

2005 General Assembly Session Juvenile Justice Legislative Handbook



This overview of legislation, as enacted by the 2005 General Assembly, relates to juvenile justice.

This handbook is intended only for use as a summary of those bills enacted during the 2005 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.

For questions or issues concerning any of the information contained herein, please contact Deron M. Phipps via email at Deron.Phipps@djj.virginia.gov or by calling (804) 786-6407.

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Part I Juvenile Court Proceedings

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

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 Passed in 2004 to be Effective July 1, 2005

Arguably, the most significant juvenile justice bill of the 2005 session was passed during the 2004 session because legislation was introduced this session that attempted to repeal HB 600 before it became effective. Moreover, because of the substantive changes made to the juvenile code, HB 600 does not become effective until July 1, 2005. HB 600 made three significant structural changes to the juvenile code in Virginia. First, it requires the appointment of counsel on behalf of the child to occur prior to an initial detention hearing unless an attorney has been retained and appears on behalf of the child. Second, it amends the statutes pertaining to the detention hearing to ensure that counsel for the child is provided notice and the opportunity to be heard. Finally, as amended during the 2005 session, HB 600 limits a child's ability to waive counsel when that child is alleged to have committed a felony.¹

1.01 HB 600 & HB 2670

HB 2670 was introduced and passed during the 2005 General Assembly session. Because it modifies the waiver provisions as amended by HB 600, the new waiver provisions effective July 1, 2005, will be summarized under HB 2670 immediately following the summary of HB 600.

2.00 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 proceeding.²

2.10 Substantive Change #1 - 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. A juvenile must be appointed counsel when a detention hearing is to be conducted.

2.11 A Juvenile Cannot Waive Counsel at the Detention Hearing

A juvenile cannot waive his right to counsel at the initial detention hearing. As summarized under HB 2670 below, a juvenile can waive the right to counsel only *subsequent* to the detention hearing and prior to the adjudicatory hearing or transfer hearing.

¹ See the summary for HB 2670 immediately below.

² *Side note:* This section of the Code also provides the juvenile court with the authority to appoint guardian ad litem.

2.12 No Appointment Necessary if Child Has an Attorney

If an attorney has been retained and appears on behalf of the child, there is no need for the juvenile court to appoint an attorney.

2.13 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.

2.14 No Appointment Necessary if Judge is Going to Release the Child

A judge may release a child from detention prior to appointing 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.

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

If there is no detention hearing and the child is released, the child must be provided the opportunity to obtain counsel or request that counsel be appointed prior to the adjudicatory or transfer hearing. For the most part, the changes made to appointing counsel when a child is not detained are technical.

2.21 Appointing Counsel Applies to Child in Need of Services (CHINS), Child in Need of Supervision (CHINSup), and Delinquent Cases (*Not New*)

The requirement for appointing counsel applies to any case involving a child alleged to be in need of services, in need of supervision, or delinquent.

2.22 Child Must be Indigent: Subdivision 2 of Subsection C (*Not New*)

For the court to appoint counsel for a child, the court must determine that the child is indigent according to Virginia Code § 19.2-159.

2.23 Child's Parents Must Complete Indigency Forms and Financial Statement: Subdivision 2 of Subsection C (*Revised*)

For a court to determine that a child is indigent, the child's parent, guardian, legal custodian, or other person standing in loco parentis must complete a statement of indigence substantially in the form provided by Virginia Code § 19.2-159 and a financial statement. HB 600 modifies this subdivision of the Code to specifically 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 § 19.2-159 and a financial statement.

2.24 If Child is Indigent, the Court Will Appoint Counsel

If the court finds that the child is indigent, the court will appoint an attorney to represent the child.

2.30 Requiring the Parents to Pay When Financially Able: Technical Amendments to Va. 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.

3.00 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).

3.10 Notice of the Detention Hearing or Rehearing 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 required to be given only 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.

3.20 Child's Attorney Shall 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 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.

3.30 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.

3.31 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*.

3.32 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.

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

The detention review hearing (Virginia Code § 16.1-250.1) is abolished. As counsel will be appointed and present at the initial appearance before the judge, the need for the section of the Code providing for a "detention review hearing" is no longer needed.

5.00 Guidelines on Implementing HB 600 Were Submitted to the 2005 General Assembly

The Office of the Executive Secretary of the Supreme Court, in conjunction with the Commonwealth's Attorneys' Service Council, the Public Defender Commission, and the Department of Juvenile Justice (DJJ), developed written guidelines and procedures for implementing subsections B and C of Virginia Code § 16.1-266. That report was submitted to the Chairmen of the Senate Courts of Justice and House Courts of Justice Committees prior to the 2005 General Assembly session.

6.00 Both HB 600 & HB 2670 Take Effect July 1, 2005

Although HB 600 was passed during the 2004 General Assembly session, the bill contained a 2nd enactment that delayed the effective date to July 1, 2005.

HB 2670 JUVENILE COURT: REPRESENTATION MAY NOT BE WAIVED WITHOUT CONSULTATION IF CHARGE IS A FELONY. DELEGATE ROBERT F. McDONNELL

HB 2670 amends Virginia Code § 16.1-266 relating to when a juvenile may waive the right to representation by an attorney. Effective July 1, 2005.

1.00 Summary: No Waiver if Felony Without Consultation With Attorney

HB 2670 is the counterpart of HB 600. HB 2670 amends Virginia Code § 16.1-266 as enacted in last year's HB 600 concerning the appointment of counsel when a juvenile is released rather than detained. It raises the waiver portion of the bill to apply only to felonies rather than any committable offense (i.e., four Class 1 misdemeanors) under the original provisions of HB 600. Under HB 2670, a juvenile alleged to be a felon cannot waive his right to counsel without first consulting with an attorney. HB 2670 contains a second enactment clause that provides the Supreme Court with more discretion when determining payment to an attorney for the initial detention hearing.

1.01 Side Bar: Bill to Repeal HB 600 Rolled Into HB 2670

HB 2409, a bill intended to repeal the changes made by HB 600 prior to its taking effect, was introduced during the 2005 General Assembly session. After subsequent negotiations, HB 2409 was rolled into HB 2670, thereby preserving the substance of HB 600.

2.00 Appointing Counsel When Child is Released: Subsection C of Va. Code § 16.1-266

Subsection B of Virginia Code § 16.1-266 requires an attorney to be appointed for a juvenile alleged to have committed a Class 1 misdemeanor or a felony at the initial detention hearing before a judge. Subsection C provides that, if a child is not detained in detention and released from custody without having an attorney, the child maintains the right to waive the appointment of counsel. As a result of HB 600, as subsequently modified by HB 2670, specific requirements must be satisfied before a juvenile may waive the right to counsel when that juvenile was not originally detained.

3.00 The Process for Waiving Counsel When a Juvenile is Alleged to Have Committed a Felony *(New and Substantive Change)*

A child alleged to have committed a felony offense may waive his right to counsel subject to certain limitations. A juvenile alleged to have committed any other lesser offense may waive his right to counsel if the court finds that the waiver is free and voluntary.

3.10 HB 2670 Applies Only to Felony Cases When Juvenile is Released

A child who is alleged to have committed a felony and who is not detained may waive his right to counsel only after consulting with an attorney.

3.11 HB 600 Originally Applied to any Committable Offenses

Originally, HB 600 amended this section of the Code so that a juvenile could not waive the right to an attorney before consulting with an attorney if that juvenile was alleged to have committed an offense that “may result in commitment pursuant to subsection 14 of § 16.1-278.8.”

3.20 Court Must Find That the Waiver is Free and Voluntary

For a juvenile to waive his right to an attorney, the court must find that the waiver is free and voluntary.

3.30 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.

3.40 Waiver Must be Consistent With the Interests of the Child

The juvenile court must find that such waiver is *consistent with* the interests of the child.

HB 2529 PROBATION AND PAROLE: NOTICE OF TRANSFER HEARING AND CIRCUIT COURT DISPOSITION. DELEGATE KENNETH R. MELVIN

HB 2529 amends Virginia Code §§ 16.1-269.2 and 16.1-272 relating to notifications when a juvenile is transferred and tried and convicted as an adult in circuit court. Effective July 1, 2005.

1.00 Summary: Transfer Hearing & Circuit Court Disposition Notifications to Court Service Units (CSUs)

HB 2529 amends Virginia Code §§ 16.1-269.2 and 16.1-272 relating to notifications when a juvenile is transferred and tried and convicted as an adult in circuit court. First, when the attorney for the Commonwealth files a motion for a transfer hearing pursuant to subsection A of § 16.1-269.1, the attorney for the Commonwealth must provide notice to the designated probation services or other qualified agency of the need for a transfer report. Second, when the circuit court sentences a juvenile convicted as an adult, the circuit court clerk will provide a copy of the court's final order or judgment to the CSU in the same locality as the juvenile court to which the case had been transferred.

2.00 Transferring a Juvenile to be Tried as an Adult: Va. Code § 16.1-269.1

Virginia Code § 16.1-269.1 provides the statutory authority for certifying or transferring a juvenile from the juvenile and domestic relations district court to the circuit court to be tried as an adult. Three generally used mechanisms for sending a juvenile to circuit court to be tried as an adult are:³

2.01 Mandatory Certification: Va. Code § 16.1-269.1(B)

Virginia Code § 16.1-269.1(B) mandates certification for trial as an adult for a juvenile who is 14 years of age or older and probable cause exists to believe that the juvenile committed capital murder, first and second degree murder, lynching, or aggravated malicious wounding as defined in § 18.2-51.2. If the juvenile court finds probable cause that the juvenile committed a violent juvenile felony as defined in subsection B, the juvenile court must certify the juvenile to be tried as an adult.

2.02 Prosecutorial Discretion: Va. Code § 16.1-269.1(C)

A juvenile, 14 years of age or older, accused of certain other violent juvenile felonies may be tried as an adult if the attorney for the Commonwealth requests the juvenile court judge to certify the case. Subsection C identifies the felonies considered to be violent juvenile offenses.⁴ If the

³ Subsection D of Virginia Code § 16.1-269.1 provides the attorney for the Commonwealth with the authority to seek a direct indictment in circuit court. Virginia Code § 16.1-270 provides that a juvenile, 14 years of age or older charged with an offense that could be punishable by confinement in an adult state correctional facility may elect to waive the jurisdiction of the juvenile court and have his case transferred to the circuit court.

⁴ The offenses for which an attorney for the Commonwealth may request certification to circuit court for trial as an adult are: felonious injury by mob in violation of § 18.2-41, abduction in violation of § 18.2-48, malicious wounding in violation of § 18.2-51, malicious wounding of a law-enforcement officer in violation of § 18.2-51.1, felonious poisoning in violation of § 18.2-54.1, adulteration of products in violation of § 18.2-54.1, robbery in violation of § 18.2-58, carjacking in violation of §

attorney for the Commonwealth files a motion to certify a juvenile for trial as an adult, the juvenile court's action is only to determine whether or not there is probable cause that the juvenile committed the alleged violent juvenile felony as defined under subsection C.

2.03 Transfer Hearing: Va. Code § 16.1-269.1(A)

If a juvenile, 14 years of age or older, is accused of any other felony, then by motion of the attorney for the Commonwealth, the juvenile court may conduct a transfer hearing. The purpose of the hearing is to decide if the juvenile is a proper person to remain under the jurisdiction of the juvenile court or to be transferred to the circuit court.

3.00 The “Old Fashioned” Transfer Hearing & Transfer Report

If the attorney for the Commonwealth motions for a transfer hearing pursuant to subsection A of Virginia Code § 16.1-269.1, the juvenile court must conduct a transfer hearing. During the transfer hearing, the juvenile court must consider several factors including the juvenile's history and the seriousness of the alleged offense. Whether or not to transfer the juvenile to circuit court to be tried as an adult is a decision to be made by the juvenile court. By transferring the juvenile to circuit court to stand trial as an adult, the juvenile court has made the determination that the juvenile is no longer amenable to treatment or rehabilitation as a juvenile.

3.10 When a CSU is Required to Complete a Transfer Report: Va. Code § 16.1-269.2

If the attorney for the Commonwealth moves to have a juvenile transferred to circuit court to be tried as an adult pursuant to subsection A of Virginia Code § 16.1-269.1, then Virginia Code § 16.1-269.2 requires the CSU to provide a transfer report “prior to a transfer hearing.”

3.11 CSU or “Other Qualified Agency” may Complete the Report

The CSU or “other qualified agency designated by the court” can complete the transfer report. The Virginia Code does not define “qualified agency.”

3.12 The Contents of the Transfer Report/Study

The written report/study must address the factors set out in subdivision A 4 of Virginia Code § 16.1-269.1. As stated above, that section of the Code provides the juvenile court with the criteria for determining whether or not to transfer a juvenile to circuit court for trial. The transfer report must also provide an assessment of any affiliation with a youth gang.

3.13 Access to the Report

Counsel for the juvenile and the attorney for the Commonwealth shall have full access to the study and report and any other report or data concerning the juvenile that are available to the court.

3.14 No Report Until Probable Cause Established

The court cannot consider the report until probable cause that the juvenile committed the alleged felony has been established.

3.20 Issue #1: Prior to HB 2529, No Notice Provision That a Transfer Report was Needed

Prior to HB 2529, there was no provision in the Virginia Code that the juvenile court must notify the CSU that a report was needed or any timeframes for the filing of such report. In some cases, the CSUs did not receive notice that a transfer report was needed until days or even hours before the hearing.

