of mental illness, or is so seriously mentally ill as to be substantially unable to care for himself, and the person is incapable of volunteering or unwilling to volunteer for treatment.

2.10 Designating Responsibility for Transporting Person (*New*)

When the magistrate issues the temporary detention order, the order must specify the law-enforcement agency and jurisdiction that shall execute the temporary detention order and provide transportation.

2.11 Law-Enforcement Agency Where Person Resides

The magistrate shall designate the law-enforcement agency of the jurisdiction in which the person resides to execute the order and provide transportation.

2.12 Over 50 Miles Distance, Look to Where Person is Located

If the nearest boundary of the jurisdiction in which the person resides is more than 50 miles from the nearest boundary of the jurisdiction in which the person is located, the law-enforcement agency of the jurisdiction in which the person is located shall execute the order and provide transportation.

2.13 Law-Enforcement Agencies May Enter Into Mutual Agreements

Law-enforcement agencies may enter into agreements to facilitate the execution of temporary detention orders and provide transportation.

3.00 HB 589 Removes Ambiguous Transportation Language in Virginia Code § 37.1-71

The new language added by HB 589 is more specific in delineating which law-enforcement agency is responsible for providing transportation than the language in Virginia Code § 37.1-71. Therefore, subsection A is stricken.

SCHOOL ATTENDANCE & TRUANCY

HB 1326 COMPULSORY SCHOOL ATTENDANCE; ENFORCEMENT AGAINST PARENTS
DELEGATE BRADLEY P. MARRS - CHESTERFIELD
HB 1326 amends Virginia Code §§ 16.1-241.2, 16.1-263, 22.1-263, and 22.1-279.3 and creates in Article 9 of Chapter 11 of Title 16.1 a section numbered 16.1-290.1. Effective July 1, 2004.

1.00 Holding Parents Accountable for Failure to Comply With the Compulsory School Attendance Law

Virginia Code § 22.1-279.3 requires parents of a student enrolled in a public school to assist the school in enforcing the standards of student conduct and attendance. Virginia Code § 16.1-241.2 provides the statutory authority for holding parents accountable for failing to meet their responsibilities by ensuring that their child complies with the standards of conduct or the compulsory school attendance law.

1.10 School Board May Petition the Juvenile Court for Action

Upon the failure of a parent to comply with the provisions of Virginia Code § 22.1-279.3, the school board may petition the juvenile and domestic relations court to proceed against such parent for willful and unreasonable refusal to participate in efforts to improve the student's conduct or attendance.

1.20 Court May Order Parents to Meet With School Officials

If the court finds that the parent has willfully and unreasonably failed to meet with school personnel as required in subsection D of Virginia Code § 22.1-279.3 to discuss the child's behavior, educational progress, or attendance, the court may order the parent to do so.

1.21 Ordering the Parent to Meet Because of Attendance *(New)*

Prior to HB 1326, the court could only order the parents to meet with school officials to discuss the child's behavior or educational progress. HB 1326 adds school attendance to that list.

1.30 Court May Order Parents of a Suspended Student to Attend Programs

If the court finds that the parent has willfully and unreasonably failed to accompany a suspended student to meet with school officials pursuant to subsection F of Virginia Code § 22.1-279.3, or upon the student receiving a second suspension or being expelled, the court may order the student or his parent to participate in such programs or such treatment as the court deems appropriate to improve the student's behavior.

1.31 Such Programs May Include Educational Programs (*New*)

HB 1326 identifies such programs as including "*extended day programs and summer school or other education programs and counseling.*"

1.40 Court May Order Parents of a Suspended Student to be Subject to Certain Conditions

If the court finds that the parent has willfully and unreasonably failed to accompany a suspended student to meet with school officials pursuant to subsection F of Virginia Code § 22.1-279.3 , the court may subject the student or his parent to conditions and limitations as the court deems appropriate for the supervision, care, and rehabilitation of the student or his parent. Please note: This section of the Code does not specify what those conditions may be.

1.50 Court May Fine the Parents of a Suspended Student

If the court finds that the parent has willfully and unreasonably failed to accompany a suspended student to meet with school officials pursuant to subsection F of Virginia Code § 22.1-279.3, the court may order the parent to pay a civil penalty not to exceed $500.00.

1.60 Court May Find Parents in Contempt (*New!*)

If a parent fails to adhere to any of the court orders listed above, the court ***may*** use its contempt power to enforce any order entered. Prior to HB 1326, the court's authority to use its powers of contempt were specifically prohibited.

2.00 Issuance of the Summons: Va. Code § 16.1-263

Virginia Code § 16.1-263 requires the issuance of a summons following the filing of a petition in juvenile court. The summons must be "directed" to the juvenile (if the juvenile is 12 or more years of age), to at least one parent, guardian, legal custodian, or other person standing in loco parentis, and any other persons necessary to the proceedings. The summons will require them to appear personally before the court at the time fixed to answer or testify as to the allegations of the petition.

2.10 Failure to Adhere to Summons Constitutes Contempt (*New!*)

HB 1326 amends Virginia Code § 16.1-263 to hold that failure to obey the requirements of **any** summons subjects any person guilty thereof to liability for punishment for contempt. Upon the failure of any person to appear as ordered in the summons, the court shall immediately issue an order for such person to show cause why he should not be held in contempt.

2.11 Powers of Contempt Apply to Any Summons

Please note: Although the intent of this bill is to address parents who fail to ensure that their child attends school, this new language in the Virginia Code applies to any summons issued for any petition.

3.00 Payment for Court-Ordered Counseling, Treatment, or Programs: Va. Code § 16.1-290.1 (*New Virginia Code Section!*)

HB 1326 creates Virginia Code § 16.1-290.1 giving the court with the authority to order the participant in any treatment, counseling, or other program for the rehabilitation of a minor child or his family to pay as much of the applicable fee for participation as such person is able to pay.

3.10 New Code Section Applies to any Participant

The court may order any person who is ordered by the court to participate in a program to pay for that program.

3.11 Any Participant Means Any Person – Not Just Parents

Please note: Although the intent of this bill is to address parents who fail to ensure that their child attends school, this new language in the Virginia Code applies to any person receiving any type of court-ordered treatment, counseling, or other program.