3.30 Transfer Report Notification Fix: Language in Subsection B of Va. Code § 16.1-269.2 (New)

HB 2529 places responsibility upon the attorney for the Commonwealth to notify the CSU that a transfer report is needed when a motion to transfer is made. *Upon motion of the attorney for the Commonwealth for a transfer hearing pursuant to subsection A of § 16.1-269.1, the attorney for the Commonwealth shall provide notice to the designated probation services or other qualified agency of the need for a transfer report.*

4.00 Sentencing a Juvenile Convicted as an Adult: Va. Code § 16.1-272

Virginia Code § 16.1-272 provides the sentencing powers of the circuit court over a juvenile who is convicted as an adult. A juvenile convicted as an adult may be given a juvenile disposition, a blended juvenile and adult sentence, or an adult-only sentence. Subsection A of Virginia Code § 16.1-272 provides three subdivisions for sentencing a juvenile convicted in circuit court as an adult as summarized below:

4.01 Circuit Court may Impose a Blended Sentence Upon a Juvenile Convicted of a Violent Juvenile Felony: Part Juvenile Sentence – Part Adult Sentence

Subdivision (A)(1) of Virginia Code § 16.1-272 provides the circuit court with the options available for imposing a sentence upon a juvenile convicted as an adult of a violent juvenile felony. First, the circuit court may impose an active adult sentence but allow a portion of that sentence to be served in a juvenile correctional center (JCC) as a serious juvenile offender. Second, the circuit court may impose an adult sentence upon a juvenile convicted of a violent juvenile felony. Finally, the circuit court may sentence the juvenile as an adult but suspend the adult sentence conditioned upon successful completion of a juvenile disposition including commitment under subdivision 14 of § 16.1-278.8 or § 16.1-285.1.

4.02 A Juvenile Convicted of any Other Felony may Have an Adult Sentence or a Juvenile Sentence: One or the Other - Not Blended

Subdivision (A)(2) provides the sentencing options for a juvenile convicted of a non-violent juvenile felony. For juveniles convicted in circuit court as an adult of any other felony, the court may sentence the juvenile as an adult or may deal with the juvenile in the manner prescribed for disposition of cases in the juvenile court.

4.03 Circuit Court may Impose Only a Juvenile Disposition Upon a Juvenile Convicted of a Misdemeanor

Subdivision (A)(3) provides the sentencing options for a juvenile convicted of a misdemeanor. If the juvenile is not convicted of a felony but is convicted of a misdemeanor, the court shall deal with the juvenile in the manner prescribed by law for the disposition of a delinquency case in the juvenile court.

4.04 A Juvenile Sentence may be Supervised by a Juvenile Probation Officer

Subsection B of § 16.1-272 of the Code of Virginia states, “If the circuit court decides to deal with the juvenile in the same manner as a case in the juvenile court and places the juvenile on probation, the juvenile may be supervised by a juvenile probation officer.”

4.10 Issue #2: Prior to HB 2529, Again, No Notice to CSU Provision

The circuit court clearly has the authority to impose a juvenile disposition upon a juvenile convicted as an adult and to order a juvenile probation officer to supervise a juvenile convicted as an adult and given a juvenile disposition. Prior to HB 2529; however, there was no notice provision in the Virginia Code informing the CSU of the disposition or its duty to provide supervision.

4.20 Circuit Court Notification Fix: Language in Subsection D of Va. Code § 16.1-272 (New)

HB 2529 amends subsection D of Virginia Code § 16.1-272 to require the circuit court clerk to notify the CSU of the sentence imposed upon a juvenile convicted as an adult in circuit court. *If the court sentences the juvenile as a juvenile under this chapter, the clerk shall provide a copy of the court’s final order or judgment to the CSU in the same locality as the juvenile court to which the case had been transferred.*

HB 2650 JUVENILE DETENTION: COMMONWEALTH’S ATTORNEY MAY APPEAL RELEASE OF JUVENILE. DELEGATE ROBERT HURT

HB 2650 amends Virginia Code § 16.1-248.1 relating to appealing a decision not to detain a juvenile in detention prior to trial. Effective July 1, 2005.

1.00 Summary: Commonwealth’s Right to Appeal Decision not to Detain Prior to Trial

HB 2650 amends Virginia Code § 16.1-248.1 relating to appealing a decision not to detain a juvenile in detention prior to trial. The original bill authorized the attorney for the Commonwealth to appeal *any* decision of the judge, intake officer, or magistrate to release a juvenile over the objection of the attorney for the Commonwealth. Amendments added in the Senate significantly limited the Commonwealth’s right to appeal by ensuring that revoking a juvenile’s release mirrors the provisions for the revocation of bail or recognizance on the adult side.

2.00 The Criteria for Detaining a Juvenile Prior to Trial: Va. Code § 16.1-248.1 (Not New)

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.⁵

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

The decision whether or not to detain a juvenile will be made by the judge, intake officer, or magistrate.

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

2.10 The Alleged Act is a Felony or Class 1 Misdemeanor: Va. Code § 16.1-248.1(A)(1)

A juvenile can be detained 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)(1) are satisfied.

2.11 Alleged Act is Probation or Parole Violation – Look to Underlying Offense

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.”

2.20 Additional Requirements That Must be Satisfied Prior to Detaining a Juvenile

If the alleged offense is a felony or a Class 1 misdemeanor, one of the following circumstances must be satisfied before a juvenile can be placed in a detention facility.

2.21 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.

2.22 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.

⁵ As defined in Virginia Code § 16.1-228, 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.

2.23 Or There is 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.

2.24 Fugitive and Fails to Appear (FTA) may be Detained: Subdivisions 2, 3, & 4 of Va. Code § 16.1-248.1(A)

Subdivisions 2, 3, and 4 of subsection A under Virginia Code § 16.1-248.1 provide the authority to detain a juvenile who is a fugitive or FTA in court.

2.25 CHINS & CHINSup Cases can be Detained Only When FTA

Please note: CHINS and CHINSup offenses are eligible offenses for pre-dispositional detention only when the juvenile FTA in court and such incarceration is limited to the next day the court is in session, not to exceed 96 hours.

3.00 The Commonwealth's Right to Appeal: Subsection H Under Va. Code § 16.1-248.1 (New)

The attorney for the Commonwealth may appeal the decision of *the intake officer or magistrate to release a juvenile, either on bail or recognizance or under such conditions as may be imposed*. No motion to revoke bail or change such conditions can be made unless certain criteria are satisfied.

3.10 Requirements for the Commonwealth's Attorney to Appeal the Decision to Release (New)

The Commonwealth's attorney can challenge the release of a juvenile on bail or recognizance if:

- the juvenile has violated a term or condition of his release,
- is convicted of or taken into custody for an additional offense, or
- the attorney for the Commonwealth presents evidence that incorrect or incomplete information was relied upon by the intake officer or magistrate establishing the initial terms of release.

If the above conditions are met and the juvenile court releases the juvenile, either on bail or recognizance, over the objection of the attorney for the Commonwealth, the attorney for the Commonwealth may appeal the decision to the circuit court.

3.20 The Commonwealth's Attorney Must State Objection

The Commonwealth's attorney must object to the juvenile court's decision to release the juvenile, either on bail, recognizance, or any other conditions as imposed. Presumably, the objection must be stated to the juvenile court during the detention hearing before the juvenile court judge.

3.30 Appeal of Decision to Release Goes to the Circuit Court

The appeal of a decision to release a juvenile over the objection of the attorney for the Commonwealth goes to the circuit court.

3.40 Decision to Detain Remains in Effect Pending Appeal to the Circuit Court

The order of the juvenile court releasing the juvenile remains in effect until the circuit court, Court of Appeals, or Supreme Court rules otherwise.

**HB 2810 & SB 1342 DRUG COURT TREATMENT ACT: AUTHORITY TO ESTABLISH IN
CHESAPEAKE. DELEGATE JOHN A. COSGROVE & SENATOR L. LOUISE LUCAS**

HB 2810 and SB 1342 amend Virginia Code § 18.2-254.1 relating to the Drug Treatment Court Act by allowing the establishment of a drug treatment court in Chesapeake. Effective July 1, 2005.

1.00 Chesapeake Becomes First General Assembly Approved Drug Court Since Passage of Drug Treatment Court Act

During the 2004 session, the General Assembly enacted HB 1430 establishing 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.⁶ HB 1430 provided the Supreme Court with the administrative oversight for implementing drug treatment courts in circuit courts and in juvenile courts. HB 1420 further established a state Drug Treatment Court Advisory Committee chaired by the Chief Justice of the Supreme Court. The state Drug Treatment Court Advisory Committee establishes the criteria for implementing a drug treatment court. HB 1430 also provided that 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. Therefore, the City of Chesapeake could establish a drug court without this legislation subject to the requirements and conditions established by the state Drug Treatment Court Advisory Committee. The City of Chesapeake is the first locality to seek such authority under the Code since the passage of the Drug Treatment Court Act in 2004.

⁶ The 2004 General Assembly Handbook contains a summary of the new requirements for establishing a drug court pursuant to the Drug Court Treatment Act.

**SB 806 POWERS OF THE COURT: CROSS DESIGNATION OF DISTRICT COURT JUDGES.
SENATOR HENRY L. MARSH III**

*SB 806 amends Virginia Code § 16.1-69.35 relating to administrative duties of chief district judges.
Effective July 1, 2005.*

1.00 Juvenile Court Judges may Serve in General District Court for One Year

Virginia Code § 16.1-69.35 permits the chief judge of the general district court to designate any juvenile and domestic relations district court judge of the district, with the judge's consent, for an individual case or to sit and hear cases in any general district court in the district for a period of not more than 90 days. Similarly, the statute permits the chief juvenile and domestic relations district court judge of a district to designate any general district court judge of the district, with the judge's consent, for an individual case or to sit and hear cases in any juvenile court in the district for a period of not more than 90 days. SB 806 extends from 90 days to one year the length of time that such transfer appointments may be effective.

Part II Juvenile Court Dispositions & Punishment

HB 2206 JUVENILE COURT: DEFERRED DISPOSITIONS FOR DELINQUENTS – NO TIME LIMITATIONS. DELEGATE BRADLEY P. MARRS

HB 2206 amends Virginia Code § 16.1-278.8 to remove the time limitations upon the juvenile court's authority to defer a disposition imposed upon a juvenile found to be delinquent. Effective July 1, 2005.

1.00 One Sentence Summary: No Time Limitations Upon Deferred Dispositions

HB 2206 amends Virginia Code § 16.1-278.8 to remove the time limitations upon the juvenile court's authority to defer a disposition imposed upon a juvenile found to be delinquent.

2.00 Available Dispositions for Juvenile Found Delinquent: Va. Code § 16.1-278.8

Virginia Code § 16.1-278.8 provides the juvenile court and the circuit court the available dispositions for the supervision, care, and rehabilitation when a juvenile is found to be delinquent.

2.10 The Authority to Defer Pending Successful Completion of Program

Subdivisions 4 and 5 under subsection A of Virginia Code § 16.1-278.8 provide the juvenile court with two options in which it may defer either the imposition of the finding of guilt or the imposition of the disposition.

2.12 Defer Disposition Pending Good Behavior: Subdivision 4

Subdivision 4 allows the court to defer the disposition after which time the charge may be dismissed by the judge if the juvenile exhibits good behavior during the period for which disposition is deferred.

2.13 Impose Disposition, But Defer Guilt/Adjudication Pending Successful Completion of Terms & Conditions: Subdivision 5

Subdivision 5 allows the juvenile court to impose a disposition and defer the finding of guilt pending the successful completion of the disposition. If the juvenile successfully completes the terms and conditions as imposed by the court, the court will discharge the juvenile and dismiss the proceedings against him without an adjudication of guilt.

2.20 Prior to HB 2206, Deferred Dispositions/Adjudications Limited to 12 Months

Prior to HB 2206, a deferred disposition or a deferred adjudication was limited to 12 months. After 12 months, the court was required to dismiss or impose the disposition or adjudication.

3.00 No More 12-Month Time Limitations on Deferring Adjudications or Dispositions (New)

HB 2206 strikes the 12-month language and requires the juvenile court to establish a specific period of time based upon the *gravity of the offense and the juvenile's history*.

3.10 Timeframe Based on Gravity of Offense & Juvenile's History

HB 2206 adds language requiring the court to establish a specific timeframe for deferring the disposition or adjudication based upon the gravity of the offense and the juvenile's history.

3.11 No Offense Criteria for Deferring Dispositions/Adjudications

Side Bar: There are no designated offenses for determining eligibility for deferment under either option under current law, and the bill does not change that.

**HB 2318 JUVENILE SEX OFFENDERS: JUDICIAL DISCRETION TO REQUIRE
REGISTRATION OF A MINOR WHO COMMITS CERTAIN SEX OFFENSES.
DELEGATE H. MORGAN GRIFFITH**

HB 2318 amends Virginia Code §§ 9.1-901, 9.1-902, and 9.1-903 relating to judicial discretion to require registration in the Sex Offender and Crimes Against Minors Registry (Registry) of a minor who is adjudicated delinquent of a registrable offense in juvenile court. Effective July 1, 2005.

1.00 Summary: Juvenile Court may Order Juvenile Sex Offenders to Register

HB 2318 amends Virginia Code §§ 9.1-901, 9.1-902, and 9.1-903 relating to judicial discretion to require registration in the Sex Offender and Crimes Against Minors Registry (Registry) of a minor who is adjudicated delinquent of a registrable offense in juvenile court. Under current law, only those juveniles tried and convicted as adults in circuit court for registrable offenses are required to register in the Registry.

2.00 The Sex Offender and Crimes Against Minors Registry (Registry)

The purpose of the Registry is to assist the efforts of law-enforcement agencies and others to protect their communities and families from repeat sex offenders and to protect children from becoming victims of criminal offenders by helping to prevent such individuals from being allowed to work directly with children.

2.10 Prior to HB 2318, Who Must Register: Va. Code § 9.1-901

A juvenile convicted in circuit court for the murder of another juvenile will be required to register under the new provisions of this bill. A juvenile convicted in another state for which registration is required will

be required to register in Virginia if that juvenile relocates to Virginia for any reason including school or employment.⁷

2.11 Failure to Register is a Class 1 Misdemeanor

Failure to register is a Class 6 felony if the offender had been convicted of a sexually violent offense; for other listed offenses, failure to register is a Class 1 misdemeanor.

2.20 Prior to HB 2318, Offenses for Which Registration is Required

Virginia Code § [9.1-902](#) lists the offenses for which registration is required.

2.21 First Time Convictions for Which Registration is Required

A violation or attempted violation of the following offenses requires registration:

- § [18.2-63](#) (Carnal knowledge of child between 13 and 15 years of age),
- § [18.2-64.1](#) (Carnal knowledge of certain minors),
- § [18.2-67.2:1](#) (Marital sexual assault),
- § [18.2-90](#) (Entering dwelling house, etc., with intent to commit murder, rape, robbery, or arson), and
- § [18.2-374.1](#) (Production, publication, sale, possession with intent to distribute, financing, etc., of sexually explicit items involving children; presumption as to age).

2.22 Second Conviction Possessing Child Porn Requires Registration

A second or subsequent violation or attempted violation of subsection D of § [18.2-374.1:1](#) (Possession of child pornography – 2nd offense) requires registration.

2.23 Third Conviction for Sexual Battery and Other Specific Sex Crime Requires Registration

A third conviction of the following offenses requires registration:

- § [18.2-67.4](#) (Sexual battery),
- subsection C of § [18.2-67.5](#) (Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual battery, and sexual battery), or
- § [18.2-386.1](#) (Unlawful filming, videotaping or photographing of another).

⁷ See Va. Code §§ [9.1-905](#) (New residents and nonresident offenders; registration required) and [9.1-906](#) (Enrollment or employment at institution of higher learning; information required).

2.24 Victim is Minor or Physically Helpless or Mentally Incapacitated

A conviction for one of the below offenses where the victim is a minor or is physically helpless⁸ or mentally incapacitated⁹ as defined in § 18.2-67.10 requires registration:

- a violation or attempted violation of subsection A of § 18.2-47 (Abduction and kidnapping),
- clause (i) or (iii) of § 18.2-48 (Abduction with intent for immoral purpose - concubinage or prostitution),
- § 18.2-67.4 (Sexual battery),
- subsection C of § 18.2-67.5 (Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual battery, and sexual battery),
- § 18.2-361 (Crimes against nature),
- § 18.2-366 (Adultery and fornication by persons forbidden to marry; incest), or
- clause (iv) of subsection B of § 18.2-374.3 (Use of communications systems to facilitate certain offenses involving children – indecent liberties with children).

2.25 Certain Federal Crimes Require Registration

A violation of Chapter 117 (18 U.S.C. § 2421 et seq.) of Title 18 of the United States Code requires registration.

2.26 Sexually Violent Offenses – 1st Conviction - Require Registration

A first time conviction for committing or attempting to commit one of the following “sexually violent offenses” requires registration:

- Clause (ii) of § 18.2-48 (Abduction with intent to defile),
- § 18.2-61 (Rape),
- § 18.2-67.1 (Forcible sodomy),
- § 18.2-67.2 (Object sexual penetration),
- § 18.2-67.3 (Aggravated sexual battery),
- subsections A and B of § 18.2-67.5 (Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual battery),
- § 18.2-370 (Taking indecent liberties with children), or
- § 18.2-370.1 (Taking indecent liberties with child by person in custodial or supervisory relations).

⁸ Virginia Code § 18.2-67.10 defines "physical helplessness" as meaning unconsciousness or any other condition existing at the time of an offense under this article that otherwise rendered the complaining witness physically unable to communicate an unwillingness to act and about which the accused knew or should have known.

⁹ Virginia Code § 18.2-67.10 defines "mental incapacity" as the condition of the complaining witness existing at the time of an offense under this article that prevents the complaining witness from understanding the nature or consequences of the sexual act involved in such offense and about which the accused knew or should have known.

2.27 Sexually Violent Offenses – 2nd Conviction – Require Registration

The following offenses are defined as sexually violent offenses and require registration for a second conviction:

- §18.2-63 (Carnal knowledge of child between 13 and 15 years of age),
- §18.2-64.1 (Carnal knowledge of certain minors),
- §18.2-67.2:1 (Marital sexual assault),
- § 18.2-90 (Entering dwelling house with intent to commit rape or the victim is a minor or is physically helpless or mentally incapacitated),
- a violation or attempted violation of subsection A of § 18.2-47 (Abduction and kidnapping),
- § 18.2-67.4 (Sexual battery),
- subsection C of § 18.2-67.5 (Sexual battery),
- clause (i) or (iii) of § 18.2-48 (Abduction for immoral purpose - concubinage or prostitution),
- § 18.2-361 (Crimes against nature),
- §18.2-366 (Adultery and fornication by persons forbidden to marry; incest), or
- § 18.2-374.1 (Production, publication, sale, or possession with intent to distribute sexually explicit items involving children).

The person must have been at liberty between such convictions.

2.30 Duration of Registration Requirement: Va. Code § 9.1-908

A person required to register or reregister will be required to register for 10 years from the date of initial registration. A person convicted of a sexually violent offense as defined above or marital sexual assault¹⁰ will be required to register and reregister for life.

2.40 The Sex Offender Registry is Available Via the Internet

The Registry is available via Internet pursuant to Virginia Code § 9.1-913. The information available includes the offender's name; the date and locality of the conviction with a brief description of the offense; his age; current address; and photograph.

2.41 Photographs of Adults & Juveniles

There is no distinction between an adult or a juvenile. Therefore, any juvenile who is required to register will have his photograph posted on the Internet. The information about whether or not an individual is wanted for failing to register or reregister is also available.

3.00 HB 2318: Juveniles Adjudicated in Juvenile Court may be Required to Register (New)

HB 2318 marks a substantial policy decision by the 2005 General Assembly relating to juveniles.

¹⁰ See Va. Code § 18.2-67.2:1.

3.10 First Change is Clarifying in Nature

HB 2318 clarifies that a juvenile convicted in circuit court of an offense that requires registration must register; not a substantive change.

3.20 Second Change is Substantive: At the Judge's Discretion, a Juvenile Adjudicated Delinquent in Juvenile Court may be Required to Register

Making a substantial policy departure, HB 2318 allows a juvenile court to order a juvenile to register when that juvenile is adjudicated delinquent for an offense that requires registration when other requirements are satisfied.

3.21 Juvenile Must be Over 13 Years of Age

The juvenile must be 13 years of age or older to be eligible for registration.

3.22 The Court Must Find That the Evidence Shows Inclusion is Warranted

To determine whether or not to order a juvenile to register, the court must consider the following factors:

- the degree to which the delinquent act was committed with the use of force, threat, or intimidation;
- the age and maturity of the complaining witness;
- the age and maturity of the offender;
- the difference in the ages of the complaining witness and the offender;
- the nature of the relationship between the complaining witness and the offender;
- the offender's prior criminal history; and
- any other aggravating or mitigating factors relevant to the case warrants registration.

3.30 HB 2318 Only Applies to Offenses Committed after July 1, 2005

The registration changes made by HB 2318 only applies to offenses that occur on or after July 1, 2005. If a trial for a juvenile occurs after July 1, 2005, but the offense occurred prior to July 1, 2005, the new provisions of HB 2318 would not apply to that juvenile.

Also see: [HB 2836 SEX OFFENDER REGISTRY \(PAGE 59\)](#).

**HB 2722 JUVENILES: IF ADJUDICATED DELINQUENT OF CERTAIN CRIMES,
UNLAWFUL TO HAVE FIREARM, REST OF LIFE. DELEGATE JAMES M. SCOTT**

HB 2722 amends Virginia Code § 18.2-308.2 relating to possession and transportation of firearms, stun weapons, tasers, or concealed weapons by juveniles adjudicated delinquent of certain offenses. Effective July 1, 2005.

1.00 Illegal Possession of a Weapon is a Class 6 Felony: Va. Code § 18.2-308.2

Virginia Code § 18.2-308.2 makes it a Class 6 felony for a person convicted of a felony to knowingly and intentionally possess or transport any firearm or stun weapon. Virginia Code § 18.2-308.2 also makes it a Class 6 felony for a person under the age of 29 to possess or transport any firearm or stun weapon if that person was adjudicated delinquent as a juvenile for a felony offense and was 14 years of age or older at the time of the offense.

1.10 Offenses Inside and Outside of the Commonwealth Court, State and Federal Offenses

Felony convictions or adjudications outside of the Commonwealth trigger the prohibitions of this statute. Such felony convictions or adjudications include state or federal laws.

1.20 Minimum Mandatory of Five Years for Violent Felons

A person convicted of a violent felony as defined in Virginia Code § 17.1-805 who subsequently violates this section of the Code shall be sentenced to a mandatory minimum term of imprisonment of five years.

1.30 Minimum Mandatory of Two Years for Other Felonies Within 10 Years (*New*)

A person convicted of any other felony within the *prior 10 years* who violates this section by knowingly and intentionally possessing or transporting any firearm shall receive a mandatory minimum term of imprisonment of two years. The mandatory minimum terms of imprisonment prescribed for violations of this section will be served consecutively with any other sentence.

2.00 Lifetime Ban for Juveniles Adjudicated Delinquent for Serious Felonies (*New*)

HB 2722 makes it unlawful for a juvenile 14 years of age or older who was adjudicated delinquent on or after July 1, 2005, of murder (§ 18.2-31 or 18.2-32), kidnapping (§ 18.2-47), robbery by the threat or presentation of firearms (§ 18.2-58), or rape (§ 18.2-61) to possess a firearm or a concealed weapon for the rest of his life. Under current law, such a person would be able to possess these weapons at age 29.

HB 2503 JUVENILE COURT: COMPETENCY TO STAND TRIAL, LICENSED MARRIAGE AND FAMILY THERAPIST MAY PERFORM EVALUATIONS.

DELEGATE JAMES M. SHULER

HB 2503 amends Virginia Code §§ 8.01-400.2, 16.1-356, 16.1-361, and 60.2-219 relating to the performance of competency evaluations in juvenile court by marriage and family therapists. Effective July 1, 2005.

1.00 Summary: Marriage & Family Therapists may Perform Competency Evaluations

Virginia Code § 16.1-356 provides the statutory authority for raising the issue of whether or not a juvenile is competent to stand trial in a juvenile court delinquency proceeding. If there is probable cause to believe that the juvenile lacks substantial capacity to understand the proceedings against him or to assist his attorney in his own defense, the court shall order that a competency evaluation be performed by at least one psychiatrist, clinical psychologist, licensed professional counselor, or licensed clinical social worker. HB 2503 adds a licensed marriage and family therapist to the list of professionals deemed qualified by training and experience in the forensic evaluation of juveniles to conduct the competency evaluations.

Part III Juvenile Records & Release of Confidential Information

SB 1320 CONFIDENTIALITY OF JUVENILE RECORDS: RELEASING INFORMATION WHEN A JUVENILE IS A FUGITIVE. SENATOR W. ROSCOE REYNOLDS

SB 1320 amends Virginia Code § 16.1-309.1 to allow the public release of juvenile information when a juvenile becomes a fugitive from justice to apply to juveniles who are being held in custody by a law-enforcement officer or in a secure facility. Effective July 1, 2005.

1.00 Summary: Expanding the Authority to Release Information When a Juvenile is a Fugitive

Under current law, release of this personal, identifying information of a juvenile who is a fugitive is allowed only if the juvenile is charged with certain felonies (rape, robbery, burglary, or a Class 1, 2, or 3) and only upon court order. This bill provides that if the juvenile becomes a fugitive from justice at a time when court is not in session, DJJ, the attorney for the Commonwealth, or a CSU may release such information. SB 1320 amends Virginia Code § 16.1-309.1 to allow the public release of juvenile information (name, age, physical description, photograph, charge, and other information that might expedite apprehension) when a juvenile becomes a fugitive from justice to apply to juveniles who are being held in custody by a law-enforcement officer or in a secure facility.

2.00 Purpose of Va. Code § 16.1-309.1: Allowing the Public Release of Information When a Juvenile is Adjudicated Delinquent for Serious Offenses or the Juvenile is a Fugitive

Virginia Code § 16.1-309.1 allows for the public release of confidential information about a juvenile when consideration of public interest requires it because the juvenile has been adjudicated delinquent or convicted of a specified offense.

2.10 Court's Authority to Make Public Information When a Juvenile Adjudicated Delinquent for Violent Offenses & Serious Felonies

Virginia Code § 16.1-309.1 provides the juvenile court and the circuit court the authority to make public certain information about a juvenile when a juvenile has been found to have committed a serious offense or has been tried as an adult.

2.11 Mandatory Release of Name & Address When a Juvenile is Adjudicated Delinquent for a Serious Felony: Va. Code § 16.1-309.1(A) (Not New)

A juvenile court judge shall make available the name and address of a juvenile when that juvenile has been adjudicated delinquent for an act that would be a Class 1, 2, or 3 felony, forcible rape, robbery or burglary or a related burglary offense. This requirement is mandatory and not discretionary.

2.12 Discretionary Release of Information on Violent Juveniles: Va. Code § 16.1-309.1(C) (Not New)

A court may make public a juvenile's name and address if that juvenile is 14 years old or older and charged with a mob-related offense (§ 18.2-38 et seq.), a felony involving a weapon, a felony violation of crimes involving controlled substances (§ 18.2-247 et seq.), or an "act of violence" as defined in Virginia Code § 19.2-297.1(A).

2.13 Circuit Court may Release Name & Address: Va. Code § 16.1-309.1(C) (Not New)

A circuit court judge may make available the name and address of a juvenile in any case where the juvenile is sentenced as an adult in circuit court.

2.20 Fugitive Juvenile Before Disposition: Va. Code § 16.1-309.1(B)(1) (Not New)

At any time prior to disposition, if a juvenile, charged with a delinquent act that would be forcible rape, robbery, burglary or a related burglary offense (§ 18.2-89 et seq.), or any Class 1, 2, or 3 felony, becomes a fugitive from justice, the court can release identifying information about the juvenile to expedite his apprehension.

2.21 Commonwealth's Attorney, DJJ, or CSU may Petition the Court for Release of Information

The Commonwealth's attorney, DJJ, or a locally operated CSU may petition the court to authorize public release of information that may expedite the fugitive juvenile's apprehension.

2.30 Fugitive Juvenile After Final Disposition: Va. Code § 16.1-309.1(B)(2) (Not New)

After adjudication and final disposition, DJJ can release identifying information about a fugitive juvenile to the public if that juvenile is found to have committed a delinquent act that would be forcible rape, robbery, burglary or a related burglary (§ 18.2-89 et seq.), or a Class 1, 2, or 3 felony. DJJ may release identifying information on a juvenile who escapes from a JCC or other facility.