3.12 Amount Based Upon Ability to Pay

The amount will be based upon the person's ability to pay. There are no guidelines for determining the amount.

3.20 No Finding of Guilt Needed

A finding of guilt is not required for the court to order payment. The new language makes no mention of a finding or adjudication of delinquency.

4.00 Violations of the Compulsory School Attendance Law Constitute a Class 1 Misdemeanor: Va. Code § 22.1-263

Virginia Code § 22.1-254 establishes the compulsory attendance law pertaining to the age a child is required to attend school. Virginia Code § 22.1-263 makes it a Class 3 misdemeanor for any person to violate the compulsory attendance law. Violation constitutes a misdemeanor.

4.10 Violations of the Compulsory School Attendance Law Constitute a Class 1 Misdemeanor: Va. Code § 22.1-263

HB 1326 amends Virginia Code § 22.1-263 to make it a Class 3 misdemeanor for any person to violate "*the parental responsibility provisions relating to compulsory school attendance included in § 22.1-279.3.*"

5.00 Parental Responsibility Includes Child's Compliance With the Compulsory School Attendance Law: Va. Code § 22.1-279.3

Virginia Code § 22.1-279.3 provides the parental responsibility and involvement requirements. HB 1326 amends this section of the Code to ensure that parents have the duty to ensure that their child complies with the compulsory school attendance law.

SB 270 PUBLIC SCHOOL ENROLLMENT OF HOMELESS CHILDREN
SENATOR FREDERICK M. QUAYLE – CHESAPEAKE
SB 270 amends Virginia Code §§ 22.1-3, 22.1-3.1, 22.1-4.1, 22.1-270, and 22.1-271.2.
Effective July 1, 2004.

Revises provisions addressing the public school enrollment of homeless children to reflect the definitions and requirements set forth in the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001 – a law that is included within the federal No Child Left Behind Act. School divisions are to coordinate the provision of services to such homeless students with relevant local social services agencies , other agencies and programs providing services to such students, and with other school divisions as may be necessary to resolve interdivisional issues. The measure also provides that superintendents cannot exclude from school attendance those homeless children who do not provide the requisite health or immunization information required of other students and deletes the outdated mumps immunization exemption. However, the student must be immediately referred to the local school division liaison who is required to assist the student in obtaining the necessary physical examinations or proof or completion of immunizations. Technical amendments delete references to "guardian," as Virginia Code § 22.1-1 includes guardians, legal custodians, and other persons having "control or charge of a child" within the definition of "parent" throughout Title 22.1.[11]

[11]Bill summary taken from Legislative Information Services (http://leg1.state.va.us/041/bil.htm).

CUSTODY & VISITATION

HB 344 & SB 103 CAPPING FILING FEES FOR CUSTODY & VISITATION PETITIONS
DELEGATE TERRY G. KILGORE - LEE
SENATOR JEANNEMARIE A. DEVOLITES - FAIRFAX

HB 344 and SB 103 amend Virginia Code §§ 16.1-69.48:5 and 16.1-296 and create § 16.1-296.2. Effective July 1, 2004.

HB 344 and SB 103 amend the Virginia Code to provide that only one $25.00 fee shall be required for all custody and visitation petitions simultaneously initiated by a single petitioner barring any add-on fees in these cases and applies the special rate for appeal of these cases.

1.00 2003 General Assembly Created Virginia Code § 16.1-69.48:5 Placing a $25.00 Fee Upon Custody and Visitation Petitions

During the 2003 session, the General Assembly enacted HB 2444 that required the petitioner to pay a $25.00 filing fee prior to the initial commencement of any case in the juvenile and domestic relations district court when the custody or visitation of a child is a subject of controversy or requires determination. Whereas last year's bill did not directly impact DJJ, intake officers are responsible for filing petitions involving custody and visitation disputes. In FY 03, intake officers processed 127,528 complaints involving domestic relations. Since the law became effective on July 1, 2003, intake officers have expressed concern about the impact of the new bill upon low-income families.

1.01 Significant Costs Associated With Filing of Petitions

The $25.00 filing fee for each petition alleging that the custody or visitation of a child was in dispute could be financially prohibitive or burdensome to many families. For example, if a parent of three children files for custody of those children, the filing fee could be as much as $150.00 (some courts require a visitation petition to accompany the filing of the custody petition). For low-income families, such fees may actually serve as a disincentive to seeking judicial assistance.

2.00 HB 344 and SB 103: The Family Plan (*New*)

HB 344 and SB 103 amend Virginia Code § 16.1-69.48:5 to create a flat rate fee for the filing of multiple custody or visitation fees. HB 344 and SB 103 insert language stating "*only one $25.00 fee shall be required for all custody and visitation petitions simultaneously initiated by a single petitioner. Notwithstanding any other provision of law, there shall be no other fees or costs added to this fee as a condition of filing.*

2.10 Brief Overview of Virginia Code § 16.1-69.48:5 *(Not New)*

Below, is a brief overview of Virginia Code § 16.1-69.48:5 pertaining to the filing of a fee for initiating a custody or visitation proceeding.

2.11 Fees Must be Paid for Visitation and Custody Petitions

The filing fee applies to custody and visitation petitions.

2.12 Fees Must be Paid to the Clerk for the Court

The filing fee must be paid to the clerk in the jurisdiction in which the petition is filed.

2.13 Case Will Not Be Set for Hearing Without Payment of Fee

The clerk of the court will not set a case for hearing until the fee has been paid.

2.14 No Fees for State or Local Government Entities

The fee will not be charged to any state or local government entity.

2.15 Fee Will Be Waived if Petitioner is Indigent

The fee will be waived if the party is found indigent pursuant to Virginia Code § 17.1-606, which that a person will be provided all legal services and that all legal fees (except what may be included in the costs recovered from the opposite party) will be waived on account of poverty.

2.16 No Charge for Reissuing Service of Process One Time

When service of process is made on the respondent named in a petition for which the filing fee established by this section has been paid, such petition may be reissued once by changing the return day of such process. No fee will be charged for this reissue. Reissuance of process must be within three months after the original return day.