2.31 Any Juvenile who Escapes From a JCC or Contract Facility

The public release of identifying information applies to any juvenile committed to DJJ pursuant to subdivision 14 of § 16.1-278.8 or § 16.1-285.1 and becomes a fugitive from justice by escaping from a facility operated by or under contract with the Department.

2.32 Immediate Notification to Commonwealth's Attorney

When DJJ releases information on a fugitive juvenile, the Department must promptly notify the attorney for the Commonwealth of the jurisdiction in which the juvenile was tried.

2.40 Information That can be Released (*Not New*)

The information that can be released to the public includes the juvenile's name, age, physical description and photograph, the charge for which he is sought or for which he was committed, and any other information that may expedite his apprehension.

2.50 Release of Information Upon Request of the Victim: Va. Code § 16.1-309.1(D) (*Not New*)

The victim of a felony offense committed by a juvenile may request the court to order that the victim be informed of the charge or charges brought, the findings of the court, and the disposition of the case. "Victim" is defined in § 19.2-11.01.

2.60 Release of Information on Emancipated Juvenile: Va. Code § 16.1-309.1(E) (*Not New*)

Upon request, the judge or clerk may disclose information if an emancipation order of a juvenile pursuant to § 16.1-333 has been entered provided: (i) the order is not being appealed, (ii) the order has not been terminated, or (iii) there has not been a judicial determination that the order is void ab initio.

2.70 Release of Court Order Imposing Curfew: Va. Code § 16.1-309.1(F) (*Not New*)

During the 2000 General Assembly session, SB 361 and HB 673 added subsection F to Virginia Code § 16.1-309.1 allowing the court to share with local law-enforcement officials the court order imposing a curfew on a juvenile.

3.00 Issue: Releasing Information on a Fugitive Prior to Trial & the Court is not in Session

Prior to SB 1320, if a juvenile alleged to have committed one of the specified offenses became a fugitive, the attorney for the Commonwealth, DJJ or a locally operated CSU through the attorney for the Commonwealth could petition the court to authorize the public release of the identifying information. Upon a showing that the juvenile is a fugitive and for good cause, the court must order release of this information to the public. The issue arose where the court was not in session and a juvenile became a fugitive.

4.00 SB 1320's Fix: Expanding the Authority to Release Identifying Information (*New*)

SB 1320 addresses the above issue by expanding the authority to release to the public identifying information about a juvenile when that juvenile has become a fugitive.

4.10 Fix #1: Court May Release Identifying Information When a Juvenile Escapes From Law Enforcement or a Secure Facility (*New*)

When the court is in session and a juvenile either held in the custody of law enforcement or in a secure facility becomes a fugitive from justice, the Commonwealth's attorney, DJJ, or a locally operated CSU may petition the court for release of identifying information.

4.11 What Information can be Made Public?

The court may authorize the public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought or for which he was adjudicated, and any other information that may expedite his apprehension.

4.20 FIX #2: Releasing Information When a Juvenile Becomes a Fugitive Prior to Trial and the Court is not in Session (New)

SB 1320 allows the Commonwealth's attorney, DJJ, or a locally operated CSU to authorize the public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought or for which he was adjudicated, and any other information that may expedite his apprehension.

4.21 Court Must not be in Session

The authority to release identifying information when a juvenile is a fugitive only applies when the court is not in session.

4.22 Fugitive Juvenile Must be Alleged to Have Committed Specified Crime (Same Crimes)

For identifying information to be released to the public, the fugitive juvenile must be alleged to have committed a delinquent act that would be forcible rape, robbery, burglary or a related offense as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2, or a Class 1, 2, or 3 felony if committed by an adult. These offenses are the same as before SB 1320.

4.23 Juvenile Becomes Fugitive After Being Held in Custody by Law Enforcement or in a Secure Facility

If a juvenile who had been held in custody by a law-enforcement officer or in a secure facility becomes a fugitive when the court is not in session, the Commonwealth's attorney, DJJ, or a locally operated CSU may authorize the public release of identifying information.

4.24 What Information can be Made Public?

Identifying information means the juvenile's name, age, physical description and photograph, the charge for which he is sought or for which he was adjudicated, and any other information that may expedite his apprehension.

HB 2516 & SB 1109 COMPLIANCE WITH HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPPA): RELEASING INFORMATION WHEN A JUVENILE IS DEEMED AN ADULT.

DELEGATE JOHN M. O'BANNON, III & SENATOR HARRY B. BLEVINS

HB 2516 and SB 1109 amend Virginia Code §§ 2.2-3705.5, 16.1-338, 20-124.6, and 54.1-2969. Effective July 1, 2005.

1.00 Summary: Deeming a Juvenile an Adult for Purposes of Releasing Information

HB 2516 and SB 1109 revise provisions relating to a minor's health records to provide a measure of consistency with the federal regulations that were promulgated by the federal Secretary of Health and Human Services pursuant to HIPPA concerning access to and authority to disclose protected health information. Virginia Code § 16.1-338 provides that a minor 14 years of age or older may be admitted to a willing mental health facility for inpatient treatment upon the joint application and consent of the minor and the minor's parents. HB 2516 amends that section of the Code to provide the minor and his parents with concurrent access to the minor's health information. The concurrent authorization of both the parents and the minor is also required to disclose such minor's health information. Also note: Virginia Code § 54.1-2969 provides the statutory authority for a juvenile and other certain persons to consent to surgical and medical treatment for that juvenile. These bills expand the consent provisions to include releasing confidential medical records. These bills provide exceptions to the release of a juvenile's confidential health records to the parents, legal guardian, or person standing in loco parentis when the disclosure of health records would be reasonably likely to cause substantial harm to the minor or another person.

SB 1131 CRIMINAL INJURIES COMPENSATION FUND (FUND): CHANGES TO ALLOWANCES & ACCESS TO JUVENILE POLICE RECORDS. SENATOR JANET D. HOWELL

SB 1131 amends Virginia Code §§ 16.1-301, 19.2-368.5, 19.2-368.10, 19.2-368.11:1, and adds § 19.2-368.5:2 relating to Criminal Injuries Compensation Fund. Effective July 1, 2005.

1.00 Summary: Releasing Information for the Criminal Injuries Compensation Fund

As far as DJJ concerned, SB 1131 allows police and sheriffs' departments to release current information on juvenile arrests or juvenile victims to the Virginia Workers' Compensation Commission solely for purposes of determining whether or not to make an award to the victim of a crime. Further, it allows that such information shall not be disseminated or used by the Commission for any other purpose than provided in Virginia Code § 19.2-368.3. The remaining amendments increase the maximum funeral payout from \$3,500 to \$5,000; reconciles inconsistent language in the definition of victim; specifies that the lack of a restitution order does not preclude the Fund from exercising its subrogation rights; and provides that upon the filing of a claim, health care providers are prohibited from undertaking debt collection activities until an award is issued.

Part: IV Incarcerated Juveniles: Programs & Education

HB 2657 ESTABLISHING JUVENILE WORK & EDUCATIONAL RELEASE PROGRAMS. DELEGATE MAMYE E. BACOTE

HB 2657 adds Virginia Code §§ 66-25.1:1 through 66-25.1:4 relating to DJJ establishing juvenile work release programs. Effective July 1, 2006, with enactment clauses.

1.00 Summary: Creating Juvenile Work & Educational Programs at JCCs

As far as navigating the legislative process, the most challenging bill this session was HB 2657. HB 2657 authorizes DJJ to establish work and educational release programs for approved juveniles in a JCC. DJJ did not previously have the authority to provide educational, vocational, or work-related experience outside of a JCC campus. HB 2657 provides that authority. Nonetheless, the House Committee on Militia & Police had significant reservations about placing committed juveniles in the community. After much negotiation and compromise, the House passed the bill with a delayed effective date, a pilot program for one year, and a report due before the 2006 session. The Senate had no opposition to the bill. HB 2657 will strengthen DJJ's ability to ensure that committed juveniles are equipped with the educational and career skills needed to successfully transition back into the community from which the juvenile was committed. HB 2657 creates several new statutes in Title 66 requiring DJJ to develop work and educational release programs.

2.00 Juvenile Academic and Career Training Assessment: Va. Code § 66-25.1:1

In accordance with criteria established pursuant to Virginia Code § 66-25.1:3, each juvenile committed to DJJ must be assessed for participation in a work release program, apprenticeship program, job enterprise program, or any other work experience opportunity located at or through the JCC where the juvenile is placed.

2.10 Career Training and Technical Education Programs: Va. Code § 66-25.1:2 (A)

With available funds, DJJ will provide juveniles committed to the Department with opportunities to work and to participate in career training or technical education programs operated by the Department or by the Department of Correctional Education (DCE) in accordance with Virginia Code § 22.1-339 et seq.

2.20 Interagency Linkages: Va. Code § 66-25.1:2(B)

The Department may develop appropriate interagency linkages with state and local agencies, public and private institutions of education and of higher education, labor and industry councils, the business community, rehabilitative services providers, and employment and guidance services to assist juveniles in acquiring necessary work habits, developing marketable skills, and identifying career goals through a broad range of career opportunities, mentoring, and apprenticeship programs.

2.21 Consultation with DCE, Virginia Employment Commission, and the Department of Labor and Industry

In providing career-related programs, training, and services, DJJ, in conjunction with DCE, may consult and cooperate with the Virginia Employment Commission and the Department of Labor and Industry.

2.22 Types of Training Opportunities

Work-training opportunities may include business, industrial, agricultural, highway maintenance and construction, and work release programs as hereafter specified in this article. In addition, juveniles may be employed to improve, repair, work on, or cultivate public property or buildings.

3.00 Work & Educational Release Programs in JCCs: Va. Code § 66-25.1:3(A)

Virginia Code § 66-25.1:3 allows the Director of DJJ to establish work release programs subject to such rules and regulations as the State Board may prescribe.

3.10 Eligibility for Participation in Work & Educational Programs: Va. Code § 66-25.1:3(A)

By statute, the juveniles participating in these offsite work and educational opportunities will be those who have made significant rehabilitative progress and have demonstrated their capacity to meet the challenges presented by these opportunities.

3.11 Work Release Criteria

A juvenile who is proficient in a trade or occupation and who meets the work release criteria established by the Director may be approved for employment outside of the JCC.

3.12 Educational Release Criteria

A juvenile who the Director is satisfied meets the work release criteria and is capable of receiving substantial benefit from educational and other related community activity programs that are not available within a JCC may attend such programs outside of the juvenile correctional facility.

4.00 Work & Educational Release Programs in Detention Facilities: Va. Code § 66-25.1:3(B)

The Director may contract with the superintendent of a local detention facility or home for the temporary placement of a committed juvenile who is deemed appropriate for participation in the programs or services provided by or through a certified post-dispositional program in that local detention facility or home.

4.10 Eligibility Criteria for Detention Placement

A juvenile who the Director is satisfied meets the work release criteria and is capable of receiving substantial benefit from educational programs, employment, or other related community activity programs

available at or through the local detention facility or home is eligible for placement in such local detention facility or home.

4.20 Placement in a Local Detention Facility: Va. Code § 66-25.1:3 (E)

The Director and a local detention home superintendent may enter into an agreement where persons committed to DJJ may be placed in a local detention facility for the purpose of participating in a local work release or educational program. Any such placement must be in accordance with the rules and regulations applicable to local work release programs.

5.00 Compensation for Employment in Private Sector: Va. Code § 66-25.1:3 (C)

When a juvenile is employed in a position that normally is compensated, the Director shall arrange that the juvenile receive compensation comparable to that of regular employees in similar occupations.

5.10 Wages Shall go to Director for Distribution

Any wages earned by the juvenile during his employment will be paid to the Director. In accordance with regulations promulgated by the Board, the Director will deduct any outstanding debts owed by the juvenile.

5.11 Debts Shall be Paid in Order of Priority

The Director will pay the debts from the wages in the following order of priority:

- Meet the obligation of any judicial or administrative order to provide support, and such funds shall be disbursed according to the terms of such order;
- Pay any fines, restitution, or costs as ordered by the court; and
- Pay travel and other such expenses made necessary by the juvenile's work release employment or participation in an educational or rehabilitative program.

5.12 Remaining Balance Shall be Credited to Juvenile's Account

Any remaining wages will be credited to the juvenile's account or sent to his family in an amount the juvenile chooses.

6.00 Escape From a Work Release or Educational Program may be a Class 6 Felony: Va. Code § 66-25.1:3 (C)

A juvenile placed in a work release or educational program outside the JCC or juvenile detention facility remains in custody regardless of whether or not he is under the supervision of a juvenile correctional officer. If the juvenile, without permission, leaves the area in which he has been directed to work or to attend educational or community activity programs, or the vehicle or route involved in his traveling to or from such place or program, he may be found guilty of a Class 6 felony escape as provided for in Virginia Code § 18.2-477. If there are mitigating circumstances or the culpability of the juvenile is minimal, he may be found guilty of a Class 2 misdemeanor.

7.00 No Serious Offenders Without Permission of the Committing Court: Va. Code § 66-25.1:3(F)

A juvenile committed to DJJ as a serious offender pursuant to Virginia Code § 16.1-285.1 will not be approved for placement in a work release program located outside of the juvenile correctional facility without written approval of the committing court.

8.00 Work Release Furlough: Va. Code § 66-25.1:4

HB 2657 creates the statutory authority to allow furloughs for committed juveniles. The Director may extend the limits of confinement of any offender participating in a work release program that is subject to the Director's authority to permit the offender a furlough for the purpose of visiting his home or family.

8.10 Furloughs Shall be Governed by Regulations Promulgated by the State Board

The State Board of Juvenile Justice must address the utilization of furloughs for committed juveniles in the regulations pertaining to work release and educational programs.

8.20 Furloughs Cannot Exceed Three Days

The Director can determine the length of a furlough. However, no furlough shall exceed three days.

8.30 No Furloughs for Serious Offenders Without Court Permission

A juvenile committed to DJJ as a serious offender pursuant to Virginia Code § 16.1-285.1 cannot be approved for a furlough without the written concurrence of the committing court.

8.40 Class 1 Misdemeanor for Failing to Return

A juvenile who fails to return at the designated time may be guilty of a Class 1 misdemeanor and will be ineligible for further participation in a work release program.

9.00 House Militia & Police Committee Action: Pilot Program & Report

The House Committee for Militia & Police added the following enactment clauses:

1. That the work release program will begin as a pilot site located at only one facility for one year beginning on July 1, 2005;
2. That DJJ will issue regulations that define the parameters of the work release program and clearly and narrowly define who may be eligible to participate in the work release program; and
3. That DJJ will submit a report concerning the implementation of a work release program.
4. Aside from the pilot program, the bill has a delayed effective date of July 1, 2006.

**HB 1789 DCE, NOT DJJ, TO TRANSFER SCHOOL RECORDS & ACHIEVEMENT
INFORMATION WHEN CHILD RETURNS TO COMMUNITY.**

DELEGATE J. PAUL COUNCILL, JR.

HB 1789 amends Virginia Code § 16.1-287 that makes DCE primarily responsible for transferring school records when a juvenile is released from a JCC. Effective July 1, 2005.

1.00 Summary: DCE will Transfer School Records When a Juvenile is Released From a JCC

HB 1789 amends Virginia Code § 16.1-287 that makes DCE primarily responsible, in cooperation with DJJ, for transferring academic, career and technical education, and related achievement information to local school boards when children are returned to the community from DJJ's care.

**2.00 Transferring Court & Scholastic Records for a Committed Juvenile: Va. Code § 16.1-287
(Not New)**

Virginia Code § 16.1-287 governs the transfer of court records and school records when a juvenile is committed to DJJ.

2.10 Transferring Court Records When Juvenile is Committed

The court is responsible for transferring to DJJ the commitment order along with any clinical reports, predisposition studies, and other information it has pertinent to the care and treatment of the child when that court has committed a juvenile.

2.11 DJJ not Responsible for the Juvenile Until Commitment Packet is Received

The Department is not responsible for a committed juvenile until it has received the court order and the information concerning the child.

2.20 DJJ Must Provide any Information Requested by the Court About the Committed Juvenile

The Department, including any other institutions or agencies, must give to the court any information concerning a committed juvenile as the court requires.

2.30 Local School Must Forward Scholastic Records Upon Commitment

The local school board must promptly furnish the Department "with any information from their files that the Department deems to be necessary in the classification, evaluation, placement or treatment" for a committed juvenile.

3.00 The Issue: DJJ was Required to Return Scholastic Records not in the Custody of DJJ

Prior to HB 1789, DJJ was responsible for transferring a committed juvenile's scholastic records back to the local school division at the time the juvenile was released from his commitment. Unfortunately, this

transfer was problematic for DJJ because DCE maintained custody of the juvenile's complete scholastic records during the juvenile's commitment.

4.00 The Fix: DCE, Not DJJ, Will be Responsible for Returning Scholastic Records

HB 1789 adds language to Virginia Code § 16.1-287 requiring DCE, pursuant to §§ 22.1-289 and 22.1-344, to furnish the local school division with the juvenile's scholastic records upon the juvenile's release from a JCC. The new language also requires DJJ to cooperate with the transfer of the juvenile's scholastic records.

4.10 Timeframes for Transferring Scholastic Records: Va. Code § 22.1-289

Virginia Code § 22.1-289 defines scholastic records. Virginia Code § 22.1-289 requires the local school division to forward a juvenile's scholastic records to DJJ within five work days upon notice that a juvenile has been committed. The five work-day timeframe also applies when a juvenile is placed in a detention facility. Likewise, Virginia Code § 22.1-289 requires DCE to return the juvenile's scholastic records to the local school division within five work days of the juvenile's release from commitment.

4.20 Reenrollment Plans for Committed Juveniles: Va. Code § 22.1-344 (B)

Subsection B of Virginia Code § 22.1-344 requires the local school division to participate in the development of a reenrollment plan for a juvenile committed to DJJ. In the event that the juvenile is not returning to his original school division, the original school division is required to forward the juvenile's scholastic records to the appropriate school division.

5.00 Side Bar: The Reenrollment Regulations

In 1996 a law was passed that required the Department of Education (DOE) to promulgate regulations to insure that when a juvenile is released from a JCC his or her re-entry back into the local school division is accomplished promptly. Over the summer of 2004, it came to light that those regulations never completed the regulatory process. Several news articles were published when this omission became known. Immediately, the State Board of Education put together a task force to draft regulations. That Board made it clear that it wanted a uniform set of procedures that would ensure the prompt reenrollment of a juvenile back into school upon his or her release from a JCC. The reenrollment task force consisted of staff from DOE, DCE, DJJ, local school divisions, and members of the public. (Also included was a woman whose son, upon being released from a JCC, remained out of school for over two weeks as the school division processed his paperwork. Her situation was the focal point of several of the news articles.) The task force met in October to discuss the issues and impediments to reenrolling a juvenile promptly upon his or her release from a JCC. A subgroup met in November 2004 to discuss the general structure and framework of the regulations. The draft regulations were presented to the State Board of Education at its February 2005 meeting.

Part V Incarcerated Juveniles & Mental Health Issues

HB 2245 & SB 843 MENTAL HEALTH SERVICES TRANSITION PLAN FOR INCARCERATED JUVENILES: BOARD OF JUVENILE JUSTICE TO PROMULGATE REGULATIONS. DELEGATE ROBERT B. BELL & SENATOR R. CREIGH DEEDS

HB 2245 and SB 843 amend the Virginia Code by adding § 16.1-293.1 relating to a mental health transition plan for incarcerated juveniles. Effective July 1, 2005.

1.00 Summary: Mental Health Transition Plan for Juveniles Released From JCCs

The bills require DJJ to promulgate regulations for the planning and provision of post-release services for persons committed to the custody of DJJ or placed in a post-dispositional detention program and identified as having a recognized mental health, substance abuse, or other therapeutic treatment need. The regulations will provide the structure and substance for the development of a mental health plan for a juvenile who has been identified by DJJ as having a mental health treatment need. The purpose of the mental health plan will be to identify and coordinate the provision of existing services available within the community to which the juvenile will be returning. The goal of the legislation is to promote the seamless continuation of mental health services by the community in which a juvenile will reside.

2.00 Regulations for the Mental Health Services Transition Plan: Va. Code § 16.1-293.1

The Board of Juvenile Justice, after consultation with the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) must promulgate regulations pertaining to the development of a mental health plan. DJJ maintains the lead role, but DMHMRSAS plays lead supporting role.

2.10 State Board Must Convene Key Players and Stakeholders When Drafting the Regulations

For all intents and purposes, the Board of Juvenile Justice, in conjunction with DMHMRSAS, will convene a work group of local and state, private and public, players and stakeholders to draft the regulations. A second enactment clause requires the Board to specifically consult the Departments of Correctional Education, Education, Medical Assistance Services, Rehabilitative Services, and Social Services prior to promulgating the regulations.

2.20 The Regulations Must Address Committed and Post-D Juveniles

Juveniles committed to DJJ pursuant to Virginia Code subdivision A 14 of § 16.1-278.8 or placed in a post-dispositional detention program pursuant to subsection B of § 16.1-284.1 are eligible for a mental health services transition plan.

2.30 Only Juveniles Identified With a Mental Health Need Require a Plan

The regulations must provide for the completion of a mental health services transition plan for each juvenile identified as having a recognized mental health, substance abuse, or other therapeutic treatment

need. The regulations will need to provide a process for identifying those juveniles for which a plan is required.

2.40 Process for Including Key Professionals With Developing the Plan

The regulations must outline a process for including the appropriate treatment providers and other persons from state and local agencies or entities who need to participate in the development of the mental health treatment services plan prior to the juvenile's release.

2.50 Process for Inviting Key Family Members & Caregivers

The regulations must outline a process for including the appropriate family members, caregivers, or other persons who should be invited to participate in the development of the juvenile's plan.

2.60 Process for Identifying Case Manager

The regulations will need to provide a process for identifying the agency or agencies responsible for the case management of the mental health services transition plan prior to the juvenile's release from incarceration.

3.00 Purpose of the Mental Health Services Transition Plan (Plan)

The purpose of the Plan is to ensure continuity of necessary treatment and services.

3.10 The Plan Must Identify the Juvenile's Mental Health, Substance Abuse, or Therapeutic Needs

The Plan will not only identify the mental health needs of a juvenile, but also will identify any substance abuse or other therapeutic needs of the juvenile being released.

3.20 Key Professionals Must Assist With Developing the Plan

Appropriate treatment providers and other persons from state and local agencies or entities need to participate in the development of the Plan prior to the juvenile's release.

3.30 Key Family Members & Caregivers Must be Invited to Participate

Appropriate family members, caregivers, or other persons must be invited and given the opportunity to participate in the development of the juvenile's Plan.

3.40 The Plan Must Identify the Person or Agency Responsible for Case Management

The Plan must identify the agency or agencies responsible for case management.

3.41 Make Necessary Referrals

Prior to the person's release from incarceration, the case manager must make any necessary referrals specified in the Plan.

3.42 Assist With Obtaining Insurance and Identified Services

The case manager must assist the person in applying for insurance and other services identified in the Plan including completing and submitting applications that may be submitted only upon release.

3.50 Plan Must be in Writing and Completed Before the Juvenile's Release

The plan must be in writing and completed prior to the person's release.

**HB 578 TEMPORARY DETENTION ORDERS (TDOs): USE OF ELECTRONIC
COMMUNICATION FOR PROCEEDINGS AND WITNESS TESTIMONY.
DELEGATE PHILLIP A. HAMILTON**

HB 578 amends the Virginia Code by adding §§ 16.1-345.1 and 37.1-67.7 relating to use of electronic communication for certain proceedings. Effective July 1, 2005.

1.00 Summary: Use of Electronic Equipment When Conducting TDO Hearings

HB 578 provides that petitions and orders for emergency custody, temporary detention, and involuntary commitment of minors may be filed, issued, served, or executed by electronic means, with or without the use of two-way electronic video and audio communication. HB 578 creates Virginia Code § 16.1-345.1 to allow the juvenile court to use electronic communication when conducting an emergency custody proceeding pursuant to § 37.1-67.01, a temporary detention proceeding pursuant to § 37.1-67.1, or an involuntary commitment proceeding pursuant to § 16.1-341.

2.00 TDOs & Emergency Admission of a Minor for Inpatient Mental Health Treatment: Va. Code §§ 16.1-340 et seq. (Not New)

Virginia Code §§ 16.1-340 et seq., provide the authority and process to take a minor into custody for the purpose of emergency mental health treatment.

2.10 Emergency Admission of a Minor for Inpatient Treatment: Va. Code § 16.1-340 (Not New)

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 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 magistrate may issue a TDO.

2.20 TDO (Involuntary Commitment) Hearing Must be Held Within 72 Hours: Va. Code § 16.1-341

If a minor is taken into custody for the purpose of emergency mental health treatment and a TDO is issued, the juvenile and domestic relations district court must conduct a hearing no sooner than 24 hours and within 72 hours from the time of the issuance of the TDO.

2.30 Conducting the Involuntary Commitment Hearing: Va. Code § 16.1-344

Virginia Code § 16.1-344 provides for the conduct of the hearing. The court will summon to the hearing all material witnesses requested by either the minor or the petitioner. All testimony will be under oath. The rules of evidence will apply. There will be the opportunity to present evidence and cross-examine witnesses. The hearing will be closed to the public unless the minor and petitioner request that it be open.

3.00 Conducting the TDO or Involuntary Commitment Hearing Via Electronic Means (New)

HB 578 allows petitions and orders to be filed, issued, served, or executed by electronic means. Such electronic means may or may not include the use of two-way video and audio communication. Parties and witnesses to the proceeding may appear via two-way electronic video and audio communication system. Any two-way electronic video and audio communication system used to conduct a proceeding must meet the standards set forth in subsection B of Virginia Code § 19.2-3.1. When a witness whose testimony would be helpful to the conduct of the proceeding is not able to be physically present, his testimony may be received using a telephonic communication system. The bill also provides the same provisions for the analogous adult proceedings. (See Virginia Code § 37.1-67.7.)

SB 1070 JUVENILES: EMERGENCY HOSPITALIZATION PRIOR TO TRIAL. SENATOR KEN T. CUCCINELLI, II

SB 1070 amends Virginia Code §§ 16.1-340, 16.1-341, 16.1-342, 16.1-345, and 16.1-346.1 relating to emergency treatment of juveniles prior to trial. Effective July 1, 2005.

1.00 Summary: Emergency Hospitalization for Juveniles in Detention or Shelter Care

SB 1070 is similar to existing provisions for adults under Virginia Code § 19.2-169.6, but applies only to juveniles. SB 1070 amends the Code provisions pertaining to 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 specifically to include *a minor in detention or shelter care*. A minor, *including a minor in detention or shelter care*, may be taken into custody and admitted for inpatient treatment pursuant to the procedures specified in §§ 37.1-67.01 or 37.1-67.1.

2.00 Emergency Admission of a Minor for Inpatient 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. 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 magistrate may issue a TDO.

2.10 Minor Includes a Minor in Detention or Shelter Care (New)

SB 1070 amends Virginia Code § 16.1-340 specifically to state that a minor “*in detention or shelter care pursuant to an order of a juvenile and domestic relations court*” may be taken into custody and admitted for inpatient treatment pursuant to the procedures specified in §§ 37.1-67.01 or 37.1-67.1. This amendment appears to be a technical clarification and not a substantive change.

3.00 TDO (Involuntary Commitment) Hearing Must be Held Within 72 Hours: Va. Code § 16.1-341

If a minor is taken into custody for the purpose of emergency mental health treatment and a TDO is issued, the juvenile and domestic relations district court must conduct a hearing no sooner than 24 hours and within 72 hours from the time of the issuance of the TDO.

3.10 Petitioning the Court for Involuntary Commitment Hearing (New)

SB 1070 amends Virginia Code § 16.1-341 to ensure that a petition for an involuntary commitment hearing in the juvenile court can be filed by “*the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district court.*” This amendment appears to be a technical clarification and not a substantive change.