3.00 Flat Rate Fee Applies in Appeal Cases

HB 344 and SB 103 amend Virginia Code § 16.1-296 and create § 16.1-296.2 to ensure that the flat rate fee for the filing of custody or visitation petitions applies for appeal of these cases.

3.10 Technical Amendments to Virginia Code § 16.1-296

Virginia Code § 16.1-296 provides the statutory procedure for appealing a juvenile court decision. HB 344 and SB 103 add language to subsection G that states that any fees required by the juvenile court pertaining to custody and visitation petitions are assessed in accordance with newly created Virginia Code § 16.1-296.2.

3.20 Fees for Appeals to Circuit Court for Custody and Visitation: Va. Code § 16.1-296.2

HB 344 and SB 103 create Virginia Code § 16.1-296.2 to ensure that the fees required to file a custody or visitation petition in juvenile court also apply when a party appeals the juvenile court's decision to the circuit court.

3.21 Amount of the Fee Required in Circuit Court Same as Juvenile Court

The party applying for an appeal to circuit court of a final juvenile court judgment or order must pay a fee to the clerk of the circuit court in the same amount that the party either was or could have been assessed pursuant to Virginia Code § 16.1-69.48:5 (i.e., the $25.00 fee requirement).

3.22 Fees Must be Paid Within 10 Days of Juvenile Court's Judgment

Within 10 days from the entry of the final juvenile court judgment or order, the party applying for the appeal must pay the filing fee to the circuit court clerk.

3.23 Fee Will Be Waived if Petitioner is Indigent

The fee will be waived if the party is found indigent pursuant to Virginia Code § 17.1-606, which states that a person will be provided all legal services and that all legal fees (except what may be included in the costs recovered from the opposite party) will be waived on account of poverty.

HB 447 PARENTAL EDUCATIONAL SEMINARS IN CUSTODY/VISITATION CASES
DELEGATE TERRIE L. SUIT – VIRGINIA BEACH

HB 447 amends Virginia Code §§ 16.1-278.15 and 20-103. Effective July 1, 2004.

1.00 2000 General Assembly: Requiring Parents in Custody Cases to Attend Educational Seminars

The 2000 General Assembly enacted HB 1178 (Delegate Reid) that required the court to order parents involved in custody and visitation cases to attend educational seminars on the effects of separation or divorce on children, parenting responsibilities, options for conflict resolution, and financial responsibility. The court may grant an exemption from participation for good cause shown. HB 1178 became effective on July 1, 2001, and contained an expiration date of July 1, 2003. The Executive Secretary of the Supreme Court was requested to report on the provisions of the act to the General Assembly.

2.00 2003 General Assembly: Sunset Clause & Good Cause Exemption Removed

During the 2003 General Assembly session, SB 1097 and HB 2128 eliminated the 2003 sunset and modified the existing requirements that parents attend educational seminars addressing the effects of separation or divorce on children and parental responsibilities. The 2003 legislation required that **all** parties to any petition for custody, visitation, or support must attend a parental education seminar or show proof that they have attended within 12 months before their first court appearance or shall attend within 45 days an educational seminar that is at least four hours in length. Parties include natural or adoptive parents or any person with a legitimate interest as defined in Virginia Code § 20-124.1.

3.00 2004 General Assembly Session: Mandated for Contested Cases

HB 447 amends Virginia Code § 16.1-278.15 by removing the language that made attendance at a parental educational seminar mandatory for all parties involved in a custody, visitation, or child support case. The court may require the parties to attend such seminar or program in uncontested cases only if the court finds good cause.

3.10 Uncontested Cases for Good Cause

The court may require the parties to attend an educational seminar or program in uncontested cases only if the court finds good cause.

3.20 Amendments to Virginia Code § 20-103 *(Same Changes)*

The amendments to Virginia Code § 20-103 are substantively identical to the changes made to § 16.1-278.15.

SB 335 SERVICE ON NON-PARTY TEACHER IN CUSTODY/VISITATION CASES
SENATOR KENNETH W. STOLLE – VIRGINIA BEACH
SB 335 amends Virginia Code §§ 8.01-293, 16.1-241, 16.1-264, and 17.1-272. Effective July 1, 2004.

SB 335 provides that only a sheriff or his deputy is authorized to make service of a summons on school property in any custody or visitation case where the summons is issued for a teacher or other school personnel who is not a party to the proceeding. The bill applies the $12.00 service fee for service of a summons in any custody or visitation case.

HB 441 COURT'S AUTHORITY WHEN CONSIDERING BEST INTEREST OF CHILD
DELEGATE TERRIE L. SUIT – VIRGINIA BEACH
HB 441 amends Virginia Code § 20-124.3. Effective July 1, 2004.

Virginia Code § 20-124.3 provides the factors that the court must consider in determining the best interests of a child in matters involving the custody or visitation arrangements of a child. One such factor is any history of family abuse. HB 441 amends Virginia Code § 20-124.3 so that if the court finds any history of family abuse as that term is defined in Virginia Code § 16.1-228, the court may disregard the propensity of each parent to actively support the child's contact and relationship with the other parent, including whether a parent has unreasonably denied the other parent access to or visitation with the child.

FAMILY VIOLENCE & CHILD ABUSE & NEGLECT

SB 550 FAMILY ABUSE & DETERMINATION OF PREDOMINANT PHYSICAL AGGRESSOR
SENATOR JANET D. HOWELL - FAIRFAX
SB 550 amends Virginia Code §§ 9.1-102, 19.2-81.3, and 19.2-81.4. Effective July 1, 2004.

Virginia Code § 19.2-81.3 provides the statutory procedures for arresting a person without a warrant in cases of assault and battery against a family or household member, stalking, and for violations of

protective orders. Prior to SB 550, in cases of family assault and battery under § 18.2-57.2 or violations of protective orders under § 16.1-253.2, a law-enforcement officer was required to take into custody the person he had probable cause to believe, based on the totality of the circumstances, was the primary physical aggressor. SB 550 strikes "~~primary~~" and inserts "*predominant*" physical aggressor.