3.20 Notice to All Parties Provision Added to Subsection B (New)

SB 1070 adds language to subsection B of Virginia Code § 16.1-341 to ensure that the attorney for the minor, the attorney for the Commonwealth in the jurisdiction giving rise to the detention, and the juvenile and domestic relations district court having jurisdiction over any minor in detention or shelter care are given notice prior to the hearing.

4.00 Mandatory Clinical Evaluation: Va. Code § 16.1-342

Virginia Code § 16.1-342 requires the court to order the Community Services Board to arrange for an evaluation of the juvenile prior to the hearing.

4.10 Language Requiring the Findings of an Evaluation of a Juvenile in Detention to be Stated (New)

SB 1070 adds language to Virginia Code § 16.1-342 requiring the evaluator to state that the child meets the criteria for involuntary commitment if the child does in fact meet the criteria even though the child is being detained in detention. The actual language states: “*In conducting a clinical evaluation of a minor in detention or shelter care, if the evaluator finds, irrespective of the fact that the minor has been detained, that the minor meets the criteria for involuntary commitment in § 16.1-345, the evaluator shall recommend that the minor meets the criteria for involuntary commitment.*”

5.00 Criteria for Determining Whether or Not a Juvenile Should be Involuntarily Committed: Va. Code § 16.1-345

Virginia Code § 16.1-345 provides the criteria for determining whether or not a juvenile should be involuntarily committed to a mental health facility. The court must find by clear and convincing evidence that the criteria are satisfied. If the criteria are satisfied, the court “shall” order the involuntary commitment of the minor to a mental health facility for treatment. The placement cannot exceed 90 days.

5.10 Criteria for Involuntarily Committing a Juvenile for Mental Health Treatment (*Not New*)

The criteria for determining that a juvenile needs inpatient treatment as a result of a mental illness includes:

- the minor is a “serious danger” to himself or others to the extent that severe or irremediable injury is likely to result, or
- the minor is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner due to delusional thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control.

The court must also find that the juvenile is reasonably likely to benefit from the proposed treatment. If the court finds that the above criteria are met, the court must order that the inpatient treatment is provided in the least restrictive alternative that meets the minor’s needs. In the alternative, the court may order the minor to participate in outpatient or other clinically appropriate treatment.

5.20 Dealing With a Mentally Ill Juvenile who is in Detention (*New*)

The sum and substance of SB 1070 focuses upon the involuntary commitment of a juvenile who is detained in a local detention facility or shelter care and needs emergency mental health treatment.

5.21 Following the Inpatient Treatment, the Juvenile Shall be Returned to the Detention Facility From Which he was Originally Placed (*New*)

If the juvenile was detained in a local detention facility immediately preceding his placement in a mental health facility for the purpose of receiving emergency mental health treatment, that juvenile will be returned to that detention facility following completion of inpatient treatment. The court retains the authority to release the juvenile from custody.

5.22 If the Evaluator Finds That the Juvenile Needs Inpatient Treatment, the Evaluator Must Make That Recommendation (*New*)

If the person conducting the evaluation of the child finds that the juvenile meets the criteria for involuntary commitment, the evaluator “shall recommend that the minor meets the criteria for involuntary commitment” despite the fact that the juvenile may be incarcerated in a local detention facility at the time of the evaluation.

5.23 Incarcerated Juvenile Cannot Seek Voluntary Commitment (*New*)

Virginia Code § 16.1-338 provides the authority for a juvenile 14 years of age or older to voluntarily seek admission into a mental health facility for the purpose of emergency mental health treatment. SB 1070 adds language to § 16.1-345 to prohibit a juvenile who is incarcerated in a detention facility from applying for voluntary admission and treatment.

6.00 Discharge Plan & Returning Juvenile to Local Detention Facility: Va. Code § 16.1-346.1 (*New*)

Virginia Code § 16.1-346.1 requires a discharge plan for every juvenile admitted for inpatient mental health treatment.

6.01 Contents of the Discharge Plan

At a minimum, the plan must:

- specify the services required by the released patient in the community to meet the minor's needs for treatment, housing, nutrition, physical care, and safety;
- specify any income subsidies for which the minor is eligible;
- identify all local and state agencies that will be involved in providing treatment and support to the minor; and
- specify services that would be appropriate for the minor's treatment and support in the community but are currently unavailable.

6.02 Copies of the Discharge Plan (*Not New*)

The discharge plan must be given to and explained to the juvenile. Copies of the plan must be provided to the juvenile's family. A copy of the discharge plan must be provided to the local department of social services if custody of the juvenile belongs to that agency. If the juvenile will be returned to a local detention facility, a copy of the discharge plan must be provided to the court and to the superintendent of the detention facility.

6.10 Law Enforcement Shall Return the Juvenile to Detention (*New!*)

If a juvenile was incarcerated in a detention facility or shelter care prior to admission to inpatient treatment, the juvenile shall be returned to the detention facility by appropriate law enforcement upon release from the treating facility.

6.11 Outright Release of a Juvenile (*New*)

The juvenile court may provide written authorization for the release of a juvenile prior to the scheduled date of release.

HB 2037 INTERAGENCY CIVIL ADMISSIONS ADVISORY COUNCIL: CREATED.
DELEGATE PHILLIP A. HAMILTON

HB 2037 amends the Virginia Code by adding in Chapter 26 of Title 2.2 an article numbered 30, consisting of §§ 2.2-2690 through 2.2-2695 relating to the Interagency Civil Admissions Advisory Council. Effective July 1, 2005.

1.00 Summary: Interagency Civil Admissions Advisory Council for TDOs

HB 2037 establishes the Interagency Civil Admissions Advisory Council (Council) as an advisory council in the executive branch of state government. The purpose of the Council is to study issues related to the provisions of Virginia law regarding the emergency custody, temporary detention, admission, and involuntary inpatient and outpatient treatment of persons with mental illness; to propose recommendations and provide advice addressing those issues; and to improve the coordination and effectiveness of the implementation of those recommendations. The Council will be composed of 17 members and two ex officio members as follows: One appointee of the Commissioner of DMHMRSAS; one appointee of the Director of the Department of Medical Assistance Services; one appointee of the Director of the Department of Criminal Justice Services; one appointee of the Executive Secretary of the Supreme Court of Virginia; and 13 non-legislative citizen members to be appointed by the Governor. The Secretary of Health and Human Resources and the Secretary of Public Safety will serve as ex officio members.

Part VI Gangs

**HB 2217 & SB 1217 GANGS: DEFINITION OF PREDICATE CRIMES AND PUNISHMENT
FOR GANG-RELATED ACTIVITY TAKING PLACE IN SCHOOL.
DELEGATE **DAVID B. ALBO** & SENATOR **WILLIAM C. MIMS****

HB 2217 and SB 1217 amend Virginia Code §§ 18.2-46.1, 19.2-11.2, 48-7, 48-8, 48-9, and adds in Article 2.1 of Chapter 4 of Title 18.2 § 18.2-46.3:3; all relating to criminal street gangs. Effective July 1, 2005.

1.00 Summary: Expanding the Definition of Criminal Gang Activity Crimes

HB 2217 and SB 1217 expand the list of predicate crimes necessary to satisfy the definition of criminal street gang. The bills further amend the definition of a “predicate criminal act” to include the violation of any offense substantially similar to these newly added crimes as well as the existing listed crimes when committed in another state or territory of the United States, the District of Columbia, or the United States. The legislation creates Virginia Code § 18.2-46.3:3 enhancing penalties for criminal street gang activity on school property.

2.00 The Definition of Criminal Street Gang Activity: Va. Code § 18.2-46.1

Virginia Code §§ 18.2-46.2 and 18.2-46.3 make participating in gang activity and recruiting persons into a gang a crime. Virginia Code § 18.2-46.1 provides the definition of a “criminal street gang” to mean 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, at least one of which is an act of violence, provided such acts were not part of a common act or transaction.

3.00 Definition of “Predicate Criminal Act” (Old List of Predicate Crimes)

An essential element of the definition of a criminal street gang requires that one of the gang’s primary functions is the commission of one or more predicate criminal acts. “*Predicate criminal act*” means an act of violence, any violation of the following Virginia Code sections:

- 18.2-51 (Shooting with Intent to Maim),
- 18.2-51.1 (Malicious Bodily Injury),
- 18.2-52 (Malicious Bodily Injury by Caustic Substance, etc.),
- 18.2-53 (Shooting, etc., in Committing or Attempting a Felony),
- 18.2-55 (Bodily Injuries Caused by Prisoners),
- 18.2-57 (Assault and Battery),
- 18.2-57.2 (Assault and Battery Against Family Member),

[18.2-121](#) (Entering Property of Another for Purpose of Damaging),
[18.2-127](#) (Injuries to Churches),
[18.2-128](#) (Trespass upon Church or School Property),
[18.2-137](#) (Injuring any Property, Monument, etc.),
[18.2-138](#) (Damaging Public Buildings),
[18.2-146](#) (Breaking, Destroying, etc., Vehicles),
[18.2-147](#) (Entering or Setting in Motion Vehicles), or
 any violation of a local ordinance adopted pursuant to § 18.2-138.1 (Damaging Public Buildings).

3.10 Expanding the List of Predicate Crimes (*New*)

HB 2217 and SB 1217 add the following offenses to the definition of a predicate crime:

- [18.2-42](#) (Assault or battery by mob),
- [18.2-56.1](#) (Reckless handling of firearms; reckless handling while hunting),
- [18.2-59](#) (Extorting money, etc., by threats),
- [18.2-286.1](#) (Shooting from vehicles so as to endanger persons; penalty),
- [18.2-287.4](#) (Carrying loaded firearms in public areas prohibited; penalty), and
- [18.2-308.1](#) (Possession of firearm, stun weapon, or other weapon on school property prohibited).

3.20 Predicate Criminal Acts can Occur Outside of Virginia (*New*)

The bills further amend the definition of a “predicate criminal act” to include the violation of any offense substantially similar to these newly added crimes as well as the existing listed crimes when committed in another state or territory of the United States, the District of Columbia, or the United States.

4.00 Enhanced Punishment for Gang Activity in a School Zone: Va. Code§ [18.2-46.3:3](#)

The legislation creates Virginia Code § [18.2-46.3:3](#) to:

- require a mandatory minimum sentence of two years for participating in a street gang and committing a predicate criminal act on school property, on public property within 1,000 feet of a school, or on a school bus;
- make it a Class 6 felony to recruit someone to join a gang while on school property, on public property within 1,000 feet of a school, or on a school bus (Recruitment is now a Class 1 misdemeanor.);
- if the person doing the recruiting is 18 years old or older and the person being recruited is a juvenile, the offense would be a Class 5 felony (currently a Class 6 felony); and
- make it a Class 5 felony to use force or threats while on school property, near a school, or on a school bus, to get someone to join a street gang, remain a member of a street gang, or commit a criminal offense on the demand of a street gang (currently a Class 6 felony).

5.00 Enhanced Witness and Victim Protections: Va. Code § [19.2-11.2](#)

Virginia Code § [19.2-11.2](#) protects a crime victim’s and witness’ right to nondisclosure of certain information and gives certain testimonial privilege. HB 2217 and SB 1217 amend Virginia Code § [19.2-](#)

11.2 to allow the restriction of the disclosure of the address, telephone number, or place of employment of a witness in a trial involving gang activity or gang recruitment, if so requested by the witness.

6.00 Criminal Street Gangs as Public Nuisances: Va. Code §§ 48-7, 48-8, and 48-9

HB 2217 and SB 1217 amend Virginia Code §§ 48-7, 48-8, and 48-9 to allow criminal street gangs to be treated as public nuisances and allow for the enjoinder of such nuisances. *A suit brought to enjoin criminal street gang activity may be brought against the criminal street gang as defined in § 18.2-46.1, as an unincorporated association and in the name by which it is commonly known.*

HB 2734 GANGS: REPORTING ORGANIZED CRIMINAL ACTIVITY AND MEMBERSHIP. DELEGATE MICHELE B. MCQUIGG

HB 2734 amends Virginia Code §§ 16.1-269.2, 16.1-273, and 18.2-55.1, adds § 52-8.6, and repeals § 16.1-299.2; all relating to gang reporting. Effective July 1, 2005.

1.00 Summary: Creating a Gang Membership Data Base

HB 2734 creates a general law-enforcement reporting requirement of all gang activity to the Organized Criminal Gang File in the Virginia Criminal Information Network (VCIN) and the Violent Criminal Gang File of the National Crime Network Center maintained by the Federal Bureau of Investigation. HB 2734 removes references to “youth gang” in Title 16.1 and replaces such references with *criminal street gang* as defined in Virginia Code § 18.2-46.1.

2.00 Virginia Code § 16.1-299.2 (Definition of a Youth Gang) is Repealed

Virginia Code § 16.1-299.2 creates a Youth Gang File in VCIN and provides a definition of a “youth gang.”

2.10 The VCIN Youth Gang File

The first paragraph of Virginia Code § 16.1-299.2 requires law-enforcement to submit a juvenile’s name and other appropriate gang-related information required by the Department of State Police to VCIN’s Youth Gang File when it is determined that a juvenile who has been arrested is a member of a youth gang. HB 2734 moves the gang reporting requirement to Virginia Code § 52-8.6.

2.20 Until HB 2735, Virginia Code § 16.1-299.2 Provided the Definition of a Youth Gang

The second paragraph of Virginia Code § 16.1-299.2 provided the definition of a “youth gang.”¹¹ That definition was repealed and, subsequently, no longer exists.