1.00 Who is the Predominant Aggressor?

SB 550 establishes criteria for establishing standards for determining who the predominate physical aggressor is. Determining who the predominant physical aggressor is will be based on the following considerations:

> *(i) who was the first aggressor;*
> *(ii) the protection of the health and safety of family and household members;*
> *(iii) prior complaints of family abuse by the allegedly abusing person involving the family or household members;*
> *(iv) the relative severity of the injuries inflicted on persons involved in the incident;*
> *(v) whether any injuries were inflicted in self-defense;*
> *(vi) witness statements; and*
> *(vii) other observations.*

2.00 DCJS Must Establish the New Standards & Policy

SB 550 amends Virginia Code § 9.1-102 to require the Board and the Department of Criminal Justice Services (DCJS) to establish training standards and publish a model policy for law-enforcement personnel in the handling of family abuse and domestic violence cases, *including standards for determining the predominant physical aggressor in accordance with § 19.2-81.3.* Virginia Code § 9.1-102 provides the statutory powers and duties of the Board and the Department of Criminal Justice Services.

HB 656 ASSAULT & BATTERY; INCREASED PENALTY WHEN COMMITTED AGAINST A FAMILY OR HOUSEHOLD MEMBER

DELEGATE ROBERT B. BELL – ALBEMARLE

HB 656 amends Virginia Code § 18.2-57.2. Effective July 1, 2004.

HB 656 revises the time from 10 to 20 years in which three convictions for assault and battery against a family or household member must occur in order that the third conviction be deemed a felony.

The increase in the "look back" period for which a third conviction for domestic assault will be considered a felony may result in increased criminal penalties for those offenders. However, all such offenders will be adults, and while the cases may be heard in a juvenile and domestic relations court, the sanctions will be through the Department of Corrections if the individual is sentenced as a felon.

HB 1041 Definition of Child Abuse or Neglect; Substance Abuse

Delegate Christopher B. Saxman – Staunton

HB 1041 amends Virginia Code §§ 16.1-228 and 63.2-100. Effective July 1, 2004.

HB 1041 amends the definition of child abuse and neglect to include a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of Virginia Code § 18.2-248.[12]

HB 1038 & SB 576 Notice of Duty to Report Child Abuse or Neglect by School Personnel

Delegate Christopher B. Saxman – Staunton

Senator Mark D. Obenshain – Harrisonburg

These bills amend the Virginia Code by adding a section numbered 22.1-291.3. Effective July 1, 2004.

Requires each public school board and each administrator of every private or parochial school to post in each of their schools a notice, pursuant to Virginia Code § 63.2-1509, that (i) any teacher or other person employed in a public or private school who has reason to suspect that a child is an abused or neglected child, including any child who may be abandoned, is required to report such suspected cases of child abuse or neglect to local or state social services agencies or the person in charge of the relevant school or his designee; and (ii) all persons required to report cases of such suspected child abuse or neglect are immune from civil or criminal liability or administrative penalty or sanction on account of such reports unless such person acted in bad faith or with malicious purpose. The notice must also include the Virginia Department of Social Services' toll-free child abuse and neglect hotline. A second enactment clause requires that the notice will be prepared and distributed to each public school board by the office of the Attorney General. Further, the Attorney General will also furnish, upon request, the notice to any private school.[13]

HB 420 & SB 429 Child Abuse or Neglect; Development of Multi-Disciplinary Consultation Teams

Delegate Vivian E. Watts - Fairfax

Senator Frank W. Wagner – Virginia Beach

HB 420 and SB 429 amend Virginia Code §§ 63.2-105 and 63.2-1503. Effective July 1, 2004.

HB 420 and SB 429 enable local social services departments to develop multi-disciplinary teams to provide consultation to them the investigation of selected cases involving child abuse or neglect and make recommendations regarding the prosecution of such cases. The teams may include members of the medical, mental health, legal and law-enforcement professions, including the attorney for the Commonwealth or his designee, a local child-protective services representative, and the guardian ad litem or other court-appointed advocate for the child. These bills also contain provisions regarding the confidentiality of information exchanged during such consultation.[14]

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[12] Bill summary taken from Legislative Information Services (http://leg1.state.va.us/041/bil.htm).
[13] Id.
[14] Id.

HB 1135 & SB 584 Child Protective Services; Training & Investigation Procedures

Delegate Robert F. McDonnell - Virginia Beach

Senator William T. Bolling - Hanover

HB 1135 and SB 584 amend Virginia Code § 63.2-1502 and add a section numbered 63.2-1516.01. Effective July 1, 2004.

HB 1135 and SB 584 require the Department of Social Services' Child Protective Services Unit to include standards of training regarding the legal duties of child protective service workers in order to protect the constitutional and statutory rights and safety of children and families from the initial time of contact during investigation through treatment. The bills also require local departments of social services, at the initial time of contact with the person subject to a child abuse and neglect investigation, to advise the person of the complaints or allegations made against the person in a manner that is consistent with laws protecting the rights of the person making the report or complaint.[15]

HB 1109 Establishment of Independent Living Services for Persons in Foster Care

Delegate Brian J. Moran - Alexandria

HB 1109 amends Virginia Code § 63.2-100 and creates a section numbered 63.2-905.1. Effective July 1, 2004.

HB 1109 provides local departments of social services with statutory authorization to provide independent living services to persons between 18 and 21 years of age in order to help them transition from foster care to self-sufficiency. Currently, no state or federal law exists against providing such services, and this bill serves to codify the existing policy of allowing local departments to do so, if they choose. Consistent with this intent, the bill adds the provision of independent living services to persons between 18 and 21 years of age who are transitioning out of foster care to the services that may be provided by a children's residential facility.[16]

SB 35 Guardianship of Children - Subsidy for Relative Caregivers

Senator Yvonne B. Miller - Norfolk

SB 35 amends Virginia Code § 63.2-100 and adds in Chapter 9 of Title 63.2 a section numbered 63.2-913. Effective July 1, 2004, pending availability of federal funds.

Directs the Department of Social Services (DSS) to establish a subsidized custody program for the benefit of children in the custody of a local board of social services on or after July 1, 2004, who are living with relative caregivers and for whom reunification with their natural parents and adoption by relatives are ruled out as placement options. A relative caregiver means a person, other than a natural parent, to whom the child is related by blood, marriage, or adoption. A relative caregiver shall obtain legal custody over such child. Within the limitations of federal funding and the subsidized custody appropriation to DSS, the subsidized custody program shall include (i) a one-time special-need payment, which shall be a lump sum payment for expenses resulting from the assumption of care of the

[15] Bill summary taken from Legislative Information Services (http://leg1.state.va.us/041/bil.htm).
[16] Id.

child; (ii) services for the child, including but not limited to, short-term casework, information and referral, and crisis intervention; and (iii) a maintenance subsidy that shall be payable monthly to the relative caregiver equal to the prevailing foster care rate. DSS may establish an asset test for eligibility under the program. The subsidized custody payment shall be made pursuant to a subsidized custody agreement entered into between the local board and the relative caregiver. The relative caregiver receiving a custody subsidy shall submit annually to the local department a sworn statement that the child is still living with and receiving support from the relative. The parent of any child receiving assistance through the subsidized custody program shall remain liable for the support of the child. The bill requires the State Board of Social Services to promulgate emergency regulations and DSS to seek all federal waivers. The final enactment clause states the act shall not become effective unless federal funds are made available through a federal Title IV-E waiver and an appropriation of funds effectuating the purposes of the act is included in the biennial budget passed by the 2004 General Assembly and signed into law by the Governor.[17]

SB 114 ABANDONED CHILDREN; PROTECTION, AFFIRMATIVE DEFENSE TO PROSECUTION OF PARENT

SENATOR MARTY E. WILLIAMS - NEWPORT NEWS

SB 114 amends Virginia Code §§ 16.1-228 and 63.2-100. Effective July 1, 2004.

SB 114 provides that in civil proceedings involving child abuse, neglect, or abandonment based solely on the parent having left the child at a hospital or rescue squad, it is an affirmative defense that the parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended rescue squad that employs emergency medical technicians within 14 days of the child's birth. The bill provides that for purposes of terminating parental rights and placing a child for adoption the court may find that the child has been neglected upon the ground of abandonment. This provision is similar to the affirmative defense that the General Assembly made available in 2003 for parents in criminal abuse and neglect cases.[18]

SB 409 CHILD ABUSE OR NEGLECT; CHILD PROTECTIVE SERVICES TO NOTIFY PARENT

SENATOR FRANK M. RUFF, JR. - LUNENBURG

SB 409 amends Virginia Code §§ 16.1-228 and 63.2-100. Effective July 1, 2004.

SB 409 requires the local department of social services to notify the custodial parent and make reasonable efforts to notify the non-custodial parent of a report of suspected abuse or neglect concerning a child who is the subject of an investigation or receiving family assessment in those cases in which such custodial or non-custodial parent is not the subject of the investigation.[19]

[17] Bill summary taken from Legislative Information Services (http://leg1.state.va.us/041/bil.htm).
[18] Id.
[19] Id.

ALCOHOL & DRUG OFFENSES

HB 654 DUI; QUALIFICATIONS OF PERSONS TAKING BLOOD SAMPLES
DELEGATE ROBERT B. BELL – ALBEMARLE

HB 654 amends Virginia Code §§ 18.2-268.5, 19.2-310.3, and 46.2-341.26:5. Effective July 1, 2004.

HB 654 provides that registered nurses, licensed practical nurses, and phlebotomists are authorized to take blood samples in DUI cases and for DNA samples. HB 654 eliminates the word "professional" from the term "registered professional nurse" that describes a class of persons authorized to take blood samples. The nomenclature used in the industry is "registered nurse" not "registered professional nurse." The bill conforms statutory language to that used in the profession. It makes no other substantive change to the law.

HB 1309 UNDERAGE ALCOHOL OFFENDERS MAY BE PLACED ON COMMUNITY-BASED PROBATION
DELEGATE ROBERT HURT - HENRY

HB 1309 amends Virginia Code § 4.1-305. Effective July 1, 2004.

1.00 Possession of Alcohol or Fake ID is Illegal

Virginia Code § 4.1-305 (A) makes it illegal for a person under the age of 21 to purchase or possess alcoholic beverages and to use a fake identification of any type for the purpose of purchasing or attempting to purchase an alcoholic beverage. HB 1309 provides that a person convicted of underage possession of alcohol may, as a condition of deferral and dismissal, be sent to community-based probation as an alternative to an alcohol safety action program.

2.00 Punishment for Underage Drinking Conviction: Va. Code § 4.1-305

It is a Class 1 misdemeanor to be convicted of purchasing, possessing, or consuming alcohol or for using a fake ID. The authorized punishment for conviction of a Class 1 misdemeanor is confinement in jail for not more than 12 months and a fine of not more than $2,500.00, either or both. In addition, the person will be ordered to pay a fine of at least $500.00 or ordered to perform a minimum of 50 hours of community service. Additionally, upon conviction, the person's driver's license may be suspended for up to one year.

3.00 Defer and Dismiss - Conviction May Be Set Aside for First-time Offender: Va. Code § 4.1-305(F)

Virginia Code § 4.1-305(F) provides that the court may defer and dismiss the charges pending successful completion of terms and conditions deemed by the court to be necessary.

In order to defer and dismiss, the court must find sufficient facts to justify a finding of guilt. The person must agree to deferring the charge. Upon fulfillment of the conditions, the court will discharge the person and dismiss the proceedings against him without an adjudication of guilt. Please note: A discharge and dismissal will be treated as a conviction for the purpose of applying this section of the Code in any subsequent proceedings.

3.10 HB 1309 Amends Subsection F to Allow for Community-Based Probation

HB 1309 amends Virginia Code § 4.1-305 to provide that a person convicted of underage possession of alcohol may, as a condition of deferral and dismissal, be sent to community-based probation as an alternative to an alcohol safety action program.

ILLEGAL ALIENS

HB 570 & SB 493 ILLEGAL ALIENS & PROCEDURE FOR DETENTION & ARREST
DELEGATE DAVID B. ALBO - FAIRFAX
SENATOR WILLIAM C. MIMS - LOUDON
HB 570 and SB 493 amend Virginia Code §§ 19.2-82 and 19.2-120 and create a section numbered 19.2-81.6. Effective July 1, 2004.