¹¹ Va. Code § 16.1-299.2 defined a "youth gang" as meaning "an ongoing organization, association, or group (i) having common characteristics, including but not limited to initiation practices, hand signals, structured style of dress, specific geographic territorial claim or identifiable leadership and (ii) consisting of three or more individuals, at least one of whom is a juvenile, who identify themselves as a group by a name or symbol and are involved in a pattern of recurrent felonious criminal conduct. "

3.00 The Transfer Report & Gang Assessment: Va. Code § 16.1-269.2 (Not New)

Virginia Code § 16.1-269.1 provides the statutory authority for certifying or transferring a juvenile from the juvenile and domestic relations district court to the circuit court to be tried as an adult. Subsection A of Virginia Code § 16.1-269.1 provides that if a juvenile, 14 years of age or older, is accused of any other felony, then by motion of the attorney for the Commonwealth, the juvenile court may conduct a transfer hearing. If the attorney for the Commonwealth moves to have a juvenile transferred to circuit court to be tried as an adult, Virginia Code § 16.1-269.2 requires the CSU to provide a transfer report “prior to a transfer hearing.” The purpose of the transfer report is to provide information necessary for the court to determine whether or not the juvenile is a proper person to remain under the jurisdiction of the juvenile court. Included in the report as required by subsection B of Virginia Code § 16.1-269.2 is an assessment of any affiliation with a “youth gang as defined in § 16.1-299.2.”

3.10 Transfer Report Must now use the Criminal Street Gang Definition: Va. Code § 18.2-46.1 (New)

When the gang assessment is conducted for the transfer report, the definition of a criminal street gang as provided in Virginia Code § 18.2-46.1 must be used instead of the definition of a “youth gang” as formerly provided in Virginia Code § 16.1-299.2.

4.00 The Social History & the Gang Assessment: Va. Code § 16.1-273 (Not New)

Virginia Code § 16.1-273 provides the court with the authority to order a social history prior to the dispositional hearing for a juvenile who has been adjudicated delinquent. Generally, the social history provides an overview of an investigation into the juvenile’s “physical, mental and social conditions . . . and personality of the child and the facts and circumstances surrounding the violation of law.” The social history may provide an assessment of any affiliation with a gang.

4.10 Gang is now Defined by Va. § 18.2-46.1 and not by Va. Code § 16.1-299.2 (New)

HB 2734 replaces the reference to a “youth gang” in Virginia Code § 16.1-273 with “criminal street gang” as defined in Virginia Code § 18.2-46.1. Therefore, when an assessment of a juvenile’s gang activity is conducted for a social history, the definition of a criminal street gang as provided in Virginia Code § 18.2-46.1 should be used.

5.00 Criminal Definition of Hazing now Refers to Criminal Street Gang: Va. Code § 18.2-55.1

Virginia Code § 18.2-55.1 makes hazing a Class 1 misdemeanor.¹² Bodily injury during hazing by a gang member is a Class 1 misdemeanor. HB 2734 amends Virginia Code § 18.2-55.1 by striking “youth gang” and inserting “a criminal street gang as defined in § 18.2-46.1.”

¹² Va. Code § 18.2-55.1 defines hazing as meaning “to recklessly or intentionally endanger the health or safety of a person or to inflict bodily injury on a person in connection with or for the purpose of initiation, admission into, or affiliation with or as a condition for continued membership in a youth gang or criminal street gang regardless of whether the person so endangered or injured participated voluntarily in the relevant activity. ”

6.00 Criminal Street Gang Reporting: Va. Code § 52-8.6

HB 2734 requires state and local law enforcement officers, regional jail staff, the Department of Corrections (DOC), or a regional multi-jurisdictional law-enforcement task force to report persons affiliated with criminal street gang activity to a state data base operated by the State Police and a federal data base operated by the Federal Bureau of Investigation.

6.10 The State & Federal Gang Data Bases

The state data base is the Organized Criminal Gang File of VCIN and is established and maintained by the State Police pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. The federal data base is the Violent Criminal Gang File of the National Crime Information Center (NCIC), which is maintained by the Federal Bureau of Investigation.

6.20 Identifying Gang Affiliation

When identifying whether or not an individual is affiliated with a gang, the definition of a criminal street gang as provided in Virginia Code § 18.2-46.1 is used. Identification of affiliation with a criminal street gang can be made by the following:

- admission of membership in a gang by the offender,
- observation by a law-enforcement officer that a person frequents a known gang area, associates with known gang members and demonstrates gang style of dress, tattoos, hand signals, or symbols, or
- having been arrested on more than one occasion with known gang members for offenses consistent with gang activities.

The agency shall enter the person's name and other appropriate gang-related information required by the Department of State Police into the information system.

**HJ 573 CRIME COMMISSION TO STUDY CRIMINAL STREET CONDUCT AND
CHARACTERISTICS: A REPOSITORY OF GANG INFORMATION.
DELEGATE DAVID B. ALBO**

HJ 573 directs the Virginia State Crime Commission to study the characteristics and makeup of discrete criminal street gangs.

HJ 573 directs the Virginia State Crime Commission to study criminal street gang conduct and characteristics for the purpose of reducing the burden on prosecutors by producing a formal listing of gang names coupled with conduct and characteristics unique to those gangs. The Virginia State Crime Commission must submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the 2006 Regular Session of the General Assembly.

Part VII School Specific Legislation

SB 1006 EXPEDITING SCHOOL ENROLLMENT OF FOSTER CARE CHILDREN. SENATOR EMMETT W. HANGER, JR.

SB 1006 amends Virginia Code §§ 22.1-289 and 63.2-900 and adds § 22.1-3.4 relating to school enrollment of children placed in foster care. Effective July 1, 2005.

1.00 Summary: Expediting Enrollment of Foster Care Children in School

SB 1006 requires that whenever a student has been placed in foster care and the social services agency is unable to produce the required documents for enrollment, the student must be immediately enrolled. Furthermore, the person enrolling the student must provide a written statement that, to the best of his knowledge, sets forth the student's age, compliance with notice requirements regarding good standing in the previous school, and that the student is in good health and is free from communicable or contagious disease.

2.00 Enrolling Foster Care Children in School: Va. Code § 22.1-3.4

SB 1006 creates Virginia Code § 22.1-3.4 to provide the process for enrolling in school a child placed in foster care outside of that child's original school district.

2.10 Missing Documentation Shall not be a Barrier: Va. Code § 22.1-3.4(A)

SB 1006 ensures that missing documentation for a child placed in foster care shall not be a barrier to enrolling that child in school. If a child has been placed in foster care by a local social services agency and the placing social services agency is unable to produce any of the documents required for enrollment,¹³ the person enrolling the student shall provide a written statement that, to the best of his knowledge, sets forth: (i) the student's age, (ii) compliance with the requirements of § 22.1-3.2, and (iii) that the student is in good health and is free from communicable or contagious disease. Upon such declaration, the student shall be enrolled immediately.

2.20 Cooperation Between Sending and Receiving Schools: Va. Code § 22.1-3.4(B)

The sending and receiving school divisions shall cooperate in facilitating the enrollment of any child placed in foster care across jurisdictional lines for the purpose of enhancing continuity of instruction.

2.21 Definitions for Sending and Receiving Schools

Subsection D of Virginia Code § 22.1-3.4 defines a foster care student, a receiving school, and the sending school. These definitions are important concerning financial reimbursement.

“A child or student placed in foster care” means a pupil who is the subject of a foster care placement through an entrustment or commitment of such child to the local social services board

¹³ Va. Code §§ 22.1-3.1, 22.1-270, or 22.1-271.2 provide the requirements and documentation for enrolling a child in school.

or licensed child-placing agency pursuant to clause (ii) of the definition of “foster care placement” as set forth in § 63.2-100.

“Receiving school division” means the school division in which the residence of the student’s foster care placement is located.

“Sending school division” means the school division in which the student last attended school.

2.30 Agreement to Have Child Remain in Original School Prior to Foster Care Placement: Va. Code § 22.1-3.4(B)

The sending school division and the receiving school division may agree to allow the child to continue to attend the school in which he was enrolled prior to the most recent foster care placement upon the agreement of the placing social services agency that such attendance is in the best interest of the child.

2.31 Monetary Arrangements for Foster Care Child & School: Va. Code § 22.1-3.4(C)

If the foster care child is allowed to continue to attend the school in which he was enrolled prior to the foster care placement, the receiving school division shall be accorded foster children education payments pursuant to § 22.1-101.1. The receiving school division may enter into financial arrangements with the sending school division pursuant to subsection C of § 22.1-5.

2.32 A Foster Care Child Will not be Charged Tuition

Under no circumstances shall a child placed in foster care be charged tuition regardless of whether such child is attending the school in which he was enrolled prior to the most recent foster care placement or attending a school in the receiving school division.¹⁴

3.00 Expediting the Transfer of Scholastic Records for a Foster Care Child: Va. § 22.1-289

Virginia Code § 22.1-289 pertains to the transfer and management of scholastic records. This section of the Code covers the transfer of records when a child changes school districts and is committed or released from a juvenile correctional center. SB 1006 adds new language to this section of the Code requiring the sending school and the receiving school to expedite the transfer of scholastic records upon notice that a child has been placed in foster care.

4.00 Notice to School Within 72 Hours of Foster Care Placement: Va. Code § 63.2-900(C)

Virginia Code § 63.2-900 provides a local board of social services (i.e., a local department of social services) with the statutory authority to accept children for placement in foster care homes and other out-of-family placements.¹⁵ SB 1006 adds subsection C to Virginia Code § 63.2-900 requiring the local social services agency to notify the principal of the school and the superintendent of the school division in which the child shall be enrolled within 72 hours of placing that child in the foster care placement. The notice must be in writing and must inform the principal of the status of the parental rights.

¹⁴ Also see subsection E of Virginia Code § 22.1-3.4 that also prohibits a foster care child from being charged for tuition.

¹⁵ Such placements must be made in accordance with regulations promulgated by the State Board of Social Services.

5.00 Local DSS has 30 Days to Submit Needed Enrollment Documents: Va. Code § 63.2-900(C)

Subsection C provides the local department of social services with 30 days from the child's enrollment to submit the required documentation needed for enrollment to the receiving school. Virginia Code §§ 22.1-3.1, 22.1-270, or 22.1-271.2 provide the requirements and documents needed for enrolling a child in school.

6.00 Memorandum of Understanding: 2nd Enactment Clause

SB 1006 contains a second enactment clause requiring the Superintendent of Public Instruction and the Commissioner of the Department of Social Services (DSS) to issue a memorandum as soon as practicable after the enactment of this act to inform local school division superintendents and local social services agencies of its provisions.

HB 2266 & HB 2879 REQUIRED SCHOOL POLICIES ON BULLYING & REPORTING OF STALKING. DELEGATE ROBERT B. BELL AND DELEGATE ROBERT G. MARSHALL

HB 2266 and HB 2879 amend Virginia Code §§ 22.1-208.01, 22.1-279.3:1 and 22.1-279.6 relating to school board policies addressing bullying, harassment, and intimidation. Effective July 1, 2005.

1.00 One Sentence Summary: School Polices Addressing Bullying

HB 2266 & HB 2879 amend Virginia Code §§ 22.1-208.01, 22.1-279.3:1, and 22.1-279.6 relating to school board policies addressing bullying, harassment, and intimidation.

2.00 Character Education Programs: Va. Code § 22.1-208.01

Virginia Code § 22.1-208.01 requires each school board for each school division to establish a character education program in its schools. The purpose of the character education program is to “instill in students civic virtues and personal character traits so as to improve the learning environment, promote student achievement, reduce disciplinary problems, and develop civic-minded students of high character.¹⁶ The purpose of the statute is “intended to educate students regarding those core civic values and virtues that are efficacious to civilized society and are common to the diverse social, cultural, and religious groups of the Commonwealth.”

¹⁶ Virginia Code § 22.1-208.01 states that the basic character traits taught may include: (i) trustworthiness, including honesty, integrity, reliability, and loyalty; (ii) respect, including the precepts of the Golden Rule, tolerance, and courtesy; (iii) responsibility, including hard work, economic self-reliance, accountability, diligence, perseverance, and self-control; (iv) fairness, including justice, consequences of bad behavior, principles of nondiscrimination, and freedom from prejudice; (v) caring, including kindness, empathy, compassion, consideration, generosity, and charity; and (vi) citizenship, including patriotism, the Pledge of Allegiance, respect for the American flag, concern for the common good, respect for authority and the law, and community-mindedness.

2.10 Character Education Programs Must now Address Bullying (New)

[HB 2266](#) & [HB 2879](#) amend Virginia Code § [22.1-208.01](#) to require each character education program to address the inappropriateness of bullying. Bullying will be defined in the Student Conduct Policy Guidelines adopted by the Board of Education pursuant to Virginia Code § [22.1-279.6](#).

3.00 State DOE Must Provide Guidelines and Model Policies for Codes of Student Conduct: Va. Code § 22.1-279.6 (A) (New)

Virginia Code § [22.1-279.6](#) requires the State Board of Education to establish guidelines and develop model policies for codes of student conduct to aid local school boards in the implementation of such policies. [HB 2266](#) & [HB 2879](#) amend the criteria for the guidelines and model policies to include standards for addressing *bullying*.¹⁷

4.00 Local School Divisions Must Address Bullying in Student Code of Conduct: Va. Code § 22.1-279.6 (B) (New)

Subsection B of Virginia Code § [22.1-279.6](#) requires each local school board to adopt a code of student conduct. The code of student conduct must address procedures for suspension, expulsion, and exclusion decisions and incorporate discipline options and alternatives to preserve a safe, nondisruptive environment for effective teaching and learning. Subsection D also requires each local school division to include in its code of student conduct prohibitions against hazing and profane or obscene language or conduct. [HB 2266](#) & [HB 2879](#) amends subsection D to add *bullying* to that list of prohibitions.

5.00 Mandatory Incident Reports to School Principal: Va. Code § 22.1-279.3:1(A)

Subsection A of Virginia Code § [22.1-279.3:1](#) 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](#));

¹⁷ The guidelines and model policies must include: (i) criteria for the removal of a student from a class, the use of suspension, expulsion, and exclusion as disciplinary measures, the grounds for suspension and expulsion and exclusion, and the procedures to be followed in such cases, including proceedings for such suspension, expulsion, and exclusion decisions and all applicable appeals processes; (ii) standards, consistent with state, federal and case laws, for school board policies on alcohol and drugs, hazing, vandalism, trespassing, threats, search and seizure, disciplining of students with disabilities, intentional injury of others, self-defense, *bullying*, and dissemination of such policies to students, their parents, and school personnel; and (iii) standards for in-service training of school personnel in and examples of the appropriate management of student conduct and student offenses in violation of school board policies.

- any illegal conduct involving firebombs, explosive materials or devices, hoax explosive devices (defined in § 18.2-85), 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.

5.10 Stalking Added to the List Requiring an Incident Report (*New*)

HB 2266 & HB 2879 amend subsection A of Virginia Code § 22.1-279.3:1 to add the criminal offense of stalking of any person as described in § 18.2-60.3 to the list of offenses requiring an incident report to the principal.

6.00 Mandatory Reports From Principal to Law-Enforcement: Va. Code § 22.1-279.3:1(D)

When a principal receives an incident report pursuant to subsection A of Virginia Code § 22.1-279.3:1, subsection 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. This notification requirement is subject to any prohibitions by “federal law, regulation, or jurisprudence.”

6.10 Mandatory Reports From Principal to Parents: Va. Code § 22.1-279.3:1(D) (*New*)

When a principal receives an incident report pursuant to subsection A of Virginia Code § 22.1-279.3:1, HB 2266 & HB 2879 amend subsection D to require the principal to notify the parents of the student who is the “*specific object of such act*” if the act may constitute a criminal offense. This notification requirement is subject to any prohibitions by “federal law, regulation, or jurisprudence.”

6.11 Principal Must Tell Parents About Report to Law-Enforcement (*New*)

The principal must also inform the parents that that the incident has been reported to local law enforcement and that the parents may contact local law enforcement for further information, if they so desire.

HB 2267 CIVIL IMMUNITY FOR REPORTING SCHOOL BULLIES. DELEGATE ROBERT B. BELL

HB 2267 amends Virginia Code § 8.01-220.1:2 relating to civil immunity for reporting incidents of bullying. Effective July 1, 2005.

1.00 Civil Immunity for Teachers Performing Their Duties: Va. Code § 8.01-220.1:2

Virginia Code § 8.01-220.1:2 provides civil immunity for teachers under certain circumstances. A teacher will not be held liable for civil damages arising out of the performance of the teacher’s duties and within such teacher's scope of employment as long as the actions or omissions are taken in good faith in the course of supervision, care, or discipline of students. There is no protection for acts or omissions resulting from gross negligence or willful misconduct.

2.00 Civil Immunity for Reporting Bullying: Va. Code § 8.01-220.1:2(B) (New)

HB 2267 adds a new subsection to Virginia Code § 8.01-220.1:2 to protect school employees and volunteers from being held liable for any civil damages arising from *the prompt good faith reporting of alleged acts of bullying or crimes against others to the appropriate school official in compliance with specified procedures.*

HB 2382 MAKING FALSE STATEMENTS REGARDING SCHOOL DIVISION RESIDENCY: CLASS 4 MISDEMEANOR. DELEGATE WILLIAM K. BARLOW

HB 2382 amends the Virginia Code by adding § 22.1-264.1 relating to false statements regarding school division residency. Effective July 1, 2005.

1.00 Class 4 Misdemeanor for Falsifying School Residency Requirements

HB 2382 amends the Virginia Code by adding § 22.1-264.1 relating to false statements regarding school division residency. A person who knowingly makes a false statement concerning the residency of a child in a particular school division or school attendance zone for the purposes of avoiding tuition charges or enrollment in a school outside the attendance zone in which the student resides is guilty of a Class 4 misdemeanor. The punishment for conviction of a Class 4 misdemeanor is a fine of not more than \$250.

HB 2535 POSSESSION OF FIREARMS ON SCHOOL PROPERTY: WHEN ALLOWED. DELEGATE RILEY E. INGRAM

HB 2535 amends Virginia Code § 18.2-308.1 relating to possession of firearms on school property. Effective July 1, 2005.

1.00 Possession of Concealed Handgun in School Parking Lot

Virginia Code § 18.2-308.1 provides prohibitions for possessing a firearm, stun weapon, or other weapon on school property. HB 2535 amends Virginia Code § 18.2-308.1 to allow a person who has a valid concealed handgun permit to possess *a concealed handgun while in a motor vehicle in a parking lot, traffic circle, or other means of vehicular ingress or egress to the school.*

Part VIII Regulating Group Homes & Residential Facilities

HB 2461 YOUTH GROUP HOMES: DESIGNATED COMMUNITY LIAISONS AND REGULATORY REQUIREMENTS. DELEGATE SAMUEL A. NIXON, JR.

HB 2461 amends Virginia Code §§ 22.1-323.2, 37.1-189.1, 63.2-1737, and 66-24 and adds § 22.1-16.3 relating to licensed or certified group homes or other residential facilities. Effective July 1, 2005.

1.00 New Statutory Requirements When Promulgating Regulations Pertaining to Group Homes

HB 2461 amends Virginia Code §§ 22.1-323.2, 37.1-189.1, 63.2-1737, and 66-24 and adds § 22.1-16.3 relating to licensed or certified group homes or other residential facilities. The portion of the bill that applies to DJJ amends § 66-24 to require the State Board to adopt regulations that require persons who are certified to operate group homes or other residential care facilities for juveniles to provide to DJJ a name, address, and telephone number of a contact person to serve as the facility's community relations liaison and to notify DJJ immediately of any changes in this information. The Board's regulations must address the services required to be provided in such facilities as it may deem appropriate to ensure the welfare and safety of the juveniles. The regulations must include specifications for the structure and accommodations of such facilities according to the needs of the juveniles to be placed in the home or facility. The regulations must establish rules concerning allowable activities, local government- and group home- or residential care facility-imposed curfews, and hours for study, recreation, and bedtime.

2.00 Language Gives DJJ Right to be a Part of CORE (New)

HB 2461 adds new language to paragraph A in Virginia Code § 66-24 that provides the statutory authority for DJJ to participate in the CORE Standards. The new language requires DJJ to "cooperate with other state departments in fulfilling their respective licensing and certification responsibilities and in reducing and simplifying the regulations involved in the licensing or certification of children's residential facilities." The new language requires the State Board to promulgate regulations that shall allow DJJ to assist and cooperate with other state departments.

2.10 Language Mirrors Language for DSS, DOE, and DMHMRSAS (New)

The CORE standards mean the standards for residential care that are common to DSS, DOE, DMHMRSAS and DJJ. The CORE standards must be met by a children's residential facility in order to qualify for a license or certificate. The new language in Virginia Code § 66-24 mirrors statutory language that is relied upon as the basis for DSS, DOE, and DMHMRSAS to promulgate the CORE standards.

SB 1333 AUTHORITY TO SUMMARY SUSPEND CHILDREN'S GROUP HOMES & RESIDENTIAL FACILITIES LICENSES. SENATOR STEPHEN H. MARTIN

SB 1333 amends Virginia Code §§ 37.1-185 and 37.1-189.1 relating to summary suspension of licenses of children's group homes and residential facilities. Effective July 1, 2005.

1.00 Summary Suspension of Group Home License by DMHMRSAS

SB 1333 authorizes the Commissioner of DMHMRSAS to issue an order of summary suspension of a license to operate a group home or residential facility for children, including homes or facilities licensed under core licensure regulations, in cases of immediate and substantial threat to the health, safety, and welfare of residents.

The bill requires the State Mental Health, Mental Retardation and Substance Abuse Services Board to promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

The Executive Secretary of the Supreme Court and DMHMRSAS must establish a protocol for the expedited appointment of a hearing officer for the summary suspension of licenses in accordance with the provisions of this act.

**HJ 685 YOUTH GROUP HOMES: JOINT SUBCOMMITTEE STUDY.
DELEGATE FRANKLIN P. HALL**

HJ 685 establishes a joint subcommittee to study private youth and single family group homes in the Commonwealth.

The joint subcommittee will look at licensing requirements, enforcement, and other issues that affect the integration of youth group home residents into the community. The subcommittee will study the excessive concentration of single family group homes in certain neighborhoods and any possible adverse effects. Administrative staff support will be provided by the Office of the Clerk of the House of Delegates. Legal, research, and policy analysis will be provided by the Division of Legislative Services. Technical assistance will be provided by DJJ, DSS, DOE, and DMHMRSAS. The joint subcommittee must submit an executive summary of its findings and recommendations no later than the first day of the 2006 Regular Session of the General Assembly.

Part IX Miscellaneous Legislation

HB 1765 TELEPHONE SYSTEMS FOR CORRECTIONAL FACILITIES – USE OF DEBIT SYSTEM. DELEGATE JAMES H. DILLARD, II

HB 1765 amends the Virginia Code by adding § 53.1-1.1 pertaining to telephone systems within correctional facilities. The bill has a delayed effective date of January 1, 2006.

1.00 DOC Must Provide Debit or Prepaid Telephone Systems

HB 1765 requires DOC to offer prepaid or debit telephone systems in addition to existing collect calling systems. Such telephone systems may be established with the lowest available rates. The bill has a delayed effective date of January 1, 2006. Although the language in the bill does not apply to DJJ, DJJ does contract with DOC for the provision of telephone services for committed youth.

HB 2854 TESTING FOR HEPATITIS C & DISCLOSING POSITIVE TESTS TO CERTAIN PARTIES. DELEGATE KRISTEN J. AMUNDSON

HB 2854 amends Virginia Code § 18.2-346.1 relating to testing for and limited disclosure of infection with certain blood-borne pathogens when a person is convicted of a certain crime. Effective July 1, 2005.

1.00 Testing for Hepatitis C When Person is Convicted for Certain Crimes

HB 2854 requires hepatitis C testing of persons convicted under statutes prohibiting prostitution, crimes against nature, and certain drug offenses indicating intravenous use. Under current law, persons convicted of prostitution and crimes against nature must be tested for HIV. This bill adds drug crimes to that provision. The bill also contains provisions related to the sharing and confidentiality of hepatitis C test results. HB 2854 allows the State Health Commissioner to share protected health information relating a positive test for hepatitis C to certain parties if two conditions are met. First, sharing the information is necessary to advise the exposed individuals of the risk of infection and to enable exposed individuals to seek appropriate testing and treatment. Second, sharing the information is needed to prevent and control the disease and is deemed necessary to prevent serious harm and serious threats to the health and safety of individuals and the public. Disclosure can be made to relevant sheriffs' offices, the state police, local police departments, *adult or youth correctional facilities*, firefighters, paramedics or emergency medical technicians, *officers of the court*, and regional or local jails.

**SB 889 SUICIDE PREVENTION: LEAD AGENCY TO BE DEPARTMENT OF MENTAL HEALTH,
REPORT. SENATOR WILLIAM C. MIMS**

SB 889 amends Virginia Code § 32.1-73.7 and adds §37.1-24.001 relating to suicide prevention across the lifespan. Effective July 1, 2005.

1.00 Youth Suicide Prevention & Coordination of State Agencies: Va. Code § 32.1-73.7

Virginia Code § 32.1-73.7 requires the Department of Health, DOE, DMHMRSAS, community services boards and behavioral health authorities, and local departments of health to coordinate a youth suicide prevention program within the Commonwealth. The activities of these agencies will pertain to youth suicide prevention in order to develop comprehensive youth suicide prevention strategies addressing public awareness, the promotion of health development, early identification, intervention and treatment, and support to survivors. The strategies will target the specific needs of children and adolescents.

2.00 DMHMRSAS New Lead Agency: Va. Code § 37.1-24.001 (New)

Prior to SB 889, the Department of Health was the lead agency responsible for coordinating suicide prevention in Virginia. SB 889 creates Virginia Code § 37.1-24.001 to make DMHMRSAS the lead agency for youth suicide prevention. DMHMRSAS will coordinate the activities of the agencies of the Commonwealth pertaining to suicide prevention in order to develop and carry out a comprehensive suicide prevention plan addressing public awareness, the promotion of health development, early identification, intervention and treatment, and support to survivors.

SJ 368 COMMENDING LILLIAN BROOKS.

Agreed to by the Senate, January 20, 2005

Agreed to by the House of Delegates, January 28, 2005

Lillian Brooks has served for two decades as director of court services for the Alexandria CSU. Ms. Brooks was named Outstanding Juvenile Court Administrator in the United States by the National Juvenile Court Services Association. This prestigious national award recognizes her work on behalf of children and families, her innovative and progressive approach to solving problems, and her efficient management of the CSU. SJ 368 commends Lillian Brooks for her many years of dedicated and effective service to the citizens of Alexandria and for being named the Outstanding Juvenile Court Administrator in the United States.

Part X Sex Offenses Against Minors & the Sex Offender Registry

SB 1170 INDECENT LIBERTIES WITH CHILDREN: EXPANDING TO COVER AGE 14. SENATOR **KENNETH W. STOLLE**

SB 1170 amends Virginia Code § 18.2-370 relating to indecent liberties with children. Effective July 1, 2005.

1.00 Indecent Liberties with Children 14 Years of Age or Younger (*New Age*)

SB 1170 amends Virginia Code § 18.2-370 relating to indecent liberties with children. Current law lists several sexually-related actions for which it is a Class 5 felony for anyone 18 years or older to commit against a child under the age of 14; i.e., 13 years of age or younger. A subsequent offense would be a Class 4 felony. SB 1170 expands the applicability of the indecent liberties with children statute to cover children under the age of 15; i.e., 14 years of age or younger.

HB 2836 SEX OFFENDER REGISTRY: EXPANDING THE OFFENSES FOR WHICH REGISTRATION IS REQUIRED. DELEGATE **BEVERLY J. SHERWOOD**

HB 2836 amends Virginia Code §§ 9.1-902, 9.1-905, 9.1-907, and 9.1-913 relating to the Virginia Sex Offender and Crimes Against Minors Registry Act. Effective July 1, 2005.

HB 2836 adds murder pursuant to Virginia Code §§ 18.2-31 or 18.2-32 where the victim is a minor to the list of offenses for which registration is required. HB 2836 also adds to the list for which registration is required sexual battery pursuant to § 18.2-67.4 where the perpetrator is 18 years of age or older and the victim is under the age of six. HB 2836 further requires a person to register in Virginia for an offense *for which registration in a sex offender and crimes against minors registry is required under the laws of the political subdivision where the offender was convicted*. The bill also requires the registration of a nonresident in Virginia within 10 days of entering Virginia for an extended visit (30 days or more). Finally, the bill clarifies that local law-enforcement agencies have the authority to enforce the provisions of the Act.