HB 570 and SB 493 provide that all law-enforcement officers have the authority to enforce immigration laws and under certain circumstances arrest an illegal alien. These bills also create a presumption that an individual shall not be admitted to bail if he is detained pursuant to this provision.

1.00 Authority of Law-Enforcement Officers to Arrest Illegal Aliens: Va. Code § 19.2-81.6 *(New)*

HB 570 and SB 493 create Virginia Code § 19.2-81.6 to provide law-enforcement officers the authority to enforce immigration laws of the United States. HB 570 and SB 493 provide a law-enforcement officer with the powers to arrest an illegal alien without a warrant if the law-enforcement officer finds "*reasonable suspicion*" that an individual has committed a crime.

1.01 Definition of Law-enforcement Officer: Va. Code § 19.2-81

Law-enforcement officer is defined in Virginia Code § 19.2-81 as meaning the following officers:

- The State Police,
- Sheriffs and their deputies,
- County or city police,
- The Marine Resources Commission pursuant to § 28.2-900,
- Game wardens appointed pursuant to § 29.1-200,
- United States Coast Guard and United States Coast Guard Reserve as authorized under § 29.1-205, and
- Special policemen for counties as provided by § 15.2-1737.

1.10 To Arrest Without Warrant, Must Confirm Illegal Alien Status and Prior Criminal History

The law-enforcement officer must confirm through the Bureau of Immigration and Customs Enforcement of the United States Department of Homeland Security that the individual (i) is an illegal

alien and (ii) has previously been convicted of a felony in the United States and deported or left the United States after such conviction.

2.00 Arresting a Person Without a Warrant: Va. Code § 19.2-82

Virginia Code § 19.2-82 provides the procedures upon arresting a person without warrant. Generally, such a person must be brought before a magistrate. If the magistrate finds probable cause to believe that a criminal offense has been committed and that the person arrested has committed such offense, the magistrate may issue a warrant under the provisions of Virginia Code § 19.2-72 or a summons under the provisions of § 19.2-73.

2.10 Warrant Can be Issued for Illegal Alien With Prior Criminal History *(New)*

HB 570 and SB 493 create subsection B in Virginia Code § 19.2-82 to allow the magistrate to issue a warrant when the magistrate finds probable cause to believe that the arrested person is an illegal alien and has previously been convicted of a felony in the United States and deported or left the United States after such conviction (clauses (i) and (ii) of § 19.2-81.6).

2.11 Expiration of the Warrant Upon 72 Hours or Federal Custody

The warrant expires within 72 hours or when the person is taken into federal custody, whichever occurs first.

3.00 No Bail for Illegal Aliens Arrested Under Virginia Code § 19.2-81.6 *(New)*

Virginia Code § 19.2-120 provides the conditions under which a judicial officer may issue bail. HB 570 and SB 493 add subsection C that requires the judicial officer to *"presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is being arrested pursuant to Virginia Code § 19.2-81.6."*

MISCELLANEOUS JUVENILE JUSTICE LEGISLATION

HB 14 STATE AGENCY REPORTING REQUIREMENTS
DELEGATE KRISTEN J. AMUNDSON - FAIRFAX

HB 14 amends Virginia Code §§ 2.2-216, 2.2-2634, 10.1-200, 10.1-1118, 10.1-1155, 23-31, and 51.5-75. HB 14 repeals the fifth enactment clauses of Chapters 755 and 914 of the Acts of Assembly of 1996. Effective July 1, 2004.

HB 14 eliminates obsolete or duplicative agency reports including the Intermediate Sanction Juvenile Boot Camp Annual Evaluation by DJJ by repealing the fifth enactment clauses of Chapters 755 and 914 of the 1996 Acts of Assembly. This bill is a recommendation of the Joint Subcommittee to Study the Operations, Practices, Duties, and Funding of the Commonwealth's Agencies, Boards, Commissions, Councils, and Other Governmental Entities pursuant to HJR 159 (2002).

In 1996 the General Assembly enacted HB 251 (Delegate Jerrauld Jones) and SB 44 (Senator Early) that, among other things, allowed DJJ to contract for the establishment of a juvenile boot camp. (See Virginia Code § 66-13.) Those bills contained enactment clauses that required DJJ to conduct a three-

year follow-up of juveniles sentenced to boot camps to determine the effectiveness of this sentencing option. Beginning October 1, 1997, and each year thereafter, DJJ was required to report the findings of the evaluations to the chairmen of the House Committees on/for Appropriations, Courts of Justice and Health, Welfare and Institutions; and the Senate Committees on/for Courts of Justice, Education and Health, and Finance. During the 2003 session the General Assembly removed language in the Appropriations Act that provided DJJ with the funding and the authority to contract and establish a juvenile boot camp. Therefore, the requirement that DJJ submit an annual boot camp report is obsolete.

HB 534 & SB 72 CIVIL IMMUNITY FOR PUBLIC OFFICIALS & VOLUNTEERS PARTICIPATING IN LITTER PROGRAMS FOR PROBATIONERS

DELEGATE JACKIE T. STUMP - BUCHANAN

SENATOR PHILLIP P. PUCKETT - TAZEWELL

SB 72 and HB 534 create Virginia Code § 8.01-226.8. Effective July 1, 2004.

SB 72 and HB 534 provide civil immunity for public officials and volunteers participating in a program in which persons on community service or persons on probation are ordered, as a condition of probation or community service, to pick up litter along a section of public roadway or waterway.

1.00 Civil Immunity for Officials Involved With Litter Pick-up Program for Probationers: Va. Code § 8.01-226.8

SB 72 and HB 534 create Virginia Code § 8.01-226.8 to provide civil immunity for officials participating in roadway litter pick-up program for probationers.

1.10 Civil Immunity Only Applies to Litter Pick-up Programs

Where persons on probation are ordered as a condition of probation or community service to pick up litter along a section of public roadway or waterway, state, or local staff will not be liable for any civil damages to a probationer or person on community service or his property for acts or omissions resulting from such participation.

1.20 Employee Coverage – Who's Protected?

The civil immunity extends to probation officers; court personnel; county, city, and town personnel; and any other public officials who participate in a program.

1.30 Immunity Does Not Cover Willful Misconduct

The civil immunity will not provide protection for acts or omissions resulting from the public official's willful misconduct.

1.40 No Immunity for Vehicular Negligence

The civil immunity will not protect a driver transporting the persons on probation or community service or a motorist who, by his negligence, may injure such probationer or person on community service.

2.00 FYI: Judicial Immunity

Judges are protected by judicial immunity. Under the doctrine of judicial immunity, a judge is not subject to civil liability for any act committed within the exercise of his judicial function. The immunity is absolute. Therefore, judges do not need the protections afforded by this bill. A "willful misconduct" standard would afford a judge less protection.

3.00 Sovereign or Qualified Immunity

State employees are protected by Sovereign Immunity or Qualified Immunity. Sovereign Immunity or Qualified Immunity is a legal doctrine that provides persons performing duties under the state's authority protection from civil suit due to the performance of those duties. In the performance of his official duties, a local and state employee would not be held civilly liable unless that employee acted with gross negligence. Under SB 72 and HB 534, the gross negligence standard would be replaced by the higher standard of "willful misconduct" when the issue involves a litter pick-up program.

THE DEPARTMENT OF CORRECTIONAL EDUCATION (DCE) LEGISLATION

HB 792 & SB 98 DCE PARENTING PROGRAMS FOR ADULT OFFENDERS IN DOC
DELEGATE VIVIAN E. WATTS – FAIRFAX
SENATOR JEANNEMARIE DEVOLITES - FAIRFAX
HB 792 and SB 98 amend the Virginia Code by adding in Chapter 18 of Title 22.1 a section numbered 22.1-345.1. HB 792 and SB 98 will not become effective unless an appropriation of general funds is included in the general appropriation act for the period July 1, 2004, through June 30, 2006, passed during the 2004 Session of the General Assembly and signed into law by the Governor.

HB 792 and SB 98 create Virginia Code § 22.1-345.1 pertaining to parenting classes for adult offenders in the custody of the Department of Corrections (DOC). If funding is available, DCE may arrange for non-custodial parent offenders committed to the custody of DOC to participate in pre-release parenting programs that include parenting skills training and anger management. The programs will be administered by DCE, but DCE may contract out such programs. The programs will include integration with transitional programs, and DCE will be responsible for screening individuals for the programs. Individuals may be required to establish, reestablish, or maintain family ties and communications in order to continue to participate in the programs. A pre-release parenting program may be part of an offender's treatment program.

HB 1108 DCE COMMUNITY-BASED PROGRAMS FOR ADULTS IN JAIL OR DETENTION
DELEGATE BRIAN J. MORAN – ALEXANDRIA

HB 1108 amends Virginia Code §§ 22.1-340, 22.1-342, and 22.1-343. Effective July 1, 2004.

HB 1108 created some concern and confusion during the 2004 General Assembly session. The concern and confusion arose out of the perceived impact upon local juvenile detention facilities. Currently, local school districts provide education in local juvenile detention facilities. There was some concern that HB 1108 required DCE to assume responsibility for providing educational services to juveniles detained in a local juvenile detention facility. That is not the case.

HB 1108 authorizes DCE to provide community-based educational programs to adult probationers and parolees in residential diversion centers and to adult prisoners who are participating during their incarceration in the short-term, highly structured, military-style program provided by residential detention centers as set forth in Virginia Code §§ 53.1-67.7 and 53.1-67.8. HB 1108 only applies to adults in facilities and community-based supervision and diversion programs operated by DOC.

STUDIES

SJ 88 MENTAL ILLNESS & SUBSTANCE ABUSE INITIATIVES: DOC & DJJ TO INCLUDE EVALUATION COMPONENTS
SENATOR STEPHEN H. MARTIN - CHESTERFIELD

Encourages the Departments of Corrections and Juvenile Justice to include an evaluation and reporting component in any new mental health or substance abuse treatment initiative that is established for offenders in their custody.[20]

SJ 81 OFFENDERS WITH MENTAL ILLNESS OR SUBSTANCE ABUSE DISORDERS PROJECT DESIGNED TO DIVERT FROM JAIL
SENATOR WILLIAM C. MIMS - LOUDON

Encourages the Department of Mental Health, Mental Retardation and Substance Abuse Services to provide non-financial assistance in developing demonstration projects designed to divert individuals with mental illness, substance abuse, and co-occurring disorders from jail or secure detention. The Department is requested to incorporate information within its web-based Internet site about such programs and continue the activities of its Forensic Work Group.[21]

[20] Bill summary taken from Legislative Information Services (http://leg1.state.va.us/041/bil.htm).
[21] Id.

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§ 22.1-254. Compulsory attendance required; excuses and waivers; alternative education program attendance; exemptions from article.

A. Except as otherwise provided in this article, every parent, guardian, or other person in the Commonwealth having control or charge of any child who will have reached the fifth birthday on or before September 30 of any school year and who has not passed the eighteenth birthday shall, during the period of each year the public schools are in session and for the same number of days and hours per day as the public schools, send such child to a public school or to a private, denominational or parochial school or have such child taught by a tutor or teacher of qualifications prescribed by the Board of Education and approved by the division superintendent or provide for home instruction of such child as described in § 22.1-254.1.

As prescribed in the regulations of the Board of Education, the requirements of this section may also be satisfied by sending a child to an alternative program of study or work/study offered by a public, private, denominational or parochial school or by a public or private degree-granting institution of higher education. Further, in the case of any five-year-old child who is subject to the provisions of this subsection, the requirements of this section may be alternatively satisfied by sending the child to any public educational prekindergarten program, including a Head Start program, or in a private, denominational or parochial educational prekindergarten program.

Instruction in the home of a child or children by the parent, guardian or other person having control or charge of such child or children shall not be classified or defined as a private, denominational or parochial school.

The requirements of this section shall apply to (i) any child in the custody of the Department of Juvenile Justice or the Department of Corrections who has not passed his eighteenth birthday and (ii) any child whom the division superintendent has required to take a special program of prevention, intervention, or remediation as provided in subsection C of § 22.1-253.13:1 and in § 22.1-254.01. However, the requirements of this section shall not apply to any child who has obtained a high school diploma, its equivalent, or a certificate of completion or who has otherwise complied with compulsory school attendance requirements as set forth in this article.

B. A school board shall excuse from attendance at school:

1. Any pupil who, together with his parents, by reason of bona fide religious training or belief is conscientiously opposed to attendance at school. For purposes of this subdivision, "bona fide religious training or belief" does not include essentially political, sociological or philosophical views or a merely personal moral code; and

2. On the recommendation of the juvenile and domestic relations district court of the county or city in

which the pupil resides and for such period of time as the court deems appropriate, any pupil who, together with his parents, is opposed to attendance at a school by reason of concern for such pupil's health, as verified by competent medical evidence, or by reason of such pupil's reasonable apprehension for personal safety when such concern or apprehension in that pupil's specific case is determined by the court, upon consideration of the recommendation of the principal and division superintendent, to be justified.

C. A school board may excuse from attendance at school:

1. On recommendation of the principal and the division superintendent and with the written consent of the parent or guardian, any pupil who the school board determines, in accordance with regulations of the Board of Education, cannot benefit from education at such school; and

2. On recommendation of the juvenile and domestic relations district court of the county or city in which the pupil resides, any pupil who, in the judgment of such court, cannot benefit from education at such school.

D. Local school boards may allow the requirements of subsection A of this section to be met under the following conditions:

For a student who is at least 16 years of age, there shall be a meeting of the student, the student's parents, and the principal or his designee of the school in which the student is enrolled in which an individual student alternative education plan shall be developed in conformity with guidelines prescribed by the Board, which plan must include:

a. Career guidance counseling;

b. Mandatory enrollment and attendance in a general educational development preparatory program or other alternative education program approved by the local school board with attendance requirements that provide for reporting of student attendance by the chief administrator of such GED preparatory program or approved alternative education program to such principal or his designee;

c. Counseling on the economic impact of failing to complete high school; and

d. Procedures for reenrollment to comply with the requirements of subsection A of this section.

A student for whom an individual student alternative education plan has been granted pursuant to this subsection and who fails to comply with the conditions of such plan shall be in violation of the compulsory school attendance law, and the division superintendent or attendance officer of the school division in which such student was last enrolled shall seek immediate compliance with the compulsory school attendance law as set forth in this article.

Students enrolled with an individual student alternative education plan shall be counted in the average daily membership of the school division.

E. A school board may, in accordance with the procedures set forth in Article 3 (§ 22.1-276.01 et seq.) of Chapter 14 of this title and upon a finding that a school-age child has been (i) charged with an offense relating to the Commonwealth's laws, or with a violation of school board policies, on weapons, alcohol or drugs, or intentional injury to another person; (ii) found guilty or not innocent of a crime that resulted in or could have resulted in injury to others, or of an offense that is required to be disclosed to the superintendent of the school division pursuant to subsection G of § 16.1-260; (iii) suspended pursuant to § 22.1-277.05; or (iv) expelled from school attendance pursuant to § 22.1-277.06 or § 22.1-277.07 or subsection B of § 22.1-277, require the child to attend an alternative education program as provided in § 22.1-209.1:2 or § 22.1-277.2:1.

F. Whenever a court orders any pupil into an alternative education program offered in the public schools, the local school board of the school division in which the program is offered shall determine the appropriate alternative education placement of the pupil, regardless of whether the pupil attends the public schools it supervises or resides within its school division.

The juvenile and domestic relations district court of the county or city in which a pupil resides or in which charges are pending against a pupil, or any court in which charges are pending against a pupil, may require the pupil who has been charged with (i) a crime which resulted in or could have resulted in injury to others, (ii) a violation of Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, or (iii) any offense related to possession or distribution of any Schedule I, II, or III controlled substances to attend an alternative education program, including, but not limited to, night school, adult education, or any other education program designed to offer instruction to students for whom the regular program of instruction may be inappropriate.

This subsection shall not be construed to limit the authority of school boards to expel, suspend, or exclude students, as provided in §§ 22.1-277.04, 22.1-277.05, 22.1-277.06, 22.1-277.07, and 22.1-277.2. As used in this subsection, the term "charged" means that a petition or warrant has been filed or is pending against a pupil.

G. Within one calendar month of the opening of school, each school board shall send to the parents or guardian of each student enrolled in the division a copy of the compulsory school attendance law and the enforcement procedures and policies established by the school board.

H. The provisions of this article shall not apply to:

1. Children suffering from contagious or infectious diseases while suffering from such diseases;

2. Children whose immunizations against communicable diseases have not been completed as provided

in § 22.1-271.2;

3. Children under 10 years of age who live more than two miles from a public school unless public transportation is provided within one mile of the place where such children live;

4. Children between the ages of 10 and 17, inclusive, who live more than 2.5 miles from a public school unless public transportation is provided within 1.5 miles of the place where such children live; and

5. Children excused pursuant to subsections B and C of this section.

Further, any child who will not have reached his sixth birthday on or before September 30 of each school year whose parent or guardian notifies the appropriate school board that he does not wish the child to attend school until the following year because the child, in the opinion of the parent or guardian, is not mentally, physically or emotionally prepared to attend school, may delay the child's attendance for one year.

The distances specified in subdivisions 3 and 4 of this subsection shall be measured or determined from the child's residence to the entrance to the school grounds or to the school bus stop nearest the entrance to the residence of such children by the nearest practical routes which are usable for walking or riding. Disease shall be established by the certificate of a reputable practicing physician in accordance with regulations adopted by the Board of Education.

(Code 1950, § 22-275.1; 1952, c. 279; 1959, Ex. Sess., c. 72; 1968, c. 178; 1974, c. 199; 1976, cc. 681, 713; 1978, c. 518; 1980, c. 559; 1984, c. 436; 1989, c. 515; 1990, c. 797; 1991, c. 295; 1993, c. 903; 1996, cc. 163, 916, 964; 1997, c. 828; 1999, cc. 488, 552; 2000, c. 184; 2001, cc. 688, 820; 2003, c. 119.)

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